



CITY COUNCIL  
2267 N 1500 W  
CLINTON UT 84015  
Phone: (801)-614-0700  
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www.clintoncity.net

## AMENDED AGENDA

October 28, 2014

Mayor

*L. Mitch Adams*

City Council

*Anna Stanton*

*Brice Mitchell*

*Mike Petersen*

*Karen Peterson*

*Barbara Patterson*

**I. REGULAR SESSION – 7:00 P.M.**

1. Call to Order
2. Pledge of Allegiance
3. Invocation or Thought
4. Roll Call

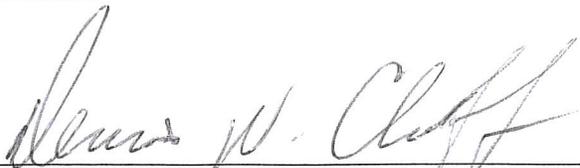
**II. BUSINESS**

- A. 2014-15 Youth Council Swearing In
- B. Employee of the Month of August 2014 – Steve Hubbard
- C. Employee of the Month of September – Holly Martinez
- D. Department Head of the Third Quarter – Bruce Logan
- E. Employee Service Awards – Third Qtr 2014
- F. Arts Board Appointment
- G. 7:30 PM Public Hearing, Resolution 17-14 Amending the FY 2014-15 Budget
- H. 8:00 PM Public Hearing, Resolution 18-14 Final Plat Approval of Clinton Homestead East Phase 3
- I. 1800 North Draft Environmental Impact Statement
- J. Subdivision Conditional Acceptance, Mirage Estates
- K. Personnel Policy Manual Update
- L. Ordinance 14-07, Telecommunications Rights-of-Way
- M. Award Contract for Street Crack Sealing
- N. 1600 North Storm Drain Project
- O. Tabled from August 12, 2014 Ordinance No. 14-05 - Action, by Ordinance, upon a request to vacate a portion of 1615 West, adjacent to lots 7 and 8, Kendall Estates Phase 1, running south from 1950 North to the south boundary of the Subdivision.
- P. Resolution 19-14 Environmental Evaluation – 3000 W Clinton City/4300 W Hooper City – 1400 N to 6000 S

**III. OTHER BUSINESS**

- a. Approval of All Meeting Minutes: September 23, 2014
- b. Accounts Payable
- c. Planning Commission Report
- d. City Manager's Report
- e. Mayor's Report
- f. Council Reports on Areas of Responsibility
- g. Action Item Review

**IV. ADJOURN**

  
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DENNIS W. CLUFF, CITY RECORDER

If you attend this meeting and, due to a disability, will need assistance in understanding or participating therein, please notify the City at least eight hours prior to the meeting and we will seek to provide assistance. The order of agenda items may be changed or times accelerated as time permits with the exception of public hearing.

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Introduction and Swearing in of the 2014-15 Youth Council Members	<b>AGENDA ITEM:</b> A
<b>PETITIONER:</b> Amber Harsin, Youth Council Advisor	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council recognize the 2014-15 Youth Council Members	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<p><b>BACKGROUND:</b> Amber Harsin, the Youth Council Advisor will introduce the members of the 2014-15 Youth Council. Mayor Adams will swear in the following individuals as members of the 2014-15 Youth Council:</p> <p><u>2014/15 Youth Council Members</u>            Madison Reynolds            Nathan Stokes            Curtis Talbot            Ian Steadman            Kylie Harris            Jacob Phillips            Jacob Robbins            Matthew Gates            Austin Smith            Katelynn Egbert            Sierra Watson            Marissa Phillips            Kolton Stoddard            Chloe Stokes            Mackenzie Jenkins            Briana Jenkins            Isaiah Pack            Maxwell Frampton            Shayla Burnham            Shelbie Jones</p>	
<b>ATTACHMENTS:</b>	

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Employee of the Month for August 2014 - Steve Hubbard	<b>AGENDA ITEM: B</b>
<b>PETITIONER:</b> Dennis Cluff, Carla Parsons	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council recognize Steve Hubbard as Employee of the Month for August 2014.	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<p><b>BACKGROUND:</b></p> <p>I am pleased to nominate <i>Steve Hubbard as Employee of the Month</i>. Steve has been an outstanding employee of Clinton City for the past thirteen years. He resides in Clinton City with his wife Tammy.</p> <p>Steve has created a variety of financial forms that have been beneficial for both him and other departments in the City. He is proficient at all tasks he is required to do and a resource for other employees as well. Steve develops corrective financial action plans, as required by City Manager, including but not limited to journal entries in the budget. He coordinates resolution of concerns with department heads in order to balance out budget requirements. When necessary he develops documentation and reports justifying account number assignments as required by the City Manager. Some of the more recent documentation includes a recent quarterly financial statement that reports operational and historical information to the City Council.</p> <p>Other accomplishments include his creativity and ability to meet changing conditions and help resolve problem situations. He serves effectively as a liaison between the City and the auditors that evaluate annual reports. He works diligently to accomplish an accurate and timely payroll.</p> <p>He is excellent at establishing good will and gets along extremely well with other co-workers. He is always eager to assist in any way possible that might help make the Treasurer's Department run more smoothly and efficiently. He possesses many admirable talents that contribute to his success. I feel that Clinton City is fortunate to have such an industrious, honest and dedicated employee as Steve.</p>	
<b>ATTACHMENTS:</b>	

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Employee of the Month for September 2014-Holly Martinez	<b>AGENDA ITEM:</b> C
<b>PETITIONER:</b> Dennis Cluff, Chief Bill Chilson	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council recognize Holly Martinez as Employee of the Month for September 2014.	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> <p>Holly Martinez is a part-time Secretary for the Police Dept. Holly with the Dept for 2 years. She is a great help in making our office run smoothly.</p> <p>Holly helps Cathy Miller with entering citations and reports, and, making sure they are accepted by the State's systems. She assists the DARE officer with his program and also is in charge of keeping the Crossing Guard information updated.</p> <p>As the front office person, Holly is the first person at our Dept that most citizens make contact with, either in person or by phone. She handles these situations very professionally. Holly is always willing to help others wherever she can. She is well liked by all our staff and is a great asset to our Dept.</p>	
<b>ATTACHMENTS:</b>	

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Department Head of the 3 <sup>rd</sup> Quarter of Bruce Logan	<b>AGENDA ITEM: D</b>
<b>PETITIONER:</b> Dennis Cluff	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council recognize Bruce Logan as the Department Head of the 3 <sup>rd</sup> Quarter of 2014	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<p><b>BACKGROUND:</b></p> <p>Bruce is the Director of Recreation, better known as the organizer of all things fun in the City. He has been with us since July 2013. Bruce has done an amazing job of getting up to speed on the City's recreation programs, policies and procedures. After understanding his department's functions, he has made many improvements and changes that have made things run more effectively and efficiently.</p> <p>Bruce has a great way of working with people and smoothing out issues that arise. He has brought a wealth of local experience to his work from the many years of working for and with other local cities as well as his involvement in regional and statewide sporting events. He has a positive "lets get it done now" attitude and is willing to get totally involved.</p> <p>Bruce is a great asset and addition to our management staff. I appreciate his desire to excel in all he does, follow the rules and policies, and, continually seek ways to improve services to the public. He is truly dedicated to recreation. I'm glad to have him working with us on behalf of the citizens of Clinton and am pleased to recognize Bruce as the Dept Head of the 3<sup>rd</sup> quarter of 2014.</p>	
<b>ATTACHMENTS:</b>	

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Employee Service Awards-Third Quarter of 2014	<b>AGENDA ITEM: E</b>
<b>PETITIONER:</b> Dennis Cluff	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council recognize the below listed employees for their dedicated service to the City.	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> For this past Quarter these employees are eligible for awards. They are: Police Bill Chilson 30 years Admin Dennis Cluff 20 years Recreation Cathy Derrick 15 years Police Jon Gill 10 years	
<b>ATTACHMENTS:</b>	

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Appointment to the Community Arts Board	<b>AGENDA ITEM: F</b>
<b>PETITIONER:</b> Mayor Adams	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council ratify the Mayor's appointment of Nolan Evans to the Community Arts Board	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> An existing member of the Arts Board needs to be replaced (Shane Thompson). Upon recommendation from the Arts Board, the Mayor is appointing Nolan Evans to fill that Board Seat which runs through April 2015.	
<b>ATTACHMENTS:</b>	

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> 7:15 P.M.- <u>Public Hearing</u> - Resolution #17-14, Amendments to FY 14-15 Budget	<b>AGENDA ITEM:</b> G
<b>PETITIONER:</b> Dennis Cluff	<b>MEETING DATE:</b>  October 28, 2014
<b>RECOMMENDATION:</b> The Council adopt Resolution #17-14 amending the budget for FY 2014-15	<b>ROLL CALL VOTE:</b>  <b>YES</b>
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> This short budget amendment is to mainly transfer funds in the Water Enterprise Fund Reserve to the active expense budget to cover the cost of purchasing 2.8 acres of land. Additionally there is a small amount for engineering costs to accommodate the transference of the water rights to include the new location and start some site planning. The last two budget amendments are to Public Works as reimbursements to their program.	
<b>ATTACHMENTS:</b> Resolution 17-14 Attachment "A" spread sheet	

## RESOLUTION No. 17-14

### A RESOLUTION AMENDING THE CITY BUDGET FOR ALL CITY FUNDS FOR FISCAL YEAR 2014-2015

**WHEREAS**, Clinton City has established the following funds: General Fund, Motor Pool Fund, Capital Projects Fund, Water Fund, Sewer Fund, Solid Waste Fund, and Cemetery Perpetual Care Fund; and,

**WHEREAS**, Section 10-6-128 of the Utah Code allows amendments to the budget for each of the above-listed funds; and,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLINTON, DAVIS COUNTY, UTAH, THAT THE BUDGET IS HEREBY AMENDED AS SHOWN ON ATTACHMENT "A", ATTACHED HERETO, FOR THE FISCAL YEAR 2014-2015, BEGINNING JULY 1, 2014 AND ENDING JUNE 30, 2015.**

Passed, adopted and ordered posted and recorded by the City Council of Clinton City, Utah, this the 28<sup>th</sup> day of October, 2014.

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L. Mitch Adams, Mayor

Attest:

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Dennis W. Cluff, City Manager/Recorder

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Date Posted

**COUNCIL BUDGET AMENDMENTS-October 28, 2014**

<u>Item</u>	<u>Dept</u>	<u>Description</u>	<u>Revenue</u> <u>Increase</u>	<u>Expense</u> <u>Increase</u>	<u>Balance</u>	<u>Comments</u>
<b>GENERAL FUND REVENUES</b>						
10-3690	Revenue	Sundry	2615		69823	Revenue from PW metal sales & st light payback
		<b>GF Revenue TOTAL</b>	<b>2615</b>			
<b>GENERAL FUND EXPENSES</b>						
10-6023	Pub Wks	Meeting and Training		1063	2713	Extra costs
10-6055	Pub Wks	St. Light Maint		1552	11752	Fix broken street light
		<b>GF Expense TOTAL</b>	<b>0</b>	<b>2615</b>		
			<u>Revenue</u>	<u>Expense</u>		
			<u>Increase</u>	<u>Increase</u>		
<b>WATER FUND</b>						
	<b>REVENUE</b>					
51-1111		Water Fund Bal Surplus	255125			Property and engineering for well/storage
	<b>EXPENSE</b>					
51-4073		Water Improvements		235125	250725	Property and engineering for well/storage
51-4076		Engineering		20000	20000	water rights transfer & site engineering
		<b>TOTAL</b>	<b>255125</b>	<b>255125</b>		

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> <b>PUBLIC HEARING - 8:00 p.m. – RESOLUTION NO. 18-14</b> - Review and action upon a recommendation from the Planning Commission concerning a request for Final Plat approval of Clinton Homestead East Phase 3, to be located at approximately 2465 North 1500 West, Clinton.	<b>AGENDA ITEM: H</b>
<b>PETITIONER:</b> Howard Kent, representing SLI	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> Adopt, amend and adopt or reject Resolution No. 18-14, approving Clinton Homestead East Subdivision Phase 3.	<b>ROLL CALL VOTE:</b> <b>X YES                      NO</b>
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> <p>On October 21, the Planning Commission held a public hearing to hear public input related to this subdivision, there was no public comment. The Commission unanimously passed a motion to recommend the Council approve the subdivision and adopt Resolution No. 18-14.</p> <p>The following was provided to the Commission.</p> <ul style="list-style-type: none"> <li>○ This subdivision was granted preliminary approval in 2008 and the downturn in the housing market caused a slow down in the progress of the phases. The petitioner is the same company that acquired the preliminary plat and there remains an escrow on phase 2.</li> <li>○ This phase significantly matches the preliminary plat approved.</li> <li>○ This subdivision is in the R-1-10 Zone.</li> <li>○ The lots meet the minimum standards for the R-1-10 Zone</li> <li>○ Comments have been returned to the developer’s engineer for changes to the plat and engineering. Changes are not significant to the lot layout or subdivision.</li> </ul>	
<b>ALTERNATIVE ACTIONS:</b>	
<b>ATTACHMENTS:</b> Plat Aerial of area Resolution No. 18-14	
<b>REFERENCED DOCUMENTS:</b>	







# RESOLUTION NO. 18-14

## A RESOLUTION APPROVING THE FINAL PLAT FOR CLINTON HOMESTEAD EAST SUBDIVISION PHASE 3

**WHEREAS**, Section 3-4(4) of the Clinton City Subdivision Ordinance states that the City Council shall approve, modify and approve, or disapprove subdivision application by resolution; and,

**WHEREAS**, The Clinton City Planning Commission has reviewed the final plat for Clinton Homestead East Subdivision Phase 3 and recommended approval of the plat; and,

**WHEREAS**, The Clinton City Board of Zoning Adjustments has reviewed an application for a variance to minimum frontage requirements within the zone and upon findings approved the request for the variance.

**NOW, THEREFORE, BE IT RESOLVED BY THE CLINTON CITY COUNCIL THAT THE FINAL PLAT FOR CLINTON HOMESTEAD EAST SUBDIVISION PHASE 3 IS HEREBY APPROVED WITH THE FOLLOWING FINDINGS, CONDITIONS AND STIPULATIONS:**

**SECTION 1.** By majority vote on a motion before the Clinton City Council the Final Plat of Clinton Homestead East Subdivision Phase 3 Cove Subdivision is (Approved) (Not Approved) based upon the following findings, conditions and/or stipulations:

- The Council concurs with the findings of the Clinton City Planning Commission.

**SECTION 2.** Reviewed in a public hearing the 21<sup>st</sup> day of October 2014, by the Clinton City Planning Commission and recommended for approval through a motion passed by a majority of the members of the Commission based upon the following findings and conditions.

- 1 The City is to be reimbursed for the cost of installing the laterals on the lots fronting 1500 West.
- 2 Developer is to provide credible documentation from the Roy South Branch Ditch Company, Davis Weber County Canal Company, indicating that the design of the flood irrigation ditch is acceptable or that the ditch can be abandoned and removed from the rear of the lots on the north end of the subdivision. If removed all pipe, headgates and boxes in the project shall be removed and any open pipes leading into the project area permanently plugged.
- 3 1500 West street shall not be cut in the development of the subdivision.
- 4 It is the developer/contractor's responsibility to comply with all Clinton City Standards, Ordinances, Staff, Engineer and requirements established during the approval process. Wherever there is a discrepancy between these drawings and City Standards the more stringent requirement will apply. If there is any doubt as to the requirement the developer is to seek clarification from the Community Development Department and obtain the determination in writing. Copies of the Standards are available at the Community Development Department.

- 5 The developer/contractor is responsible for insuring that all required inspections are performed by the Clinton City Public Works Department. If the developer is unsure of what inspections are required he can obtain a list from Public Works. The developer is cautioned not to proceed past an inspection point without insuring that the inspection has been performed and work passed by Public Works.
- 6 It is the developer/contractor's responsibility to insure adequate dust, trash and weed control practices are observed while any of the lots are under their control.

OCTOBER 2, 2014

NOTICE PUBLISHED

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ANTHONY O. THOMPSON  
CHAIRMAN

**SECTION 3.** Effective date. This Resolution shall become effective upon signature and posting.

PASSED BY MOTION AND ORDERED PUBLISHED by the Council of Clinton City, Utah, this 28<sup>th</sup> day of October, 2014.

OCTOBER 2, 2014

NOTICE PUBLISHED

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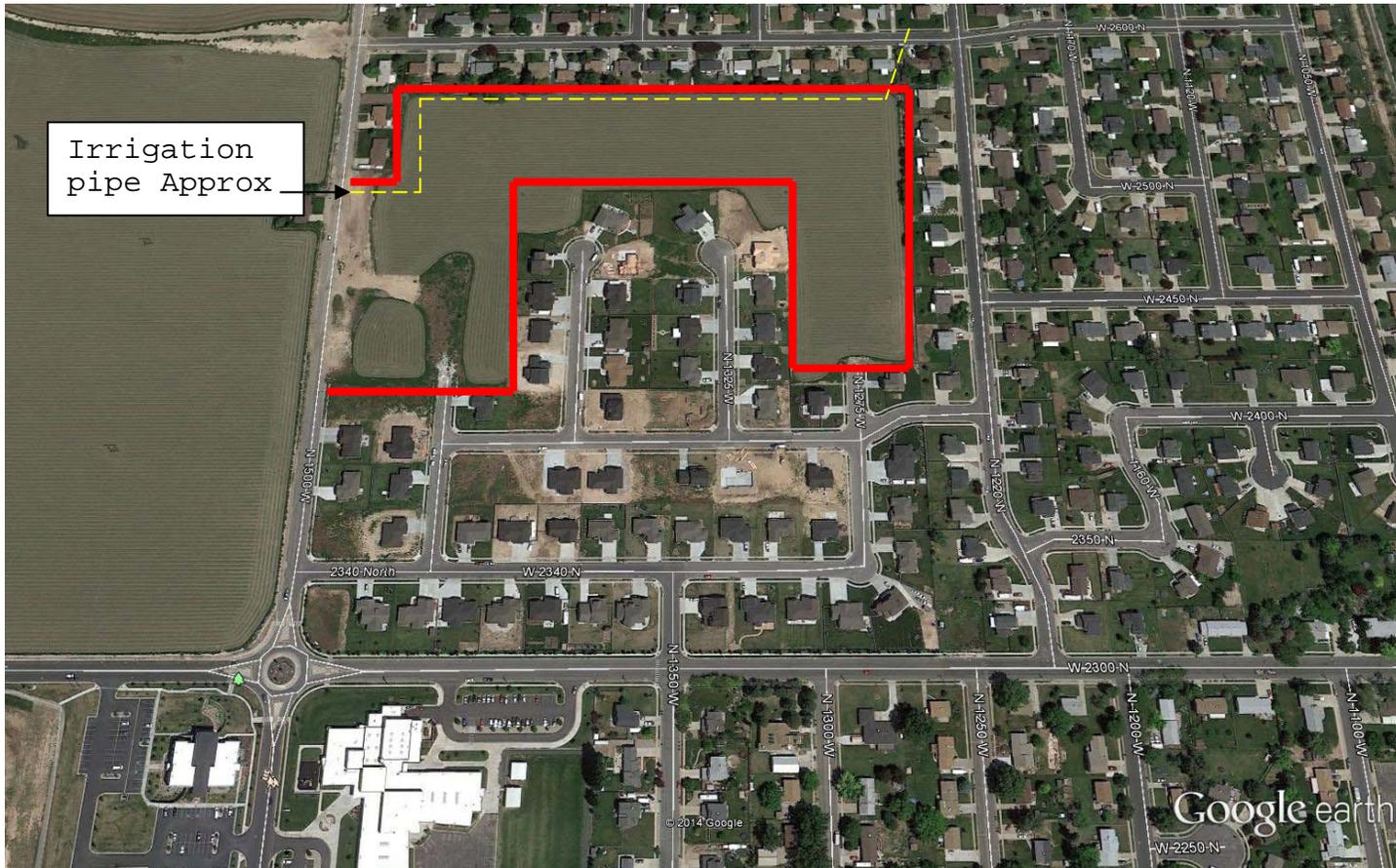
L. MITCH ADAMS  
MAYOR

ATTEST:

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DENNIS W. CLUFF  
CITY RECORDER

Posted: \_\_\_\_\_



# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> 1800 North Draft Environmental Impact Statement	<b>AGENDA ITEM: I</b>
<b>PETITIONER:</b> Community Development Horrocks Engineering, Stan Jorgensen	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> Receive presentation and provide comment.	<b>ROLL CALL VOTE:</b> <b>YES            X NO</b>
<b>FISCAL IMPACT:</b> Unknown	
<p><b>BACKGROUND:</b> I recommend, that prior to starting the presentation, a statement be made announcing the Public Hearing to be held November 19, at Sunset City Building, where there will be brief presentations at 6:30 and 7:30 p.m. followed by open microphone for public comment. This is not the forum for discussion related to impact upon houses or compensation. This is a chance for the Council to hear a presentation in order to prepare comments, for the City, related to the Statement.</p> <ul style="list-style-type: none"> <li>○ The Draft Environmental Impact Statement for the 1800 North project is in for final review by UDOT .</li> <li>○ Stan Jorgensen, of Horrocks Engineering, will be present at the meeting to present the Draft Environmental Impact Statement to the Council to answer any questions, related to the Statement, that may arise.</li> <li>○ I have a paper copy of the statement and two disks containing the Statement or you can go to the web site and see the whole thing <a href="http://www.udot.utah.gov/1800north/">http://www.udot.utah.gov/1800north/</a> . The web site is faster than trying to research the disks if you are interested in reviewing it on the computer.</li> </ul> <p>Items of primary concern to the City that have been presented during the preparation of the Study:</p> <ul style="list-style-type: none"> <li>○ Impact on City Well and Tank</li> <li>○ Impact to existing dwellings</li> <li>○ Impact upon existing businesses</li> <li>○ Impact upon landscaping required as part of the business development</li> <li>○ Will there be an underpass for 550 West for connection between the two sides of the City</li> <li>○ Impact upon infrastructure</li> </ul> <p>These are specific areas that I think should be emphasize as being deficient in this Statement.</p> <ul style="list-style-type: none"> <li>○ There needs to be an underpass at 550 West for connectivity between the two halves of the City. Some of the alternatives depict an underpass and some do not. A search of the document for “550 West” does not reveal a comment concerning this underpass.</li> <li>○ There needs to be connectivity between the Clinton Pines Development (Wal-Mart) and Parkside Plaza Development (Lowes). The Statement shows that there is an island in 1800 North at the access between the two shopping areas. This will provide all traffic out of the centers a right-turn only. Shoppers won’t be able to get from one area to the other without driving around the block, a two mile distance. These access points from the two shopping areas were approved, even directed, by UDOT when the developments were submitted for UDOT review.</li> <li>○ The 1800 N connection between the two shopping areas is approximately 750, centerline to centerline, feet from the intersection at 2000 W and 1800 N. The connection between Parkside Plaza and Clinton</li> </ul>	

Towne Center, across 2000 West, is 670 feet north of 1800 N. We can expect this connection to be a right turns only when 2000 W widens if this design logic continues. Limiting access between these commercial centers is not addressed as an economic impact. If this design standard continues to get from Parkside to Clinton Pines you will have to drive over two miles.

