

TITLE 2 – MUNICIPAL GOVERNMENT

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**CHAPTER 2.1
MUNICIPAL GOVERNMENT**

Sections:

- 2.1.1 The City Seal**
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2.1.1 The City Seal.

The corporate seal of the City of Payson, Utah, shall be circular in form, and one and one-half inches in diameter, with a capital letter "P" in Old English in the center of the seal, and encircled with a wreath, with the words "CITY OF PAYSON, UTAH, CORPORATE SEAL" in capital letters after the margin thereof and the same is hereby established and declared to be the seal of the City of Payson, Utah. (3-15-06)

2.1.2 Compensation of Officers (6-1-94)

- a) The elective and statutory officers shall receive such compensation for their services as the Governing Body may fix, adopting compensation or compensation schedules enacted after public hearing.
- b) The compensation schedules for all elected, statutory and appointed offices shall be

submitted as part of the budget each year and approved as part of the budgeting process after a public hearing.

- c) The Governing Body shall comply with Utah Code Annotated §10-3-818 in setting compensation for elected and statutory officers.

**CHAPTER 2.2
GOVERNING BODY**

Sections:

- 2.2.1 Form of Government**
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- 2.2.20 Appointment of Other Officers**
- 2.2.21 Administration of Payson City**
- 2.2.22 Compensation**
- 2.2.23 Board of Adjustment**

2.2.1 Form of Government

Payson City is a fourth class City governed by §10-3b-103 Utah Code Annotated, 1953, as amended. Payson City is governed by the six-member council form of government. The Governing Body has appointed, by ordinance, a City Manager pursuant to provisions of §10-3b-303 Utah Code Annotated, 1953, as amended. (07-07-10)

2.2.2 Governing Body

In accordance with §10-3b-301 et. seq. Utah Code Annotated, 1953, as amended, the Governing Body of Payson City shall be a council composed of six (6) members one of whom shall be the Mayor and five (5) of whom shall be City Council members hereinafter referred to as the Governing Body. (07-07-10)

2.2.3 Powers and Duties.

The Governing Body shall exercise the legislative and executive powers of Payson City and may perform such other functions as may be specifically provided or necessarily implied by law. It is the responsibility of the Governing Body to adopt, ordain, and resolve, by majority vote of a quorum of the Governing Body, all laws, ordinances, resolutions, policies and procedures of Payson City. (10-1-03)

2.2.4 Meetings

1. Regular Meetings. In accordance with §10-3-502 Utah Code Annotated, 1953, as amended, the City Council shall hold regular meetings on the first and third Wednesday of each month at the Payson City Center located at 439 West Utah Avenue, Payson, Utah, in accordance with an annual meeting schedule adopted annually by the Governing Body by ordinance. If the meeting date is a legal holiday or a quorum of the City Council is not available, the meeting may be canceled or may be held on an alternate date set by the City Council. (3-15-06)

2. Special Meetings. In accordance with §10-3-502 Utah Code Annotated, 1953, as amended, the Mayor or any two (2) City Council members may call a special meeting for the purpose of discussing and acting upon any business of the City. The calling of a special meeting shall be entered into the minutes of the Governing Body. Notice of the special meeting shall be served by the City Recorder or Clerk on each member of the Governing Body who did not call the special meeting by delivering the notice personally or by leaving it at the member's primary residence at least three (3) hours prior to the special meeting in addition to an attempt to contact the City Council member by phone. The personal appearance by a member at any specially called meeting constitutes a waiver of the notice required by this Section. A quorum of the Governing Body must be present to conduct a special meeting. (10-1-03)

3. Closed Meeting. A closed meeting may be held upon the affirmative vote of at least two thirds of the City Council members present at an open meeting for which notice is given and a quorum is present to discuss certain items as provided under Title 52, Chapter 4 -Utah Code Annotated, 1953, as amended. The reason or reasons for holding a closed meeting and the vote, either for or against the proposition to hold such a meeting, cast by each member by name shall be entered on the minutes of the Governing Body. No ordinance, resolution, rule, regulation, contract, or appointment shall be approved at a closed

meeting. (07-07-10)

4. Adjourned Meetings. If the business noticed on the agenda of a regular or special meeting is not completed before adjournment of that meeting, an adjourned meeting may be held to continue the uncompleted business. A motion to adjourn at the regular or special meeting shall specify the date and the time for the continuation of the meeting. No adjourned meeting shall be scheduled for a date later than the next regular meeting.

2.2.5 Open Meetings Law

All meetings of the City Council shall be open to the public, except closed meetings defined in Title 52, Chapter 4 Utah Code Annotated, 1953, as amended. (07-07-10)

2.2.6 Electronic Meetings

Pursuant to §52-4-207 Utah Code Annotated 1953, as amended, the Payson City council authorizes and allows electronic meetings by complying with the following written procedures:

1. The anchor location shall be the Payson City Council Chambers located at 439 West Utah Avenue, Payson, Utah 84651. (8-18-04)
2. An electronic meeting will only be allowed if there is a quorum at the anchor location.
3. Members of the Governing Body can only participate electronically in emergency or extenuating situations.
4. If a member of the Governing Body is going to be absent for an extended period of time, the Mayor must give his consent to allow that member of the Governing Body to participate electronically in the city council meetings. (9-1-04)
5. Prior to or at the beginning of an electronic meeting, the Chair of the public body shall verify that proper notice of the meeting was given pursuant to Section 54-4-207, Utah Code Annotated 1953, as amended. (07-07-10)
6. Prior to or at the beginning of the electronic meeting or portion of the electronic meeting in which non-present members will be participating, the Chair shall confirm that the non-present members are connected via electronic means (*i.e.*, telephonic or telecommunications conference). (9-1-04)
7. The electronic connection shall be such that all members, both present and non-present, may hear the proceedings of the meeting, or portion of the meeting, in which they are participating. (9-1-04)
8. If voting is required, the Chair shall require a roll

call vote, so that the non-present members' votes may be counted. (9-1-04)

9. The Chair shall require all participants in the electronic meeting to verbalize their statements and responses, so that the non-present members may hear them. (9-1-04)
10. The Chair shall require that all visual aids and written materials not available to the non-present members be verbally described. (9-1-04)

2.2.7 Agenda

A written agenda for each regular meeting shall be prepared by the City Manager or designee, reviewed by the Mayor, and distributed to the Governing Body. Items may be placed on the agenda by the Mayor, City Manager, or any member of the City Council. The agenda may not be modified within twenty four (24) hours of a City Council meeting. (3-15-06)

2.2.8 Minutes

Written minutes shall be kept of all meetings of the Governing Body as required by §52-4-203 Utah Code Annotated, 1953, as amended, and shall be presented to the Governing Body for review, correction and approval. The written minutes of an open meeting shall include the date, time, and place of the meeting; the names of members of the Governing Body present and absent; the substance of all matters proposed, discussed or decided by the Governing Body; a record, by individual member, of each vote taken; the name of each person who is not a member of the Governing Body who after being recognized, provides testimony or comments to the Governing Body; a summary of the testimony or comments provided by the public; and any other information that any member of the Governing Body requests be entered into the minutes of the meeting.

A recording of an open meeting shall be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting and shall be properly labeled or identified with the date, time and place of the meeting. The written minutes of an open meeting are public records and shall be available within a reasonable time. A recording of an open meeting is a public record and shall be available to the public for listening within three business days after the end of the meeting. No recording is required to be kept of an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the Governing Body. Written minutes made available before approval by the Governing Body shall be clearly identified as "awaiting formal approval" or

some other appropriate notice that the written minutes are subject to change until formally approved. (07-07-10)

2.2.9 Public Records

In accordance with §10-3-603 Utah Code Annotated, 1953, as amended, the minutes, journals, books, records, accounts and documents of the Governing Body shall be kept at the office of the City Recorder. Approved copies shall be open and available to the public during regular business hours for examination and copying pursuant to the Payson City Government Records Access and Management Ordinance. (07-07-10)

2.2.10 Public Notice of Meetings

In accordance with §52-4-202 Utah Code Annotated, 1953, as amended, the Governing Body shall give public notice at least once each year of its annual meeting schedule as provided by law. In addition, the Governing Body shall give not less than 24 hours public notice of the agenda, date, time and place of each of its meetings except for emergency meetings permitted by state statute. (10-1-03)

2.2.11 Mayor Presides

The Mayor shall chair and preside at the meetings of the Governing Body pursuant to §10-3b-302. In the absence of the Mayor or because an inability or refusal to act, the City Council may elect a member of the Council to preside over the meeting as Mayor pro tempore, who shall have all of the powers and duties of the Mayor during any absence, disability or refusal. Each appointment of Mayor pro tempore shall be in effect until the Mayor returns or until another is appointed by the Governing Body. (07-07-10)

2.2.12 Attendance

The Governing Body shall have the power to compel the attendance of its own members and to provide such penalties as it deems necessary for the failure to comply therewith in accordance with §10-3-505 Utah Code Annotated, 1953, as amended. (10-1-03)

2.2.13 Rules of Procedure

Except as otherwise provided by law, and in accordance with §10-3-606 Utah Code Annotated, 1953, as amended, the Governing Body may determine its own rules of procedure for the proper conduct of its meetings. The Governing Body has adopted resolution #05-15-02 dictating conduct and procedures to be followed during the meetings of the Governing Body. (07-07-10)

2.2.14 Rules of Conduct

In accordance with §10-3-608 Utah Code Annotated, 1953, as amended, the Governing Body, with the affirmative vote of two thirds of its members may expel any person who is disorderly during the meeting of the Governing Body. The Governing Body, in accordance with §10-3-607 Utah Code Annotated, 1953, as amended, may also, upon a two thirds vote of its members expel or fine any member of the Governing Body for disorderly conduct. This Section or any action taken by the Governing Body pursuant hereto does not preclude prosecution under any other provision of law. (07-07-10)

2.2.15 Attendance of Witnesses and Evidence

In accordance with §10-3-610 Utah Code Annotated, 1953, as amended, the Governing Body may require the attendance of any person to give testimony or produce records, documents or items for inspection, copying or examination necessary or useful for the governance of Payson City. The Governing Body shall issue subpoenas in its own name in the manner provided in the Utah Rules of Civil Procedure or may by ordinance establish its own procedure for issuing subpoenas under this Section. (10-1-03)

2.2.16 Quorum

No action of the Governing Body shall be official or of any affect unless a quorum is present, except as otherwise provided by law. Three (3) or more voting Council members shall constitute a quorum. (10-1-03)

2.2.17 Voting

1. How Taken. Consistent with §10-3-506 Utah Code Annotated, 1953, as amended, a roll call vote shall be taken and recorded for all ordinances, resolutions, and any action which would create a liability against Payson City. In all other cases, at the request of any member of the City Council, an “aye” or a “no” vote shall be taken and recorded. Every resolution or ordinance shall be in writing before the vote is taken. (10-1-03)

2. Number Required. In accordance with §10-3-507 Utah Code Annotated, 1953, as amended, and the contents of this Title, the minimum number of affirmative votes required to pass any ordinance, resolution, or to take any action by the Governing Body, unless otherwise provided by law or this Title, shall be a majority of all voting members of the Governing Body. Any ordinance, resolution, or motion of the Governing Body having fewer favorable votes than required herein shall be deemed

defeated and invalid. Fewer votes may be allowed to adjourn a meeting from time to time, or fill a vacancy in the Governing Body. (07-07-10)

3. Mayor Voting. In accordance with §10-3b-302 Utah Code Annotated, 1953, as amended, the Mayor is a nonvoting member of the Governing Body. The Mayor shall not vote except in cases of a tie vote of the other council members present at a council meeting; when the council is voting on whether to appoint or dismiss the City Manager, or when considering an ordinance that enlarges or restricts the mayor’s powers, duties, or functions. (07-07-10)

4. Veto. In accordance with §10-3b-302 Utah Code Annotated, 1953, as amended, the Mayor shall have no power to veto an ordinance, tax levy, or appropriation of the Governing Body unless otherwise specifically authorized by state statute. (07-07-10)

2.2.18 Reconsideration

In accordance with §10-3-508 Utah Code Annotated, 1953, as amended, any action taken by the Governing Body may not be reconsidered or rescinded at any special meeting unless the number of members of the Governing Body present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved. (07-07-10)

2.2.19 Final Action on Committee Reports

In accordance with §10-3-609 Utah Code Annotated, 1953, as amended, any final action on any report of any committee appointed by the Governing Body shall be deferred to the next regular meeting or special council meeting of the Governing Body on the request of any two (2) City Council members. (07-07-10)

2.2.20 Appointment of Other Officers.

1. Advice and Consent. In accordance with §10-3-916 Utah Code Annotated, 1953, as amended, on or before the first Monday in February following a municipal election, the Mayor, with the advice and consent of the City Council, shall appoint a qualified person to each of the offices of City Recorder and City Treasurer. The Mayor, with the advice and consent of the council, may appoint and fill vacancies in all offices provided for by law or ordinance. All appointed officers shall continue in office until their successors are appointed and qualified. If an appointed officer does not continue in office for whatever reason and a successor has not yet been appointed and confirmed, the Mayor, with the advice and consent of the City Council may appoint a

temporary officer to fulfill the duties of the office until such time as a successor is hired. (07-07-10)

2. General Administration. In accordance with §10-3-916 Utah Code Annotated, 1953, as amended, the Governing Body, may, by ordinance, designate such other officers as may be necessary for the order and well being of the City, define their duties, fix their term and compensation, and require them to take and subscribe an oath of office. The Governing Body may divide the work of the City into departments. The duties, powers and privileges of all officers in any way connected with the city government not herein defined, shall be defined by the City Manager. Defining these duties, powers and privileges shall not preclude the City Manager or the Governing Body from defining by ordinance further and additional duties to be performed by any such officer. (10-1-03)

2.2.21 Administration of Payson City

In accordance with §10-3b-104 and §10-3b-303 Utah Code Annotated, 1953, as amended, the administrative powers, authority, and duties are appropriately divided between the Mayor and the City Manager in accordance with Chapter 2.3 and 2.6 herein. The Mayor and City Manager shall be responsible to accomplish and implement Payson City Policy established by the Governing Body. The Governing Body shall not be involved in the administration of the City beyond the establishment of appropriate legislative policies and procedures, and the City Council assignments as given by the Mayor with the advice and consent of the City Council. (07-07-10)

2.2.22 Compensation

In accordance with §10-3-818 Utah Code Annotated 1953, as amended, the Governing Body shall be paid a monthly salary as established in the annual municipal budget adopted by ordinance following a public hearing. The Governing Body shall not receive additional compensation to attend meetings and shall not be reimbursed for costs associated with missing the member of the Governing Body's primary employment. The Governing Body shall be entitled to reimbursement for Payson City related expenses as set forth in the Payson City Personnel Policy. Members of the Governing Body may elect to receive as additional compensation, pursuant to City Council Motion dated July 5, 2006, a cell phone allowance of \$50 and a mileage allowance of \$50 in lieu of filing for reimbursement expenses. Exceptions to this section may be granted by the Governing Body on a case-by-case basis. (12-05-07)

2.2.23 Board of Adjustment

No member of the City Council, as a representative of the Payson Governing Body, may attend the meetings of the Board of Adjustment, interfere or attempt to influence the Board of Adjustment or any of the members of the Board of Adjustment before, during or after any meeting of the Board of Adjustment. (10-01-03)

CHAPTER 2.3 **MAYOR**

Sections:

2.3.1 Duties

2.3.2 Presiding Officer

2.3.3 Legislative Participation

2.3.1 Duties

In accordance with §10-3b-302 Utah Code Annotated, 1953, as amended, the Mayor shall be the Chair and preside at the meetings of the Governing Body. In the event that the Mayor is absent, unable or refuses to act, the Governing Body may elect a member of the Council to preside over the meeting who shall have all powers and duties of the Mayor during the absence, inability, or refusal of the Mayor. Except as otherwise provided in this Title, and in accordance with §10-3b-104 Utah Code Annotated, 1953, as amended, the Mayor shall have the following duties and responsibilities:

1. The Mayor is the chief executive officer of Payson City to whom all employees and department heads of the city report through the City Manager. The Mayor shall report to the Governing Body regarding the exercise of these responsibilities at City Council Meeting when deemed necessary. The Governing Body may reverse the decision of the Mayor through the City Manager by a simple majority vote.
2. The Mayor shall sign officially for and in behalf of the City all deeds, bonds, bills, notes, obligations and other agreements, documents and papers, previously approved by the City Council, to which the City is legally a party.
3. The Mayor shall keep the peace and enforce the laws of Payson City.
4. The Mayor shall, or cause a designee to, remit fines and forfeitures.
5. The Mayor shall, or cause a designee to, report remittances to the Governing Body at its next regular meeting.
6. The Mayor shall perform all duties prescribed by law, resolution or ordinance.

7. The Mayor shall ensure that all the laws, ordinances, resolutions, motions of the Governing Body and policies are faithfully executed and observed.
8. Together with the City Manager, the Mayor shall report to the City Council the condition of Payson City and recommend for consideration by the City Council any measures that would be in the best interest of Payson City.
9. When necessary, the Mayor shall call upon the residents of Payson City over the age of 21 to assist in enforcing the laws of the state and Payson City.
10. The Mayor shall appoint, with the advice and consent of the City Council, persons to fill:
 - a. The appointive positions of Payson City including the City Recorder, City Treasurer, Municipal Judge, City Attorney, Police Chief, City Engineer and Fire Chief.
 - b. Vacancies on commissions, committees, and boards.
 - c. Positions on newly created temporary or permanent commissions, committees, and boards.
11. Together with the City Manager, present persons to fill new or vacated positions of Department Heads of each recognized department of Payson City in accordance with the adopted personnel policies.
12. The Mayor shall, at any reasonable time, examine and inspect the official books, papers, records, or documents of Payson City or any officer, employee, or agent of Payson City.
13. The Mayor may release any person imprisoned for violation of any municipal ordinance provided that the Mayor informs members of the City Council prior to the release.
14. In accordance with §10-3-301 Utah Code Annotated, 1953, as amended, the Mayor may not serve as the City Recorder or City Treasurer.

2.3.2 Presiding Officer

The Mayor shall be the presiding officer of Payson City and represent the City at all appropriate functions. The Mayor, or designee, shall attend meetings of the Utah League of Cities and Towns, Utah County Council of Governments, Mountainland Association of Governments, South Utah County Mayor's Meetings, and other appropriate and necessary meetings. In the absence of the Mayor or because of an inability or refusal to act, the Governing Body may elect a member of the Council to represent Payson City as Mayor pro tempore, who shall have all the powers and duties of the Mayor

during his absence, disability or refusal. Each election of the Mayor pro tempore shall be entered into the minutes of the meeting and shall be in effect until the Mayor returns or until another is appointed by the Governing Body. (10-1-03)

2.3.3 Legislative Participation

1. The Mayor shall obtain approval from the City Council prior to any official representation of Payson City in policy making or legislative matters with other public or private agencies except as specifically authorized in advance by the City Council. Any binding commitments, contracts or agreements advanced or proposed by the Mayor which involves the encumbrance or the expenditure of City funds shall be approved in advance by the Governing Body in accordance with the procedures set forth in the Utah Uniform Municipal Fiscal Procedures Act, as amended. (10-1-03)
2. It is not the responsibility of the Mayor to employ or terminate any City employee except as provided in § 2.3.1(9) and § 2.3.1(10) herein. As a member of the Governing Body, the Mayor shall participate in and vote when the council is voting on whether to appoint or dismiss the City Manager, or when considering an ordinance that enlarges or restricts the mayor's powers, duties, or functions. (07-07-10)
3. The City Manager has been appointed to address the day to day administrative functions of the City, the more serious atypical administrative issues shall be the responsibility of the Mayor. An atypical administrative issue is defined as an issue that has not been previously acted upon by the City Council whereby an ordinance, resolution, motion or policy has been created. The Mayor shall play a critical role in the legislative function of Payson City by being an active participant in the creation of policies, procedures, resolutions, ordinances and other laws of Payson City. The Mayor shall be the primary point of contact for citizen input and suggestions, complaints, and examples of exemplary behavior. The Mayor will obtain information about the needs of the community from any or all of the following sources:
 - a. The Mayor shall be the official representative of Payson City in associating with civic groups unless previously assigned to another City Council member.
 - b. Government and quasi-government groups including, but not limited to federal, state and local elected officials, the Utah League

of Cities and Towns, Utah County Council of Governments, Mountainland Association of Governments, South Utah County Mayor's Meetings and other entities that affect Payson City.

- c. City Council members and employees of Payson City.
- d. Any other source that will provide the Mayor with the information necessary to notify the City Council of the needs of the community.

After the Mayor has first obtained the information from the sources listed above, the Mayor shall present the information to the City Council for potential action by the Governing Body. The Mayor will also present a plan of action to the City Council that includes the following:

1. The action necessary to resolve the situation through enactment, repeal or alteration of a Payson City policy, procedure, resolution, ordinance or law.
2. The Council member assigned oversight to that administrative function of the City, or a Councilmember appointed by the Mayor with the advice and consent of the City Council to assist the Mayor in the formulation of the ordinance, resolution, motion or policy of the City Council.
3. The staff members that the Mayor will need assistance from to properly explore the issue or to resolve the situation and the anticipated staff time.
4. The anticipated fiscal impact of the necessary action to address the issue or resolve the situation and if a budget amendment will be required.
5. The anticipated timeframe for action by the City Council to address the issue or resolve the situation.

After the Mayor has worked with the appropriate parties including, but not limited to, staff, petitioners, consultants, and any other appropriate entity, and developed the solution to the issue, the Mayor shall present the information to the Governing Body for consideration. The Governing Body shall deliberate on the issue and determine the appropriate action. After the Governing Body determines the appropriate action, the Governing Body will forward the issue to the City Manager for administrative action, if any. The City Manager will follow the direction of the Governing Body and report when the issue has been resolved.

When ideas or issues that are not part of the day to day administrative functions of Payson City are

brought to the Governing Body, staff or any other person associated with the Payson City Corporation, the information shall be forwarded to the Mayor for development and exploration of the appropriate solution to the issue.

If the Mayor fails to act on an issue presented to the Mayor, any entity can request an appearance before the Governing Body. Any City Council member can bring an issue before the Governing Body if the Mayor has failed to act on an issue and more than one (1) regular meeting of the Governing Body has past. (10-1-03)

CHAPTER 2.4 **CITY ATTORNEY**

2.4.1 City Attorney

The Governing Body has established the appointed position of City Attorney. The City Attorney must be a regularly licensed attorney and shall perform the duties required by the general laws and by the ordinances of the City and such other duties as the Governing Body may by ordinance or resolution require. The City Attorney shall attend the meetings of the City Council to provide legal counsel. In case of disability or inability, the City Attorney may, with the consent and approval of the Governing Body, appoint a deputy to advise the City officers in any or all legal matters and to perform any duty ordinarily performed by the City Attorney. (10-1-03)

CHAPTER 2.5 **APPOINTED OFFICERS**

Sections:

- 2.5.1 Office Creation**
- 2.5.2 Employment Agreements**
- 2.5.3 Vacancies**
- 2.5.4 City Recorder**
- 2.5.5 City Treasurer**
- 2.5.6 Justice Court**
- 2.5.7 City Engineer**

2.5.1 Office Creation

In accordance with §10-3b-105 Utah Code Annotated, 1953, as amended, the Governing Body may create any office deemed necessary for the proper governance of Payson City and shall, by resolution or ordinance, prescribe the power and duties to be performed by appointed officials. (07-07-10)

2.5.2 Employment Agreements.

Nothing in this Title shall be construed as a limitation on the power or authority of the Governing Body to enter into any supplemental agreement with an appointed official delineating additional terms and conditions of employment not inconsistent with any provisions of this Title. (10-1-03)

2.5.3 Vacancies

The Governing Body may appoint and fill vacancies in all appointed offices provided for by law or ordinance. All appointed officers shall continue in office until their successors are appointed and qualified.

2.5.4 City Recorder

1. Appointment. In accordance with §10-3-916 Utah Code Annotated, 1953, as amended, on or before the first Monday in February following a municipal election, the Mayor, with the advice and consent of the City Council shall appoint a qualified person to the office of City Recorder. (10-1-03)

2. Bond Required. The City Recorder shall be covered by the blanket bond as provided in §2.8.6 of the Payson City Ordinances. The blanket bond shall be filed with the City Treasurer.

3. Office. In accordance with §10-6-137 Utah Code Annotated, 1953, as amended, the City Recorder shall occupy an office in the City Hall or at some other place convenient thereto as the Governing Body may direct.

4. City Auditor. The City Recorder is the ex-officio City Auditor, and shall perform the duties of that office, including the preparation and presentation to the Governing Body of monthly summary financial reports and quarterly detail financial reports prepared in the manner prescribed in the Uniform Accounting Manual for Utah Cities.

5. Corporate Seal. The City Recorder shall keep the Corporate Seal. When certified by the City Recorder under the Corporate Seal, copies of all papers filed in the City Recorder's office and transcripts from all records of the Governing Body shall be admissible in all courts as originals.

6. Meetings of City Council. The City Recorder shall attend the meetings as assigned and keep the record of the proceedings of the Governing Body.

7. Actions of City Council. The City Recorder shall record all ordinances, resolutions, and regulations passed by the Governing Body in the manner provided in § 2.7.7 Payson City Code. (07-07-10)

8. Contracts. In accordance with §10-6-138 Utah Code Annotated, 1953, as amended, the City

Recorder shall countersign all contracts made on behalf of the City or to which the City is a party and shall maintain a properly indexed record of all such contracts. (10-1-03)

9. Accounting. In accordance with §10-6-139 Utah Code Annotated, 1953, as amended, the City Recorder under the direction of the City Manager shall maintain the general books for each fund of the City and shall keep accounts with all receiving and disbursing officers of the City including all subsidiary records relating thereto. (10-1-03)

10. Bonds. In accordance with §10-6-139 Utah Code Annotated, 1953, as amended, the City Recorder shall maintain a list of all outstanding bonds of the City, including their purpose, amount, terms, date and place payable. (10-1-03)

11. Claims. In accordance with §10-6-139 Utah Code Annotated, 1953, as amended, the City Recorder shall pre-audit all claims and demands against the City before they are allowed. (10-1-03)

12. Payments. In accordance with §10-6-139 of the Utah Code Annotated, 1953, as amended, the City Recorder shall prepare and certify the necessary checks in payment. The checks shall include an appropriate certification pursuant to §11-1-1 Utah Code Annotated, 1953, as amended, examples of which shall be presented in the Uniform Accounting Manual for Utah Cities. (10-1-03)

13. Warrants. In accordance with §10-6-140 Utah Code Annotated, 1953, as amended, in the event the City is without funds on deposit in one of its appropriate bank accounts with which to pay any lawfully approved claim, the City Recorder shall draw and sign a warrant upon the City Treasurer for the payment of the claim and tender the warrant to the payee named thereon. (10-1-03)

14. Monies. The City Recorder shall pay into the City Treasury all monies belonging to the City coming into the Recorder's office. (10-1-03)

15. Elections and Appointments. The City Recorder shall manage all municipal election procedures and requirements as provided in the Utah Code Annotated, 1953, as amended, and shall keep a record of all persons elected or appointed to any office within the City, including the date of appointment or election, term of office, date of death, resignation, or removal, and name of person appointed to fill any vacancy. (10-1-03)

16. Limitations. In accordance with §10-3-301 Utah Code Annotated, 1953, as amended, the City Recorder shall not serve as the City Treasurer. (07-07-10)

17. Records of the City. The City Recorder shall keep all the books, records, accounts, and documents

of the City at the Recorder's Office. Such records shall be open for public inspection pursuant to the provisions of the Payson City Government Records Access and Management Act.

18. Appeal of Employee. The City Recorder shall receive an appeal taken by an employee who has been discharged or transferred from one position to another pursuant to §10-3-1106 Utah Code Annotated, 1953, as amended. When a proper appeal has been filed, the City Recorder shall refer a copy to the Board of Appeals. (10-1-03)

19. Additional Duties. The City Recorder shall perform such other and further duties as the Governing Body may provide by ordinance, resolution, regulation or directive.

2.5.5 City Treasurer

1. Appointment. In accordance with §10-3-916 Utah Code Annotated, 1953, as amended, on or before the first Monday in February following a municipal election, the Mayor with the advice and consent of the City Council shall appoint a qualified person to the office of City Treasurer. (10-1-03)

2. Bond Required. Before commencing duties, the City Treasurer shall execute and file with the City Recorder an official bond as required by §2.8.6 Payson City Code. (10-1-03)

3. Custodian. In accordance with §10-6-141 Utah Code Annotated, 1953, as amended, the City Treasurer shall be the custodian of all money, bonds, or other securities belonging to the City. The City Treasurer shall collect and receive all monies payable to the City, including taxes, assessments, licenses, fines, forfeitures, service charges, fees and other revenues of the City. The City Treasurer shall keep an accurate account of all monies received hereunder and shall promptly deposit all such monies in the appropriate bank accounts of the City. (07-07-10)

4. Commingling with Personal Funds. In accordance with §10-6-146 Utah Code Annotated, 1953, as amended, the City Treasurer shall promptly deposit all city funds in the appropriate bank accounts of the city. It shall be unlawful for any person to commingle city funds with his or her own money. Whenever it shall appear that the treasurer or any other officer is making profit out of public money, or is using the same for any purpose not authorized by law, such treasurer or officer shall be suspended from office. (07-07-10)

5. Receipts. In accordance with §10-6-142 Utah Code Annotated, 1953, as amended, the City Treasurer shall give or cause to be given to every person paying money to the city treasury, a receipt or other evidence of payment therefore, specifying the

date of payment and account paid. The City Treasurer shall file the duplicate of such receipt or evidence of payment in the office of the City Recorder. (10-1-03)

6. Checks. In accordance with §10-6-143 Utah Code Annotated, 1953, as amended, the City Treasurer shall sign all checks prepared by the City Recorder and shall, prior to affixing a signature, determine or cause to be determined that sufficient funds are on deposit in the appropriate bank account of the City to honor such check. (10-1-03)

7. Warrants. In accordance with §10-6-144 Utah Code Annotated, 1953, as amended, the City Treasurer shall pay all warrants in the order in which presented and as money becomes available for payment thereof in the appropriate funds of the City. The City Treasurer shall note upon the back of each warrant presented the date of presentation and the date of payment. (10-1-03)

8. Special Assessments. In accordance with §10-6-145 Utah Code Annotated, 1953, as amended, the City Treasurer shall receive all monies received by the City on any special assessment and shall apply the payments thereof to the cost of the improvement for which the assessment was made. (07-07-10)

9. Accounting. In accordance with §10-6-141 Utah Code Annotated, 1953, as amended, the City Treasurer shall keep an accurate detailed accounting of all transactions, receipts, collections, disbursements and other matters within the Treasurer's charge as provided by state law or as the Governing Body may by ordinance or resolution direct (10-1-03)

10. Limitations. In accordance with §10-3-301 Utah Code Annotated, 1953, as amended, the City Treasurer shall not serve as the City Recorder. (07-07-10)

11. Additional Duties. The City Treasurer shall perform such other and further duties as the Governing Body may provide by ordinance, resolution, regulation or directive.