- A conservative count of trees removed, in Clinton, by the project is 136 deciduous trees and 41 evergreen trees. Over a third of these trees are required landscaping in the central business district and the others are either park strip trees or trees within the future right-of-way. The EIS addresses replacing 4 trees in Clinton (4-23/24, 4-54/55).
- There is no indication throughout the EIS addressing the amount of landscaped acreage that will be removed from the central business district and the impact upon retail sales this aesthetic decline will have. Section 3.7 discusses Economic Conditions, Landscaping and Aesthetics pg 3-47 indicates that “The project would replace landscaping where possible...remnant land could be used for additional landscaping opportunities.” Under Mitigation, pg 3-51 there is the following “During the design phase, develop a landscaping plan that will replace impacted landscaping and be consistent with the existing aesthetics of the corridor.” It is well known that UDOT does not maintain landscaping. The Statement does not discuss who will be responsible for installing and maintaining landscaping that the businesses were required, by ordinance, to install and maintain. There is no discussion on how the “remnant land” that “could be used for additional landscaping” be turned over to the City, will we have to buy it? The businesses will be compensated, financially, for the loss of their landscaping.
- There isn’t any discussion of the impact upon the shopping centers when they become non-compliant with the zoning ordinance. This non-conforming situation will have to be addressed by the City in the future.
- The Statement addresses connectivity between the streets on the north and south side of 1800 North when the viaduct cuts off access to 1800 North. The Statement shows a parallel street on the north and south side of 1800 North that connects 550 W, 630 W, and 725 W, with 810 West on the north side and 550 W, 670 W, and 775 W to 810 W on the south side. This is the only option that will provide connectivity. Pg. 3-47 “Access” discusses this connectivity vaguely but does not address the traffic load that will be generated at 810 West.
- The viaduct and embankment are going to develop an impact upon the residents that end up looking at this structure. There won’t be any residences on the north side that look at the embankment there will be four houses with side lots toward the embankment. On the south side, there will be eight houses facing the embankment and an additional four houses with side lots facing the embankment. Pg 3-127 discusses the impact of the embankment on properties in the area “approximately 810 West to 300 West, would experience the greatest impact to visual character and quality as a result of the rail separation structure.” The only other mention of 810 West is from a comment during the November 30, 2010 public meeting, pg 7-4.
- This plan will dump traffic that currently access 1800 North from 4 streets on the north and 4 streets on the south into one street from the north and one street from the south, 810 West. The Statement does not show improvements to 810 West similar to those on 250 West, 810 West should be designed with a left turn lane, right turn lane, through lanes north and south and should get a signal. I am sure the discussion will be that some of the cut-off traffic will go to 2300 N and 1300 N to avoid the traffic at 810 / 1800. The problem is this philosophy increases the traffic flow on the city streets which defeats the purpose of improving 1800 N.
- At 630 West there are two houses that will become corner lots against the access street on the north side of the embankment. No measurements are provided, however these two houses appear to be very close to the access street and they both will have driveways dumping into the ADA ramp at the new corner. City minimum setback at a corner lot is 20-feet from the property line to the structure and a driveway setback is 40-feet from the curb.
- Some of the alternatives have a direct impact upon the land we lease on HAFB for the water tanks:

- Alternative A and B: Takes some of the leased area and reduces the size of the overflow basin. Severely reduces the ability of the City to add another water tank at the site.
- Alternative C: No direct affect to the site.
- Alternative D and E: Takes some of the leased area and reduces the size of the overflow basin. Severely reduces the ability of the City to add another water tank at the site.
- Alternative F: No direct affect to the site.
- The impact upon the City's culinary water system has been a major concern for the City throughout the process. We have two water tanks on HAFB and one at the intersection of 1800 N 550 W. We have a well at 1800 N and 550 West and a delivery system under 1800 North that includes two mains from the tanks on HAFB a 12" and a 20" that turns into an 18" main as the delivery system spreads out starting at 670 West. There is no mention of the possibility of disruption of service to the City or the impact upon the system during construction. I searched the document for the words "water" and "tank" the only mention of our water system is on pages 7-3 and 7-4 where it states that the City has expressed a concern over protection of our system. Pages 3-45, 3-49, and 3-51 make reference to the fact that Sunset City delivers water to HAFB and that it should not be disrupted.
- The current location of our water mains in 1800 North will be under the embankment. Leaving these mains under the embankment is not an option. Obviously, the project will relocate the mains; however it will be important for the City to ensure that two mains continue to supply the City from HAFB.
- The Storm water system is addressed, pg 3-84: "Storm water runoff would be collected in curbs and gutters along the roadway and enter improved or new storm drain systems via catch basins....A system of inlets and pipes would convey the storm water to discharge points and detention facilities that would aid in lowering peak flows to near existing conditions." Pg 3-85.
- The increase in flow from the widening of 1800 North will have an affect upon our storm drain system even though the Statement indicates that the project will create detention for new flows. Even though the increased flows are detained they will eventually dump into our drain system which we have to maintain. Flows from Sunset will end up in Meadows Park and flows from the portion in Clinton will continue down 1800 North through our system until it gets to the County Channel at 2050 North. We will have increased maintenance. Presently UDOT does not have any detention or storm drain infrastructure in Clinton.

### **RECOMMENDATIONS:**

I recommend the City accomplish the following:

- Immediately: Send in a comment letter to be included in the Statement covering the concerns of the City.
- November 19, 2014: Attend the 1800 North EIS Public Hearing; there will be brief presentations at 6:30 and 7:30 p.m. followed by open microphone for public comment.
- Before UDOT starts to design the project develop a Boulevard Plan, in conjunction with Sunset, with design, landscape, aesthetic and commerce enhancing ideas.
- Before UDOT starts to design the project develop a plan for our water system and how it would work best for the City. This water system plan doesn't need to depict specific locations only the technical requirements of the system; pipe sizes, valve locations in relationship to streets and structures.
- Before UDOT starts to design the project develop a cost estimate for the culinary water system and figure what the cost to the City will be for the improvements to the system will be. There will be improvements above the cost of relocating the system that UDOT will cover.
- Even before the estimated cost of upgrades, to the water system, associated with widening 1800 N are known start setting funds aside, in the water enterprise fund, for the upgrades.

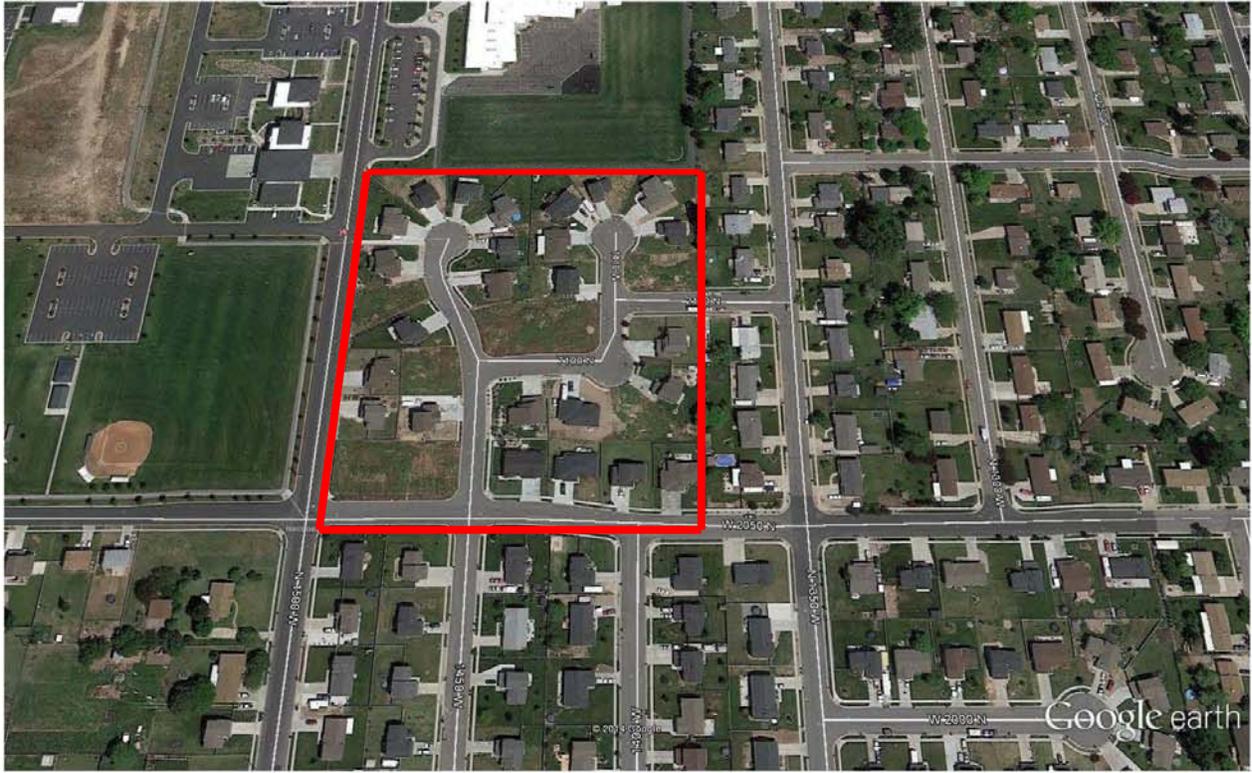


# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Subdivision Conditional Acceptance, Mirage Estates	<b>AGENDA ITEM: J</b>
<b>PETITIONER:</b> Community Development, Shron Builders	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> Grant Conditional Acceptance of improvements in Mirage Estates Subdivision and authorize release of funds being held in escrow with the exception of the 15% guarantee plus unfinished sidewalk.	<b>ROLL CALL VOTE:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> Public Works has accomplished required inspections.  This will start a 2-year guarantee; this escrow was established prior to the state requirement that guarantee periods only be one year.	
<b>ALTERNATIVE ACTIONS:</b>	
<b>ATTACHMENTS:</b> Public Works Inspection Map	
<b>REFERENCED DOCUMENTS:</b>	

**CLINTON CITY SUBDIVISION  
INSPECTION  
CONDITIONAL ACCEPTANCE**

<b>SUBDIVISION</b>		Mirage Estates		
<b>REQUIRED INSPECTIONS</b>	<b>INSPECTION REQUIRED FOR THIS RELEASE</b>	<b>DATE</b>	<b>INITALS</b>	<b>COMMENTS</b>
<b>BLUE PRINT INSPECTIONS</b>				
REVIEW OF PRELIMINARY PLANS			GF	
REVIEW OF AS BUILTS			GF	
WIRING DIAGRAMS/STREET LIGHTS			ZM	
<b>CONSTRUCTION INSPECTIONS</b>				
<b>SEWER</b>				
MANHOLES	X	10/21/14	GF	
VIDEO			GF	
<b>LAND DRAINS</b>				
VISUAL PIPE INSPECTION	X	10/21/14	GF	
MANHOLES	X	10/21/14	GF	
<b>WATER</b>				
CHLORINE TEST			GF	
BACTEIRA TEST			GF	
PRESSURE TEST			GF	
CONNECT TO EXISTING SYSTEM			GF	
FLUSH			GF	
HYDRANT CHECK (PRIOR TO HOME CONSTRUCTION)			GF	
VALVE & VALVE BOXES	X	10/21/14	GF	
FIRE HYDRANTS	X	10/21/14	GF	
METER BOXES	X	10/21/14	GF	
BLOW OFF HYDRANTS			GF	
<b>STORM DRAINS</b>				
VISUAL PIPE INSPECTION	X	10/21/14	GF	
MANHOLES	X	10/21/14	GF	
COLLECTION BOXES	X	10/21/14	GF	
<b>STREETS</b>				
SUB GRADE			GF	
FINAL GRADE / ROADBASE			GF	
ASPHALT	X	10/21/14	GF	
CURB & GUTTER (PRE -POUR)			GF	
CURB & GUTTER (POST-POUR)	X	10/21/14	GF	
SIDEWALK (POST-POUR)	X	10/21/14	GF	AS BUILT
COLLARS ON BOXES	X	10/21/14	GF	
<b>STREET LIGHTS</b>				
BASE INSPECTION	X	10/21/14	GF	
PRE POWER INSPECTION	X	10/21/14	GF	
<b>MISC INSPECTIONS</b>				
LOTS CLEANED UP	X	10/21/14	GF	
WEEDS CUT TO 10 INCHES	X	10/21/14	GF	
VACANT LOTS GRADED SMOOTH	X	10/21/14	GF	
FENCE INSTALLED	X	10/21/14	GF	
MAILBOX POLE IN CULDISAC			GF	



Google earth

feet 900  
meters 200



# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Personnel Policy Manual Update	<b>AGENDA ITEM:</b> K
<b>PETITIONER:</b> Dennis Cluff, Karen Peterson	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council approve the changes to the Personnel Policy Manual	<b>ROLL CALL VOTE:</b> NO
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> Council Member Karen Peterson has undertaken a review and update of the City's Personnel Policy Manual in conjunction with a graduate school class she is taking. Some spelling and grammatical changes have been made as well as: update in the FMLA (Family Medical Leave Act) policy; improved explanations of paid leave guidelines; 401K contributions for new employees hired after July 2015 and, the adding of existing cell phone use and computer/email use policies. An additional memo will be sent out with 401K information and possible options on how to treat new employees after July 2015, as is listed in the Personnel Policy changes. Since the specifics are really an annual budgetary issue, they should not be codified in with the Personnel Policies, but rather be a budgetary policy or guideline established by the Council. An agenda item on this issue will be on your Nov 25 <sup>th</sup> agenda.	
<b>ATTACHMENTS:</b>	





# CLINTON CITY

## *PERSONNEL POLICIES*

Published by Order of the Clinton City Council

October 2014

Deleted: January 2013



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## **I. A WORD ABOUT THIS HANDBOOK**

Communication is the most important aspect of the employment relationship. This handbook is designed as part of our effort to improve your understanding of what we expect of you as an employee. It also outlines your benefits as a City employee. This personnel policy is not a contract of employment. However, to the extent an employee wishes to remain or be employed by Clinton City, these are the basic policies that must be followed.

Your daily contact with the public has two effects: First, the perception the public gains from your appearance and behavior which reflects on the City as an employer; Second, what you see and hear can be very useful to us in improving the public's perception of the City, and are important in helping us serve the citizens of the City.

Improving the public perception of the services we provide and how well we provide them, in the long term, allows us to better compensate you for the part you play in getting the job done. Serving the public and getting the job done right should be the ultimate goals all of us are striving to achieve.

Please read this handbook with these ideas in mind. It is a synopsis of our mutual expectations. As such, it cannot anticipate every situation that might arise while you work here. However, it does address the most common issues where questions have been raised in the past. Should you not understand a specific portion or reference in this handbook, contact your Supervisor.

## **II. EMPLOYEE ORIENTATION**

New employees will be provided with an orientation session during which they will be given a copy of this handbook and the opportunity to ask questions they may have concerning its contents or application. Current employees will also be given an orientation to this handbook, or any subsequent modification to it, required by changes in applicable laws or regulations, or by subsequent action of the City Council.

### **III. PURPOSE**

The purpose of these policies is to provide systematic and equitable procedures and regulations relating to the hiring, compensation, hours of work, leave, safety, training, working conditions, promotions, transfer, discipline, removal and other matters affecting the status of employees of the City. These rules and regulations are provided to maintain and improve the facilities and services which the residents of the City require, to maintain uniformity and equity in personnel matters which will make City service attractive as a career and to encourage each employee to give his/her best service to the City. Individual departments may have additional policies approved by the City Manager specific to their function; department policies shall not supersede the policies outlined in this handbook.

### **IV. APPLICATION OF POLICIES**

These personnel rules, policies and procedures apply to all City employees, except in the event of a conflict between these policies and any valid collective bargaining unit contract, City ordinance, state or federal law.

The City specifically reserves the right to modify or amend these policies at any time, with or without notice. In the event of the amendment of any ordinance, rule or law incorporated in this document or upon which these provisions rely, these policies will be deemed amended in conformance with those changes.

## V. DEFINITION OF TERMS

As used in these rules, unless the context requires otherwise:

### **Anniversary Date:**

The date marking the end of the probationary period of an employee after being appointed, promoted or reclassified to a position of employment as a regular employee.

### **Appointing Authority:**

Any person or group vested with the authority to employ, discipline or terminate an employee in a position in City service. This definition includes all Elected Officials, Appointed Officials and Department Heads given such authority by the City Council or City Manager.

### **Department Heads:**

Supervising managers of a City department. They are employed or terminated through the City Manager with approval of the Mayor and City Council. They are supervised, directed, disciplined (except for termination) and evaluated by the City Manager. Department Heads direct and supervise the employee activity and services provided within their respective departments. They are allowed to employ, discipline or terminate an employee with approval of the City Manager.

### **Disciplinary Probation:**

A period of time defined by the employee's appointing authority, which shall not be less than 30 days nor more than one (1) year for violation of these policies, city ordinances, or state law.

### **Employee:**

A person employed by the City in one of the following categories:

Probationary Employee; Regular Full-time Employee, ~~Regular Part-time Employee~~ or Regular Part-time Employee Exempted; Probationary Promotion Employee; or Temporary/Seasonal Employee.

Deleted: or

All persons employed by the City are "at will" employees.

### **Fair Labor Standards Act:**

Federal law establishing requirements relating to minimum wage, salary classifications, overtime compensation, child labor and equal pay requirements. It also identifies certain employee classifications which may be declared exempt from overtime and minimum wage laws (for Clinton City these are executive, administrative and professional employees who qualify.)

**Governing Body:**

The Mayor and Clinton City Council or its Designated Representative(s).

**Illegal Act:**

Acts which violate law, federal, state or local.

**Immediate Family:**

Shall include the employee's spouse, children (adopted or natural), parents, mother/father in law, brothers, sisters, grandparents, or other dependents living in the employee's household.

**Lay-off:**

Termination due to a shortage of funds, materials, work or for involuntary reasons not reflecting discredit upon the performance of the employee.

**Lay-off List:**

A list of laid off regular employees in a particular Class of job who are entitled to be reappointed to a position in that Class, setting forth the effective date of lay-off, and establishing an order of re-call for future job openings.

**Military Leave:**

A leave of temporary absence granted to employee(s) while serving in the US Armed Forces, Reserves, or the National Guard.

**Personnel Action:**

Any action taken with reference to an employee or position.

**Position:**

Defines a group of duties within a work classification requiring a full-time or part-time employee to accomplish the specified duties.

**Position Vacancy:**

A position which becomes vacant when a current employee has been promoted, voluntarily or involuntarily demoted, resigned, terminated, or has retired.

**Probation:**

Normally a period of time not less than six (6) months and not more than one (1) year, during which new employees are required to demonstrate by actual performance their fitness for the regular full-time position or regular part-time position to which appointed, promoted, or hired.

**Probationary Promotion:**

Normally a period of not less than six (6) months nor more than one (1) year, during which a promoted employee is required to demonstrate, by actual performance, fitness for the position to which promoted.

**Promotion:**

Movement of an employee from a position in one classification to a position in a higher classification.

**Reclassification:**

Change in job status due to certain changed job requirements.

**Regular Full-Time Employee:**

An employee who has been appointed or hired to a full-time position established in the annual budget, following satisfactory completion of the probationary period, who regularly works forty (40) hour weeks.

**Regular Part-time Employee:**

Employee who after satisfactory completion of the probationary period, holds a part-time position that is established in the annual budget and these rules, and normally works regular weekly hours of twenty (20) hours or more, but less than ~~thirty (30)~~, hours per week.