2.5.6 Justice Court.

1. Authority. Payson City has created a City Justice Court in accordance with State statute. Article VIII, Section 1, Utah Constitution, authorizes the creation of a court not of record to be known as the justice court. The judges of this court are Justice Court Judges. (3-15-06)

2. Duties. The Payson City Justice Court shall adhere to Title 78A, Chapter 7, Utah Code Annotated, 1953 as amended, in administering the powers and duties of the court. (07-07-10)

3. Appointment of Judge. The Justice Court Judge shall be appointed according to the procedures set forth in §78A-7-202 Utah Code Annotated, 1953, as

amended. Once appointed, the Justice Court Judge shall be certified by the State Judicial Council prior to performing any duties. (07-07-10)

4. Term of Office - Judge. The term of office of a municipal Justice Court Judge is six years, beginning the first Monday following the date of appointment or retention election.. Before each retention election each Justice Court Judge shall be evaluated in accordance with the performance evaluation program established by the Judicial Council in §78A-2-104(5) Utah Code Annotated, 1953, as amended. (07-07-10)

5. Eligibility - Judge. A Justice Court Judge must meet the eligibility requirement of §78A-7-201 Utah Code Annotated, 1953 as amended. (07-07-10)

6. Compensation of Judge. The Governing Body shall determine the compensation to be paid to the Justice Court Judge pursuant to the guidelines established in §78A-7-206 Utah Code Annotated, 1953, as amended. (07-07-10)

7. Vacancy - Judge. Vacancies in the office of Justice Court Judge shall be filled as provided in §78A-7-202 Utah Code Annotated, 1953, as amended. (07-07-10)

8. Fines, Fees and Forfeitures Collected. The Justice Court shall remit all fines and forfeitures pursuant to §§78A-7-119, 120, 121 & 122 Utah Code Annotated, 1953, as amended. (07-07-10)

9. Clerks and Staff. The City Governing Body shall provide adequate funding to provide sufficient clerical personnel to conduct the business of the court; sufficient public prosecutors to attend the court and perform the duties of prosecution; sufficient peace officers to attend the court when required to provide security; and to provide the costs of defense for persons charged with a public offense who are determined by the court to be indigent under Title 77, Chapter 32 Utah Code Annotated, 1953, as amended. (07-07-10)

2.5.7 City Engineer

The Governing Body has established the appointed position of City Engineer pursuant to section 10-3-917 Utah Code Annotated, 1953, as amended. The city engineer shall be licensed by the state of Utah and shall perform the duties required by him by the general laws and by the ordinances of the city and such other duties as the council may by ordinance or resolution require. The City Engineer shall serve as the Development Services Director with supervisory responsibilities over building services, planning and zoning as well as economic development. The City Engineer shall be under the direction of the City Manager. (07-07-10)

CHAPTER 2.6 **CITY MANAGER**

Sections:

2.6.1 Appointment of City Manager

2.6.2 Term of Office

2.6.3 Employment Agreements

2.6.4 Resignation

2.6.5 Powers and Duties.

2.6.1 Appointment of City Manager

The office of City Manager has been established by the Governing Body of Payson City pursuant to §10-3b-303 Utah Code Annotated, 1953, as amended, and shall continue in force and effect as an appointed office of the City. The appointment of a person to be known as City Manager shall be by the governing body. Once approved, the Mayor shall sign the employment contract entered into with the City Manager on behalf of the City. (10-1-03)

2.6.2 Term of Office

The City Manager shall serve at the pleasure of the governing body. The term of employment may be renewed at any time. Any person serving as City Manager of the municipality under this Section may be removed with or without cause by a majority vote of the Governing Body convened in a regularly scheduled City Council meeting, subject, however to the provisions of next succeeding subsections.

1. Notice. In the case of intended removal by the Governing Body, the City Manager shall be furnished with a written notice stating the Council's intention at least thirty (30) days before the effective date of removal. (10-1-03)

2. Meeting. Within seven days after the delivery to the City Manager of such notice of intention to remove, the City Manager may by written notification to any City Council member, request a confidential executive meeting with the Governing Body. Thereafter the Council shall fix a time for the meeting, which shall be held, at its usual meeting place, but before the expiration of the thirty (30) day period, at which the City Manager shall appear and be heard. (10-1-03)

3. Discretion of Council. In removing the City Manager, the Governing Body may use its uncontrolled discretion and its action shall be final and may or may not depend upon any particular showing or degree of proof at the meeting. (10-1-03)

2.6.3 Employment Agreements

Nothing in this Title shall be construed as a limitation on the power or authority of the Governing Body to enter into any supplemental agreement with the City Manager delineating additional terms and conditions of employment not inconsistent with any provisions of this Ordinance. (10-1-03)

2.6.4 Resignation

Before voluntarily resigning from the position of City Manager, the City Manager shall give the Governing Body thirty (30) days notice in writing of the intention to resign. (10-1-03)

2.6.5 Powers and Duties

Pursuant to the authority outlined in §10-3b-303 Utah Code Annotated, 1953, as amended, the powers, duties, and obligations of the City Manager are as follows:

1. The City Manager of Payson City is the administrative officer to whom all employees of the City shall report. The City Manager shall be under the direct supervision of the Mayor, as chief executive officer, and shall answer directly to the Mayor, subject to the ultimate authority of the Governing Body.. (07-07-10)
2. The City Manager shall be directly responsible to the Mayor for the administration of all City affairs placed in the charge of the City Manager, subject to the ultimate authority of the Governing Body. (07-07-10)
3. The City Manager shall hire and, when deemed necessary, suspend or remove any City employee with the exception of the appointive employees listed in Section 2.3.1(9) herein in accordance with the adopted personnel policies of Payson City. The City Manager may authorize any administrative officer who is subject to the direction and supervision of the City Manager to exercise these powers with respect to subordinates in that officer's department, office or agency. (10-1-03)
4. The City Manager shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by law.
5. Except for the purpose of inquiry or preparation of legislation in accordance with §2.3.3 herein, the Mayor, the City Council and its members shall not provide direction or instruction either publicly or privately to Department Heads, Superintendents, Appointed Officials, City employees, or any subordinates of the City Manager except through the City Manager. (10-1-03)
6. The City Manager shall attend meetings of the Governing Body with the right to take part in the

discussion but not to vote, and to present to the Mayor and City Council any proposed adoption, repeal or alteration of any policy, procedure, resolution, ordinance or law. The City Manager shall cause the appropriate staff members to attend the meetings of the Governing Body. (10-1-03)

7. The City Manager shall prepare and submit the annual budget and capital improvements program to the Governing Body; and keep the Governing Body advised as to the financial condition and needs of the City. The City Manager shall also serve as the City Budget Officer.

8. The City Manager shall utilize the buildings, equipment and other physical holdings of Payson City as he sees fit to maximize the productivity of City officials and employees and to ensure the health and safety of the community.

9. The City Manager shall notify the Mayor and City Council of any emergency existing in any department under his supervision.

10. The City Manager shall perform such other duties as may be required of him by the Payson City Code or by the Governing Body through ordinance or resolution.

11. In the City Manager's temporary absence, the powers and duties vested in the position of City Manager shall rest with the City Attorney, unless otherwise determined by the Governing Body to be delegated as seen fit until the return of the City Manager. (10-1-03)

12. The City Manager shall carry out the policies and programs established by the Governing Body.

13. The City Manager shall examine and inspect the books, records, and official papers of any office, department, agency, board, or commissions of the City and make investigations and require reports from all personnel.

14. The City Manager shall faithfully execute and enforce all applicable laws, ordinances, motions, policies, rules and regulations, and see that all franchises, leases, permits, contracts, licenses, and privileges granted by the municipality are observed.

CHAPTER 2.7 **LEGISLATION**

Sections:

- 2.7.1 Ordinances**
- 2.7.2 Resolutions**
- 2.7.3 Regulations**
- 2.7.4 Public Records**
- 2.7.5 Rules of Construction**

2.7.1 Ordinances.

1. Legislative Power. Except as otherwise specifically provided, the Governing Body shall exercise its legislative powers through ordinances pursuant to §10-3-830 Utah Code Annotated, 1953, as amended. (10-15-03)

2. Extent of Power. The Governing Body may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by law pursuant to §10-3-702 Utah Code Annotated, 1953, as amended. (10-15-03)

3. Form. In accordance with §§10-3-506 & 704 Utah Code Annotated, 1953, as amended, every ordinance shall be in writing before the vote is taken and shall contain and be in substantially the following order and form:

- a) a number;
- b) a title which indicates the nature of the subject matter of the ordinance;
- c) a preamble which states the need or reason for the ordinance;
- d) an ordaining clause which states: “Be it ordained by the Payson City Council”;
- e) the body or subject of the ordinance;
- f) when applicable, a statement indicating the penalty for violation of the ordinance or a reference that the punishment is covered by an ordinance which prescribes the fines and terms of imprisonment for the violation of a municipal ordinance;
- g) a statement indicating the effective date of the ordinance or the date when the ordinance shall become effective after publication or posting as required by this law, a line for the signature of the Mayor or acting mayor to sign the ordinance; and a place for the City Recorder to attest the ordinance and fix the seal of Payson City. (10-15-03)

4. Improper Form. In accordance to §10-3-705 Utah Code Annotated, 1953, as amended, no ordinance shall be void or unlawful by reason of its failure to conform to the provisions of this section. (10-15-03)

5. Effective Date. In accordance to §10-3-712 Utah Code Annotated, 1953, as amended, unless otherwise provided in the ordinance, ordinances shall become effective twenty (20) days after publication or posting, or thirty (30) days after final passage by the Governing Body, whichever is sooner. (10-15-03)

6. Signed. Ordinances passed or enacted by the Governing Body shall be signed by the Mayor, or if the Mayor is absent, unable, or refuses to sign, by the Mayor pro tempore or by a quorum of the Council

Members, before taking effect pursuant to §10-3-705 Utah Code Annotated, 1953, as amended. (10-15-03)

7. Recording. In accordance with §10-3-713 Utah Code Annotated, 1953, as amended, ordinances passed or enacted by the Governing Body shall be recorded by the City Recorder in a book used exclusively for that purpose, before taking effect. The City Recorder shall give each ordinance a number, if the Governing Body has not already done so and shall make or cause to be made a certificate stating the date of passage and the date of publication or posting of the ordinance. (10-15-03)

8. Publication.

(a) All ordinances, except those enacted pursuant to §10-3-706 through §10-3-710, Utah Code Annotated, 1953, as amended, shall be deposited in the office of the City Recorder and a short summary of the ordinance shall be published at least once in a newspaper published within Payson City, or if there is no newspaper published in Payson City, then a complete copy of the ordinance shall be posted in three (3) public places within Payson City, before taking effect.

(b) Any ordinance, code, or book, other than the state code, relating to building or safety standards, municipal functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting, if reference is made to the code or book and at least three (3) copies have been filed for use and examination by the public in the office of the City Recorder prior to the adoption of the ordinance by the Governing Body.

(c) Any state law relating to building or safety standards, municipal functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting, if reference is made to the State code.

(d) The ordinance adopting the code or book shall be published in the manner provided in this Section pursuant to §10-3-711 Utah Code Annotated, 1953, as amended. (10-15-03)

9. Prima Facie Evidence. The record and certificate prepared by the City Recorder or a certified copy thereof shall be prima facie evidence of the contents, passage, and publication or posting of the ordinance or codification. In addition, the ordinances printed and published by the authority of the Governing Body, shall be prima facie evidence of the contents, passage, and legal publication of such ordinances, as of the dates mentioned in the publication, in all courts and administrative proceedings in accordance with §10-3-715 Utah Code Annotated, 1953, as amended. (10-15-03).

10. Proved Under Seal. The contents of all Payson City ordinances, the dates of passage, and at the date of publication or posting, may be proved by the certification of the City Recorder under the seal of Payson City pursuant to §10-3-714 Utah Code Annotated, 1953, as amended. (10-15-03)

11. Penalty. The Governing Body may provide a penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under §76-3-301 Utah Code Annotated, 1953, as amended, and/or by a term of imprisonment not to exceed the maximum class B misdemeanor term of imprisonment under § 76-3-200 Utah Code Annotated, 1953, as amended. The Governing Body may also impose a civil penalty for the unauthorized use of municipal property, including, but not limited to, the use of parks, streets, and other public grounds or equipment.

12. Liability. In accordance with §10-3-702, Utah Code Annotated, 1953, as amended, an officer of Payson City shall not be convicted of a criminal offense where he relied on or enforced an ordinance he or she reasonably believed to be a valid ordinance. It shall be a defense to any action for punitive damages that the official acted in good faith in enforcing an ordinance or that he or she enforced an ordinance on advice of legal counsel pursuant to §10-3-711 Utah Code Annotated, 1953, as amended. (10-15-03)

2.7.2 Resolutions.

1. Administrative Powers. In accordance with §10-3-717, Utah Code Annotated, 1953, as amended, unless otherwise required by law, the Governing Body may exercise all administrative powers by resolution. (10-15-03)

2. Form. In accordance with §10-3-718, Utah Code Annotated, 1953, as amended, any resolution passed by the Governing Body shall be in a form and contain sections substantially similar to that prescribed for ordinances. (10-15-03)

3. Effective Date. In accordance with §10-3-719, Utah Code Annotated, 1953, as amended, resolutions may take effect on passage or at a later date as the Governing Body may determine, but resolutions may not become effective more than three months from the date of passage. (10-15-03)

4. Publications. In accordance with §10-3-719, Utah Code Annotated, 1953, as amended, resolutions need not be published or posted. (10-15-03)

5. Filing. Resolutions shall be retained on file in the records of Payson City, but need not be codified.

6. Limitation. No punishment, fine, or forfeiture may be imposed by resolution.

7. Proved Under Seal. The contents and dates of passage of all Payson City Resolutions may be proved by the certification of the City Recorder under the seal of Payson City.

2.7.3 Regulations.

1. Authorization. When and to the extent authorized by ordinance, an administrative officer of the City may promulgate regulations governing the administration of the City.

2. Defined. A regulation is any administrative rule, policy, procedure, or decision of the City which is or can be applied to recurrent situations or problems, or which is intended to govern one or more activities or services of the City for an extensive period of time.

3. Requirements. In promulgating a regulation the administrative officer shall substantially comply with the following:

- a) **Written.** The regulation shall be in writing.
- b) **Consistency.** The regulation shall be consistent with the Payson City Code and other provisions of law.
- c) **Not Arbitrary or Capricious.** The regulation in whole or in part, shall not be arbitrary or capricious.
- d) **City Manager Approval.** The regulation shall be submitted to and approved by the City Manager.
- e) **City Attorney.** After approval by the City Manager, the regulation shall be submitted to the City Attorney for review and comment.
- f) **Governing Body.** After approval of the City Manager and review by the City Attorney, the regulation must be incorporated by reference into a resolution of the Governing Body. Such resolution must be duly passed and adopted.

4. Ratification. In the event any act performed or position taken by a City official on behalf of the City is called into question for failure to comply with the requirements of subsection (3) of this Section, the Governing Body may ratify the act or position by resolution. In which event such act shall be deemed to have been performed and such position shall be deemed to have been taken pursuant to a valid regulation.

5. Effect. Regulations adopted shall have the force and effect of resolutions adopted by the Governing Body.

6. Proved Under Seal. The contents and dates of passage of all Payson City Regulations may be proved by the certification of the City Recorder under the seal of Payson City.

2.7.4 Public Records.

The ordinances, resolutions, regulations, and any other books, records, accounts or documents of Payson City shall be kept at the office of the City Recorder. Approved copies shall be open and available to the public during regular business hours for examination and copying pursuant to the Payson City Government Records Access and Management Act.

2.7.5 Rules of Construction.

Unless expressly provided to the contrary, the following rules shall govern construction and interpretation of the ordinances, resolutions, and regulations of Payson City:

1. Amendment or Repeal. Unless otherwise specifically provided, any amendment or repeal shall not affect any right which has accrued, any duty imposed, any penalty incurred, nor any action or proceeding commenced under or by virtue of the provision amended or repealed, nor shall any repeal have the effect of reviving any provision previously repealed or superseded.

2. Severability. If any part of provision of an ordinance, resolution, or regulation is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and all provisions, clauses and words of the ordinance, resolution, or regulation shall be severable.

3. Titles and Headings. Titles and headings form no part of the ordinances, resolutions, or regulations, have no binding or interpretive effect, and shall not alter the legal effect of any part of the provisions for any reason, unless otherwise provided by law.

4. Common and Specific Usage. All words and phrases shall be construed and understood according to the common use and understanding of the language, however, the technical words and phrases and such other words and phrases that have acquired a particular meaning or which are specified as having a particular meaning shall be construed and understood according to such particular meaning.

5. Liberal Construction. All provisions of the ordinances, resolutions, and regulations of Payson City shall be liberally construed according to the import of their terms to promote justice and to achieve the objectives of the law.

6. Gender and Number. Unless otherwise indicated from the context of the ordinance, resolution, or regulation, all words in the singular shall include the plural and all words used in the masculine gender shall extend and apply to the feminine gender and vice-versa.

7. Tenses. The use of any verb in the present tense shall include the future and past tense when such would be a reasonable interpretation of the provision.

8. City. The word “City”, when capitalized, shall be understood to refer to Payson City, unless the context clearly indicates otherwise.

CHAPTER 2.8 **TAKING OFFICE**

Sections:

2.8.1 Eligibility for Mayor and Council Members

2.8.2 Election of Mayor and Council Members

2.8.3 Term of Office for Mayor and Council Members

2.8.4 Vacancies in Office of Mayor or Council Member

2.8.5 Oath of Office

2.8.6 Bond

2.8.7 Salaries

2.8.8 Failure to Qualify for Office

2.8.9 Duties and Powers Defined

2.8.10 Official Neglect of Misconduct

2.8.11 Transfer of Records

2.8.1 Eligibility for Mayor and Council Members

1. Chosen by Voters. The Mayor and members of the City Council shall be elected by the registered voters of Payson City.

2. Resident and Registered Voter. In accordance with §10-3-301 Utah Code Annotated, 1953, as amended, any person elected to the office of Mayor or member of the City Council must be a resident of and a registered voter in Payson City. Each elected officer of Payson City shall maintain residency within the boundaries of the City during his or her term of office. If an elected officer of the City establishes his or her principal place of residence outside the municipality during his or her term of office, that person’s elected office is automatically vacant. If an elected officer is absent from the City anytime during his or her term of office for a continuous period of more than sixty (60) days without the consent of the Governing Body, that person’s elected office is automatically vacant. (10-15-03)

3. City Employee. No member of the Governing Body shall, upon taking office, be an employee of Payson City. Any employee of Payson City shall be entitled to run for office while a municipal officer or employee but, if elected, shall comply with the

provisions of this Section or §10-3-1108 Utah Code Annotated, 1953, as amended, prior to taking office. (10-15-03)

2.8.2 Election of Mayor and Council Members

1. Elected. The Mayor and members of the City Council shall be elected in an at-large municipal election held on the Tuesday after the first Monday in November, as provided in §10-3-201 Utah Code Annotated, 1953, as amended. (10-15-03)

2. Procedure. The municipal elections and primary elections for Mayor and members of the City Council shall be conducted in the manner provided for in the Utah Municipal Election Code for fourth class cities. (10-15-03)

3. Districts. The Governing Body, for purposes of an election, may combine regular Utah County voting districts into one or more Payson City municipal election districts by designating the location and address of each such district. If only two districts are combined, the polling place shall be within the combined district or within one-half mile of the boundaries of the combined voting district. If more than two districts are combined the polling place should be as near as practical to the middle of the combined district pursuant to §20A-5-301 Utah Code Annotated, 1953, as amended. (10-15-03)

4. Primary Elections. No primary elections shall be held for the offices of Mayor or City Council and all openings for such offices shall be filled at the November general municipal election of Payson City, unless:

- a) the number of candidates exceeds twice the number of offices to be filled, or
- b) primary election is otherwise required by law, in which cases a primary election shall be held in the manner provided in the Utah Municipal Election Code, as set forth in §20A-9-404 Utah Code Annotated, 1953, as amended. (10-15-03)

2.8.3 Term of Office for Mayor and Council Members

The elected Mayor and members of the City Council shall begin their term of office at 12:00 p.m. on the first Monday in January following their election, and shall continue in office for four (4) years thereafter and until their respective successors are chosen and qualified, except in case of death, resignation, removal, or disqualification from office pursuant to §10-3-201 Utah Code Annotated, 1953, as amended. (10-15-03)

2.8.4 Vacancies in Office of Mayor or Council Member

1. In accordance with §20A-1-510 Utah Code Annotated, 1953, as amended, if any vacancy occurs in the office of Mayor or the City Council, the Governing Body shall appoint a registered voter in the City to fill the unexpired term of office vacated until the January following the next municipal election. Before acting to fill the vacancy, the Governing Body shall give public notice of the vacancy at least two weeks before the City Council meets to fill the vacancy, and identify in the notice, the date, time, and place of the meeting where the vacancy will be filled, and provide information regarding the person to whom a person interested in being appointed to fill the vacancy may submit their name for consideration and any deadline for submittal.

2. If, for any reason, the Governing Body does not fill the vacancy within thirty (30) days after the vacancy occurs, the City Council shall vote upon the names that have been submitted. The two persons having the highest number of votes shall come before the Governing Body and the City Council shall vote again. If neither candidate receives a majority vote of the Governing Body at that time, the vacancy shall be filled by lot in the presence of the City Council.

3. A vacancy in the office of Mayor or Council member shall be filled by an interim appointment, followed by an election to fill a two (2) year term, if:

- a) the vacancy occurs, or a letter of resignation is received, by the Governing Body at least fourteen (14) days before the deadline for filing for election in an odd numbered year, and;
- b) two (2) years of the vacated term will remain after the first Monday of January following the next municipal election.
- c) The public election shall be conducted according to the requirement and procedures of Title 20A, Chapter 5 Utah Code Annotated, 1953, as amended. (10-15-03)

2.8.5 Oath of Office

1. Required. In accordance with §10-3-827 Utah Code Annotated, 1953, as amended, before entering on their respective duties, all officers of Payson City, whether elected or appointed, shall take the constitutional oath of office as set forth in Article IV, §10 of the Constitution of Utah.

2. Time. Elected officials shall take their oath of office at 12:00 p.m. on the first Monday in January following their election or as soon thereafter as is practical. Appointed officers shall take their oath of office at any time before entering on their duties.

3. Administered. The oath of office shall be administered by the City Recorder, any Judge, or any Notary Public.

4. Filed. All oaths of office shall be filed with the City Recorder.

5. Failure to Comply. No official act of any officer shall be invalid for the reason that he or she failed to take the oath of office. (10-15-03)

2.8.6 Bond

1. Required. In accordance with §10-3-819 Utah Code Annotated, 1953, as amended, before commencing duties, elected and appointed officers of the City shall execute a corporate surety bond or blanket bond with good and sufficient sureties payable to Payson City conditioned for the faithful performance of the duties of his or her office and the payment of all monies received by such officer according to the law and the ordinances of Payson City in an amount as set forth by resolution of the City Council. (10-15-03)

2. Limitation on Treasurer's Bonds. In accordance with §10-3-821 Utah Code Annotated, 1953, as amended, the City Treasurer's bond may not be set at an amount less than that established by the State money management council pursuant to §51-7-15 Utah Code Annotated, 1953, as amended. (10-15-03)

3. Filed. All bonds shall be filed with the City Recorder, except the City Recorder's bond, if different from the blanket bond, which shall be filed with the City Treasurer pursuant to §10-3-825 Utah Code Annotated, 1953, as amended. (10-15-03)

4. Approval of Bonds. In accordance with §10-3-822 Utah Code Annotated, 1953, as amended, the bonds for members of the City Council shall be approved by the Mayor, and the bond of the Mayor shall be approved by the City Council, at the first meeting of the Governing Body in January following a municipal election. (10-15-03)

5. Premium Charge. In accordance with §10-3-823 Utah Code Annotated, 1953, as amended, the premium charged by a corporate surety for any official bond shall be paid by Payson City. (10-15-03)

6. Additional Bonds. The City Council may at any time require further and additional bonds of any or all elected or appointed officers of the City by resolution or ordinance pursuant to §10-3-825 Utah Code Annotated, 1953, as amended. (10-15-03)

2.8.7 Salaries

1. Generally. In accordance with §10-3-818 Utah Code Annotated, 1953 as amended, elected and appointed officers of the City shall receive such

compensation for their services as the Governing Body may fix by ordinance pursuant to the procedure set forth in subsection (2).

2. Adopting, Changing or Amending Compensation. Upon its own motion, the Governing Body may review or consider the compensation of any officer or officers of the City or a salary schedule applicable to any officer or officers of the City for the purpose of determining whether it should be adopted, changed or amended. In the event the Governing Body decides that the compensation or compensation schedules should be adopted, changed or amended, it shall set a time and place of a public hearing at which all interested persons shall be given an opportunity to be heard. Notice of the time, place and purpose of the meeting shall be published at least seven (7) days prior thereto by a publication in at least one issue of a newspaper published in Utah County and generally circulated in Payson City. After the conclusion of the public hearing, the City Council may enact an ordinance fixing, changing, or amending the compensation of any elective or appointed officer of the City or adopting a compensation schedule applicable to any officer or officers. (10-15-03)

3. Monthly Compensation. The compensation of all City officers shall be paid at least monthly. (10-15-03)

2.8.8 Failure to Qualify for Office

Whenever any person duly elected to any office of the City fails to qualify for such office within sixty (60) days after the date beginning of the term of office for which he or she was elected, such office shall thereupon become vacant and shall be filled as provided by law. Whenever the bond of any officer of the City is canceled, revoked, annulled, or otherwise becomes void or of no effect, without another proper bond being given so that continuance of bonded protection is afforded the office of such officer shall thereupon become vacant and shall be filled as provided by law.

2.8.9 Duties and Powers Defined

The duties, powers and privileges of all elected and appointed officers of the City shall be defined by the Governing Body pursuant to State Law and Title 2 of the Payson City Ordinances.

2.8.10 Official Neglect or Misconduct

In accordance with §10-3-826 Utah Code Annotated, 1953, as amended, in case any officer of the City willfully omits to perform any duty, or willfully and corruptly commits oppression, misconduct, misfeasance, or malfeasance in office, the person if

guilty of a class A misdemeanor, shall be removed from office, and is not eligible for any City office thereafter. (10-15-03)

2.8.11 Transfer of Records.

Every officer and employee of the City upon expiration of his or her term for any cause whatsoever shall, within five (5) days after notification and request to do so, deliver to his or her successor all books and records which may be the property of the City.

CHAPTER 2.9 **PURCHASES AND ENCUMBRANCES**

(10-06-10) (08-15-12)

Sections:

- 2.9.1 Scope.**
- 2.9.2 Services.**
- 2.9.3 Supplies, materials and equipment.**
- 2.9.4 Construction.**
- 2.9.5 Performance bond.**
- 2.9.6 Rejection of bids or price solicitation.**
- 2.9.7 Emergency purchases.**
- 2.9.8 Purchasing coordinator.**
- 2.9.9 Single source purchases.**
- 2.9.10 Pre-qualification of bidders, proponents and suppliers.**

2.9.1 Scope.

1. No purchases shall be made and no encumbrances shall be incurred for the benefit of the City, except as provided in Sections 10-6-122, 10-6-123, 10-6-139 and 11-39-101 et al, Utah Code Annotated, 1953, as amended. Pursuant to 63G-6-104 Utah Code Annotated, 1953 as amended, the following sections of the Utah Procurement Code are applicable to Payson City; 63G-6-103, 105, 301, 303-420, 422, 501-602, 801-806, and 815-820 and are hereby incorporated by reference.

2. No purchases shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance have been budgeted and are available and the purchase is approved by the appropriate City officials as herein provided.

3. Notwithstanding the provisions of paragraph (1), whenever any purchase or encumbrance is made with State or Federal funds and the applicable State or Federal law or regulations are in conflict with this Chapter to the extent that following the provisions of this Chapter would jeopardize the use of those or future State or Federal funds, such conflicting provisions of this Chapter shall not apply and the City shall follow the procedure required by the State

or Federal law or regulation.

2.9.2 Services.

All contracts for services shall be made as follows:

1. Prior approval of all contracts for services must be obtained from the City Manager.
2. In order to promote overall economy and the best use for the purposes intended, the City Manager shall be responsible for assuring that all contracts for services awarded shall obtain the desired services for the lowest possible price. The use of competitive request for proposals is highly recommended for the procurement of services of consultants, professionals and other service providers.

2.9.3 Supplies, materials and equipment.

All purchases of supplies, materials and equipment shall be made as follows:

1. Any purchase in an amount less than two thousand dollars (\$2,000.00) shall be considered an operating expense and not a capital item, and may be approved by the department superintendent if the item does not cause an overage to the department's budget.
2. Purchases or contracts for the purchase of supplies, materials or equipment where the amount to be paid by the City is between two thousand dollars (\$2,000.00) and ten thousand dollars (\$10,000.00) may be approved by the City Manager if the item does not cause an overage to the department's budget.
3. Purchase or contracts for the purchase of supplies, materials or equipment where the amount to be paid by the City is greater than ten thousand dollars (\$10,000.00) must be approved by the Governing Body, unless it is a specific item approved in the municipal budget.
4. In order to promote overall economy and the best use for the purposes intended, the City Manager shall be responsible for assuring that all purchases or contracts for the purchase of materials, supplies and equipment awarded shall obtain the desired product for the lowest responsible price. This may include receiving informal competitive proposals and/or using the State agreements and contracts pursuant to Section 63G-6-424 Utah Code Annotated, 1953, as amended.