Deleted: forty (40)

**Regular Part-time Employee Exempted:**

An employee who following satisfactory completion of the probation period, works greater than thirty (30) hours, but less than forty (40) hours per week and has been declared exempt from the requirements of the Affordable Health Care Act by the City Manager.

**Supervisor:**

Includes any person responsible for assigning tasks to and evaluating the performance of an employee, and who may, with the concurrence of the Appointing Authority, discipline, suspend or terminate an employee.

**Suspension (Administrative):**

A temporary interruption in work of an employee directed by the Appointing Authority for investigative reasons. During this period the employee will be paid. Administrative suspension periods normally shall not exceed ten (10) days. Employee benefits will not be affected during the suspension period.

**Suspension (Disciplinary):**

Temporary interruption of work of an employee directed by the Appointing Authority for disciplinary reasons. During this period the employee shall not be paid. The disciplinary suspension period shall not exceed thirty (30) calendar days.

**Temporary/Seasonal Employees:**

These employees are normally hired for a defined project and/or limited time frame, typically for less than nine (9) consecutive months. These employees are not eligible for benefits unless required by law. They shall be covered by Worker's Compensation and shall be compensated for overtime hours at one and one-half times the normal hourly rate for the position held. Employment of temporary/seasonal employees beyond an initially specified term does not imply or constitute an employment status change. These employees are considered "at will" employees subject to termination without cause.

**Transfer:**

Movement of an employee from a specifically described position of employment and pay level in one department, to a similar described position and same pay level in another department.

**Voluntary Demotion:**

A demotion requested by an employee in order to retain employment when a layoff is imminent or for other reasons, when the action is entirely voluntary on the part of the employee.

**Volunteer Employee:**

An individual who performs a service for the City that is humanitarian or civic in nature, done for the worker's private reasons, and the volunteer does not expect to be paid, nor is the volunteer paid. Employees of the City may not volunteer to do the same work that they normally do in their paid positions.

**Work Week:**

A basic full-time work week is 40 hours of work on 5 consecutive 8-hour days. The standard work period commencing at 12:01 A.M. Sunday and ending midnight the following Saturday.

With City Manager approval, Departments may establish other work week schedules or work arrangements to meet their requirements.

## **VI. EMPLOYMENT POLICIES & INFORMATION**

### **A. EQUAL EMPLOYMENT OPPORTUNITY**

Equal employment opportunity at the City is defined as a policy of approaching all employment related decisions based on the skills, experience, education, and demonstrable ability to perform the essential tasks of the position being offered, without reference to age, sex, race, color, religion, national origin, or disability.

Employment applications, job descriptions, advertising (internal or external), and interviews for job openings will be confined to whether the applicant can perform particular job functions. Based on the responses received, should it appear that an applicant might have difficulty with an essential function of the job, due to a disability as defined by law; the City will seek to provide reasonable accommodation, in cooperation with the applicant, on a case by case basis. Should a current employee suffer a disability as defined by law, reasonable accommodation, including reassignment to a vacant position for which the employee is fully qualified, will be made.

An offer of employment requires the applicant to first pass a pre-employment drug screen and take an appropriate medical examination, if required. Information obtained as a result of medical examination will be limited to job related inquiries, specific physical job requirements consistent with business necessity, and maintained in a confidential file.

It is the intent of the City to apply these policies to all employment practices, including, but not limited to: job applications and testing; hiring; termination; advancement; promotion; tenure; compensation; training; recruitment; advertising of job openings; layoff and recall; leaves of absence; fringe benefits; and all other employment related activities.

Any violation of this policy should immediately be brought to the attention of the City Manager who will institute an appropriate investigation as deemed necessary to substantiate the facts surrounding the alleged violation. Based on this information, disciplinary action to correct the violation will be taken as indicated by the facts of the case, and a written record will be maintained containing the results of the investigation

### **B. POLICY AGAINST DISCRIMINATION AND HARASSMENT**

It is the intent of the City to provide a work environment that is free from unlawful discrimination and harassment. Unlawful harassment includes undesired harassment based on race, gender, religion, national origin, age, disability, marital status, and any other basis prohibited by law. Unlawful harassment in the workplace on the part of any employee is prohibited and any employee found to have engaged in unlawful harassment will be subject to disciplinary action.

It is the intent of the City to apply these polices to all employment related practices, including, but not limited to: job application procedures and testing; hiring; promotion; demotion; termination; tenure; compensation; training; recruitment; advertising of job openings; lay-off and recall; leaves of absence; fringe benefits; and all other employment related activities.

An employee who believes he/she is the subject of unlawful harassment should report the complaint to his/her Department Head, who will take it to the City Manager, or if the complaint is against the Department Head, the employee shall report the complaint to the City Manager, unless the complaint is against the City Manager or Municipal Judge, then the employee should notify the Mayor or a City Council member, who will immediately institute an appropriate investigation as deemed necessary to substantiate the facts surrounding the alleged violation.

Based upon this information, disciplinary action to correct the alleged violation will be taken as indicated by the facts of the case, and a written record will be maintained containing the results of the investigation. Falsification of a complaint shall be grounds for disciplinary action.

Retaliation by an employee's Supervisor or another employee for filing a complaint alleging unlawful harassment will not be tolerated and will subject the retaliators to disciplinary action.

### **C. PERSONNEL RECORDS**

Each City employee will have an official personnel file which will be maintained by the City. The file shall contain:

1. Employee's name, title, job description, department assigned, current salary, change in employment status, training received, evaluations, disciplinary actions, and other such information as may be considered pertinent.
2. All employee records shall be considered "CONFIDENTIAL". Employee records will be accessible only to the employee; the Employee's Supervisor, the City Manager or the City Manager's authorized designee, in performance of their duties with the City.
3. All Medical files created as a result of employment offers will be maintained in a CONFIDENTIAL file, and only be used for purposes of determining physical fitness for the performance of essential functions of

a specific job sought either as initial or promotional employment. (Also see XXI.C.1)

No information from the personnel file shall be released to outside parties except with the prior written authorization of the employee, or by order of appropriate legal authority.

Generally, public records are available for public inspection. The Government Records Access and Management Act, in the Utah Code, outline the specific material that is exempted from public disclosure (see Utah Code Title 63G, Chapter 2). This exemption includes most of the material in an employee's personnel file unless a public need is shown for its disclosure. Personnel records are controlled by the City Manager and requests to review records must be made in writing to him/her.

#### **D. OUTSIDE EMPLOYMENT**

No full-time City employee shall accept outside employment, whether part-time, temporary or permanent, without prior written notice of the proposed employment, employer, and hours of employment to, and the approval of, his immediate Supervisor and the City Manager. Such approval will be conveyed in writing back to the employee. It is understood that the City may, at any time, revoke permission to hold outside employment.

In order to be approved, the outside employment must:

1. In no way detract from the efficiency of the employee in his/her work for the City;
2. In no way conflict with the interest of the City or be a discredit to the City; and,
3. Not take preference over extra work required by City employment.

Copy of the request, whether approved or not, shall be placed in the employee's personnel file together with the final disposition.

#### **E. POLITICAL ACTIVITY**

It is the policy of the City that Employees of the City shall not simultaneously hold an elective municipal office with the City. Any employee running for a Clinton City elected office, and winning that election, must resign from City employment prior to taking the oath of office.

The restrictions imposed by the law of the State of Utah on political activities are that no city employee shall use such employment to solicit any money, influence, service or other thing of value, or otherwise aid or promote any political committee, or the nomination or election of any person to public office, while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee; outside the hours of employment, to campaign, express his/her personal political views, support candidates/ballot issues, hold a political office in a different jurisdiction or to vote in any election.

## **F. ATTENDANCE**

Employees are expected to work a complete designated work day. If an employee, for some unavoidable reason, cannot report for work, he/she is expected to notify the appropriate Supervisor as soon as possible, but no later than ½ hour after the scheduled reporting time. Employees in emergency services must notify their Supervisor of an impending absence as far in advance as possible of the beginning of their shift.

An employee who is absent from work for three (3) consecutive working days, without authorization, will be considered to have abandoned his/her job as of the last day of active employment and will be declared to have voluntarily quit, unless the City determines the absence was due to an unavoidable situation and the employee was unable to contact the City due to circumstances beyond the employee's control.

An employee is responsible for correct reporting of hours worked, on bi-weekly time sheets. Supervisors are responsible for verification of employee time worked.

Because of overtime requirements, non-exempt (FLSA) employees should not begin work early or leave late without prior approval of their Supervisor.

## **G. NEPOTISM**

The City shall adhere to the provisions of Utah State Code 52-3. Members of the fire department are exempt from these provisions if they are non-full-time or on call employees. The provisions of this section shall apply to promotion, demotion, transfer, reinstatement, and new appointment/hire, but shall not be construed retroactively to affect situations of employment in effect prior to the enactment of this section.

## **H. CONFIDENTIALITY**

All information relating to personal or private matters, gained by employees as a result of the confidence placed in them as City employees by the public, is to be treated as confidential, unless specifically designated otherwise. Discussions involving such matters should always be confined to those who have a "need to know" based on related City services required by

the confidential matter.

## **I. RESIDENCY REQUIREMENTS**

Employees are encouraged to live within the City Limits. However, residency will not be a condition of employment or continued employment.

For Public Works employees while on stand-by duty, consumption of alcoholic beverages, illegal drugs or incapacitating prescription drugs is forbidden. The employee shall maintain the capability to respond to an off-hour or holiday emergency within 30 minutes of receiving the call.



## **VII. ADMINISTRATION AND PERSONNEL PROGRAM**

### **A. ADMINISTRATION**

1. Officers of the City shall be the City Manager/Recorder, City Engineer, and City Attorney, all of whom shall be appointed by the Mayor with the ratification of the City Council. Department heads shall be appointed by the City Manager with City Council approval.

Employees are defined as all other persons hired by the City whether on a regular or temporary basis.

As authorized by the City Manager, department heads may have the right to hire and terminate employees within their own departments subject to budgeting limitations placed on said departments by the City Council and subject to such other limitations as are contained in this manual.

The City Manager will serve as the appellate board for all personnel issues, except as stated in the next paragraph and in occasions when he/she is acting in the capacity of the first line Supervisor. In such cases the Mayor and City Council will act as the appellate board.

As outlined in Utah Code 10-3-1106, an appeals board will be established as needed to review written appeals of discharged or disciplinary transferred employees. The decision of the appeals board may be appealed to the City Council. (See Appeals Board, XVIII.B)

### **B. PERSONNEL PROGRAM**

The personnel program established by this plan shall be administered by the City Manager. The City Manager shall:

1. Prepare the job classification and pay plan, compensation survey fringe benefits and amendments and revisions to this plan for Council adoption.
2. Administer all provisions of the personnel program.
3. Advise Department Heads on interpretations of provisions of the plan and assist in personnel administration in each department.
4. Advise the City Council on the need for changes or amendments to the plan.



## **VIII. HIRING PROCEDURES**

### **A. VACANCIES/NEW POSITIONS**

Vacant or new City positions may be filled by a transfer or promotion of a current City employee, or by recruitment of a new employee. When it is determined by the City Manager that a position needs to be filled, the Department Head will be authorized to recruit, test, and select an individual for the position, after coordination and final approval by the City Manager.

The City Manager will decide the mode of filling the vacant position, whether to promote, to recruit first from qualified current employees, or to open the vacant position to the public by posting the announcement with all required entities. Such an announcement shall specify: the title and salary range; the date of closing for the acceptance of applications; the nature of the work to be performed; education and experience required; and any other pertinent information.

### **B. APPLICATION FOR EMPLOYMENT**

Application forms will be furnished by the City Treasurer to all applicants. A signed application form must be on file for each person considered for the position. Resumes may be included with the application form.

### **C. QUALIFICATION STANDARDS: NEW HIRES/PROMOTIONS**

All qualified applications will be reviewed by the hiring Department Head, keeping in mind the essential functions of the job, the applicant's education, experience and other qualifications.

Qualifications of an applicant for a position in City Service shall be ascertained on the basis of one or more of the following:

1. Information contained on the application form.
2. Written, performance, or physical tests, or any combination thereof.
3. Qualifications required for certification under State Law.
4. Oral interview process.
5. Background checks (includes previous employment, driving, criminal

and personal reference checks).

6. Other requirements as specified by the governing body of the City in the position description.

Any examinations required for various positions will be administered by the Department Head in consultation with the City Manager.

#### **D. INTERVIEW BOARD**

An oral interview board may be appointed by the City Manager for the purpose of interviewing applicants. The interview board may consist of the following:

1. The relevant Department Head;
2. The City Manager or designee;
3. Other qualified persons designated by the City Manager.

## **IX. TERMS AND CONDITIONS OF EMPLOYMENT**

### **A. CLASSIFICATION OF NEW APPOINTMENTS/PROMOTIONS**

All Clinton City employees are hired under the Utah "at will" law. All new or promoted employees are subject to a probationary period as outlined in subsection B. Normally new employees are hired at the first step (probationary step) of the pay plan for their classification. However, in instances where a new or promoted employee has experience or skills which are above those required for the position, it is possible to hire in above the minimum salary with City Manager approval.

### **B. PROBATIONARY PERIOD**

The probationary period shall normally be six (6) consecutive full months of employment, but no longer than one (1) year. A shorter probationary period may be established at the time of employment or thereafter with the written approval of the City Manager. Probationary employees are not entitled to use Articles XVII and XVIII of this policy.

The work and conduct of probationary employees shall be subject to close scrutiny and evaluation, and if found to be below standards of acceptability, the Department Head may remove or demote the probationer at any time during the probationary period. Such removals or demotions shall not be subject to appeal.

A satisfactory rating on a written performance evaluation will be required to establish the end of the probationary period. Upon the successful completion of the probationary period this completion date shall become the anniversary date. Annual merit increases shall be considered thereafter on this anniversary date of each succeeding fiscal year, but may be limited by annual budget constraints.

During the original appointment probationary period, the employee will not be eligible for vacation leave but will earn vacation credit, usable after successful completion of the probationary period. Employees terminated prior to the completion of such probation will not be paid for accrued vacation time. Probationary employees may be allowed to use accumulated sick leave, as may be approved by their Department Head. Any request for administrative leave needs to be approved by the City Manager.

### **C. PROMOTIONS**

To be eligible for promotion, an employee must meet minimum requirements of the higher level position and must have a current satisfactory performance rating in the present position. Final decisions whether to promote a current employee or hire outside the City services to fill vacant positions, rests with the City Manager.

Promotions may be granted by the City Manager on recommendation of the Department Head where an employee has demonstrated performance above and beyond requirements of the job and performance of other employees.

A promotion may take place whenever an employee moves from one job classification into another job classification at a higher grade. When an employee is so promoted, he/she shall be entitled to the step in the higher grade that represents an increase over the salary range previously received in the lower grade. In accordance with the City Manager's decision, an opportunity to apply for any available promotional opportunity may first be offered to qualified regular employees within the City before new applicants will be considered. Promotions to Department Head positions require City Council approval.

#### **D. PROBATIONARY PROMOTIONS**

Following a promotion, a full time/regular employee shall be in a probationary period for not less than six (6) months, or more than one (1) year, at the discretion of the City Manager. During that period such employee's vacation and sick leave, and all other benefits will accrue the same as prior to the promotion. The employee will be evaluated on his/her performance in the promoted position, the same as a new appointment/hire. In the event probation is not satisfactorily completed in the opinion of the Appointing Authority, and upon notice of termination being given, the employee in a promoted position will have the right to appeal.

#### **E. LAYOFF**

A Department Head, with the concurrence of the City Manager, may lay off employees due to organizational changes, lack of funds or curtailment of work. When layoffs are required they shall be based on relative seniority and the ability to perform the work. However, no regular employee in a classification will be laid off while there are temporary, hourly or probationary employees in that department performing similar duties in the same classification. Transfer may be made between classifications in order to retain the best qualified employees for the work available. The City will make every effort to give employees reasonable notice of intent to lay off.

#### **F. RESIGNATION**

To resign in good standing, an employee shall give the City Manager not less than ten (10) working days prior notice of such resignation unless the City Manager agrees to permit a shorter period of notice because of extenuating circumstances. The notice of resignation shall be in writing and contain the reasons for leaving City service.

## **G. RE-EMPLOYMENT**

Regular and probationary employees with a satisfactory record of service, who resign their positions in accordance with Section IX (F) above, may be allowed to apply for vacancies under the same conditions as set forth in Section VIII (A through D) above.

## **H. TRANSFERS**

Employees may be transferred from one position to another, with approval of the City Manager provided such transfer is at least the same salary level, and the employee meets at least the minimum qualifications for the new position. The exception would be if the employee requests a transfer to a lower paid position.

### **1. VOLUNTARY TRANSFER**

Transfer, by employee request, can be accomplished at the same salary level, or a lower level, provided minimum qualifications for the new position are met.

### **2. TEMPORARY ASSIGNMENT**

The City has the right to temporarily assign an employee to any position, in any department, when it is deemed to be in the best interest of the City, provided the employee being transferred meets the minimum qualifications for the position.

## **I. EMPLOYEE EVALUATION**

It is the policy of the City to regularly evaluate employees for actions and deeds which will be noted in their personnel file.

Each employee shall receive a performance evaluation by his/her Supervisor annually. The evaluation shall objectively assess the employee's performance during the preceding twelve (12) months. Results shall be reviewed by and discussed with the employee prior to review by the City Manager and filing in the employee's personnel record. No step increase or promotion may be given to any employee except upon satisfactory performance evaluations based upon current budget constraints. Special situations may require additional performance evaluations during the twelve (12) month period. These must be approved and directed by the City Manager.

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## **J. DRUG FREE WORKPLACE**

The Drug Free Workplace policy of the City is found in Chapter XX. Employees should familiarize themselves with this policy, and are responsible to abide by and conform to it.

## **K. WORK SCHEDULE**

The regularly scheduled hours and days of work shall be established by the City. On occasion, it may be necessary to alter the regularly scheduled hours and days of work. Regular hours may differ in each city department and will be published by that Department Head. When the work schedule is altered, employees are required to attend work in accordance to it.

The hours during which city offices and departments shall be open to serve the public will be determined by the City Manager with City Council approval. The hours of work for individual positions shall be determined by the Department Head, with the approval of the City Manager, to meet the needs of the City.

The schedule for regular full-time employees will normally provide for a work week of forty (40) hours within a specific seven day period. Other work schedules may be established to meet the needs of specific city services.

## **L. FLEX TIME**

With approval of appropriate authority, work schedules may vary with the stipulation that time worked will be compensated on a one hour for one hour basis. Work hours may be staggered on a flex-time arrangement to provide longer hours of service to the public, or for some other approved purpose.

Employees for whom necessity requires a different schedule or a temporary change in a regular schedule than that generally applied will work according to regulations prepared by the respective Department Head and approved by the City Manager.

## **M. LUNCH AND REST PERIODS**

Employees are provided a one hour lunch period or one-half hour lunch period. Lunch schedules may vary according to department need. A Department Head may require an employee to perform tasks during the meal period. Any employee who, for emergency or other reasons, works during a lunch period must report such time as time worked.

Employees are entitled to a fifteen (15) minute paid rest period for each four (4) hours of working time. Breaks shall be arranged so as not to interfere with city business.

## **N. SAFETY RULES AND ACCIDENT REPORTS**

## 1. SAFETY POLICY STATEMENT

The City's first priority is to maintain a safe working environment for its employees and the public. For the employee's protection, job-related injuries, accidents or illnesses must be reported immediately in accordance with this City safety and accident policy.

## 2. MANAGEMENT RESPONSIBILITY

Each department will consider the need for adopting safety practices, policies, or procedures warranted by the hazards department employees encounter. Department Heads are encouraged to involve employees in this process.

A copy of such practices, policies, or procedures will be delivered and explained in detail. All department employees shall then sign a receipt, which will be placed in the individual employee's personnel file, stating that they have read and understood these rules. Department Heads shall also explain to their employees that a violation of these safety rules could lead to disciplinary action up to and including termination of employment.

## 3. EMPLOYEE RESPONSIBILITY

Every employee must be safety conscious and responsible for helping the City achieve the goal of providing a safe work place.

Employees shall report any unsafe or hazardous condition to their Supervisor immediately.

## 4. SAFE WORK PRACTICES

Employees are expected to use common sense and good judgment in their work habits and to follow safe work practices. Department Heads and Supervisors shall ensure that safe work practices are utilized. Examples of safe work practices are as follows:

- a) Using the proper safety equipment when performing a work assignment.
- b) Not operating equipment or machinery while using prescribed medication without a doctor's written approval.
- c) Under no circumstances should an employee operate any type of machinery or equipment while under the influence of drugs or alcohol.
- d) Operating only equipment or machinery for which training or orientation has been received.

- e) Warning co-workers of unsafe conditions or practices.
- f) Following all safety and operating rules posted on equipment and machinery.
- g) Refraining from horseplay at all times.
- h) Wearing safety belts when operating City-owned vehicles or private vehicles when on City business.
- i) Following OSHA rules, including but not limited to confined space access and chlorine handling guidelines. Employees are responsible for maintaining current knowledge of periodic rule/regulation changes made by the issuing State and Federal safety agencies.

## 5. SAFETY TRAINING

Periodic training will be arranged when appropriate in the judgment of the Department Head. Employees will participate in all required safety training programs offered by the City.

## 6. REPORTING ACCIDENTS

The City Manager shall be notified of all accidents involving City employees and/or City equipment as soon as possible but in no event later than the next work day. Accidents involving City owned vehicles or personal vehicles being operated on City business shall be reported to the Police Department for investigation. For accidents involving CDL drivers, see XXI.A.1.e & B.1.d.

## **O. PURCHASING POLICY AND PROCEDURES**

Pursuant to Title 21 of the Clinton City Code of Revised Ordinances; it is the policy of the City to require accountability for the requisition of all goods and services purchased by the City. Authority to make purchases on the City's financial accounts is approved through the City Manager. Departmental purchases must be cleared through Department Heads. Accountability for purchasing actions is controlled by the Accounting Office. Specific purchasing guidelines can be found in the City Ordinance.

## **X. COMPENSATION**

### **A. PAY PLAN**

The City shall adopt a pay plan for all positions in the City. The pay plan shall include each classification, a minimum and maximum rate of pay, and such intermediate rates as are considered necessary, and equitable. Flat and hourly rates may be used in place of salary ranges where appropriate.

Cost of living adjustments reflected in a percentage increase to the pay plan base will be considered annually in conjunction with the annual budget process. The percent of increase, if any, will be decided by the City Council.

The pay plan shall consist of salary ranges each having a probationary and nineteen (19) grade or incremental steps with a 2% differential between each step. Each classification shall have a minimum and maximum salary range.

When an employee has reached the top step of his/her pay plan (Step 19) he/she will be eligible on each anniversary for a 1% per year longevity pay increase, as determined by the annual evaluation and funding availability.

Any employee, at any time of the year, may be eligible for an exemplary service bonus. This bonus may be up to 2% of the employee's annual salary. It may be for any of the following reasons, though not exclusively:

1. Money savings
2. Life saving action.
3. Educational and training accomplishment.
4. Completion of an extra strenuous operation requiring a lot of employees own time.

All exemplary service bonuses must be recommended by the Department Head (and/or the City Manager), and approved by the City Manager. These are one time events and do not impact the employee's normal salary.

The salary range assigned to each classification shall be such as to equitably reflect the differences in the responsibilities and duties between it and other classifications, taking into account salary rates, benefits paid, and other relevant factors.

The City Manager is responsible for maintaining and administrating the pay plan. It is the policy of the City that every department use the pay plan in the same manner. A copy of the pay plan will be maintained in the City Hall as a matter of public record.

The rate of pay for temporary employees shall be at least federal minimum wage, and will be

set by the Department Head, and approved by the City Manager, to attract qualified personnel. Employee's classified temporary shall not be eligible for City sponsored medical, retirement, vacation and sick leave benefits.

Regular employees are hired on an hourly wage rate and receive all applicable benefits. Appointments of regular employees are made, pursuant to the hiring procedures established in Section VII and VIII of these rules, by the Department Head with the advice and consent of the City Manager. Termination is subject to all terms and conditions of these personnel rules and regulations.

## **B. CHANGE OF CLASSIFICATION**

Positions may be changed from one class to another, provided the minimum requirements of the job are met. The City may reclassify positions within the financial limitations of the current City budget using the following criteria:

1. Positions are classified in a range and vacancies are filled at the established range. Most vacancies start at the probationary step, but may be started at a higher step in the range when unusual difficulty in filling the position is experienced or the person hired is exceptionally qualified. City Manager approval is required.
2. Merit increases within classification ranges will be granted in **STEP INCREMENTS ONLY**. Requests for increases must include a satisfactory performance rating for the employee and approval of the City Manager.

Department Heads are responsible for notifying the City Manager of any unusual changes in positions. An employee may also request of the Department Head that his/her position be reviewed to determine whether it is properly classified. The City Manager will make the necessary investigation of any such request and any changes in job classification approved by him/her will be documented in written form.

## **C. SALARY INCREASES**

As needed, the City shall analyze compensation policies, cost of living, fluctuations in the personnel requirements of the City, and salary range for each class of position, to determine whether adjustments should be made in compensation, either generally or in specific positions.

Increases **will not** be automatic, but are based on consideration of individual employee performance, job related educational achievement, disciplinary actions required, and annual evaluations which are reviewed and discussed with each employee, and maintained in the employee's permanent file. Funding capability of the City to budget salary increases will be

| the overriding factor.

#### **D. MERIT SALARY RANGE STEP INCREASES**

Merit increases will be considered annually in conjunction with the annual evaluations. Merit increases are designed to reward levels of improved and increased job performance by individual employees. As is appropriate, employees may progress through their 19-step salary range. After reaching their top salary range, only the 1% longevity merit increase will be available annually.

Subsequent to each annual evaluation, Department Heads shall identify to the City Manager whether or not an employee is recommended for a merit salary step increase. Such merit salary step increase may be restricted due to budget constraints.

Regular employees not recommended for merit salary step increases may appeal such action through the procedure provided in Section XVIII (grievance).

#### **E. SERVICE AWARDS**

| A regular employee (full or part time) may be eligible for a service award after continuous city employment of 5, 10, 15, 20, 25 and 30 year time periods. The dollar award or other benefit provided for these service awards will be set from time to time by the City Council and based on current budget availability.

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#### **F. NON-DISCIPLINARY DEMOTION**

Except for a request initiated by the employee, an employee who is demoted for other than disciplinary reasons to a lower salary range than that to which he/she was previously assigned, shall have his/her salary reduced to the highest step in the new range, which is less than, but closest to, the salary of the previous salary range step.

#### **G. RECLASSIFICATION**

An employee, whose position is reclassified from one salary range to another, shall be paid at the same rate for which he/she was paid in the previous salary range or the lowest step in the new salary range, if such step in the new grade is higher.

#### **H. PAY PERIODS AND DAYS**

The minimum pay period will consist of 80 hours, usually consisting of two weeks, Sunday through Saturday. City pay periods are bi-weekly with checks issued five (5) days after the close of the pay period.



## **XI. OVERTIME**

### **A. POLICY**

Overtime shall be paid for each hour worked in excess of 40 hours per week for hourly wage employees. Overtime shall require prior approval by the Supervisor and be kept to a minimum.

### **B. COMPENSATION**

Overtime will be paid at the rate of one and one-half (1½) the regular hourly rate, or employees who work overtime will be given the equivalent (1½ hours for each hour worked) in compensatory time off, at a mutually acceptable time.

Overtime is not paid to salaried employees exempted under the Fair Labor Standards Act.

Part-time employees will receive overtime pay as scheduled above, when total hours of work exceed 40 hours per week.

Employees working on a flex-time schedule will not normally be authorized overtime because of the flex hour schedule, but will be given time off on other scheduled work days.

Overtime will not be paid for hours beyond the regular scheduled work hours during employee association meetings, for employee negotiations, or any employee appeal process, or transportation time to and from any employee training or conferences.

For the purpose of computing overtime, any holiday, sick, vacation or other paid leave time will not be counted in reaching the 40 hour weekly regular work limit. On-call duty hours will not be used in computing overtime, unless the employee is actually called to duty.

Employees who, at their own option, but with the approval of the Department Head, substitute during scheduled hours for another employee employed in the same capacity may not use those hours worked towards their own overtime calculation. All such "substitution" hours will be credited to the scheduled employee. The Department Head need not keep a record that the substitution has taken place.

### **C. COMPENSATORY TIME OFF**

Maximum accrual of compensatory time off shall not exceed 48 hours. Any accumulation exceeding this limit must first be approved by the City Manager.

## D. FAIR LABOR STANDARDS ACT

Pursuant to the *Fair Labor Standards Act*, the above overtime regulations shall not apply to executive, supervisory, administrative, professional, or contractual employees of the City who are compensated on a salary basis and paid not less than the federal required amount.

Comment [P1]: Elected officials are not exempted by law so we should not include them specifically here. But in Clinton City elected officials will never be paid overtime.

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Comment [P2]: Update to match federal law.

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## E. PUBLIC WORKS EMPLOYEES

1. Employees are assigned stand-by duty on a weekly basis. For that stand-by service the employee shall receive compensation the equivalent of four (4) hours of regular pay. These stand-by hours do not apply towards the calculation of overtime hours.
2. When a storm is imminent, employees may be required to be on storm alert status. For this storm alert service, employees shall receive compensation the equivalent of one (1) hour of regular pay per day on alert. Any paid storm alert hours do not apply towards the calculation of overtime hours.
3. In addition to this stand-by or storm alert pay, if during the stand-by or storm alert duty an employee is called back to work to perform services for the City, the employee shall be compensated for the services at the rate of one and one-half (1½) times his/her hourly rate of pay except on City holidays, during which time the employee shall be compensated with regular holiday pay plus 1½ times his/her hourly rate of pay for each hour worked, or regular holiday pay plus compensatory time off at 1½ hours for each hour worked.
4. Employees shall not consume alcoholic beverages when on stand-by or storm alert status, and shall remain within 30 minutes response time.

## F. POLICE COURT DUTY

Any court time that places the employee's total hours worked over 40 will be compensated at the rate of 1½ times their regular rate of pay. All court time must be approved in the same manner as regular overtime.

## **XII. HOLIDAYS**

- A.** All regular full-time and part-time employees shall be entitled to the following holidays with pay: (holiday pay is the regular straight time rate of up to 8 hours for regular full-time employees)

NEW YEAR'S DAY - First day of January

MARTIN LUTHER KING - Third Monday of January

PRESIDENTS DAY - Third Monday in February

MEMORIAL DAY - Last Monday in May

INDEPENDENCE DAY - July 4

PIONEER DAY - July 24

LABOR DAY - First Monday in September

COLUMBUS DAY - Second Monday in October

VETERANS DAY - November 11

THANKSGIVING DAY - Fourth Thursday in November

DAY AFTER THANKSGIVING - Friday following Thanksgiving Day

CHRISTMAS DAY - December 25

Additional holidays may be declared from time to time by the City Council.

- B.** Employees whose duties are necessary to maintain essential City Services may be required to work on holidays. Employees who are scheduled and work on a holiday are paid up to the regular eight (8) or ten (10) hours of holiday pay as is applicable to their current schedule, in addition to either their regular straight time rate for the first eight (8) or ten (10) hours, or hour for hour compensatory time off, unless they have already worked a full 40 hour week. All hours in excess of 40 for the week shall be compensated at 1½ times the normal hourly rate whether calculated for pay or compensatory time off.
- C.** During a holiday week, all hours in excess of 40 in one week shall be compensated as identified in XI.B. For an employee normally off on holidays, but called back to work on a holiday, he/she shall be compensated at regular holiday pay plus 1½ times the hourly rate of pay for each excess hour worked, or at regular holiday pay plus compensatory time off at 1½ hours for each excess hour worked.
- D.** Whenever a holiday falls on Sunday, the following Monday shall be observed as the holiday. Whenever a holiday falls on Saturday, the previous Friday shall be observed as a holiday.
- E.** On duty full-time firemen shall \_\_\_\_\_ receive the equivalent of 96

hours of alternate time off to compensate for the holidays. This may be utilized in four 24 hour shifts off annually.

- F.** When an authorized holiday falls on an employee's day off, the holiday Sunday or Saturday rule applies.
- G.** Holidays which occur during vacation or sick leave shall not be charged against such leave.

### XIII. VACATIONS

The employee's date of hire will be used in calculating vacation ~~accrual~~. Regular full and part-time employees shall accrue ~~vacation hours. Leave without pay and unpaid administrative leave do not count toward accrual. Employee accrual is based on years of employment, position, and is prorated as follows:~~

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YEARS OF EMPLOYMENT	FTE'S	PTE'S	EXEMPT
1-5 years	12 days	Pro-rated	18 days
6-10 years	15 days	Pro-rated	21 days
11-15 years	18 days	Pro-rated	24 days
16-21 years	21 days	Pro-rated	27 days
Over 21 years	24 days	Pro-rated	30 days

Paid vacation is accrued and shall be used as follows:

- A. The approval and timing of all annual leave shall be at the discretion of the employee's Department Head with due regard to the wishes of the employee as well as the needs and demands of City service. All such leave should normally be taken within one (1) calendar year from the day earned.
- B. Maximum vacation time that can be carried from year to year will be 240 hours (30 days) for non-management employees and 288 hours (36 days) for exempt employees, unless approved by the City Manager.
- C. Any vacation time accrued above hours identified in the above paragraph must be used by December 31st of each year, unless carryover is approved by the City Manager.
- D. Upon termination/resignation/retirement, an employee shall be paid for all accrued vacation time. However, no payment for accrued vacation will be made for terminations during an employee's probationary period, except following a promotion when all benefits are retained.
- E. Vacation time is pro-rated for regular part-time employees based on the number of hours worked in a month as a ratio of the equivalent full-time employee's accrual benefit.
- F. In special cases, determined by the City Manager, an employee may be allowed

to: 1) donate limited accrued vacation leave to another employee, or, 2) sell back to the City a limited amount of accrued vacation leave which exceeds the maximum accumulation.

## XIV. LEAVES OF ABSENCE

### A. SICK LEAVE WITH PAY

All regular employees will be entitled to sick leave with pay after the first month of employment. Sick leave shall accrue at the rate of eight (8) hours for each full month of service, with the exception of regular part-time employees who shall accrue sick leave based on the ratio of hours worked in comparison to the full-time equivalent.

As an incentive to minimize the use of sick leave, employees who have accumulated over 480 hours of sick leave and used less than 64 hours of sick leave during the previous 12 months, may convert up to 32 hours of sick leave to vacation annual leave or pay. Employees, who have accumulated less than 480 hours of sick leave and used 32 hours or less of sick leave during the previous 12 months, may convert up to 8 hours of sick leave to vacation annual leave or pay. Such conversion shall be on a 1 hour sick leave to a 1 hour vacation or pay basis. Use of this conversion incentive shall be accomplished by the second week of December of each year. The availability of this incentive depends on budgetary funding on a fiscal year basis. The City Manager shall notify employees if this conversion incentive is not funded for any given fiscal year.

There shall be no limit of the number of hours (days) of sick leave that can be accrued. Employees who are granted a leave of absence with pay shall continue to accrue sick leave.

Sick leave will be used in amounts of not less than one-half (½) hour increments. An employee may use accrued sick leave when unable to perform his/her work by reason of:

1. Personal illness or injury.
2. Necessity for medical or dental care.
3. Exposure to contagious disease under circumstances by which the health of the public or fellow employees would be endangered.
4. Caring for an injury or illness of immediate family members, for up to one day per injury or illness, unless approval for extended leave is granted by the employee's Department Head.
5. At the time of the birth or adoption of a child, the employee may be granted a sick leave of absence with pay for up to three days (maximum 24 hours paid).
6. In the event of a death in the employee's immediate family, an employee may be granted a leave of absence with pay, not to exceed three (3) ~~days~~ (maximum 24

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hours paid). In addition, the employee may use up to five (5) additional days of sick leave (maximum 40 hours paid sick leave), per occurrence, to enable the employee to attend and/or make arrangements for the funeral of a family member.

## **B. EXCEPTIONS TO SICK LEAVE WITH PAY**

Compensation for accrued sick leave is not authorized when an employee leaves City Service.

After 3 days of sick leave usage, and from time to time on a longer term of authorized sick leave usage, the City may require the employee to submit a disability certificate from the attending physician. In addition, the City may require this same certification on even a 1 day use of sick leave if the pattern of sick leave usage indicates abuse of sick leave. Department Heads need to receive authorization from the City Manager for this requirement. Failure or refusal to supply such certificate, or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of duties, will result in the sick leave being canceled. Refusal to return to work will be grounds for the employee's termination.

Unauthorized use or abuse of sick leave shall also be grounds for disciplinary action, as identified in Section XVI.5.

## **C. SICK LEAVE WITHOUT PAY**

Upon application of any regular employee, sick leave without pay may be granted for the remaining period of disability, once accrued sick leave with pay and all other paid leave (i.e. vacation, comp time) have been depleted. In the event that such additional requested sick leave exceeds 30 days, an extension must be requested and approved by the City Council.

## **D. FAMILY AND MEDICAL LEAVE**

Some absences due to illness, accident or personal reasons may qualify under the Family and Medical Leave Act (FMLA). This is a federal law for eligible regular employees who need to be off work for certain allowed "family and medical" reasons. FMLA provides up to 12 weeks of unpaid leave each year, during which health care benefits are continued and jobs are protected upon return to work, within certain guidelines.

### 1. Qualifying events for use of the FMLA are:

- the birth of a child and to care for that child;
- the placement of a child with an employee for adoption or

foster care (paperwork verifying this event may be required);

- to care for the employee’s spouse, children or parent who has a serious health condition (serious health conditions may require a doctor’s certification of illness);
- for a serious health condition that makes the employee unable to perform his/her job (serious health conditions may require a doctor’s certification of illness);
- for any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or called to covered active duty status.

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Comment [P3]: In the FMLA law

2. To be eligible for FMLA, a regular full-time or regular part-time employee must have been employed by the City for twelve months, and worked for the City at least 1,250 hours during that time. The twelve months of employment do not have to be consecutive. That means any time previously worked for the City (including seasonal work) could, in most cases, be used to meet the twelve month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count unless the break is due to service covered by the Uniformed Service Employment and Reemployment Rights Act. A qualified employee is then eligible for up to twelve weeks of unpaid leave during the ensuing twelve month period. However, an employee taking FMLA will be required to expend accrued paid leave to its exhaustion as is applicable for the various qualifying events.

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Comment [P4]: FMLA eligibility law

- a. For an employee giving birth, childbirth or related circumstances, is considered a “temporary disability” and accrued sick leave, vacation or comp time shall be used during the period of time the employee’s doctor certifies the employee’s “temporary disability”.
- b. For an employee’s serious health condition, accrued sick leave, vacation or comp time shall be used.
- c. For care taking of a newborn (excluding the childbirth “temporary disability” time period), adoption or foster child care, and caring for spouse, children or parent who has a serious health condition, accrued vacation and compensatory time shall be used. No accrued sick leave shall be eligible for these activities.
- d. After the eligible accrued paid leave is exhausted, the employee will continue with unpaid leave.

3. Employees desiring to use FMLA leave are required to give the City a written

notice at least 30 days prior to the commencement of the leave for any anticipated treatment or activity. For emergency/unplanned leave needs, the employee must give the City notice as soon as reasonably possible. All the proper notification, leave request and informational forms need to be filled out and filed with the City. Justification of the conditions and events requiring the employee to take FMLA leave may also be required.

4. During FMLA leave, the City shall maintain the employer paid health insurance benefits. Any employee paid portion of health insurance benefits must be paid on time as usual, or face the consequence of losing the coverage pertaining to the employee portion payment. No other City benefits shall be accrued during any unpaid time periods of the FLMA leave. If an employee decides not to return to work at the end of the FLMA leave period for reasons other than a serious health condition or circumstances beyond his/her control, the City can require reimbursement of medical premiums paid while the employee was in an unpaid leave status.
5. If a husband and wife both work for the City and are both eligible for FMLA leave, they are limited to a combined total of twelve weeks leave during any twelve month period
6. In the case of employee illness, the City may require a medical certification a fitness for duty report from the employee's doctor prior to the employee returning to work.
7. With prior approval by the supervising Department Head, FMLA leave may be taken intermittently or on a reduced leave schedule.
8. During the FMLA leave, the employee may be required to periodically notify their City Supervisor of the event condition and their intent to return to work at the conclusion of the leave.
9. Upon return to work, the employee will either be returned to their previous job or another equivalent job with the same pay and benefits (if the original job is not available), if the employee is able to perform the essential functions of the job, with or without accommodation.
10. There may be other details of the FMLA that apply to employees' specific circumstances. Contact the City Manager or City Treasurer to get more information and answers to questions on FMLA.

#### **E. MATERNITY LEAVE**

Pregnant employees anticipating time off for childbirth should consider the FMLA option in subsection "D."

Disability caused by childbirth or related circumstances shall be considered a temporary disability and will be covered by accrued sick leave during the period that the employee's doctor certifies the employee's "disability".

When to commence or terminate leave, whether paid or unpaid, both prior to and after delivery, is a decision to be made by the employee, and the treating physician.

Time taken before or after a certified period of disability, must be taken in the following order: sick leave, compensatory time, vacation time, and lastly, leave without pay. If the period of disability, as certified by the treating physician, exceeds accrued paid leave, the employee may be allowed to take a leave of absence without pay or fringe benefits as described in subsection H of this chapter.

To be eligible for sick leave benefits due to childbirth or related circumstances, the employee must notify the City in writing of the anticipated date of departure and date of return, at least thirty (30) working days prior to the beginning of the leave, if possible. In the event of emergency, such as premature delivery, telephone notice shall suffice, provided written notice is given within three (3) working days following the emergency.

#### **F. MILITARY LEAVE**

A regular full or part-time post-probationary employee who is a member of the National Guard, a Reserve component of the Armed Forces of the United States, or of the United States Public Health Services, is entitled to a leave of absence for a period not to exceed 15 calendar days in any calendar year.

Such leave shall be granted without loss of pay or other leave and without impairment of other rights or benefits to which he/she is entitled, providing the employee receives bona fide orders to active or training duty for a temporary period, and providing he/she returns to his/her position immediately upon expiration of the period for which he/she was ordered to duty. Without loss of pay means the City will pay the employee the difference between the "military on duty pay" and their normal City payroll.

Leave without pay will be allowed pursuant to Utah Law for employees entering military service for extended or indefinite periods of active duty or for individuals who are currently members of the Guard or Reserves and are called to active duty other than annual 15-day duty.