2.9.4 Construction.

1. Definitions

- a) As used in this Section, the words "lowest responsive responsible bidder" means any prime contractor who has submitted a bid in compliance with the invitation to bid and within the requirements of the plans and specifications

for the building improvement or public works project, is the low bidder that satisfies the criteria relating to financial strength, past performance, integrity, reliability, and other factors necessary to assess the ability of the bidder to perform fully and in good faith the contract requirements, has furnished a bid bond or equivalent in money as a condition to the award of a prime contract and who furnishes a payment and performance bond as required by law.

- b) As used in this Section, "building improvement" means the construction or repair of a public building or structure.
 - c) As used in this Section, "public works project" means the construction of a park or recreational facility; or a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control; and does not include the replacement or repair of existing infrastructure on private property; or construction commenced before June 1, 2003.
 - d) As used in this Section, "Consumer Price Index" mean the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.
 - e) As used in this Section, "Design-build project" means a building improvement or public works project costing over \$ 250,000 with respect to which both the design and construction are provided for in a single contract with a contractor or combination of contractors capable of providing design-build services; and (b) does not include a building improvement or public works project: (i) that is undertaken by a local entity under contract with a construction manager that guarantees the contract price and is at risk for any amount over the contract price; and (ii) each component of which is competitively bid.
 - f) As used in this Section, "Emergency repairs" means a building improvement or public works project undertaken on an expedited basis to: (a) eliminate an imminent risk of damage to or loss of public or private property; (b) remedy a condition that poses an immediate physical danger; or (c) reduce a substantial, imminent risk of interruption of an essential public service.
2. When the Governing Body intends to undertake any new building improvement to be paid for out of the funds of the city, the governing body shall cause plans, specifications, and an estimate of the cost of the improvement made. If the estimated cost is less than forty thousand dollars (\$40,000) for the year 2003; and for each year after 2003, the amount of the

bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percentage change in the Consumer Price Index during the previous calendar year, the City may make the improvement without calling for formal competitive bids for making the same.

3. If the estimated cost for the proposed new building improvement shall exceed forty thousand dollars (\$40,000) for the year 2003; and for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percentage change in the Consumer Price Index during the previous calendar year, the City, if it determines to make the improvement, shall do so by contract let to the lowest responsible bidder after publication of notice at least twice in a newspaper of general circulation printed and published in the City at least five (5) days prior to the opening of bids.

4. When the Governing Body intends to undertake any new public works project to be paid for out of the funds of the city, the governing body shall cause plans, specifications, and an estimate of the cost of the project. If the estimated cost is less than one hundred twenty five thousand dollars (\$125,000) for the year 2003; and for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percentage change in the Consumer Price Index during the previous calendar year, the City may make the improvement without calling for formal competitive bids for making the same.

5. If the estimated cost for the proposed public works project shall exceed one hundred twenty-five thousand dollars (\$125,000) for the year 2003; and for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percentage change in the Consumer Price Index during the previous calendar year, the City, if it determines to make the improvement, shall do so by contract let to the lowest responsible bidder after publication of notice at least twice in a newspaper of general circulation printed and published in the City at least five (5) days prior to the opening of bids.

6. The Governing Body shall have the right to reject any or all bids presented, without cause, and all notices calling for bids shall so state. If the bids are rejected and the Governing Body decides to re-solicit bids, it shall advertise anew in the same manner as

before. If, after twice advertising as herein provided, and no bid is received that is satisfactory, the Governing Body may proceed under its own direction to make the improvement.

7. Nothing in this section requires the City to call for bids for emergency repairs; for a building improvement or public works project if the estimated cost is less than the amount required in paragraphs 2 & 4; or for the conduct or management of any of the departments, business, or property of the City.

8. Work excluded under this subsection shall comply with §72-6-108 Utah Code Annotation, 1953, as amended, as applicable.

2.9.5 Performance & Payment bonds.

A performance bond and a payment bond in an amount equal to 100% of the price specified in the contract shall be required. The form and amount of said bond shall be described in the notice inviting bids or soliciting price quotations. The City Manager may waive requirement of a performance or payment bond if the manager has good cause to believe that a performance and/or payment bond may not be needed to protect the City.

2.9.6 Rejection of bids or price solicitation.

Any and all bids or request for proposals may be rejected without cause and the City may re-invite bids or re-solicit request for proposals when it is in the best interests of Payson City.

2.9.7 Emergency purchases.

The City Manager is authorized to make purchases of up to ten thousand dollars (\$10,000.000) in emergency situations when such purchases are deemed to be immediately necessary. The City Manager shall present written documentation and justification for any purchases made under this Section to the Governing Body as soon as possible after the purchases have been made.

2.9.8 Purchasing coordinator.

The City Recorder shall serve as purchasing coordinator to formalize purchasing procedures and to oversee the purchasing function. Purchasing procedures shall be presented in writing to all departments and shall be consistent with this ordinance.

2.9.9 Award of Contract without Competition.

A contract may be awarded for a supply, service or construction item without completing the bidding process if it is determined that there is only one

source for the required supply, service, or construction item; or the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item.

2.9.10 Pre-qualification of bidders, proponents and suppliers.

Where deemed appropriate by the City, bidders, proponents and/or suppliers may be pre-qualified for particular types of supplies, services and construction to determine the responsibility of such bidder, proponent or supplier.

1. Standard of Responsibility. Factors to be considered in determining whether the standard of responsibility has been met by a bidder, proponent, or supplier include:

- a) Availability of the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability of the bidder, proponent or supplier to meet all contractual requirements;
- b) A satisfactory record of performance;
- c) A satisfactory record of integrity;
- d) Legal qualifications to contract with Payson City; and,
- e) Whether all necessary information has been supplied in connection with the inquiry concerning responsibility.

2. Information Pertaining to Responsibility. The bidder, proponent or supplier shall supply information requested by the City concerning the responsibility of such bidder, proponent or supplier. If such information is not supplied, City shall base the determination of responsibility upon any available information or may find the bidder, proponent or supplier non-responsible if such failure, as determined by City, is unreasonable.

CHAPTER 2.10. **DISPOSITION OF PERSONAL AND** **REAL PROPERTY** (10-06-10) (08-15-12)

Sections:

- 2.10.1 Scope of disposition of personal property.**
- 2.10.2 Identification, review and approval for disposal of personal property.**
- 2.10.3 Methods of disposal of personal property.**
- 2.10.4 Conveyance for value of personal**

- property.**
- 2.10.5 Disposition of proceeds of personal property.**
- 2.10.6 Irrevocable transfer by contribution, donation, or gift to qualifying entities regarding personal property.**
- 2.10.7 Conveyance documents regarding personal property.**
- 2.10.8 Validity of actions regarding personal property.**
- 2.10.9 Scope of Disposition of Real Property.**
- 2.10.10 Notice of Conveyance of Disposition of Real Property.**

2.10.1 Scope of disposition of personal property.

No City personal property with an original purchase price of one thousand dollars (\$1,000) or more, or supplies with an aggregate value of one thousand dollars (\$1,000) or more, shall be transferred, traded, sold, salvaged, discarded or destroyed except as provided in this Chapter. If it is determined that the personal property with an original purchase price of one thousand dollars (\$1,000) or more currently has no value or nominal value, it may be disposed as described below. City personal property with an original purchase price of less than one thousand dollars (\$1,000) will be considered nominal and may be disposed at the direction of the City Manager as deemed appropriate without regard to this Chapter, yet with the objective of obtaining optimum value for the City. The City Manager will provide a semiannual report, which will include the purchaser or recipient, of these nominal dispositions to the Governing Body.

2.10.2 Identification, review and approval for disposal of personal property.

1. Department Superintendents shall, at the direction of the City Manager, identify surplus personal property within their departments and report the surplus to the City Manager. The City Manager shall review the reports with department superintendents to determine whether the property is in fact surplus and the method of disposal of the surplus property.
2. Upon written approval of the City Manager such property may be disposed of as directed and in a manner consistent with this Chapter.

2.10.3 Methods of disposal of personal property. Personal property with an original purchase price of one thousand dollars (\$1,000) or more and determined to be surplus under the criteria set forth in

this Chapter shall be disposed of by any of the following methods:

1. Interdepartmental transfer. Transfers between departments within the same budgetary fund may be made without regard to monetary value exchange. The book value of the asset at the time of transfer will be shifted to the receiving department on the fixed asset schedules. Transfers between departments within different budgetary funds must exchange a monetary value for the asset in addition to transferring the fixed asset record to the receiving department. The basis for the monetary exchange shall be the book value or ten percent (10%) of the original cost, whichever is greater.
2. Trade-in. Surplus personal property may be traded for other property or equipment being purchased.
3. Sale. Any sale of surplus personal property shall be by sealed bid, public auction or other internet web based auction, except as otherwise provided herein in accordance with Section 2.10.4 of this Chapter.
4. Salvage, discard or destruction. Personal property shall not be salvaged, discarded or destroyed without the express authorization of the Governing Body.
5. Replacement. Items approved for replacement in the annual budget by the Governing Body may be disposed by any of the means set forth in this Chapter except as stated in subsection (4) without further action of the Governing Body. Department superintendents, with approval of the City Manager, may trade the item for the replacement item without further application of this Chapter. All other disposal means must comply with the provisions herein.
6. Irrevocable transfer. Personal property may be disposed by contributing, donating or making a gift of the property to another governmental unit, civic or nonprofit organization in accordance with Section 2.10.6 of this Chapter.

2.10.4 Conveyance for value of personal property.

1. Every transfer, sale or trade of personal property with an original purchase price of one thousand Dollars (\$1,000) or more shall be based upon the highest and best economic return to the City, except that special consideration may be given to other units of government, other public or quasi-public organizations or nonprofit organizations. If a transfer is made to a qualifying governmental, public, quasi-public or nonprofit entity, the value of the item transferred may be determined by the City Manager or by a method specified by the City Manager and shall be conducted in conformance with Section 2.10.6 and this Chapter.
2. The highest and best economic return to the City,

as referred to in this Chapter, shall be determined by one or more of the following methods:

- a) Sealed competitive bid;
- b) Public auction;
- c) Internet web based auction;
- d) Valuation by qualified and disinterested consultant;
- e) Other professional publications and valuation services; or
- f) An informal market survey in the case of items of personal property possessing readily discernible market value.

3. The sale of City personal property shall be directed by the City Recorder and shall be by sealed bid, public auction or other internet web based auction. The City Manager may waive the sealed bid or auction requirement when the value of the property has been valued by an alternate method specified under this Subsection, and:

- a) The value of the property is considered negligible in relation to the costs of sale by bid or at public auction;
- b) Sale by bidding procedures at public auction are deemed unlikely to produce a competitive offer; or
- c) Circumstances indicate that bidding or sale at public auction will not be in the best interests of the City.

2.10.5 Disposition of proceeds of personal property.

All revenue derived from sales of personal property shall be credited to the general fund of the City, except when the property is owned and was purchased by an enterprise fund, in which case the revenues shall be credited to the enterprise fund, which owned the property.

2.10.6 Irrevocable transfer by contribution, donation, or gift to qualifying entities regarding personal property.

1. Personal property may be disposed by contribution, donation, or gift to another governmental unit, civic or nonprofit organization which meets the following criteria:

- a) The entity has obtained an exemption pursuant to Section 501(C)(3), Internal Revenue Code, from the Internal Revenue Service;
- b) The entity exists primarily to serve the needs of the public; and
- c) The property is to be used for bona fide public purposes with only incidental benefit to the nonprofit entity.

2. Written requests for transfer to a qualifying

agency shall be made to the City Manager. The City Manager shall determine the value of the property to be transferred as directed in Section 2.10.4.

2.10.7 Conveyance documents regarding personal property.

The City Treasurer will convey any personal property by signing and executing the appropriate title, bill of sale or other document.

2.10.8 Validity of actions regarding personal property.

No provision of this Section shall be construed to require or to invalidate any conveyance by the City or to vest rights of action of any kind against the City, its officers, or employees.

2.10.9 Scope of Disposition of Real Property

City real property of over an acre shall be considered significant. No City real property of over an acre shall be transferred, traded, sold, or condemned except as in compliance with this Chapter. City real property of one acre or less shall not be considered significant and may be disposed at the direction of the Governing Body as deemed appropriate without regard to this Chapter, yet must still be disposed of with the objective of obtaining optimal value for the City. The City Manager will provide an annual report, which will include the purchaser or recipient, of these nominal dispositions to the Governing Body.

2.10.10 Notice of Conveyance of Disposition of Real Property.

Prior to the disposition of any real property of over an acre, the City will allow an opportunity for public comment and shall publish notice in a newspaper of general circulation in Payson City at least 14 days before the opportunity for public comment.

CHAPTER 2.11 **POLICY CONSIDERATIONS**

(Adopted February 1, 1995)

Sections:

2.11.1 Policy Considerations

2.11.2 Definitions

2.11.3 Guidelines Advisory

2.11.4 Review of Decision

2.11.5 Reviewing Guidelines

2.11.6 Results of Review

2.11.7 Severability

2.11.1 Policy Considerations

There is an underlying policy that the City, strongly favoring the careful consideration of matters involving Constitutional Taking claims, in fairness to the owner of private property bringing the claim and in view of the uncertainty and expense involved in defending law suits alleging such issues. At the same time, the legitimate role of government has lawfully regulating real property must be preserved and the public's right to require the dedication or exaction of property consistent with the Constitution. Consistent with this policy, it is desired that a procedure be established for the review of actions that may involve the issue of a Constitutional Taking. These provisions are to assist governments in considering decisions that may involve Constitutional Takings. It is intended that a procedure for such a review be provided, as well as guidelines for such considerations. This ordinance is further intended and shall be construed to objectively and fairly review claims by citizens that a specific government action should require payment of just compensation, yet preserve the ability of the City to lawfully regulate real property and fulfill its other duties and functions.

2.11.2 Definitions

1. "Constitutional Taking" means actions by the City involving the physical taking or exaction of private real property that might require compensation to a private real property owner because of:

- a) The Fifth or Fourteenth Amendment to the Constitution of the United States;
 - b) Article I, Section 22, of the Utah Constitution;
 - c) Any Court ruling governing the physical taking or exaction of private real property by a government entity;
2. Actions by the City involving the physical taking or exaction of private real property is not a Constitutional Taking if the physical taking or exaction:
- a) Bears an essential nexus to legitimate governmental interests; and
 - b) Is roughly proportionate and reasonably related, on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest.

2.11.3 Guidelines Advisory

The guidelines adopted and decisions rendered pursuant to the provisions of this section are advisory, and shall not be construed to expand or limit the scope of the City's liability for a Constitutional Taking. The reviewing body or person shall not be required to make any determination

under this ordinance except pursuant to 2.11.5.