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## **G. MISCELLANEOUS LEAVE WITH PAY**

A regular employee, with approval, is entitled to leave his/her duties without loss of time, pay, or other leave benefits for absence caused by:

1. Time necessary for voting, when the employee is unable to vote before or after working hours, due to an emergency work schedule.
2. City employees called for jury duty, or subpoenaed as a witness for the City, shall not suffer any loss of regular City compensation during such absence; however, they shall be required to transfer any compensation received for the performance of such in excess of any paid traveling expenses, to the City. Time not worked because of such duty shall not affect vacation or sick leave accrued. No private civil or criminal case of the employee shall be covered by this court leave provision.
3. Employees who are requested by an appropriate agency to participate in a search and rescue operation are eligible for leave with pay for a period approved by the City Manager.
4. Bereavement leave with pay for up to three (3) days (maximum 24 hours) is authorized in case of a death in the immediate family, as outlined in A.6 of this Chapter.

## **H. LEAVE WITHOUT PAY**

Normally a regular employee may be granted leave without pay for a period not exceeding 90 days. Requests for such leave must be in writing, and must establish reasonable justification for approval by the City Manager. No vacation, sick leave, retirement, medical or other benefits will be continued or accrued during periods of leave without pay. Information concerning extended benefits is available from the City Manager.

A leave of absence without pay as granted herein may be terminated prior to the expiration date thereof with the consent of the City Manager. If this action is instigated by the City, for whatever reason or purpose, proper notification will be given to the employee of their leave termination, with a return to duty of no sooner than 48 hours (unless mutually agreed upon).

Failure of an employee to report for duty promptly at the expiration of his/her leave, or a violation of any agreement or understanding entered into by the same, relative thereto, shall be just cause for his/her discharge.

## XV. BENEFITS

### A. HEALTH & DENTAL INSURANCE

The City participates with employees and their dependents to provide health and dental insurance to cover non-occupation injuries and illnesses. All regular full-time employees are eligible for coverage on the first day of new employment. Information and health care booklets are available from the City Treasurer. The City may pay the entire premium cost for the employee and dependents. If an employee elects not to participate, a cash in lieu benefit may be offered.

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In compliance with COBRA (Consolidated Omnibus Budget Reconciliation Act), the City will offer continuing health care coverage on a self-pay basis to employees and/or their dependents following termination, retirement, death, divorce, separation or when a dependent child ceases to be a dependent child under the provisions of the health plan.

This continued COBRA health care coverage will be the same as the current level provided to the employee and/or other employees purchasing that level of coverage. In all matters concerning eligibility for and/or duration of continued health care coverage, the City will comply with the requirements of COBRA.

### B. LIFE INSURANCE

The City provides a group life, accidental death, and dismemberment insurance for all regular employees. The basic insured amount reduces at certain age periods, as provided in the current policy.

### C. RETIREMENT

The City provides retirement benefits for its qualified employees through the Public Employees and Public Safety Retirement Systems of the State of Utah and F.I.C.A. (Social Security). The City pays the required contribution for the employee as is outlined in the Public Employees Retirement System (PERS). The contribution to F.I.C.A. is shared between the City and the employee as per federal law.

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The City also participates in deferred compensation programs through the State of Utah. All regular employees achieving an average of 20 hours per week are permitted to participate in these programs. For employees hired prior to July 1, 2015, the City contributes an amount historically provided. For employees hired after June 30, 2015, the City will participate in a matching deferred compensation program through the State of Utah in an amount established

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by the action of the City Council. Consult the City Treasurer for details.

There is no mandatory retirement age for City Employees. However, employees should consult PERS' Summary of Member Benefits for further information.

#### **D. UTAH OCCUPATIONAL SAFETY AND HEALTH**

It is the intent and purpose of the City to comply with all applicable rules and regulations pertaining to the Utah Occupational Safety and Health Act as established under section 18 of the William-Steiger Occupational Safety and Health Act of 1970.

The City shall furnish each of its employees employment, free from recognized hazards that are causing or are likely to cause death or physical harm to such employee and does hereby require that each employee comply with the occupational safety and health standards, orders, rules, and regulations set forth by the above Act.

The City provides Workman's Compensation Insurance coverage for all employees covering job related injuries and illnesses occurring during employment with the City. The injured employee is responsible for immediately notifying his/her Supervisor, completing an accident report and submitting it to the Supervisor no later than the working day following the accident following the injury, unless the seriousness of the accident makes it impossible for him or her to do so. Failure to complete the required accident report may jeopardize the employee's right to worker's compensation benefits.

A report on any on-the-job injury resulting in disability or compensable lost time shall be submitted by the City Manager or other designated official to the Industrial Commission and to the affected employee within seven (7) calendar days of a "First Report of Injury" form.

Should any sudden or unusual occurrence or change of conditions occur (such as the appearance of toxic or unusual fumes or gases, explosions, fires, etc...), whether due to any accident or other instance, that might affect the health or safety of City employees or tend to increase the hazards thereof, the Industrial Commission of Utah shall be notified at once by the Department Head or designated official. Such notification must be made whether or not any actual injuries result from the above occurrences or changes of conditions.

When an employee must take time off from work as a result of such injury or illness, he/she shall receive compensation as scheduled by the Utah State Industrial Commission, and the City will supplement it to equal regular take home pay.

No employee of the City shall be entitled to draw financial compensation and/or benefits from the City during such time as the employee is drawing workmen's compensation or any

other similar benefits or payments either from the City or from any other source, which accumulated results in a higher net salary than the employee would normally earn.

In accordance with state law, management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found, take appropriate action to correct such conditions immediately. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous conditions and permit no one to work in an unsafe place, except for the purpose of making it safe.

#### **E. CONFERENCES & CONVENTIONS**

Decisions concerning employee attendance at conferences, conventions, or other meetings, at City expense, shall be made by the City Manager. Members of professional societies may be granted permission to attend meetings of their society, when such attendance is considered to be in the best interest of the City and funds are available for the expenditure. \_

No overtime pay is available for conferences and conventions.

#### **F. TRAVEL EXPENSE**

When employees are required to travel outside the City on City business, employees shall comply with the following guidelines:

1. Prior to traveling outside the City, the employee will obtain approval for the trip, and the mode of travel from his/her Department Head, Supervisor, or the City Manager.
2. If the employee is authorized to use a private vehicle, mileage will be paid as determined from time to time by the City Council, provided the private vehicle use is advantageous to the City. This rate includes all travel, insurance, maintenance and storage expense of the vehicle.
3. Employees receiving a monthly vehicle allowance, in lieu of use of a City vehicle, will be responsible for all vehicle costs and maintenance. They will also be responsible for all fuel costs within a 30 mile radius of City Hall. Mileage outside that radius will be reimbursed by the City at the going rate.
4. Employees using personal vehicles for City business shall furnish to the City proof of personal insurance coverage. The City Council may set the levels of such required coverage from time to time, provided it shall not create an excessive burden on the employee.

5. A per diem allowance for food and lodging will be allowed per traveling employee. These amounts will be set by the City Council, from time to time. The City does not provide per diem for meals included in the conference/meeting agendas unless an approved reason for not eating those meals is included in documentation. For high cost areas in-state and for out-of-state travel, the allowance will be determined on an individual basis by the City Manager. In special circumstances, the City Manager may adjust the allowances.
6. Drivers of city-owned vehicles shall obey all traffic and speed laws. No alcoholic beverages shall be carried in a city-owned vehicle except as required for evidence by law enforcement officials.
7. Employees authorized to utilize city-owned vehicles with which to travel to conferences or such meetings, may also receive authorization from the City Manager to transport non-city personnel (family members) in the vehicle. However, non-city passengers in these vehicles shall not participate in driving, unless there is an emergency and the city employee is unable to drive.
8. All drivers and passengers in a City vehicle shall wear their seatbelt or safety harness at all times while traveling on public roadways. Exceptions shall be for vehicles not equipped with seatbelts and for employees whose work specifically requires unencumbrance while in a vehicle. City drivers shall adhere to all safe driving and rules of the road procedures at all times.

#### **G. EDUCATIONAL AND TRAINING AID**

The City shall encourage training opportunities for employees in order that services rendered to the City will be more effective. At the discretion of the City, training sessions may be conducted during regular working hours. Overtime will not be paid for hours beyond the employee's regular scheduled work hours during training except for authorized Fire Fighter training outside regularly scheduled shifts.

The City may pay an employee's tuition cost upon successful completion of a job related course. Pre-approval by the City Manager and available funds are required.

When attendance is required and paid by the City, all educational materials provided to the employee shall become the property of the City.

#### **H. PROFESSIONAL AFFILIATIONS**

Employees are encouraged to join and participate in job-related professional associations and

groups. With prior approval from the City Manager, employees may attend conferences, seminars, or short training courses that are job-related. Preference will be given to courses sponsored by associations that lead to certificates of advanced standing such as EMT, police, fire fighter, accredited sewer and water systems operations, building inspection, or accredited public works operators.



## XVI. STANDARDS OF CONDUCT

- A.** Citizens of the City are always to be treated with respect. Conduct of city employees is always on public display. Many times public opinion is based on what the citizens see and hear from the city employees. Therefore, all city employees are expected to dress appropriately for the work they are doing, and always act in a professional manner. All employees are responsible to and will be held accountable for establishing and maintaining working relationships with fellow employees, supervisors, elected officials, other agency representatives, and citizens of the community with whom they must interact. Employees shall fully utilize their skills and abilities to effectively and efficiently fulfill their job responsibilities and duties.
- B.** The principal objective in normal disciplinary actions is to improve the performance, efficiency and morale of the city employees. The policy of the City is that employee discipline in normal circumstances be corrective, progressive and lawful.
1. Corrective in that the Supervisor reaches an understanding about the causes and/or reasons for an employee's deficiencies, correcting those deficiencies and attempting to restore the employee to a productive and positive employment status.
  2. Progressive in that discipline will normally begin with an oral reprimand or warning and when circumstances of each separate incident or a combination of incidents warrant, proceed to written reprimand, suspension from work without pay or demotion in status, and finally to discharge from employment with the city.  
  
A major incident of misconduct may require severe disciplinary measures such as suspension or discharge and in that instance may not be preceded by lesser forms of disciplinary action. This is also the case with CDL driver alcohol and/or controlled substance related disciplinary actions.
  3. Lawful in that discipline and the procedures by which it is administered is not to violate the City's Personnel Policies, the employee's civil rights or federal or state law.
- C.** By way of illustration and not limitation, the following list provides examples of just cause for disciplinary actions:

1. The use of any city owned material or

furnishings for private use is prohibited. Specific examples may include but are not limited to:

- a. The use of city owned vehicles for personal use, (unless part of an employment benefit package or approved by the City Manager);
  - b. The use of city owned supplies for personal projects; and,
  - c. The use of city owned equipment for work on privately owned property.
2. All city officers and employees should avoid any suggestion of the use of their official position to obtain special advantage in the purchase of any merchandise or other property.
  3. City officers and employees shall not accept gifts and favors from vendors and merchants for personal use beyond that allowed by state law.
  4. The use of the name of the City or any of its departments, except for official city business, is prohibited without prior approval of the City Council. This includes sponsorship by members of any city department of any fund raising activity in the name of that department.
  5. Any action or inaction which is a hindrance to the effective performance of city functions or reflects discredit upon the City will be considered just cause for disciplinary action. The following are examples for illustrative purposes and does not contain all possible examples of disciplinary offenses:
    - a. Drinking intoxicating beverages or use of and/or possession of controlled substances on the job or arriving on the job under the influence of intoxicating beverages or controlled substances; (discipline as described in Chapters XX & XXI of this Policy).
    - b. Violation of lawful duty;
    - c. Violation of the provisions of city ordinances, these rules or any written rules, regulations and policies prescribed by the City, a Department Head, or the City Manager.

- d. Being absent from work without permission (three [3] unexcused absences equals a resignation);
- e. Being habitually absent or tardy;
- f. Abuse of sick leave (use of sick leave for any other purpose than for which is allowable under Section XIV.A.);
- g. Failure to perform assigned work in an efficient manner; incompetence; or, non-performance to the best of ability;
- h. Abusive language or conduct toward the public or fellow employees, or other conduct unbecoming a city employee;
- i. Being wasteful of material, property or working time;
- j. Failure to get along with fellow employees to the extent that work being performed is below required standards;
- k. Conviction of a felony or a misdemeanor;
- l. Prosecution of a felony or misdemeanor where the employee is unable to report for duty or perform the essential work functions of the job;
- m. Use of religious, political or fraternal influence;
- n. Theft or intentional destruction of City property;
- o. Personal acceptance of a fee, gift or other valuable item in the course of the employee's work for the City in excess of what is allowed by state law;
- p. Unauthorized release of confidential information regarding the City or city business (includes employee lists and personal information);
- q. Falsification of forms, records or reports including time cards or application materials;
- r. Sexual harassment or other unlawful harassment of another employee or the public;

- s. Insubordination, which is defined as the refusal of an employee to follow lawful directives of a properly authorized Supervisor; and,
- t. Loss or inability to renew a license, certificate or other special requirement which is mandatory for the employee's specific job requirements.

## **XVII. DISCIPLINARY PROCEDURES**

Except as outlined in Chapters XX and XXI of this Policy, it is the general policy of the City that disciplinary actions should be corrective and progressive whenever possible.

Employees are required to acknowledge by signature all pre-disciplinary and disciplinary documents to be placed in their personnel files. Therefore, the following disciplinary actions may be considered, the actions do not have to be followed in any particular order; some may even be skipped, depending on the circumstances:

### **A. "Oral Warning":**

An "Oral Warning" may be used to correct minor conduct or job performance violations. The Supervisor shall discuss the violation privately with the employee and shall explain to the employee what actions will be required to prevent the violation from recurring.

The Supervisor shall file a personnel action form with the City Manager, documenting the oral warning, a copy of which shall be maintained in the employee's personnel file and a copy given to the employee.

### **B. "Written Warning":**

A "Written Warning" may be used to correct first time major, or repeated minor conduct and job performance violations. Supervisors shall discuss the contents of the written warning privately with the employee and shall explain in the written warning what actions will be required to prevent the violation from recurring.

The Supervisor shall file a personnel action form with the City Manager documenting the written warning, a copy of which shall be maintained in the employee's personnel file and a copy given to the employee.

### **C. "Suspension":**

"Suspension" shall be imposed when it is determined that it is in the best interest of the City to temporarily remove an employee from his official duties. There are two types of suspensions:

#### **1) Administrative Suspension**

Employees may be placed on administrative suspension by the City Manager or his authorized designee, when formal written charges have been filed against the employee for alleged illegal acts, major conduct violations or when it is apparent that it is in the best interest of the City to temporarily remove the employee from official

duties. Employees shall receive full pay and benefits while on administrative suspension.

Whenever an employee is placed on administrative suspension a complete investigation of the incident shall be conducted by the City Manager or his authorized designee. The results of the investigation and the action to be taken shall be prepared in writing and provided to the employee.

Whenever possible, investigations related to administrative suspension shall be completed within five (5) working days. Should unusual circumstances cause an investigation to take longer than five (5) days, the employee shall be informed in writing.

In the event that the investigation clears the employee of the charges, the employee will be reinstated. Results of the investigation shall be kept in the employee's permanent file for seven (7) years or less (may vary with the statute of limitations for that issue) after the reinstatement in order to protect the employee from further accusations pertaining to that issue. Subsequently, the investigation information may be placed in a confidential historical file for cleared investigations.

## **2) Disciplinary Suspensions**

Employees may be suspended for an illegal act, a single major conduct violation or a series of continuing minor violations. Disciplinary suspensions should be for not less than three (3), nor more than 30 calendar days. Employees suspended for disciplinary reasons shall not be paid during the period of suspension. Health benefits shall be continued during the suspension period. Paid leave time credit shall not accrue.

Final decisions regarding disciplinary suspensions and reinstatements shall be reviewed and approved by the City Manager

### **D. "Salary Reduction":**

A salary reduction is the reduction of the employee's salary to a lower step on the salary range and may be set for any length of time. This form of discipline is used when it is advantageous to have the employee remain on the job.

### **E. "Demotion"**

"Demotion" may be used as a disciplinary action for:

- 1) A single major conduct violation; or,
- 2) When it has been documented that an employee's job performance falls

- below the minimum acceptable standards for his position; or,
- 3) When an employee fails to meet the overall objectives of his position as described in his job description.

Demotion shall include being reduced to a position of less responsibility at a lower salary. At the end of the first three (3) month period, the demoted employee's Supervisor and/or Department Head shall file a written report to the City Manager containing one of the following suggested actions be taken:

- 1) That the employee be retained as a regular employee in the assigned lower job classification. This recommendation should be made when the employee has been satisfactorily performing the duties and responsibilities of a lower job classification; or,
- 2) That the employee be dismissed from City employment. This recommendation should be made when a demoted employee has failed to meet acceptable performance standards during the demotion period.

**F. "Dismissal":**

An employee may be dismissed from employment with the City for a single major conduct violation, a continuing history of minor conduct violations or because work performance falls below acceptable standards for the employee's position.

It is city policy that no regular employee who has successfully completed the entry or promotional probationary period be discharged without being given an opportunity to be heard on the charges brought against him or her. The employee is to be suspended with pay pending the opportunity to be heard in a Due Process Interview.

Dismissals shall be in writing, clearly stating the reason(s) for the action. Final decisions regarding dismissals shall be approved by the City Manager.

**G. "Due Process Interview":**

This meeting, conducted by the City Manager or his designee, is to acquire the final and complete information upon which the disciplinary decision will be based. The employee may have a representative present if he/she requests. If this occurs, a second management representative will be present during the meeting. This meeting should occur before the demotion or dismissal is rendered to the employee.

The employee's representative is free to consult with the employee, however, the employee, not the representative, will be required to respond to the charges and answer the questions.



## **XVIII. GRIEVANCE PROCEDURE**

The City shall promptly consider and if appropriate, adjust employee grievances relating to employment conditions and relationships. Furthermore, the City desires to adjust the causes of grievances informally. If possible, both supervisors and employees are expected to resolve problems as they arise.

### **A. APPEALS**

In the event that the informal grievance procedure fails to resolve the issue in contention to the satisfaction of the employee, the City, in order to preserve the rights of all parties, thereby establishes the following steps which shall be followed in submitting and processing a grievance: (If the aggrieved employee works directly for a Department Head, begin with Step Two)

#### **1. Step One**

The aggrieved employee or group of employees shall present in writing the grievance to the immediate Supervisor within five (5) working days of its occurrence, not including the day of occurrence.

The Supervisor shall provide a written reply within five (5) working days of the date of presentation of the grievance, not including the date of presentation.

#### **2. Step Two**

If the grievance is not settled in Step 1, the written grievance shall be presented to the Department Head by the aggrieved employee(s), together with all pertinent correspondence records and information accumulated to date, within five (5) working days after the response is provided. Department Head shall consult with the Supervisor, then meet with the aggrieved employee(s) and render a decision in writing.

#### **3. Step Three**

If the grievance is not settled in Step 2 it shall be presented to the City Manager by the aggrieved employee(s) within five (5) working days after the written response is provided to the employee by the Department Head.

The City Manager shall meet with the Department Head and the aggrieved employee(s) within five (5) working days after the presentation of the written grievance, not including the date of presentation. The City Manager will review

the written responses, listen to oral testimony and decide to uphold or modify the Department Head's decision.

If the City Manager is out of town or on leave during this five (5) day period, the period shall commence upon the first working day following the City Manager's return to work.

The written decision of the City Manager shall be final and binding on the employee, or group of employees, and shall be binding upon supervisory personnel as well.

Aggrieved Department Heads and/or other employees working under the direct supervision of the City Manager shall have the right to appeal the City Manager's decision or action to the Mayor and City Council; the City Council's written decision shall be final and binding.

## **B. APPEAL BOARD**

In all cases where an employee is discharged or demoted, he/she shall have the right to appeal such discharge or demotion in accordance to Utah Code 10-3-1105 & 1106, as outlined hereafter.

1. The Appeal Board shall consist of five (5) members, i.e. two (2) Clinton City Council members and three (3) Clinton City employees (three [3] additional employees shall be selected as alternates).
  - a. City Council members shall be appointed by the Mayor at the first City Council meeting in January, and serve for the calendar year. If needed, replacements during the year shall be appointed in the same manner.
  - b. Employee Appeal Board members shall be elected by the City employees through a secret ballot. Interested parties must submit their names to the City Manager/Recorder at least 10 days prior to the election, to be held on the first Tuesday of the year (or next available day if the first Tuesday is a holiday).'

Employees may vote for six (6) persons. The individuals chosen shall be placed upon an eligibility list to serve on this Appeal Board. This list shall be in rank order, the top three (3) to serve as regular Board members and the others, in numerical ranking, to serve as alternates.

- c. Four (4) or more Appeal Board members shall constitute a quorum and shall be present to hear appeals.
  - d. No member of the Appeal Board shall be employed by or administer the department for which the aggrieved employee works nor shall be related to the appealing employee through blood or marriage.
2. The appealing employee shall file a written appeal to the City Manager within 10 days of the discharge or demotion. He/she shall be entitled to appear in person and to be represented by counsel, to have a public hearing, to confront the witness whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board.
3. If the Appeal Board upholds the discharge or demotion, the appealing employee may appeal that decision to the City Council within 14 days of the decision. The City Council's decision shall be final.
4. If the Appeal Board does not uphold the discharge or demotion, the City Manager shall certify the decision to the affected employee and the appropriate Department Head and Supervisor. The affected employee shall report for duty the next working day. If the appeal involves violation of Chapters XX or XXI of these policies, the affected employee shall follow the required processes before returning to work.
5. The general procedure delineated in Utah Code 10-3-1106(2-6) will be followed. The Appeal Board shall have access to all confidential records pertaining to a specific case which is before them.