2.11.4 Review of Decision

Any owner of private real property who claims there has been a Constitutional Taking of their private real property shall request a review of a final decision of any officer, employee, board, commission, or council. The following are specific procedures established for such a review:

1. The person requesting a review must have obtained a final and authoritative determination, internally, within the City, relative to the decision from which they are requesting review.
2. Within thirty (30) days from the date of the formal decision that gave rise to the concern that a Constitutional Taking has occurred, the person requesting the review shall file in writing, in the office of the City recorder, a request for review of that decision. A copy shall also be filed with the City attorney.
3. The Governing Body or an individual or body designated by the Governing Body shall immediately set a time to review the decision that gave rise to the Constitutional Takings claim
4. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:
 - a) Name of the applicant requesting review;
 - b) Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners;
 - c) A detailed description of the grounds for the claim that there has been a Constitutional Taking;
 - d) A detailed description of the property taken;
 - e) Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of that same property before and after the alleged Constitutional Taking, the name of the party from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired;
 - f) Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
 - g) Terms (including sale price) of any previous purchase or sale of a full or partial interest in the

property in the three years prior to the date of application;

- h) All appraisals of the property prepared for any purpose including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application;
 - i) The assessed value of and ad valorem taxes on the property for the previous three years;
 - j) All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, right of purchasers to assume the loan;
 - k) All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;
 - l) All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning of development or utilization of the property;
 - m) For income producing property, itemized income and expense statements from the property for the previous three years;
 - n) Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and
 - o) The Governing Body or their designee may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a Constitutional Taking.
5. An application shall not be deemed to be "complete" or "submitted" until the reviewing body certifies to the applicant, that all the materials and information required above, have been received by the City. The reviewing body shall promptly notify the applicant of any incomplete application.
6. The Governing Body or an individual or body designated by them shall hear all the evidence related to and submitted by the applicant, City, or any other interested party.
7. A final decision on the review shall be rendered within fourteen (14) days from the date the complete application for review has been received by the City Recorder. The decision of the Governing Body or designee regarding the results of the review shall be given in writing to the applicant and the officer, employee, board, commission or council that rendered the final decision that gave rise to the Constitutional Takings claim.
8. If the governing Body fails to hear and decide the review within fourteen (14) days, the decision

appealed from shall be presumed to be approved.

2.11.5 Reviewing Guidelines

The Governing Body shall review the facts and information presented by the applicant to determine whether or not the action by the City, constitutes a Constitutional Taking as defined in this chapter. In doing so, they shall consider:

1. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.
2. Whether a legitimate governmental interest exists for the action taken by the City.
3. Is the property and exaction taken, roughly proportionate and reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

2.11.6 Results of review

After completing the review, the reviewing body shall make a determination regarding the above issues and where determined to be necessary and appropriate, shall make a recommendation to the officer, employee, board, commission or council that made the decision that gave rise to the Constitutional Takings Claim.

2.11.7 Severability

In the event that any section or portion thereof of this ordinance is deemed or declared to be unconstitutional or otherwise void and unenforceable, the remaining sections or portions thereof shall nevertheless remain in full force and effect.

CHAPTER 2.12

ESTABLISHING A RECORDS ACCESS AND MANAGEMENT PROGRAM

(Amended August 16, 2006)

Sections:

- 2.12.1 Short Title**
- 2.12.2 Purpose and Intent**
- 2.12.3 Definitions**
- 2.12.4 Right of Public Access**
- 2.12.5 Access to Non-Public Records**
- 2.12.6 Fees**
- 2.12.7 Procedures for Access**
- 2.12.8 Denials**
- 2.12.9 Records That Must Be Disclosed**
- 2.12.10 Private Records**
- 2.12.11 Controlled Records**
- 2.12.12 Protected Records**

- 2.12.13 Records Classification and Designation**
- 2.12.14 Records Retention**
- 2.12.15 Segregation of Records**
- 2.12.16 Appeals**
- 2.12.17 Judicial Review**
- 2.12.18 Confidential Treatment of Records for Which No Exemption Applies**
- 2.12.19 Request to Amend a Record**
- 2.12.20 Rights of Individuals on Whom Data is Maintained**
- 2.12.21 Criminal Penalties**

2.12.1 Short Title

The ordinance is known as the “Payson City Government Records Access and Management Act”.

2.12.2 Purpose and Intent

In enacting this act, the City recognizes two constitutional rights:

1. The right of privacy in relation to personal data gathered by the City; and
2. The public's right of access to information concerning the conduct of the public's business.
3. The City also recognizes a public policy interest in allowing the City to restrict access to certain records, as specified in this Title 2, for the public good.

It is the intent of the City to:

1. Promote the public's right of easy and reasonable access to unrestricted public records; and
2. Provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices; and
3. Specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access; and
4. Prevent abuse of confidentiality by permitting confidential treatment of records only as provided in this chapter; and
5. Favor public access when, in the application of this chapter, countervailing interests are of equal weight; and
6. Establish fair and reasonable records management practices.

2.12.3 Definitions

As used in this ordinance:

1. “Audit” means:

- a) a systematic examination of financial, management, program, and related records for

the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

- b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

2. “Chronological logs” means the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

3. “Classification” classify, and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under §63-2-201 (3)(b) Utah Code Annotated, 1953 as amended.

4. “Computer program” means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

“Computer program” does not mean: (i) the original data, including numbers, text, voice, graphics, and images; (ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or (3) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

5. “Contractor” means: any person who contracts with the City to provide goods or services directly to the City; or any private, nonprofit organization that receives funds from the City. “Contractor” does not mean a private provider.

6. “Controlled record” means a record containing data on individuals that is controlled as provided by 2.12.11.

7. “Designation,” “designate,” and their derivative forms mean indicating, based on the City's familiarity with a record series or based on the City's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

8. “Elected Official” Means each person elected to a state office, county office, municipal office, school

board or school district office, or special district office, but does not include judges.

9. "Explosive" means a chemical compound, device, or mixture: (a) commonly used or intended for the purpose of producing an explosion; and that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or causing death or serious bodily injury.

10. "Government audit agency" means any governmental entity that conducts an audit.

11. "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

12. "Individual" means a human being.

13. "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

- a) the date, time, location, and nature of the complaint, the incident, or offense;
- b) names of victims;
- c) the nature or general scope of the agency's initial actions taken in response to the incident;
- d) the general nature of any injuries or estimate of damages sustained in the incident;
- e) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
- f) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b) Utah Code Annotated, 1953 (as amended).

14. "Notice of compliance" means a statement confirming that a governmental entity has complied

with a records committee order.

15. "Person" means any individual, nonprofit or for-profit corporation, partnership, sole proprietorship, or other type of business organization or any combination acting in concert with one another.

16. "Private provider" means any person who contracts with the City to provide services directly to the public.

17. "Private record" means a record containing data on individuals that is classified private as provided by 2.12.10.

18. "Protected record" means a record that is classified protected as provided by 2.12.12.

19. "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in subsection 63-2-201(3)(b) Utah Code Annotated, 1953 (as amended).

20. "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics that is prepared, owned, received, or retained by the City; and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

"Record" does not mean:

- a) A personal note or personal communication prepared or received by an employee or officer of the City in the employee's or officer's private capacity;
- b) A temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;
- c) material that is legally owned by an individual in the individual's private capacity;
- d) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the City;
- e) proprietary software;
- f) junk mail or a commercial publication received by the City or an official or employee of the City;
- g) a book that is cataloged, indexed, or inventoried and contained in the collections of libraries open to the public;
- h) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;
- i) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom

- the originator is working;
- j) a computer program that is developed or purchased by or for the City for its own use or
- k) a note or internal memorandum prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function; or
- l) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of the City, provided that the employee or officer of the City has designated at least one business telephone number that is a public record as provided in Section 63-2-301 Utah Code Annotated, 1953 (as amended).

21. "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

22. "Records officer" means the City recorder and other individuals as appointed by the Mayor to work in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

23. "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by the City for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

23. "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

2.12.4 Right of Public Access

1. Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the payment of costs and fees pursuant to 2.12.6 of this ordinance.

2. All records are public unless otherwise expressly provided by this ordinance or State or Federal law or regulation.

3. The following records are not public:

- a) Records that is private, controlled, or protected under 2.12.10, 2.12.11, and 2.12.12 of this ordinance; and
- b) records to which access is restricted pursuant to count rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for

receiving state or federal funds.

4. Only those records specified in 2.12.10, 2.12.11, and 2.12.12 may be classified private, controlled, or protected.

5. The City may not disclose a record that is private, controlled, or protected to any person except as provided in 2.12.5.

6. The City may, at its discretion, disclose records that are private under 2.12.10 or protected under 2.12.12 to persons other than those specified in 2.12.5 if the City council, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweigh the interest favoring restriction of access.

a) In addition to the disclosure under subsection 6 above, the City may disclose a record that is protected under 2.12.12(?????) if: (i) the City Council or designee determines the disclosure is mutually beneficial to the subject of the record, the City, and the public; and the disclosure serves a public purpose related to public safety or consumer protection; and (ii) the person who receives the record from the City agrees not to use or allow the use of the record for advertising or solicitation purposes.

7. The disclosure of records to which access is governed or limited pursuant to count rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation.

8. This chapter applies to records described in Subsection (7) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

9. The City shall provide a person with a certified copy of a record if: The person requesting the record has a right to inspect it; identifies the record with reasonable specificity; and pays the lawful fees.

a) Upon request, the City may provide a record in a particular form if the City determines it is able to do so without unreasonably interfering with the City's duties and responsibilities and the requestor agrees to pay for the City for providing the record in the requested form in accordance with 2.12.6.

10. In response to a request, the City is not required to; (i) create a record in response to a request; (ii) compile, format, manipulate, package, summarize, or tailor information; (iii) provide a record in a particular format, medium, or program not currently maintained by the City; (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or (v) fills a person's records request if: (a) the record requested is

accessible in the identical physical form and content in a public publication or product produced by the City entity receiving the request; (b) the City provides the person requesting the record with the public publication or product; and (c) the City specifies where to record can be found in the public publication or product.

11. If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure and if the City can provide reasonable safeguards to protect the public from the potential for loss of a public record, the City may:

- a) Provide the requester with the facilities for copying the requested records and require that the requester make the copies; or
- b) Allow the requester to provide his own copying facilities and personnel to make the copies at the City offices, and waive the fees for copying the records.

12. If the City owns an intellectual property right and offers the intellectual property right for sale, or license, the City may control by ordinance or policy the duplication, and distribution of the material based on terms the City considers to be in the public interest.

13. Nothing in this ordinance shall be construed to limit or impair the rights or protections granted to the City under federal copyright or patent law as a result of its ownership of the intellectual property right.

14. The City may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this ordinance.

15. The City may provide access to an electronic copy of a record in lieu of providing access to its paper equivalent.

2.12.5 Access to private, controlled, and protected documents

1. Upon request the City shall disclose a private record to:

- a) The subject of the record;
- b) The parent or legal guardian of an un-emancipated minor who is the subject of the record;
- c) The legal guardian of a legally incapacitated individual who is the subject of the record;
- d) Any other individual who:
 - i has a power of attorney from the subject of the record; or
 - ii submits a notarized release from the subject of the record or legal representative dated no

later than 90 days before the date the request is made: or

- iii if the record is a medical record described in Subsection 2.12.10(b), is a health care provider, as defined in Section 26-33a-102 Utah Code Annotated, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
 - e) Any person to whom the record must be provided pursuant to court order.
2. Upon request, the City shall disclose a controlled record to:
- a) A physician, psychologist, or certified social worker, insurance provider or producer, or a government public health agency upon submission of: (a) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and (b) a signed acknowledgment of the terms of disclosure of controlled information as provided 2.12.5 (3); and
 - b) Any person to whom a record must be disclosed pursuant to Court Order.
3. A person who receives a record from the City in accordance with 2.12.5(2)(a) may not disclose controlled information from that record to any person, including the subject of the record.
4. If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
5. Upon request the City shall disclose a protected record to:
- a) The person who submitted the record;
 - b) Any other individual who:
 - i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or
 - c) Any person to whom a record must be provided pursuant to a court order.
6. The City may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by

§63-2-206 Utah Code Annotation, 1953 as amended.

7. Before releasing a controlled or protected record, the City shall obtain evidence of the requester's identity.

8. The City shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

- a) the record deals with a matter in controversy over which the court has jurisdiction;
- b) the court has considered the merits of the request for access to the record; and
- c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect: (i) privacy interests in the case of private or controlled records; (ii) business confidentiality interests in the case of records protected under Subsection 2.12.12; (iii) and privacy interests or the public interest in the case of other protected records;
- d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
- e) where access is restricted by a rule, statute, or regulation referred to in 2.12.4(3)(b), the court has authority independent of this ordinance to order disclosure.

9. (A) The City may disclose or authorize disclosure of private or controlled records for research purposes if the City:

- i) determines that the research purpose cannot reasonably be accomplished without use of disclosure of the information to the researcher in individually identifiable form;
- ii) determines that the proposed research is bona fide and the value of the research outweighs the infringement upon personal privacy;
- iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
- iv) prohibits the researcher from disclosing the record in individually identifiable form except as provided in 2.12.5(9)(f), or using the record for purposes other than the research approved by the City; and
- v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this Subsection and the researcher's understanding that violation of the terms of this Subsection may subject him to

criminal prosecution under §2.12.21.

(B) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(C) The City may require indemnification as a condition of permitting research under this subsection.

10. Under 2.12.4(6) and 2.12.16(8) the City may disclose to persons other than those specified in this section records that are private under 2.12.10, or protected under 2.12.12 subject to section 63-2-308 Utah Code Annotated, 1953 (as amended), if a claim for business confidentiality has been made.

11. Pursuant to section 63-2-403(11)(b) Utah Code Annotated, 1953 (as amended) the state records committee may require the disclosure to persons other than those specified in this section of records that are private under 2.12.10, controlled under 2.12.11, or protected under 2.12.12.

12. Under Section 63-2-404(8) Utah Code Annotated, 1953 (as amended), the court may require the disclosure to persons other than those specified in this section of records that are private under 2.12.10, controlled 2.12.11, or protected under 2.12.12.

2.12.6 Fees

1. The City may charge a reasonable fee to cover the City's actual cost of providing a record or compiling a record in a form other than that maintained by the City. The fees are set by resolution.

- a) The City may fulfill a record request without charge when it determines that:
 - i) Releasing the record primarily benefits the public rather than a person;
 - ii) The individual requesting the record is the subject of the record; or
 - iii) The requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.
- b) The City may not charge a fee for:
 - i) Reviewing a record to determine whether it is subject to disclosure; or
 - ii) Inspecting a record.
- c) A person who believes that there has been an unreasonable denial of a fee waiver under subsection (a) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under 2.12.16.

2.12.7 Procedures for Access

1. A person making a request for a record shall furnish the City with a written request containing the person's name, mailing address, daytime telephone number, if available, and a description of the record requested that identifies the record with reasonable specificity.

2.

i) Subject to subsection 2(b) a person making a request for a record shall submit the request to the governmental entity that prepares, owns or retains the record.

ii) In response to a request for a record, the City may not provide a record that it has received under section 63-2-206 Utah Code Annotated, 1953 (as amended), as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit. If the City is prohibited from providing a record under this section, it shall deny the record request and inform the person making the request that records requested must be submitted to the governmental entity that prepares, owns, or retains the record.