### **C. TIMELINESS DEFENSES**

Grievance procedures not initiated, and carried forward, within the time limits established in this section, shall render the grievance null and void; that is the grievance is to be considered not to have existed.

Any grievance not taken to the next step of the grievance procedure shall be considered settled on the basis of the last reply made and received in accordance with the provisions of this section.

The time limits prescribed in this section for the initiation and completion of the steps of the grievance procedure may be extended by mutual consent of the parties involved.

Finally, the grievance procedure is designed to assure the aggrieved employee(s) of protection from any form of reprisal by supervisors, or any other City official, following proper determination and decision on the grievance.

## XIX. MISCELLANEOUS POLICIES

### A. DEATH PAYMENT

Salary and accrued annual leave shall, upon an employee's death, be issued in his/her name but be delivered to such beneficiary as is designated by the employee, or if none is designated, then to his/her estate.

### B. USE OF CITY VEHICLES/EQUIPMENT

1. Only authorized employees with the appropriate valid driver's license and in-house training for that particular type vehicle or piece of equipment may drive the city vehicle or use the equipment.
2. No city employee will knowingly allow the illegal or unauthorized use of any city vehicle or equipment.
3. Smoking is prohibited.
4. Employees assigned a vehicle will keep it cleaned up.
5. Employees shall obey all traffic laws.
6. Seatbelts must be worn in all moving vehicles thus equipped.
7. Employees will follow the City's Mobile Device Policy.
8. No alcoholic beverages shall be carried in a city-owned vehicle except as required evidence by law enforcement.

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### C. ELECTRONIC MAIL AND COMPUTER SYSTEMS

In is the intent of Clinton City that the electronic mail (e-mail) and computer systems be used for City purposes. Employees should be aware of the potential for discovery of stored E-mail communications, including the use of such messages for litigation against the City. Employees shall NOT use W-mail or computer systems for any inappropriate use, including but not limited to the following:

1. Solicitation of employees for fund raisers not approved by the City;
2. To further personal business interests;
3. Offensive, harassing, vulgar, obscene, or threatening communication, including disparagement of others based on race, national origin, marital status, sex, sexual orientation, age, disability, pregnancy,

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- religious or political beliefs, or any other characteristic protected under federal, state, or local law;
- 4. Verbal abuse, slander or defamation;
- 5. Creating, distributing, or soliciting sexually oriented messages or images;
- 6. Electronic dissemination or printing of copyrighted materials, including articles and software, in violation of copyright laws.

Employees shall not access or attempt to access the E-mail system of another user unless directed and authorized by the department director. E-mail communications and the contents of City-owned computers are sole property of Clinton City and may be subject to monitoring without notice. The City may override individual passwords and codes and require employees to disclose individual passwords and codes. Abuses of the E-mail and computer systems could subject the employee to disciplinary action, up to and including termination.

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Employees with responsibilities to the City’s social media sites, must familiarize and follow the City’s Social Media Policy.

#### **D. CELLULAR TELEPHONES**

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Clinton City recognizes that there is value and benefit to convenient cell phone communications, by and between certain designated city positions, and that this most effectively meets the needs of the City.

The purpose of this policy is to establish procedures and guidelines wherein department directors may:

1. Provide City owned cell phones to employees who are required to use a cell phone on the job; and/or,
2. Instruct employees to submit for reimbursement when using their own cell phone for authorized City business; and/or;
3. Designate employees who will be refunded, by the City, for regular use of their own cell phone for authorized City business at a monthly rate based on the cost to the City for providing a phone; and,
4. Ensure accountability for City property; and,
5. Department directors must designate the positions which

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require the use of cell phones and which options above best meet the needs of the City.

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### City Owned Cell Phones

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Department directors may authorize the purchase of cell phone(s), accessories, and plan(s) for city use by designated positions that best meet the needs of the City. City owned cell phones shall be for City business, however minimal personal calls may be allowed with no reimbursement required as long as there are adequate minutes available for City business and the minutes used are within the allotted minutes for the plan. If minutes used exceed those allotted by the plan due for personal use, the employee is required to reimburse the City for the cost of overage.

City owned cell phones should be used by City employees or for city purposes, and not by family, friends, or other except in case of an extreme emergency.

### Reimbursement

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Employees using their personal cellular telephone for City business may seek reimbursement by submitting a copy of their telephone bill along with a brief explanation as to the reason for each call to the department director. Only those documented calls deemed necessary by the department director will be reimbursed. On approval by the department director the request will be forwarded to Finance for payment.

### Refund

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Department directors, at an employee's request, may designate employees in a position that is determined to require a City provided cell phone, to regularly use their personal cellular phone for City business rather than assigning a City owned cell phone. Employees requesting this will be refunded an amount designated by the City Manager based upon the cost to the City for providing a cell phone.

### Replacement of City Owned Cell Phones

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Department directors will evaluate requests by employees for replacement phones and submit requests and purchase authorizations, on forms provided by the Treasurer's department to the City Manager. Directors will evaluate the conditions under which the phone is needed to be replaced and determine if it is the employee's responsibility for the need or if it is normal wear and tear or defect.

#### Accessories

All accessories required for City owned cell phones will be provided by the individual departments.

# SUBSTANCE ABUSE AND DRUG FREE WORKPLACE

The City has the responsibility and a commitment to all its employees to provide a healthy and safe work place and environment.

Employees of the City have the responsibility to arrive at work free from the effects of controlled substances, alcohol and other job-impairing substances. These joint responsibilities result in the objective of establishing a work environment where all employees are free from the effects of controlled substances, alcohol and other job-impairing substances.

The City recognizes that chemical dependency and/or alcohol related problems are treatable conditions and offers referral to "The Medical Benefits Program" for employees seeking counseling and treatment. The existence of controlled substance dependency or alcohol related problems does not waive the employee's responsibility to comply with City employment policies. The City adopts a "zero tolerance" policy of an employee "being under the influence" upon arriving at work, or at any other time during the work schedule. Violation of this policy may result in termination of employment, as outlined in this policy.

## A. PURPOSE

Controlled substance and/or alcohol use lead to more accidents on the job, lower job performance, lost productivity, increased absenteeism, higher medical costs, and rising thefts. Impaired employees on the job are potentially dangerous to themselves and could jeopardize the health, life or safety of fellow employees and the public. While the City has no intention of intruding into the private lives of its employees, it does require them to report for work in fit condition to perform their duties in a safe manner and while at work to remain in that fit condition.

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## B. PROGRAM

The City prohibits the use, possession and/or distribution on its premises, facilities and/or work places of any of the following: alcoholic beverages, intoxicants and narcotics, illegal or unauthorized controlled substances (including marijuana), and related drug paraphernalia. In addition, a City employee will not be allowed to report for work under the influence of any controlled substance, alcoholic beverage, intoxicant or narcotic or other substance, including legally prescribed drugs and medicines which will in any way adversely affect his or her working ability, alertness, coordination, response, or adversely affect the safety of others on the job.

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Such use, possession, distribution, or impairment during working hours (breaks and lunches included) and/or on City premises will be grounds for termination. All drug testing and

results obtained under the requirements of this policy will be coordinated with and authorized by the City Manager or his/her designee. All such activities will be kept confidential.

Any arrests and/or convictions occurring to an employee while employed by the City, pertaining to a criminal alcohol or drug statute, must be reported to the Department Head and City Manager.

### **C. TRAINING OF EMPLOYEES**

Prior to implementation of this substance abuse and drug free workplace program, the City shall conduct substance abuse training for all employees. All training shall take place during normal work hours, or immediately before or after scheduled shifts, on City paid time.

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### **D. VOLUNTARY CONTROLLED SUBSTANCE AND/OR ALCOHOL REHABILITATION**

Employees who have a controlled substance or alcohol use problem, or questions/concerns on the subject, are encouraged to discuss these matters with their Dept Head or the City Manager. If appropriate, employees may be referred to a counseling and/or rehabilitation service.

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Effective treatment requires that the employee acknowledge the seriousness of the problem and make a commitment to a plan for rehabilitation. Such an employee will be allowed a leave of absence of reasonable length, for professional rehabilitation. During this leave of absence, the employee may use a one time only use of up to 30 days of accrued sick leave (not applicable if voluntary rehabilitation reoccurs). Accrued comp time or vacation leave may also be used for any additional leave of absence. If the rehabilitation period extends past these paid leave benefit periods, only leave without pay (with medical benefits continuing) shall be available. Such admission will not be used as a basis for disciplinary action and will not be used against the employee in any disciplinary proceeding unless the employee has been found to be “under the influence” on the job. Such admission shall not be a defense, to the imposition of disciplinary action based on breaches of the City's personnel policies not related to controlled substances or alcohol.

Prior to returning to duty after a voluntary rehabilitation program, the employee shall submit to an drug/alcohol test. Failure to pass the test shall result in termination of employment.

### **E. MEDICALLY AUTHORIZED DRUGS**

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Each employee must report the use of medically authorized drugs or other substances which might impair job performance to the City Manager and provide proper written medical authorization from a physician/dentist to work while using prescription drugs. It is the employee's responsibility to determine whether or not the prescribed drug would impair his or her job performance. The City Manager shall decide if and under what conditions such an employee may remain at their work station. Any failure to report the use of such drugs or other substances, or failure to provide proper evidence of medical authorization, may result in disciplinary action.

Prior to returning to duty after a voluntary rehabilitation program, the employee shall submit to an drug/alcohol test. Failure to pass the test shall result in termination of employment.

## **F. DRUG AND ALCOHOL TESTING**

Clinton City employees shall participate in the following types of drug and alcohol testing programs as directed:

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### **1. Pre-employment Drug/Alcohol Test**

Clinton City requires that as part of a conditional offer of employment, a prospective employee for any regular full-time or regular part-time position and temporary "safety sensitive" employee, must undergo an alcohol and drug screen test to detect the presence of alcohol and/or controlled substances in the body (excluding legally obtained and used substances pursuant to a physicians prescription). Refusal to take such a test shall be grounds for denial of employment. An applicant who tests positive for controlled substances or whose test detects a BAC of 0.02 or higher shall be denied employment with the City.

### **2. Post Accident Drug Testing**

Employees involved in accidents as defined in "I" below, whether injured or not, shall be tested for substance abuse and alcohol. Substance abuse tests must be performed within 8 hours after the accident. Alcohol tests must be performed within 3 hours after the accident. Any employee required to be drug tested under this policy shall submit immediately to such test when directed to do so by their Supervisor, Department Head or City Manager (or designee). If the employee refuses to submit to such testing or conducts him/herself, during the testing, in such a way as to induce a false, incorrect or invalid result, he/she shall be subject to disciplinary action up to and including termination.

### **3. Pre-promotion or Transfer**

Prior to promotion or transfer, employees must pass an alcohol and drug test.

#### 4. **Reasonable Suspicion**

The City reserves the right to require any employee to submit to a “fitness for duty” drug and/or alcohol examination with a city-referred physician or substance abuse professional when there is reasonable suspicion that the employee is working under the influence of alcohol and/or drugs. Such examinations shall be conducted on City time and at City expense.

Factors which may constitute reasonable suspicion include, but are not limited to: slurred speech; red eyes; dilated pupils; incoherence, unsteadiness of feet; smell of alcohol, marijuana or other controlled substance emanating from the employee’s person; inability to carry on a rational conversation; erratic behavior; and other unexplained behavioral changes. When practical, a Supervisor should seek confirmation of his observations by another employee or Supervisor. Findings shall be immediately passed on to the appropriate administrator for approval of drug testing. All findings shall be documented.

#### 5. **Random Testing**

Commercial Drivers License (CDL) holders and employees in “safety sensitive” positions shall be obligated to participate in random drug and/or alcohol testing. CDL holders shall follow the procedures outlined in Chapter XXI. All other non-CDL safety sensitive positions shall be pooled separately for random testing selection with a testing frequency of 15% to 20% drug/alcohol testing per year.

### **G. DEFINITIONS**

#### **Accident (Non-Vehicular)**

Where an employee sustains an on-the-job injury that results in professional medical care, testing is mandatory; or, in the opinion of the Department Head with the concurrence of the City Manager or his designee, there is reasonable suspicion that it could be related to drug or alcohol use.

#### **Accident (Vehicular)**

An occurrence associated with the operation of a motor vehicle or other motorized equipment, if, as a result:

1. A death occurs; or,

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2. An individual suffers bodily injury that requires medical treatment away from the scene of the accident; or,
3. One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle; or,
4. The employee receives a citation under state or local law for a moving traffic violation; or,
5. In the opinion of the Department Head, with the concurrence of the City Manager or his designee, the employee driver contributed to the accident and there is reasonable suspicion that it could be related to drug or alcohol use.

### **Alcohol**

Alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

### **Controlled Substances**

Controlled substances are defined by state statute (Utah Code 58-37-4).

### **Controlled Substance/Alcohol Testing**

The scientific analysis for the presence of drugs or their metabolites in the human body. Normally this analysis is performed from a urine, blood, saliva, hair or breath specimen provided by the employee.

### **Positive Test**

Any test result showing a blood alcohol content of 0.02 or greater, or the presence of any controlled substance in the test subject.

### **Pre-Employment Testing**

All prospective regular employees and temporary “safety sensitive” employees are to be tested as a condition of employment. Prospective employees who refuse or whose test is positive will be **denied employment**.

### **Random Testing**

This is a method of selecting employees for drug and/or alcohol testing that results in an equal probability that any employee in that testing pool will be selected each time a random test is conducted. Random tests shall be unannounced throughout the year.

### **Reasonable Suspicion**

This is defined as specific observations made by a trained Supervisor or police officer of behaviors, appearances and actions that are characteristic of the use or abuse of alcohol and/or controlled substances.

In cases involving an accident that results in physical injury or property damage, which occurs during the employee's scheduled work shift, or while engaged in City business, and when such accident cannot otherwise be reasonably explained, reasonable suspicion is deemed to exist.

**Safety Sensitive Positions**

Positions occupying a high level of public trust as classified by job description, duties or the possession of equipment or property capable of endangering other employees or the public. These regular employee positions include: police officers; firefighters; public works workers; building inspectors; any other City equipment and vehicle operators; and, any other City workers so designated by the City Manager.

**Under the Influence**

When an employee tests positive for any of the abovementioned controlled substances, or whose test detects a Blood Alcohol Content (BAC) of 0.02 or greater, he/she shall be deemed *under the influence*.

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## 6. CDL'S - MANDATED DRUG TESTING

The Omnibus Transportation Employees Testing Act of 1991 (the ACT) requires mandatory drug and alcohol testing to prevent accidents and injuries resulting from the use of alcohol or use of controlled substances by employees working in safety sensitive positions. On February 15, 1994 the Federal Department of Transportation issued updated rules that applied the ACT to every person who is subject to commercial drivers license requirements, including local government employees. For small employers like Clinton City, the testing program must begin by January 1, 1996.

### A. PROHIBITIONS

#### 1. Alcohol

No Clinton City employee shall knowingly be allowed to drive a City vehicle while under the influence of alcohol. (See definitions on previous pages.) CDL drivers shall not:

- a. report for or remain on duty while having a blood alcohol content of 0.02 or greater;
- b. operate a commercial motor vehicle while in possession of alcohol;
- c. use alcohol while performing safety sensitive functions;
- d. perform safety sensitive functions within four (4) hours after consuming alcohol;
- e. consume alcohol for eight (8) hours following an accident requiring a post accident test, or until the employee undergoes a post accident test, whichever comes first; or,
- f. refuse to submit to a test required under the act.

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#### 2. Controlled Substances

The City shall not allow a CDL driver, nor shall a CDL driver:

- a. report for duty or remain on duty when the driver uses controlled substance(s), except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle, and has informed his/her Supervisor of such and been cleared for duty as outlined in Chapter XX section F of this policy.
- b. report for duty, remain on duty or perform safety sensitive functions if the driver tests positive for controlled substances.

#### 3. Employees using, possessing or being at the workplace with a BAC

content of 0.02 or greater or under the influence of illegal or illegally obtained substances shall be subject to testing, questioning and disciplinary action. Any employee found to have violated this policy shall be processed in accordance to Section B.2 of this Chapter, as is outlined, for the amount of BAC and/or the controlled substance.

## **B. TESTING**

1. General ----Under rules established under the ACT, the City is required to conduct the following alcohol/drug testing for CDL drivers:
  - a. pre-employment;
  - b. reasonable suspicion;
  - c. random;
  - d. post accident;
  - e. return-to-duty and follow-up.

Clinton City maintains the right to designate the type of sample to be used in the testing program, including blood, urine, or other tests, and the use of electronic detection equipment. Trained animals may be used for locating controlled substances. The City will bear the costs of all collection, transportation and analysis. All drug screen collections, medical review officer reviews and laboratory testing of urine drug specimens shall be in compliance with the Federal Register, 49 CFR part 40-procedures for transportation workplace drug and alcohol testing programs, subpart B-Drug Testing.

Collection of the test sample will be done by trained employees of a substance abuse consulting agency during or immediately after regular work hours.

Failure of affected employees to cooperate with these sample collection and detection methods or inspections, is grounds for disciplinary action, up to and including termination of employment.

Designated Supervisors have received special training and classes to help them recognize employees who may be under the influence. It is their responsibilities to daily visually check their employees. When a designated Supervisor makes a determination that there is reasonable suspicion that an employee performing or about to perform a safety sensitive function is under the influence, using, or in possession of alcohol or controlled substances, the employee shall be subject to alcohol/drug testing.

All city employees also have the responsibility to bring to a designated Supervisor's attention all suspicions of any impairment due to drugs or alcohol in other city employees.

The City may join a consortium in order to broaden the employee testing pool, provide the

required random testing (25% of drivers for alcohol and 50% of drivers for drug testing annually), and other testing.

1. Test Results ---- Blood Alcohol Content Testing

- a. If an employee's test result shows a BAC content of 0.04 or greater, the employee shall be removed from work with pay, be given a “due process interview” and disciplined pursuant to this policy.
- b. If an employee's test result shows an alcohol concentration of greater than 0.02 but less than 0.04, the employee shall not be permitted to perform any safety sensitive functions for at least twenty-four (24) hours. The employee shall be dismissed from work for the day, without pay, and re-tested upon return to work the following day. If the re-test results again show an alcohol concentration of greater than 0.02 but less than 0.04, the employee shall be suspended without pay for three (3) working days, and re-tested again upon return to work. If the second re-test produces the same result of an alcohol concentration of greater than 0.02 and less than 0.04, the employee shall be sent home from work with pay, provided a “due process interview” and terminated.
- c. If an employee's test results show that the employee has used a controlled substance, the employee must be sent home from work with pay, provided a “due process interview” and disciplined pursuant to this policy.

**C. EMPLOYEE RIGHTS**

1. All test results will be kept confidential and will be available only to the employee, the City Manager, the City Finance Specialist or Manager, the Mayor and City Council, the City Attorney and the Appeals Board, if convened. The employee may authorize his/her representative to have copies of the test results, provided the employee waives in writing all claims against the City for disclosing such information to the employee's representative.
2. Any employee who tests positive and is terminated by the City based upon test results can request and will receive from the City all written documentation available from the testing laboratory which verifies the

accuracy of the equipment, the qualifications of lab personnel, the chain of custody of the specimen, and the accuracy rate of the laboratory.

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## 7. SAVING CLAUSE

Should any portion of this Policy Manual be rendered ineffective by a Court of Competent Jurisdiction, the remaining parts shall remain in full force and effect. The City Council may alter these policies at any time, following proper notice and public hearing thereon, including rectifying any portion as necessary to accommodate changes in applicable statute and regulation.

## 8. ADOPTION OF POLICIES

The policies and rules contained herein were originally adopted by the Clinton City Council on February 25, 1997 and later modified by the Clinton City Council on August 8, 2000, September 28, 2004, November 10, 2009, January 2013, and in October 2014. All prior policies, rules and practices, previously adopted by the City Council are hereby simultaneously superseded.

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# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Ordinance 14-07, Telecommunications Rights-of-Way	<b>AGENDA ITEM:</b> L
<b>PETITIONER:</b> Dennis Cluff	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> That Council adopt Ordinance 14-07, establishing regulations on Telecommunications Rights-of-Way	<b>ROLL CALL VOTE:</b> <b>NO</b>
<b>FISCAL IMPACT:</b>	
<p><b>BACKGROUND:</b></p> <p>With the continued expansion of telecommunications, we need to more clearly define how and under what circumstances interested telecommunications service providers (cable, fiber optics, phone, etc...) can utilize City rights-of-way. State Statute (Public Communications Law, Title 58, Chapter 8b) includes telecommunications as a public utility and 58-3-27 (public utility easements) allows telecommunications use of public utility easements. We have a fiber optic cable company requesting a Franchise Agreement for access into Clinton streets (and State Highways), so it is time to adopt an ordinance specifically about telecommunication use of the City's rights-of-way.</p> <p>There will probably be a new telecommunications franchise agreement ready for your review and approval at your next meeting.</p>	
<b>ATTACHMENTS:</b> Telecommunication Rights of Way Ordinance	

## **TITLE 29. TELECOMMUNICATIONS RIGHTS-OF-WAY ORDINANCE**

Chapter 1. Declaration of Findings and Intent; Scope of Ordinance

Chapter 2. Definitions

Chapter 3. Franchise Required

Chapter 4. Compensation and Other Payments

Chapter 5. Franchise Applications

Chapter 6. Construction and Technical Requirements

Chapter 7. Franchise and License Non-Transferrable

Chapter 8. Oversight and Regulation

Chapter 9. Rights of City

Chapter 10. Obligation to Notify

Chapter 11. General Provisions

Chapter 12. Federal, State and City Jurisdiction

### **CHAPTER 1 -- DECLARATION OF FINDINGS AND INTENT; SCOPE OF ORDINANCE**

29-1-1 Findings Regarding Rights-of-Way

29-1-2 Findings Regarding Compensation

29-1-3 Findings Regarding Local Concern

29-1-4 Findings Regarding Promotion of Telecommunications Services

29-1-5 Findings Regarding Franchise Standards

29-1-6 Power to Manage Rights-of-Way

29-1-7 Scope of Ordinance

**29-1-1 Findings Regarding Rights-of-Way.** The City of Clinton finds that the Rights- of-way within the City:

- (1) Are critical to the travel and transport of persons and property in the business and social life of the City;
- (2) Are intended for public uses and must be managed and controlled consistent with that intent;
- (3) Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
- (4) Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the

inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.

**29-1-2 Finding Regarding Compensation.** The City finds that the City should receive fair and reasonable compensation for use of the Rights-of-Way.

**29-1-3 Finding Regarding Local Concern.** The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.

**29-1-4 Finding Regarding Promotion of Telecommunications Services.** The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

**29-1-5 Findings Regarding Franchise Standards.** The City finds that it is in the interest of the public to franchise and to establish standards for franchising Providers in a manner that:

- (1) fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;
- (2) encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;
- (3) fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
- (4) protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;
- (5) otherwise protects the public interests in the development and use of the City infrastructure;
- (6) protects the public's investment in improvements in the Rights-of-Way; and
- (7) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 (Act).

**29-1-6 Power to Manage Rights-of-Way.** The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

**29-1-7 Scope of Ordinance.** This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Chapter 29-12-2.

**29-1-8 Excluded Activity.** This Ordinance shall not apply to the following:

- (1) Cable TV operators otherwise regulated by Title 12 -- Cable Television Regulatory Ordinance;
- (2) Personal Wireless Service Facilities; and,
- (3) Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

## **CHAPTER 2 -- DEFINITIONS**

### 29-2-1 Definitions

**29-2-1 Definitions.** For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Chapter, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural numbers, words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (1) "Application" means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider; and any other matter pertaining to a proposed System or Service.
- (2) "City" means Clinton City, Utah.
- (3) "Completion Date" means the date that Provider begins providing Services to customers in the City.
- (4) "Construction Costs" means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.
- (5) "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by a Person or group of Persons acting in concert, of more than twenty-five percent (25%) of any Provider (which person or group of persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.
- (6) "FCC" means the Federal Communications Commission, or any successor thereto.

- (7) "Franchise" means the rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any other permit, agreement or authorization required in connection with operations on Rights-of- Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
- (8) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.
- (9) "Gross Revenue" includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11, Utah Code Annotated, 1953, as amended.
- (10) "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-of-Way.
- (11) "Open Video Service" means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, et seq., of the Telecommunications Act, regardless of the System used.
- (12) "Open Video System" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.
- (13) "Operator" means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.
- (14) "Ordinance" or "Telecommunications Ordinance" means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.
- (15) "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.
- (16) "Personal Wireless Services Facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of- Way.
- (17) "Provider" means an Operator, Infrastructure Provider, Resaler, or System Lessee.
- (18) "APSC" means the Public Service Commission, or any successor thereto.

(19) "Reseller" refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

(20) "Rights-of-Way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.

(21) "Signal" means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(22) "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide Services.

(23) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.

(24) "Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

(25) "Telecommunications Service(s)" or "Services" means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. 521, et seq.), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

(26) "Wire" means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

### **CHAPTER 3 -- FRANCHISE REQUIRED**

29-3-1 Non-Exclusive Franchise

29-3-2 Every Provider Must Obtain

29-3-3 Nature of Grant

29-3-4 Current Providers

29-3-5 Nature of Franchise

29-3-6 Regulatory Approval Needed

29-3-7 Term

**29-3-1 Non-Exclusive Franchise.** The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

**29-3-2 Every Provider Must Obtain.** Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact the particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services, over the same System, must also obtain a Telecommunications Franchise.

**29-3-3 Nature of Grant.** A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. This section shall not be construed to prohibit a provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

**29-3-4 Current Providers.** Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Chapter 29-9-4.

**29-3-5 Nature of Franchise.** The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services, pursuant to all local requirements outlined in this Ordinance.

**29-3-6 Regulator Approval Needed.** Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

**29-3-7 Term.** No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory

manner.

## **CHAPTER 4 -- COMPENSATION AND OTHER PAYMENTS**

29-4-1 Compensation

29-4-2 Timing

29-4-3 Fee Statement and Certification

29-4-4 Future Costs

29-4-5 Taxes and Assessments

29-4-6 Interest on Late Payments

29-4-7 No Accord and Satisfaction

29-4-8 Not in Lieu of Other Taxes or Fees

29-4-9 Continuing Obligation and Holdover

29-4-10 Costs of Publication

**29-4-1 Compensation.** As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

(1) Application Fee. In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, \$500 as a non-refundable Application fee.

(2) Franchise Fees. The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The Franchise fee is offset by any business license fee or business license tax enacted by the City.

(3) Excavation Permits. The Provider shall also pay fees required for an excavation permit as provided in City Code Chapter 25-9, Permit.

**29-4-2 Timing.** Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

**29-4-3 Fee Statement and Certification.** Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

**29-4-4 Future Costs.** A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the Public Works Department to provide space on City owned poles shall be borne by the Provider.

**29-4-5 Taxes and Assessments.** To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

**29-4-6 Interest on Late Payments.** In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

**29-4-7 No Accord and Satisfaction.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

**29-4-8 Not in Lieu of Other Taxes or Fees.** The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned poles are not waived and remain applicable.

**29-4-9 Continuing Obligation and Holdover.** In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation after the term, including, but not limited to, damages and restitution.

**29-4-10 Costs of Publication.** A Provider shall assume any publication costs associated with its Franchise that may be required by law.

## **CHAPTER 5 -- FRANCHISE APPLICATIONS**

29-5-1 Franchise Application

29-5-2 Application Criteria

29-5-3 Franchise Determination

**29-5-1 Franchise Application.** To obtain a Franchise to construct, own, maintain or provide Services through any System within the city, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 7.1.2, granted pursuant to this Ordinance, an Application must be filed with City on the form attached to this Ordinance as Exhibit A, which is hereby incorporated by reference. The Application form may be changed by the Clinton City Manager so long as such changes request information that is consistent with this Ordinance. Such Application form, as amended, is incorporated by reference.

**29-5-2 Application Criteria.** In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

(1) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.

- (2) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;
- (3) Provider's agreement to comply with the requirements of Chapter 6 of this Ordinance.
- (4) Prior to making any attachments to poles, the Provider shall be willing to enter into a pole attachment agreement with the City, if the City deems it reasonably necessary.

**29-5-3 Franchise Determination.** The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

## **CHAPTER 6 -- CONSTRUCTION AND TECHNICAL REQUIREMENTS**

- 29-6-1 General Requirements
- 29-6-2 Quality
- 29-6-3 Licenses and Permits
- 29-6-4 Relocation of the System
- 29-6-5 Protect Structures
- 29-6-6 No Obstruction
- 29-6-7 Safety Precautions
- 29-6-8 Repair
- 29-6-9 System Maintenance
- 29-6-10 Trimming of Trees

**29-6-1 General Requirements.** No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

**29-6-2 Quality.** All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

**29-6-3 Licenses and Permits.** A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the city to use private property, easements, poles and

conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

#### **29-6-4 Relocation of the System.**

- (1) New Grades or Lines. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance and City Engineering and Standards Specifications.
- (2) The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefore to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Chapter. Notice shall be given as provided in Section 11.4.
- (3) A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.
- (4) Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

**29-6-5 Protect Structures.** In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

**29-6-6 No Obstruction.** In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

**29-6-7 Safety Precautions.** A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance

of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

**29-6-8 Repair.** After written reasonable notice to the Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Way intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

**29-6-9 System Maintenance.** A Provider shall:

- (1) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.
- (2) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- (3) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

**29-6-10 Trimming of Trees.** A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System. Notification to the owner(s) of the property(s) must be given as directed by the City, prior to tree trimming.

## **CHAPTER 7 -- FRANCHISE AND LICENSE NON-TRANSFERRABLE**

29-7-1 Notification of Sale

29-7-2 Event of Sale

### **29-7-1 Notification of Sale.**

(1) Notification and Election. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction[s]. The notification shall include either:

- (a) the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Providers Franchise Agreement, or
- (b) the successor entity's Application in compliance with Chapter 5 of this Ordinance.

(2) Transfer of Franchise. Upon receipt of a notification and certification in accordance with Subsection 7.1.1(a), the City designee, as provided in Subsection 9.1.1, shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for transfer. The Application shall comply with Chapter 5.

**29-7-2 Events of Sale**. The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 7-1 above:

- (1) The sale, assignment or other transfer of all or a majority of a Provider's assets to another Person;
- (2) The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider;
- (3) The issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or,
- (4) The entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

## **CHAPTER 8 -- OVERSIGHT AND REGULATION**

29-8-1 Insurance, Indemnity and Security

29-8-2 Oversight

29-8-3 Maintain Records

29-8-4 Confidentiality

29-8-5 Provider's Expense

29-8-6 Right of Inspection

**29-8-1 Insurance, Indemnity, and Security**. Prior to the execution of a Franchise, a Provider will deposit with the City a cash bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City, its officers, agents, officials and employees harmless from any action, causes of action, claims for relief which can be set forth in or through a complaint or otherwise that may arise out of the acts or omissions, negligent, or otherwise of Provider, Provider's officers, officials, agents or employees, the City, or its officers, officials, agents or employees or any person or persons. All of Provider's system or services shall be installed, maintained and serviced by Provider. Any property, personal injury or actual damage, injury or harm caused by Provider's System or Service to any person, person's property or entity shall be the sole responsibility of Provider and Provider agrees to indemnify and hold City harmless from all actions, causes of action, complaints or legal actions, whether said harm is caused by Provider or an unknown third-party.

**29-8-2 Oversight**. The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in

reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

**29-8-3 Maintain Records.** A Provider shall at all times maintain:

(1) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, as-built maps includes file construction prints. Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. As-built maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

(2) Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

**29-8-4 Confidentiality.** If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access Management Act (GRAMA), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

**29-8-5 Provider's Expense.** All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

**29-8-6 Right of Inspection.** For the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed

that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

## **CHAPTER 9 -- RIGHTS OF CITY**

29-9-1 Enforcement and Remedies

29-9-2 Force Majeure

29-9-3 Extended Operation and Continuity of Services

29-9-4 Removal or Abandonment of Franchise Property

### **29-9-1 Enforcement and Remedies**

(1) Enforcement - City Designee. The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the City Manager, is authorized to give any notice required by law or under any Franchise Agreement.

(2) Enforcement Provision. Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

**29-9-2 Force Majeure.** In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

### **29-9-3 Extended Operation and Continuity of Services.**

(1) Continuation After Expiration. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

(2) Continuation by Incumbent Local Exchange Carrier. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal of good faith.

### **29-9-4 Removal or Abandonment of Franchise Property.**

(1) Abandoned System. In the event that: (a) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (b) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (c) the

provisions of Section 3.4 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

(2) Removal of Abandoned System. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Ordinance is approved by the City.

(3) Transfer of Abandoned System to City. Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

(4) Removal of Above-Ground System. At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

(5) Leaving Underground System. Notwithstanding anything to the contrary set forth in this Ordinance, upon the written approval of the City a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other person.

## **CHAPTER 10 -- OBLIGATION TO NOTIFY**

### **29-10-1 Publicizing Work**

**29-10-1 Publicizing Work.** When performing work on private property, after securing approval as required in 29-6-3, and before entering onto any private property, Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

## **CHAPTER 11 -- GENERAL PROVISIONS**

### **29-11-1 Conflicts**

- 29-11-2 Severability
- 29-11-3 New Developments
- 29-11-4 Notices
- 29-11-5 Exercise of Police Power

**29-11-1 Conflicts.** In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the Franchise is entered into shall control.

**29-11-2 Severability.** If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changes, so that the provision in question shall return in full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a long period of time as may be reasonable required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

**29-11-3 New Developments.** It shall be the policy of the City to amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

**29-11-4 Notices.** All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the City Manager. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its names, address, or telephone number.

**29-11-5 Exercise of Police Power.** To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

## **CHAPTER 12 -- FEDERAL, STATE AND CITY JURISDICTION**

- 12-12-1 Construction
- 12-12-2 Ordinance Applicability
- 29-12-3 Other Applicable Ordinances
- 29-12-4 City Failure to Enforce
- 29-12-5 Construed According to Utah Law

**29-12-1 Construction.** This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

**29-12-2 Ordinance Applicability.** This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

**29-12-3 Other Applicable Ordinances.** A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

**29-12-4 City Failure to Enforce.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

**29-12-5 Construed According to Utah Law.** This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Award Contract for Street Crack Sealing	<b>AGENDA ITEM:</b> M
<b>PETITIONER:</b> Dennis Cluff, Mike Child	<b>MEETING DATE:</b>  October 28, 2014
<b>RECOMMENDATION:</b> That Council award the Street Crack Sealing bid to Morgan Pavement for \$46,000.	<b>ROLL CALL VOTE:</b>  NO
<b>FISCAL IMPACT:</b>	
<p><b>BACKGROUND:</b></p> <p>The weather conditions are just right to pursue crack sealing. As part of our FY 14-15 &amp; FY 15-16 street project plan, crack sealing is the first step prior to the street surface treatment that we plan to do next summer. The best time to crack seal is in the Fall while it is cool and dry, our current conditions. By doing the work now, the price may be less and it will prevent further damage and widening to the existing scheduled cracked street areas.</p> <p>Morgan Pavement has been doing our crack sealing for years and we have great confidence in their service. The contract is for approximately 20 tons of crack seal. The process first cleans the cracks of dirt and debris, then the sealant is applied. The attached list (which includes future <u>surface</u> treatment NOT in this contract) identifies the anticipated streets to be crack sealed. If some of the 20 tons of crack seal is left over from work on these streets, other street areas will be added by Public Works which apply to future year street project areas.</p> <p>Due to the timing of Morgan Pavement's recent availability and the weather, the City Manager already directed the contract with Morgan Pavement initiated. The work is already underway. So I hope your will clear me out of my personal liability and approve the contract.</p>	
<b>ATTACHMENTS:</b> list of street projects; contract	

## 2015-2016

### Collector Surface Treatments

1000 w 1800 n to 2300 n	2598'	SURFACE TREAT AND CRACK SEAL	N/A
1500 w 1930 n to 2300 n	1862'	SURFACE TREAT AND CRACK SEAL	N/A

### Residential Surface Treatments

1400 n 2700 w to 3000 w	1297'	SURFACE TREAT AND CRACK SEAL	CC ANN
2950 w 1340 n to 1400 n	250'	SURFACE TREAT AND CRACK SEAL	CC ANN
2890 w 1300 n to 1400 n	496'	SURFACE TREAT AND CRACK SEAL	CC ANN
2835 w 1300 n to 1400 n	496'	SURFACE TREAT AND CRACK SEAL	CC ANN
2865 w 1400 n to 1420 n	105'	SURFACE TREAT AND CRACK SEAL	CC ANN
2775 w 1340 n to 1400 n	247'	SURFACE TREAT AND CRACK SEAL	CC ANN
1435 w 1300 n to 1520 n	1121'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1360 n 1400 w to 1435 w	179'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1425 n 1250 w to 1435 w	954'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1350 w 1350 n to 1425 n	340'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1375 w 1470 n to 1520 n	230'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1320 w 1470 n to 1520 n	230'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1250 w 1425 n to 1520 n	494'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1460 n 1050 w to 1250 w	1062'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1205 w 1220 n to 1460 n	380'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1150 w 1395 n to 1460 n	299'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1395 n 1090 w to 1205 w	569'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1075 w 1460 n to 1520 n	324'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1050 w 1385 n to 1460 n	363'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
1385 n 1000 w to 1050 w	252'	SURFACE TREAT AND CRACK SEAL	HIGHLAND RIDGE
925 w 1730 n to 1800 n	329'	SURFACE TREAT AND CRACK SEAL	SHADY GROVE
1730 n 865 w to 950 w	453'	SURFACE TREAT AND CRACK SEAL	SHADY GROVE
950 w 1620 n to 1730 n	615'	SURFACE TREAT AND CRACK SEAL	SHADY GROVE
1680 n 865 w 950 w	444'	SURFACE TREAT AND CRACK SEAL	SHADY GROVE
865 w 1680 n to 1730 n	264'	SURFACE TREAT AND CRACK SEAL	SHADY GROVE
1620 n 865 w to 950 w	420'	SURFACE TREAT AND CRACK SEAL	SHADY GROVE
950 w 1550 n to 1620 n	360'	CRACK SEAL	SHADY GROVE
865 w 1570 n to 1680 n	563'	CRACK SEAL	SHADY GROVE
1620 n 865 w to 950 w	421'	CRACK SEAL	SHADY GROVE
1570 n 865 w to 950 w	402'	CRACK SEAL	SHADY GROVE



# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> 1600 North Storm Drain Project	<b>AGENDA ITEM:</b> N
<b>PETITIONER:</b> Community Development	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> Award the project to the low bidder, AAA Excavation	<b>ROLL CALL VOTE:</b> <b>X YES</b> <b>NO</b>
<b>FISCAL IMPACT:</b> Funding will come from the Storm Drain Enterprise Account; this is not an impact fee eligible project.	
<b>BACKGROUND:</b> <ol style="list-style-type: none"> <li>1. This project installs a storm water collection system and replaces the existing land drain system in 1600 West from 1590 North to 1740 North.</li> <li>2. The project is required primarily to replace the existing land drain system that is constructed of perforated, corrugated PVC pipe that is plugged with roots and other material. The city has, in the past, tried several ways to keep this drain free flowing but it has got to the point where the attempts are futile.</li> <li>3. Houses in the area are subject to moisture in the basements due to the poor land drain system.</li> <li>4. This project will replace the land drain main, to meet the city standard, in 1600 West and install a storm drain system to remove surface water.</li> <li>5. Engineer's estimate for the project was \$280,860, low bid is \$238,901</li> <li>6. This project is forecast to start in two weeks.</li> </ol>	
<b>ALTERNATIVE ACTIONS:</b> Limited options	
<b>ATTACHMENTS:</b> Map	
<b>REFERENCED DOCUMENTS:</b>	

Clinton City Corporation  
1600 West Storm Drain/ Land Drain Project  
55-14-047  
Bid Tabulation