3.

a) As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the City shall respond to the request by:

i) approving the request and providing the record;

ii) denying the request;

iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or

iv) notifying the requester that because of one of the extraordinary circumstances listed in, subsection 4, it, cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the date when the record will be available.

b) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

4. The following circumstances constitute 'extraordinary circumstances' that allow the City to delay approval or denial by an additional period of

time as specified in 2.12.7(3)(iv) if the City determines that due to the extraordinary circumstances it cannot respond within the time limits provided in 2.12.7(2):

a) another governmental entity is using the record as part of an audit and returning the record before the completion of the audit would impair the conduct of the audit;

b) another governmental entity is using the record, in which case the City shall promptly request that the governmental entity currently in possession return the record;

c) the request is for a voluminous quantity of records or a record series containing a substantial number of records;

d) the requestor seeks a substantial number of records or records series in requests filed within five working days of each other;

e) the City is currently processing a large number of records requests;

f) the request requires the City to review a large number of records to locate the records requested;

g) the decision to release a record involves legal issues that require the City to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

i) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

4) If one of the extraordinary circumstances listed in 2.12.7(4) precludes approval or denial within the time specified in 2.12.7(2), the following time limits apply to the extraordinary circumstances:

a) for claims under 2.12.7(4)(b), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

b) for claims under 2.12.7(4)(a), the originating City shall notify the requester when the record is available for inspection and copying;

c) for claims under 2.12.7(4)(c), 2.12.7(4)(d), 2.12.7(4)(e) and 2.12.7(4)(f), the City shall:

i) disclose the records that it has located which the requester is entitled to inspect;

ii) provide the requester with an estimate of the amount of time it will take to finish the work

- required to respond to the request;
 - iii) complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible; and
 - iv) for any person that does not establish a right to an expedited response as authorized by (3)(a), the City may choose to (1) require the person to provide for copying of the records as provided in subsection 2.12.4(11); or (2) treat a request for multiple records as separate record requests, and respond sequentially to each request;
 - d) for claims under 2.12.7(4)(g), the City shall either approve or deny the request within five business days after the response time specified for the original request has expired;
 - e) for claims under 2.12.7(4)(h), the City shall fulfill the request within 15 business days from the date of the original request; or
 - f) for claims under 2.12.7(4)(i), the City shall complete its programming and disclose the requested records as soon as reasonably possible.
7. If the City fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

2.12.8 Denials

1. If the City denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to requester's address.
2. The notice of denial shall contain the following information:
 - a) A description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or records to which access is restricted pursuant to court Rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
 - b) Citations to the provisions of this ordinance, another state statute, federal statute, court rule or order or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information;
 - c) Statement that the requester has the right to appeal the denial to the city council; and
 - d) The time limits for an appeal, and the name and business address of the city council.

3. Unless otherwise required by a court or agency of competent jurisdiction, the City may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

2.12.9 Records That Must Be Disclosed

1. As used in this section:
 - (A) "business address" means a single address of the City designated for the public to contact and employee or officer of the City.
 - (B) "business e-mail address" means a single e-mail address of the City designated for the public to contact an employee or officer of the City.
 - (C) "business telephone number" means a single telephone number of the City designated for the public to contact and employee or officer of the City.
2. The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of subsection 2.12.4(2)(b) and 2.12.4(7).
 - a) Laws and ordinances;
 - b) The name, gender, gross compensation, job title, job description, business address, Business e-mail address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualification of a current or former employee and officer of the City, excluding undercover law enforcement personnel and investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
 - c) Final opinions, including concurring and dissenting opinions, and orders that are made by the City in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, protected, or controlled;
 - d) Final interpretation of statutes or rules by the City unless classified as protected as provided in 2.12.12 (15), (16), and (17).
 - e) Information contained in or compiled from a transcript, minutes, or report of the open portion of a meeting of the City pursuant to Utah Code Annotated, Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes

- of each member of the City council;
- f) Judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this ordinance;
 - g) Unless otherwise classified as private under section 63-2-302.5 Utah Code Annotated, 1953 (as amended), records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of water Rights, or other governmental entities that give public notice of:
 - i) titles or encumbrances to real property;
 - ii) restrictions on the use of real property;
 - iii) the capacity of persons to take or convey title to real property; or
 - iv) tax status for real and personal property;
 - h) Records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;
 - i) Data on individuals that would otherwise be private under this ordinance if the individual who is the subject of the record has given the City written permission to make the records available to the public;
 - j) Documentation of the compensation that the City pays to a contractor or private provider;
 - k) Summary data; and
 - l) Voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in subsection 2.12.10(?????)
3. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under 12.12.4(3)(b) or 12.12.10, 12.12.11, and 12.12.12
- a) Administrative staff manuals, instructions to staff, and statements of policy;
 - b) Records documenting a contractor's or private provider's compliance with the terms of a contract with the City;
 - c) Records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the City;
 - d) Contracts entered into by the City;
 - e) Any account, voucher, or contract that deals with the receipt or expenditure of funds by the City;
 - f) Records relating to governmental assistance or incentives publicly disclosed, contracted for, or given by the City, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304 (35) Utah Code Annotated, 1953 (as amended);
 - g) Chronological logs and initial contact reports;
 - h) Correspondence by and with the City in which the City determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
 - i) Empirical data contained in drafts if:
 - i) the empirical data is not reasonably available to the requester elsewhere in similar form; and
 - ii) the City is given a reasonable opportunity to correct any errors or make non-substantive changes before release;
 - j) Drafts that are circulated to anyone other than a governmental entity, a political subdivision, a federal agency if the City and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and
 - k) Drafts that have never been finalized but were relied upon by the City in carrying out action or policy;
 - l) Original data in a computer program if the City chooses not to disclose the program;
 - m) Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 - n) Search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
 - o) Records that would disclose information relating to formal charges or disciplinary actions against a past or present City employee if:
 - i) The disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - ii) The charges on which the disciplinary action was based were sustained;
 - p) Records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;
 - q) Final audit reports;
 - r) Occupational and professional licenses;
 - s) Business licenses; and
 - t) A notice of violation, a notice of agency action under Section 63-46(b)(3) Utah Code Annotated 1953 (as amended), or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the City, but not including records that initiate employee discipline.
4. The list of public records in this section is not exhaustive and should not be used to limit accesses to

records.

2.12.10 Private Records

1. The following records are private:

- a) Records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
- b) Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
- c) Records of publicly funded libraries that when examined alone or with other records identify a patron;
- d) Records received or generated in a Senate or House ethics committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;
- e) Records concerning a current or former employee of, or applicant for employment with the City that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;
- f) Records or parts of records under Section 63-2-305.5 Utah Code Annotated, 1953 (as amended) that a current or former employee identifies as private according to the requirements of that section;
- g) That part of a record indicating a person's Social Security number or federal employer identification number if provided under sections 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6 Utah Code Annotated, 1953 (as amended).
- h) That part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;
- i) A record that (i) contains information about an individual; (ii) is voluntarily provided by the individual; and goes into an electronic database that is designated by and administered under the authority of the City Council and acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;
- j) Information provided to the Commissioner of Insurance under section 31A-23a-115(2)(a) or 31A-23a-302(3); and

- k) Information obtained through a criminal background check under Utah Code Annotated, Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

2. The following records are private if properly classified by the City:

- a) Records concerning a current or former employee of, or applicant for employment with the City, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under 2.12.9(2)(b), 2.12.9(3)(o) or private under 2.12.10(1)(b).
- b) Records describing an individual's finances, except that the following are public:
 - i) Records described in 2.12.9(2);
 - ii) Information provided to the City for the purpose of complying with a financial assurance requirement; or
 - iii) Records that must be disclosed in accordance with another statute;
- c) Records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
- d) Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
- e) Records provided by the United States or by a governmental entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

2.12.11 Controlled Records

A record is controlled if;

1. The record contains medical, psychiatric, or psychological data about an individual;
2. The City reasonably believes that:
 - a) Releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - b) Releasing the information would constitute a violation of normal professional practice and medical ethics; and
 - c) The City has properly classified the record.

2.12.12 Protected Records

The following records are protected if properly classified by the City:

1. Trade secrets as defined in Section 13-24-2 Utah Code Annotated, 1953 (as amended) if the person

submitting the trade secret has provided the City with the information specified in Section 63-2-308 Utah Code Annotated, 1953 (as amended).

2. Commercial information or non-individual financial information obtained from a person if:

- a) Disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the City to obtain necessary information in the future;
- b) The person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
- c) The person submitting the information has provided the City with the information specified in Section 63-2-308 of Utah Code Annotated, 1953 (as amended).

3. Commercial or financial information acquired or prepared by the City to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or state economy;

4. Records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4) Utah Code Annotated, 1953 (as amended);

5. Test questions and answers to be used in future license, certification, registration, employment. or academic examinations;

6. Records the disclosure of which would impair governmental procurement or give an unfair advantage to any person proposing to enter into a contract or agreement with the City, except that this subsection does not restrict the right of a person to see bids submitted to or by the City after bidding has closed;

7. Records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless;

- a) public interest in obtaining access to the information outweighs the City's need to acquire the property on the best terms possible;
- b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the City;
- c) In the case of records that would identify property, potential sellers of the property described have already learned of the City's plans to acquire the property;

d) In the case of records that would identify the- appraisal or estimated value of property, the potential sellers have already learned of the City's estimated value of the property; or

e) The property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78-34-4.5 Utah Code Annotated, 1953 (as amended);

8. Records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

a) The public interest in access outweighs the interests in restricting access, including the City's interest in maximizing the financial benefit of the transaction; or

b) When prepared by or on behalf of the City, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the City;

9. Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes if release of the records:

a) Reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

b) Reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

c) Would create a danger of depriving a person of a right to a fair trial or impartial hearing;

d) Reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

e) Reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

10. Records the disclosure of which would jeopardize the life or safety of an individual;

11. Records the disclosure of which would jeopardize

the security of governmental property, governmental programs, or governmental record keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

12. Records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation or parole;

13. Records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

14. Records and audit work papers that identify audit, collection, and operational procedures and methods used by the Utah State Tax Commission if disclosure would interfere with audits or collections;

15. Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

16. Records prepared by or on behalf of the City solely in anticipation of litigation that are not available under the rules of discovery;

17. Records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the City concerning litigation;

18. Records of communications between the City and an attorney representing, retained or employed by the City if the communications would be privileged as provided in Section 78-24-8 Utah Code Annotated, 1953 (as amended);

19. Drafts, unless otherwise classified as public;

20. Records concerning the City's strategy about collective bargaining or pending litigation;

21. Records of investigations of loss occurrences and analyses of loss occurrences;

22. Records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

23. Records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

24. Records of independent state agencies if the disclosure of the records would conflict with the

fiduciary obligations of the agency;

25. Records provided by the United States or by a government entity outside the state that are given to the City with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

26. Transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in section 52-4-206 Utah Code Annotated, 1953 (as amended);

27. Records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

28. Memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

29. Records that would reveal negotiations regarding assistance or incentives offered by or requested from the City for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the City at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

30. Materials to which access must be limited for purposes of securing or maintaining the City's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

31. The name of a donor or a prospective donor to the City, including an institution within the state system of higher education defined in Section 53B-1-102 Utah Code Annotated, 1953 (as amended), and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the City under this Subsection; and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102 Utah Code Annotated, 1953 (as amended), the City to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

32. Accident reports, except as provided in Sections

41-6a-404, 41-12a-202, and 73-18-13 Utah Code Annotated, 1953 (as amended);

33. A notification of workers' compensation insurance coverage described in Section 34A-2-205 Utah Code Annotated, 1953 (as amended);

34. Records that provide detail as to the location of an explosive, including a map or other document that indicates the location of a production facility or a magazine;

35. Information contained in the database described in Section 62A-3-311.1 Utah Code Annotated, 1953 (as amended);

36. records provided by any pawnbroker or pawnshop to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act;

37. Unless otherwise classified as public under section 2.12.9 and except as provided under section 41-1A116 Utah Code Annotated, 1953 (as amended), an individual's home address, home telephone number, or personal mobile telephone number, if:

a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a governmental entity; and

b) the subject of the record has a reasonable expectation that the information will be kept confidential due to the nature of the law, ordinance, rule, or order and the individual complying with the law, ordinance, rule, or order.

2.12.13 Records Classification and Designation.

1. The Mayor hereby appoints the city recorder or designee to comply with section 63-2-903 Utah Code Annotated, 1953 (as amended) which includes being trained to work with the state archives regarding the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records.

2. The City shall:

- a) Evaluate all record series that it uses or creates;
- b) Designate those record series as provided by this ordinance;
- c) Report the designation of its record services to the state archives.

3. The City may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.

4. The City may re-designate a record series or reclassify a record or record series, or information

within a record at any time.

5. Any person who provides to the City a record that the person believes should be protected under 2.12.12(1) or (2) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

2.12.14 Records Retention (10-4-00A)

a) All classified and categorized records shall be retained by the City for a time period as specified and established by the State Division of Archives and Records.

b) If a department creates or maintains documents that are not under this Chapter nor are categorized by the established retention schedule referred to in subsection (1), the department superintendent shall inform the recorder of the contents, type and purpose of the documentation. The superintendent, recorder and any other affected department superintendent, shall determine the retention period. If an agreement cannot be reached, the longest period shall be adopted. Such a determination is subject to review by the City Manager and is also subject to the appeals process of this Chapter.

c) Records that are retained for the purpose of evidence, for either criminal, civil or administrative purposes shall be retained for the time prescribed by the retention schedule or until the exhaustion of all possible appeals, whichever is longer.

2.12.15 Segregation of Records

Notwithstanding any other provision in this ordinance, if the City receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this ordinance, and, if the information the requester is entitled to inspect is intelligible, the City:

1. Shall allow access to information in the record that the requester is entitled to inspect under this ordinance; and

2. May deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial.

2.12.16 Appeals

1. Any person aggrieved by the City's access determination under this ordinance, including a person not a party to the City's proceeding, may appeal the determination within thirty (30) days to the Mayor by filing a notice of appeal to the City

Recorder.

2. If the City claims extraordinary circumstances and specifies the date when the records will be available under 2.12.7(3) and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the City's claim of extraordinary circumstances or date for compliance within thirty (30) days after notification of a claim of extraordinary circumstances by the City, despite the lack of a "determination" or its equivalent under subsection 2.12.7(7).

3. The notice of appeal shall contain the petitioner's name, mailing address, and daytime telephone number as well as a short statement of facts, reasons, and legal authority in support of the appeal.

3. If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308 Utah Code Annotated, 1953 (as amended), the City recorder shall:

- a) Send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than thirty five (35) persons, it shall be given as soon as reasonably possible; and
- b) Send notice of the business confidentiality claim and the schedule for the Mayor's determination to the requester within three business days after receiving notice of the requester is appeal.
- c) The claimant shall have seven business days after notice is sent by the City Recorder to submit further support, for the claim of business confidentiality.

4. The mayor shall make a determination on any appeal within the following period of time:

- a) Within five (5) business days after the Mayor's receipt of the notice of appeal; or
- b) Within twelve (12) business days after the City sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

5. If the mayor fails to make a determination within the time specified in 2.12.16(4), the failure shall be considered the equivalent of an order denying the appeal.

6. The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

7. The mayor may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or non-disclosure, order the disclosure of information properly classified as private under 2.12.10(2) or protected

under 2.12.12 if the interests favoring access outweigh the interest favoring restriction of access.

8. During the timeframes set forth in section 2.12.16(4) the mayor may conduct a hearing. At the hearing, the mayor shall allow the parties to testify, present evidence, and comment on the issues. The Mayor may allow other interested persons to comment on the issues.

9. After the hearing, if any, and within the timeframes set forth in 2.12.16(4), the mayor shall issue a signed order either granting the petition in whole or in part or upholding the determination of the City in whole or in part. The order of the City shall include a statement of reasons for the decision, including citations to this ordinance or other statutes that govern disclosure of records, provided that the citations do not disclose private, controlled, or protected information. The order shall be sent to all participants. If the mayor affirms the determination of the City in whole or in part, the order shall state that the requester has the right to appeal the decision to the state records committee pursuant to section 63-2-403 Utah Code Annotated, 1953 (as amended) or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the state records committee.

9. A person aggrieved by the City's classification or designation determination under this ordinance, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

10. The duties of the mayor under this section may be delegated.

2.12.17 Judicial Review

1. Any party to a proceeding before the Mayor or the state records committee may petition for judicial review by the district court of the mayor's or record committee's order by following the procedures and time frames set forth in section 63-2-404 Utah Code Annotated, 1953 (as amended).

2.12.18 Confidential Treatment of Records for Which No Exemption Applies.

1. A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

- a) There are compelling interest favoring restriction of access to the record; and
- b) The interests favoring restriction of access

clearly outweigh the interests favoring access.

2. If the City requests a court to restrict access to a record under this section, the court shall require the City to pay the reasonable attorneys' fees incurred by the lead party in opposing the City's request, if:

- a) The court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and
- b) The court denies confidential treatment under this Section.

3. This section does not apply to records that are specifically required to be public under statutory provisions outside of this ordinance or under 2.12.9 except as provided in 2.12.18 (4).

4. a) Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interest favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

2.12.19 Request to Amend a Record

1. Subject to 2.12.19(8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the City to amend the record. However, this section does not affect the right of access to private or protected records.

2. The request shall contain the following information:

- a) The requester's name, mailing address, and daytime telephone number; and
- b) A brief statement explaining why the City should amend the record.

2. The City shall issue an order either approving or denying the request to amend no later than 30 days after receipt of the request.

3. If the City approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. The City may not disclose the record until it has amended it.

4. If the City denies the request it shall:

- a) Inform the requester in writing; and
- b) Provide a brief statement giving its reasons for denying the request.

5. If the City denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

6) The City shall:

a) File the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

b) Disclose the requester's statement along with the information in the record whenever the City discloses the disputed information.

7. The requester may appeal the denial of the request to amend a record pursuant to 2.12.16 of this Ordinance.

8. This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the City determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

2.12.20 Rights of Individuals on Whom Data is Maintained.

1. The City shall file with the state archivist a statement explaining the purposes for which record series designated private or controlled are collected and used by the City. That statement is a public record.

2. Upon request, the City shall explain to an individual:

- a) The reasons the individual is asked to furnish to the City information that could be classified private or controlled;
- b) The intended uses of the information;
- c) The consequences for refusing to provide the information, and
- d) The reason and circumstances under which the information may be shared with or provided to other persons or governmental entities.

3. The City may not use private or controlled records for purposes other than those given in the statement filed with the state archivist under subsection (1) or for purposes other than those for which another governmental entity could use the record under Section 63-2-206 Utah Code Annotated, 1953 (as amended).

2.12.21 Criminal Penalties

1. A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled or protected record knowing that such disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor.

2. It is a defense to prosecution under 2.12.21(1) that the actor used or released private, controlled or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

3. It is a defense to prosecution under 2.12.21(1) that the record could have lawfully been released to the recipient if it had been properly classified.

4. A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.

5. No person shall be guilty under 2.12.21(4) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

6. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from the City, the records committee, or a court, is guilty of a class B misdemeanor.

CHAPTER 2.13
RESERVED

CHAPTER 2.14
RESERVED

CHAPTER 2.15
RESERVED

CHAPTER 2.16
APPEAL BOARD

(7-23-90A, 2-07-01, 9-15-04)

Sections:

- 2.16.010** **Right of Officers and Employees of Payson City to Appeal Certain Personnel Actions**
- 2.16.020** **Rules for Appeals**
- 2.16.030** **Appeal Board – Selection of Board Members**
- 2.16.040** **Rules and Procedures**
- 2.16.010** **Right of Officers and Employees of Payson City to Appeal Certain personnel Actions.**

(1) An employee to which subsection 2 applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:

- (a) because of the employee's politics or religious belief; or

(b) incident to, or through changes, either in the elective officers, governing body, or heads of departments.

(2) Except as provided in Subsection (3), each employee of Payson City shall hold employment without limitation of time, being subject to discharge, suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided in section 2.16.020.

(3) Subsection (2) does not apply to:

- (a) positions appointed by the mayor or other person or body exercising executive power in the city;
- (b) the police chief;
- (c) the assistant police chief;
- (d) the fire chief;
- (e) the assistant fire chief;
- (f) the head of each city department (superintendent);
- (g) probationary employees;
- (h) part-time employees;
- (i) or seasonal employees.

(4) Nothing in this section or the following sections may be construed to limit the city's ability to define cause for an employee termination or reduction in force.

2.16.020 **Rules for Appeals.**

(1) (a) If an employee is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any reason, the employee may, subject to Subsection (1)(b), appeal the discharge, suspension without pay, or involuntary transfer to a board to be known as the appeal board, established under section 2.16.030.

(b) The employee shall exhaust the employee's rights under the city's grievance procedure found in section 780 of the Payson City Personnel Policy before appealing to the board.

(2) (a) Each appeal under Subsection (1) shall be taken by filing written notice of the appeal with the City Recorder within ten days after the employee receives notice of the final disposition of the city's internal grievance procedure.

(b) (i) Upon the filing of an appeal under Subsection (2)(a), the municipal recorder shall forthwith refer a copy of the appeal to the appeal board.

(ii) Upon receipt of the referral from the municipal recorder, the appeal board shall forthwith commence its investigation, take and receive evidence, and fully hear and

- determine the matter, which relates to the cause for the discharge, suspension, or transfer.
- (3) An employee who is the subject of the discharge, suspension, or transfer may:
- (a) appear in person and be represented by counsel;
 - (b) have a public hearing;
 - (c) confront the witness whose testimony is to be considered; and
 - (d) examine the evidence to be considered by the appeal board.
- (4) (a) (i) Each decision of the appeal board shall be by secret ballot, and shall be certified to the recorder within 15 days from the date the matter is referred to it, except as provided in Subsection(4)(a)(ii).
(ii) For good cause, the board may extend the 15-day period under Subsection (4)(a)(i) to a maximum of 60 days, if the employee and municipality both consent.
- (b) If it finds in favor of the employee, the board shall provide that the employee shall receive:
- (i) the employee's salary for the period of time during which the employee is discharged or suspended without pay; or
 - (ii) any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.
- (5) (a) A final action or order of the appeal board may be appealed to the Court of Appeals by filing with that court a notice of appeal.
(b) Each notice of appeal under Subsection (5)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board.
(c) The Court of Appeals' review shall be on the record of the appeal board and for the purpose of determining if the appeal board abused its discretion or exceeded its authority.

2.16.030 Appeal Board - Selection of Board Members

- (1) The Payson City Appeal Board shall consist of the governing body of Payson City. The Mayor shall be the chair of the appeal board. If the Mayor does not participate in the appeal board, the participating members shall appoint a chair for that particular appeal. Three or more members of the Appeal Board shall constitute a quorum sufficient to hear appeals. A simple majority of the participating quorum will determine the decision. A participating member may not abstain from voting. The voting shall

be limited to upholding or reversing the decision before board on appeal.

2.16.040 Rules and Procedures.

- (1) The Appeal Board may adopt reasonable procedural rules for the conduct of its business, not inconsistent with this ordinance or other applicable law.

CHAPTER 2.17
HISTORIC PRESERVATION BOARD
(11-17-04B)

Sections:

2.17.010 Historic Preservation Management.

2.17.020 Board of Directors Established – Term of Office.

2.17.030 Director – Removal – Vacancies.

2.17.040 Directors to Serve Without Compensation.

2.17.050 Board-Chair-Duties.

2.17.060 Board-Space for Meetings, Equipment.

2.17.070 Board-Meetings-Absence.

2.17.080 Board-Meetings-Agenda-Powers.

2.17.090 Board to Adopt Rules.

2.17.100 Board-Annual Reports.

2.17.010 Historic Preservation Management.

The Payson City Historic Preservation Board is hereby established and shall be managed and operated by the Payson City Council.

2.17.020 Board-Established-Terms of Office.

There is hereby created and established a Historic Preservation Board of Directors of Payson City, which shall consist of the following residents of the City: the president of the Payson Historical Society or designee; the president of the People Preserving Peteetneet or designee; the president of the Payson Historical Downtown Alliance or designee; the president of the Payson chapter of the Daughters of the Utah Pioneers or designee; the Community Services Director or designee; and two at large citizens appointed by the Mayor with the advice and consent of the City Council for a three year term or until a successor is appointed. A Chair shall be appointed annually from among its members by the Board. The City Council shall approve the initial board of directors as well as all replacements to the board.

2.17.030 Director Removal-Vacancies.

Any director may be removed for misconduct or

neglect of duty by the City Council. Vacancies in the Board of Directors occasioned by removals, resignations, or otherwise, shall be filled for the unexpired term or in the same manner as original appointments.

2.17.040 Directors to Serve Without Compensation.

Directors shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from the general fund as approved by the City Council

2.17.050 Board-Chair-Duties.

The Chair shall present the agenda as hereinafter provided, of all material pertaining to the historical preservation effort to be considered at each and every meeting of the board. The chair shall preside at and conduct the meetings. If the Chair is not available, the remaining directors shall appoint a director to conduct the meeting.

2.17.060 Board-Space for Meetings, Equipment.

The City Council shall establish and furnish suitable space for the meetings and the carrying on of the business and functions of the board.

2.17.070 Board-Meetings-Absence.

The Board shall meet in regular meetings at a time designated by the Board. Special meetings may be convened at any time as determined by the City Council or the Chair of the Board upon giving notice to all members of the Board and the City Council. At least four members of the Board must attend said meeting in response to said notice, and a certified copy of the minutes of each special board meeting shall be furnished all members of the Board and the City Council. Absence of a member of the Board from three regular meetings in any four-month period shall have the effect of vacating the office of the member unless such absence is authorized or approved by Board action.

2.17.080 Board Meetings-Agenda-Powers.

The agenda for each meeting of the board shall be prepared by the Chair and said agenda may cover all matters pertaining to the operation of the Payson City historic preservation effort, which require attention or administrative action thereon. The Board shall have the power in respect to all matters of operation of the historic preservation effort to have read into the minutes of the board meetings, board decisions, and recommendations on any such matters; and shall have

the power to add matters to the aforesaid agenda of the Board which have not been submitted for their consideration as hereinabove provided. The powers of the Board are advisory and shall extend to all phases of the historic preservation effort within the limits of Payson City. The Board shall have no authority to bind Payson City financially. All recommendations regarding grants, loans or other financial matters shall be determined by the City Council. The City Council shall make all policy decisions and will act upon all recommendations of the Board.

2.17.090 Board-Annual Reports.

The Board of Directors shall make an annual report to the City Council of the condition and operation of the Historic Preservation effort, including a financial statement.

2.17.100 Board to Adopt Rules Governing Historic Preservation.

The Board of Directors shall make and adopt rules and regulations not inconsistent with law, for the governing of the Historic Preservation effort. All such rules and regulations shall be approved by the City Council.

2.17.110 Board to Cooperate with Other Volunteer Boards.

The Board of Directors shall work in harmony with the various boards and committees of Payson City regarding historic preservation, but shall not override the authority or independence of any such board or committee.

CHAPTER 2.18
RESERVED

CHAPTER 2.19
ECONOMIC DEVELOPMENT BOARD

Sections:

2.19.010 Economic Development Board.

2.19.020 Board of Directors Established -Term of Office.

2.19.030 Director-Removal -Vacancies.

1.19.040 Directors to Serve Without Compensation

2.19.050 Board-Chair -Duties.

2.19.060 Board-Space for Meetings, Equipment.

2.19.070 Board-Meetings -Absence.

2.19.080 Board-Meetings-Agenda -Powers.

2.19.090 Board to Adopt Rules.

2.19.100 Board-Annual Reports.

2.19.010 Economic Development Board.

The Payson City Economic Development Board is hereby established and shall be managed and operated by the Payson City Council.

Under the direction and authority of the Payson City Council, the Payson Economic Development Board shall actively promote economic development, including improvement of all business conditions within Payson City, in order to maximize employment opportunities, increase tax base, and to enrich the quality of life in Payson City. The Payson City Economic Development Board will recruit industrial and commercial businesses and act as a liaison between businesses and the Payson City Council. Additionally, the Board will strive to promote tourism, educational opportunities, residential growth, and downtown development

2.19.020 Board-Established-Terms of Office.

There is hereby created and established an Economic Development Board of Directors of Payson City, which shall consist of the following: the Payson City Mayor; a Payson City Council Member appointed by the City Council; a diverse cross section of persons from the Payson community and surrounding area that have a desire to promote economic development in Payson. The number shall be determined by the Board. The Board shall serve for a three year term or until a successor is appointed. A Chair shall be appointed annually from among its members by the Board. The City Council shall approve the initial board of directors as well as all replacements to the board.

2.19.030 Director Removal- Vacancies.

Any director may be removed for misconduct or neglect of duty by the city council. Vacancies in the Board of Directors, occasioned by removals, resignations, or otherwise, shall be filled for the unexpired term or in the same manner as original appointments.

2.19.040 Directors to Serve Without Compensation.

Directors shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from

the Economic Development Fund as approved by the City Council.

2.19.050 Board-Chair-Duties.

The Chair shall present the agenda as hereinafter provided, of all material pertaining to the economic development effort to be considered at each and every meeting of the board. The chair shall preside at and conduct the meetings. If the Chair is not available, the remaining directors shall appoint a director to conduct the meeting. The Chair shall also report to the City Council quarterly at a regularly scheduled City Council Meeting.

2.19.060 Board-Space for Meetings, Equipment.

The Board shall establish and furnish suitable space for the meetings and the carrying on of the business and functions of the board.

2.19.070 Board-Meetings-Absence.

The Board shall meet in regular meetings at a time designated by the Board. Special meetings may be convened at any time as determined by the City Council or the Chair of the Board upon giving notice to all members of the Board and the City Council. At least six members of the Board must attend said meeting in response to said notice, and a certified copy of the minutes of each special board meeting shall be furnished all members of the Board and the City Council. Absence of a member of the Board from three regular meetings in any four month period shall have the effect of vacating the office of the member unless such absence is authorized or approved by Board action.

2.19.080 Board Meetings-Agenda-Powers.

The agenda for each meeting of the board shall be prepared by the Chair and said agenda may cover all matters pertaining to the operation of the Payson City economic development effort, which require attention or administrative action thereon. The Board shall have the power in respect to all matters of operation of the economic development effort to have read into the minutes of the board meetings, board decisions, and recommendations on any such matters; and shall have the power to add matters to the aforesaid agenda of the Board which have not been submitted for their consideration as hereinabove provided. The powers of the Board are advisory and shall extend to all

phases of the economic development effort within the limits of Payson City. The Board shall have no authority to bind Payson City financially. All recommendations regarding grants, loans or other financial matters shall be determined by the City Council. The City Council shall make all policy decisions and will act upon all recommendations of the Board.

2.19.090 Board-Annual Reports.

The Board of Directors shall make an annual report to the City Council of the condition and operation of the economic development effort, including a financial statement.

2.19.100 Board to Adopt Rules Governing Economic Development.

The board of directors shall make and adopt rules and regulations not inconsistent with law, for the governing of the economic development effort. All such rules and regulations shall be approved by the City Council.