Item	Description	Unit	Quantity	Engineer's Estimate		AAA Excavation		Geneva Rock Product		Whitaker Construction		Jordan Valley Const	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Mobilization	LS	1	\$10,000.00	\$10,000.00	\$16,435.00	\$16,435.00	\$6,600.00	\$6,600.00	\$22,000.00	\$22,000.00	\$17,000.00	\$17,000.00
2	Traffic Control	LS	1	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$2,000.00	\$2,000.00	\$3,500.00	\$3,500.00	\$3,800.00	\$3,800.00
3	Clear & Grub Parkstrips	LS	1	\$3,000.00	\$3,000.00	\$600.00	\$600.00	\$4,800.00	\$4,800.00	\$4,200.00	\$4,200.00	\$2,950.00	\$2,950.00
4	Remove Existing Curb and Gutter	LF	980	\$4.00	\$3,920.00	\$2.50	\$2,450.00	\$3.30	\$3,234.00	\$3.75	\$3,675.00	\$3.50	\$3,430.00
5	Remove Existing Sidewalk	LF	150	\$4.00	\$600.00	\$3.00	\$450.00	\$12.00	\$1,800.00	\$4.00	\$600.00	\$5.00	\$750.00
6	Remove Existing Drive Approaches	LF	125	\$4.00	\$500.00	\$3.00	\$375.00	\$15.00	\$1,875.00	\$8.00	\$1,000.00	\$8.00	\$1,000.00
7	Remove Existing Waterway	LF	215	\$7.00	\$1,505.00	\$12.00	\$2,580.00	\$6.60	\$1,419.00	\$5.00	\$1,075.00	\$8.00	\$1,720.00
8	Remove Existing Curb Ramps	EA	10	\$200.00	\$2,000.00	\$200.00	\$2,000.00	\$16.25	\$162.50	\$100.00	\$1,000.00	\$250.00	\$2,500.00
9	Remove Existing Pipe	LF	36	\$5.00	\$180.00	\$5.00	\$180.00	\$16.00	\$576.00	\$10.00	\$360.00	\$20.00	\$720.00
10	Remove Existing Catch Basin/Maholes	EA	3	\$500.00	\$1,500.00	\$500.00	\$1,500.00	\$460.00	\$1,380.00	\$550.00	\$1,650.00	\$500.00	\$1,500.00
11	15" Storm Drain Line With 8" Perforated Land Drain	LF	815	\$90.00	\$73,350.00	\$48.60	\$39,609.00	\$71.00	\$57,865.00	\$85.00	\$69,275.00	\$85.00	\$69,275.00
12	15" Storm Drain Line	LF	120	\$50.00	\$6,000.00	\$37.00	\$4,440.00	\$67.00	\$8,040.00	\$45.00	\$5,400.00	\$60.00	\$7,200.00
13	12" Storm Drain Line	LF	65	\$45.00	\$2,925.00	\$37.00	\$2,405.00	\$68.00	\$4,420.00	\$40.00	\$2,600.00	\$48.00	\$3,120.00
14	8" Perforated Land Drain	LF	60	\$60.00	\$3,600.00	\$37.00	\$2,220.00	\$51.00	\$3,060.00	\$50.00	\$3,000.00	\$38.00	\$2,280.00
15	Connection to Existing Land Drain Manholes	EA	3	\$1,000.00	\$3,000.00	\$600.00	\$1,800.00	\$670.00	\$2,010.00	\$875.00	\$2,625.00	\$1,700.00	\$5,100.00
16	Standard Catch Basin	EA	4	\$2,500.00	\$10,000.00	\$1,639.00	\$6,556.00	\$2,650.00	\$10,600.00	\$2,500.00	\$10,000.00	\$2,600.00	\$10,400.00
17	4ft x 4ft Catch Basin	EA	8	\$3,700.00	\$29,600.00	\$2,580.00	\$20,640.00	\$3,750.00	\$30,000.00	\$3,600.00	\$28,800.00	\$3,600.00	\$28,800.00
18	5Ft Land Drain Manhole	EA	1	\$3,500.00	\$3,500.00	\$1,600.00	\$1,600.00	\$2,135.00	\$2,135.00	\$2,700.00	\$2,700.00	\$2,950.00	\$2,950.00
19	Fill Existing Land Drain Line with Grout and Abandon Manhole(Approx. 50 ft)	LS	1	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$1,800.00	\$1,800.00	\$2,000.00	\$2,000.00	\$1,600.00	\$1,600.00
20	Plug Existing Storm Drain Line	EA	1	\$200.00	\$200.00	\$350.00	\$350.00	\$290.00	\$290.00	\$300.00	\$300.00	\$600.00	\$600.00
21	Re-route Secondary Water Drain Line	LS	1	\$2,000.00	\$2,000.00	\$1,100.00	\$1,100.00	\$2,600.00	\$2,600.00	\$3,000.00	\$3,000.00	\$1,350.00	\$1,350.00
22	Relocate Existing Fire Hydrant	EA	2	\$1,500.00	\$3,000.00	\$1,273.00	\$2,546.00	\$3,600.00	\$7,200.00	\$2,100.00	\$4,200.00	\$2,400.00	\$4,800.00
23	Imported Free Draining Granular Backfill	TON	2800	\$16.00	\$44,800.00	\$13.00	\$36,400.00	\$15.75	\$44,100.00	\$17.50	\$49,000.00	\$24.00	\$67,200.00
24	Construct 30" Curb and Gutter	LF	980	\$18.00	\$17,640.00	\$17.00	\$16,660.00	\$25.25	\$24,745.00	\$17.00	\$16,660.00	\$17.25	\$16,905.00
25	Construct 4ft Sidewalk (4" Thick)	LF	150	\$22.00	\$3,300.00	\$24.00	\$3,600.00	\$25.25	\$3,787.50	\$20.00	\$3,000.00	\$13.75	\$2,062.50
26	Construct Drive Approaches	LF	125	\$40.00	\$5,000.00	\$42.00	\$5,250.00	\$49.00	\$6,125.00	\$45.00	\$5,625.00	\$22.00	\$2,750.00
27	Construct Curb Ramps	EA	10	\$1,200.00	\$12,000.00	\$1,200.00	\$12,000.00	\$1,400.00	\$14,000.00	\$875.00	\$8,750.00	\$650.00	\$6,500.00
28	Remove Existing Asphalt	SY	900	\$2.00	\$1,800.00	\$4.00	\$3,600.00	\$7.70	\$6,930.00	\$6.00	\$5,400.00	\$5.00	\$4,500.00
29	Imported Base Course Material	TON	450	\$16.00	\$7,200.00	\$15.00	\$6,750.00	\$18.25	\$8,212.50	\$20.00	\$9,000.00	\$25.00	\$11,250.00
30	Temporary Asphalt Surface Course (2" Thick)	SY	2000	\$10.00	\$20,000.00	\$18.00	\$36,000.00	\$8.10	\$16,200.00	\$9.50	\$19,000.00	\$11.25	\$22,500.00
31	Storm Water Pollution Prevention Plan (SWPPP)	LS	1	\$2,000.00	\$2,000.00	\$3,000.00	\$3,000.00	\$2,200.00	\$2,200.00	\$3,500.00	\$3,500.00	\$3,700.00	\$3,700.00
32	4" Topsoil in 6ft Wide Parkstrips	LF	580	\$3.00	\$1,740.00	\$2.25	\$1,305.00	\$4.50	\$2,610.00	\$5.50	\$3,190.00	\$6.00	\$3,480.00
Total					\$280,860.00		\$238,901.00		\$282,776.50		\$296,085.00		\$313,692.50

Clinton City Corporation  
1600 West Storm Drain/ Land Drain Project  
55-14-047

Bid Tabulation				Assoc Brigham Cont		Craythorne		B Jackson Const		Cody Ekker Const	
Item	Description	Unit	Quantity	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Mobilization	LS	1	\$7,430.00	\$7,430.00	\$6,800.00	\$6,800.00	\$5,000.00	\$5,000.00	\$40,000.00	\$40,000.00
2	Traffic Control	LS	1	\$2,000.00	\$2,000.00	\$6,250.00	\$6,250.00	\$4,750.00	\$4,750.00	\$5,000.00	\$5,000.00
3	Clear & Grub Parkstrips	LS	1	\$2,227.00	\$2,227.00	\$2,750.00	\$2,750.00	\$2,500.00	\$2,500.00	\$1,740.00	\$1,740.00
4	Remove Existing Curb and Gutter	LF	980	\$3.00	\$2,940.00	\$3.86	\$3,782.80	\$3.00	\$2,940.00	\$8.00	\$7,840.00
5	Remove Existing Sidewalk	LF	150	\$3.00	\$450.00	\$8.18	\$1,227.00	\$2.00	\$300.00	\$5.00	\$750.00
6	Remove Existing Drive Approaches	LF	125	\$3.00	\$375.00	\$8.80	\$1,100.00	\$8.00	\$1,000.00	\$6.00	\$750.00
7	Remove Existing Waterway	LF	215	\$5.00	\$1,075.00	\$10.77	\$2,315.55	\$10.00	\$2,150.00	\$10.00	\$2,150.00
8	Remove Existing Curb Ramps	EA	10	\$90.00	\$900.00	\$228.00	\$2,280.00	\$250.00	\$2,500.00	\$300.00	\$3,000.00
9	Remove Existing Pipe	LF	36	\$19.00	\$684.00	\$27.25	\$981.00	\$14.00	\$504.00	\$15.00	\$540.00
10	Remove Existing Catch Basin/Maholes	EA	3	\$300.00	\$900.00	\$474.00	\$1,422.00	\$250.00	\$750.00	\$500.00	\$1,500.00
11	15" Storm Drain Line With 8" Perforated Land Drain	LF	815	\$90.00	\$73,350.00	\$120.24	\$97,995.60	\$124.37	\$101,361.55	\$175.00	\$142,625.00
12	15" Storm Drain Line	LF	120	\$51.00	\$6,120.00	\$38.70	\$4,644.00	\$63.01	\$7,561.20	\$40.00	\$4,800.00
13	12" Storm Drain Line	LF	65	\$45.00	\$2,925.00	\$35.03	\$2,276.95	\$98.74	\$6,418.10	\$38.00	\$2,470.00
14	8" Perforated Land Drain	LF	60	\$41.00	\$2,460.00	\$44.22	\$2,653.20	\$102.31	\$6,138.60	\$60.00	\$3,600.00
15	Connection to Existing Land Drain Manholes	EA	3	\$828.00	\$2,484.00	\$1,392.00	\$4,176.00	\$635.65	\$1,906.95	\$1,000.00	\$3,000.00
16	Standard Catch Basin	EA	4	\$3,092.00	\$12,368.00	\$1,702.00	\$6,808.00	\$1,665.27	\$6,661.08	\$2,000.00	\$8,000.00
17	4ft x 4ft Catch Basin	EA	8	\$4,760.00	\$38,080.00	\$2,890.00	\$23,120.00	\$2,901.90	\$23,215.20	\$3,000.00	\$24,000.00
18	5Ft Land Drain Manhole	EA	1	\$4,665.00	\$4,665.00	\$2,872.00	\$2,872.00	\$1,535.66	\$1,535.66	\$2,000.00	\$2,000.00
19	Fill Existing Land Drain Line with Grout and Abandon Manhole(Approx. 50 ft)	LS	1	\$2,700.00	\$2,700.00	\$1,350.00	\$1,350.00	\$1,610.00	\$1,610.00	\$1,000.00	\$1,000.00
20	Plug Existing Storm Drain Line	EA	1	\$161.00	\$161.00	\$256.00	\$256.00	\$395.00	\$395.00	\$500.00	\$500.00
21	Re-route Secondary Water Drain Line	LS	1	\$1,339.00	\$1,339.00	\$1,735.00	\$1,735.00	\$975.00	\$975.00	\$1,000.00	\$1,000.00
22	Relocate Existing Fire Hydrant	EA	2	\$1,030.00	\$2,060.00	\$1,218.00	\$2,436.00	\$3,645.00	\$7,290.00	\$1,500.00	\$3,000.00
23	Imported Free Draining Granular Backfill	TON	2800	\$17.00	\$47,600.00	\$22.25	\$62,300.00	\$22.08	\$61,824.00	\$30.00	\$84,000.00
24	Construct 30" Curb and Gutter	LF	980	\$22.00	\$21,560.00	\$19.76	\$19,364.80	\$30.00	\$29,400.00	\$27.00	\$26,460.00
25	Construct 4ft Sidewalk (4" Thick)	LF	150	\$23.00	\$3,450.00	\$15.89	\$2,383.50	\$32.00	\$4,800.00	\$20.00	\$3,000.00
26	Construct Drive Approaches	LF	125	\$36.00	\$4,500.00	\$28.92	\$3,615.00	\$52.00	\$6,500.00	\$30.00	\$3,750.00
27	Construct Curb Ramps	EA	10	\$1,255.00	\$12,550.00	\$1,040.00	\$10,400.00	\$1,080.00	\$10,800.00	\$2,000.00	\$20,000.00
28	Remove Existing Asphalt	SY	900	\$5.00	\$4,500.00	\$7.58	\$6,822.00	\$8.68	\$7,812.00	\$7.00	\$6,300.00
29	Imported Base Course Material	TON	450	\$17.00	\$7,650.00	\$24.14	\$10,863.00	\$26.77	\$12,046.50	\$30.00	\$13,500.00
30	Temporary Asphalt Surface Course (2" Thick)	SY	2000	\$23.00	\$46,000.00	\$15.57	\$31,140.00	\$21.45	\$42,900.00	\$27.00	\$54,000.00
31	Storm Water Pollution Prevention Plan (SWPPP)	LS	1	\$1,017.00	\$1,017.00	\$2,665.00	\$2,665.00	\$1,500.00	\$1,500.00	\$4,000.00	\$4,000.00
32	4" Topsoil in 6ft Wide Parkstrips	LF	580	\$6.00	\$3,480.00	\$4.92	\$2,853.60	\$7.55	\$4,379.00	\$9.00	\$5,220.00
Total					\$320,000.00		\$331,638.00		\$369,423.84		\$479,495.00



# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> <b>TABLED ITEM FROM AUGUST 12 - Public Hearing - Ordinance No. 14-05 -</b> Action, by Ordinance, upon a request to vacate a portion of 1615 West, adjacent to lots 7 and 8, Kendall Estates Phase 1, running south from 1950 North to the south boundary of the Subdivision.	<b>AGENDA ITEM: O</b>
<b>PETITIONER:</b> Community Development / Public Works	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> Adopt, amend and adopt or reject Ordinance No 14-05 vacating 1615 West, adjacent to lots 7 and 8, Kendall Estates Phase 1, running south from 1950 North to the south boundary of the Subdivision	<b>ROLL CALL VOTE:</b> <b>X YES                      NO</b>
<b>FISCAL IMPACT:</b> Reduces the area of roadway that is required to be maintained.	
<b>BACKGROUND:</b> Item was tabled until Public Works had a chance to speak with the adjacent property owners. Greg Folk has spoken to both and determined their desires concerning the asphalt, however they both desire the property be deeded to them.  Background from August 12 <ul style="list-style-type: none"> <li>○ This street was originally established to continue to the South, however upon development of property to the south the resulting development this street is no longer needed.</li> <li>○ Vacating the street does not remove the easement for the Jordan Valley Water main that is planned for some time in the distant future.</li> <li>○ Vacating this street will relieve the City of maintaining the asphalt.</li> <li>○ When the street is vacated the land will be split and attached to the adjacent lots.</li> <li>○ Attached is a copy of the formal public notice letter and a follow-on letter I sent.</li> <li>○ The City intends on removing the curb, gutter and sidewalk. The removal of the asphalt depends upon the residents and how they want to use the area. The City will disconnect any infrastructure within the right-of-way that is no longer needed. There is infrastructure needed for drainage of the Voyage Academy, an easement will be preserved. The City will install new curb, gutter and sidewalk across the old right-of-way</li> </ul>	
<b>ALTERNATIVE ACTIONS:</b> Don't vacate the street.	
<b>ATTACHMENTS:</b> Formal notice letter (required letter) Secondary notice (not a required letter) Ordinance No. 14-05	
<b>REFERENCED DOCUMENTS:</b>	

October 24, 2014

Clinton Property Investments, LLC  
Clinton Property Investment, LLC  
352 N. Flint St.  
Kaysville, UT 84037

To Whom It May Concern:

Clinton City is in the process of vacating a portion of 1615 West, adjacent to lots 7 and 8, Kendall Estates Phase 1, running south from 1950 North to the south boundary of the Subdivision. The intent of the City is to record an Ordinance which vacates the right-of-way and splits the ownership of the resulting property equally to the owners of record of lots 7 and 8. This transaction will be subject to all existing easements, easements for the existing City infrastructure and a new, 10-foot wide, easement that will be a Public Utility and Drainage Easement (PUE) running parallel 1950 North across the vacated section of 1615 West.

The purpose of this letter is to inform you of this pending action; please refer to the Public Notice and the map on the reverse of this letter. Additionally, I am requesting that you contact me at your earliest convenience to discuss the transfer of this property and the conditions of transfer. The issues related to the transfer of this property must be resolved prior to the Council meeting.

I look forward to speaking with you in the near future.

Sincerely,

Lynn Vinzant  
Assistant City Manager

Enclosures: on reverse  
Cc: file

## NOTICE OF PUBLIC HEARING

The Clinton City Council will hold the following public hearing at the time indicated, on August 12, 2014, in the Clinton City Hall, 2267 North 1500 West, Clinton, Utah:

**8:10 p.m.** - Action, by Ordinance, upon a request to vacate a portion of 1615 West, adjacent to lots 7 and 8 Kendall Estates Phase 1, running south from 1950 North to the south boundary of the Subdivision.



October 24, 2014

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A few weeks ago I notified you that Clinton City intends to vacate a right-of-way adjacent to your property. I explained that the intent of the City is to record an Ordinance which vacates the right-of-way and splits the ownership of the resulting property equally to the owners of record of lots on either side, your property. I further explained that this transaction will be subject to all existing easements.

In order for the City to go forward with this action you must agree to accept the portion of the property that will be given to you. To accomplish this I either need you to attend the Clinton City Council meeting next week or come into the City Offices and sign an affidavit accepting this action. I informed you of the August 12, Council meeting and the time you're your specific hearing in my previous letter

If you have any questions please contact me at 801-614-0740

Sincerely,

Lynn Vinzant  
Assistant City Manager

Cc: file

# ORDINANCE NO. 14-05

## RIGHT-OF-WAY VACATION

AN ORDINANCE VACATING A SIXTY-FOOT RIGHT-OF-WAY LOCATED AT APPROXIMATELY 1615 WEST STREET, SOUTH OF AND RUNNING PERPENDICULAR TO 1950 NORTH STREET

**WHEREAS,** Clinton City has determined to vacate a sixty-foot right-of-way located at approximately 1615 West Street, South of and running perpendicular to 1950 North Street; and,

**WHEREAS,** The Owner of parcel 14-308-0007, Lot 7 Kendall Estates Subdivision Phase 1, and the Owner of parcel 14-308-0008, Lot 8 Kendall Estates Subdivision Phase 1, desire to incorporate the land to be vacated into their parcels to allow for the residential use; and,

**WHEREAS,** This sixty-foot right-of-way is not necessary to be maintained as a right-of-way; and

**WHEREAS,** The right-of-way will be divided in half, with each abutting property receiving half of the sixty-foot width for the length of the present street; and

**WHEREAS,** The City is establishing easements for the infrastructure that remains in the area of the vacated right-of-way; and,

**WHEREAS,** The City Council of Clinton City has determined that this action, with the indicated reservations, will not be detrimental to the public interest generally nor to any person and that good cause exists for the vacation; and

**WHEREAS,** Pursuant to 10-9a-609.5 Utah Code Annotated, the City Council of Clinton City, Utah, has determined that the vacating of this right-of-way is for a good cause and is in the public interest, and will not be harmful to other interests.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CLINTON CITY, DAVIS COUNTY, STATE OF UTAH:**

**BY MOTION** The Clinton City Council voted to adopt this Ordinance Number 14-0

### **SECTION 1. Petition:**

Clinton City has determined that the present and future need for this right-of-way is not and will not be needed so that vacating a portion of this right-of-way is in the public interest.

### **SECTION 2. Findings:**

The City Council finds that:

1. Good cause exists for the vacation of this right-of-way.
2. The Public interest or any person will not be materially injured by the right-of-way vacation.

**SECTION 3. Exclusions:**

This vacation expressly excludes any public or private utility easement that may exist at the date hereof and expressly reserves a perpetual easement for such utilities.

**SECTION 4. Legal Description of Vacation:**

Except as otherwise provided by this Ordinance, this right-of-way, is hereby vacated and declared no longer to be property for use as a street, avenue, alley or pedestrian way as described in the following legal description:

Part of Kendall Estates Phase 1 Subdivision, being described also as part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian. Beginning at the southwest corner of Lot 7 of said Subdivision said point also being N. 00°03'26" E. 664.14 feet along the Section line and N. 89°55'03" W. 561.57 feet from the Center of said Section 27, thence as follows:

N. 89°55'03" W. 60.00 feet along the south line of said Kendall Estates Phase 1 to the southeast corner of lot 8; thence N. 00°03'26" E. 97.74 feet along the east line of said lot 8; thence Northwesterly 23.56 feet along the east line of said lot 8 and an arc of a 15.00 foot radius curve to the left through a central angle of 90°00'00", the chord of which bears N. 44°56'34" W. 21.21 feet to the south right of way line of 1950 North Street; thence S. 89°56'34" E. 90.00 feet along said right of way line to the west line of lot 7; thence Southwesterly 23.56 feet along the west line of said lot 7 and an arc of a 15.00 foot radius curve to the left through a central angle of 90°00'00", the chord of which bears S. 45°03'26" W. 21.21 feet; thence S. 00°03'26" W. 97.77 feet along the west line of said lot 7 to the point of beginning.

Contains 6,862 square feet in area, more or less.

**SECTION 5. Legal Description Establishment of an Easement:**

Clinton City retains a public utility and drainage easement over the entire parcel described in Section 4 above.

**SECTION 6. Severability.**

In the event that any provision of this Chapter is declared invalid for any reason, the remaining provisions shall remain in effect.

**SECTION 7. Effective Date.**

This ordinance shall be recorded and become effective upon the date of posting indicated below.

PASSED AND ORDERED RECORDED AND POSTED by the Council of Clinton City, Utah, this 28<sup>th</sup> day of October, 2014.

July 14, 2014  
NOTICE PUBLISHED

\_\_\_\_\_  
L. MITCH ADAMS  
MAYOR

ATTEST:

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DENNIS W. CLUFF  
CITY RECORDER

Posted: \_\_\_\_\_

# CLINTON CITY COUNCIL AGENDA ITEM

<b>SUBJECT:</b> Resolution No. 19-14 Environmental Evaluation – 3000 West Clinton City / 4300 West Hooper City – 1400 North to 6000 South.	<b>AGENDA ITEM: P</b>
<b>PETITIONER:</b> Community Development	<b>MEETING DATE:</b> October 28, 2014
<b>RECOMMENDATION:</b> Adopt, Amend and Adopt, or Reject Resolution No. 19-14 approving the Environmental Evaluation – 3000 West Clinton City / 4300 West Hooper City – 1400 North to 6000 South.	<b>ROLL CALL VOTE:</b> <b>X YES                      NO</b>
<b>FISCAL IMPACT:</b>	
<b>BACKGROUND:</b> <p>The Environmental Evaluation was a required item by UDOT, then they realized it was a State Funded project so UDOT said parts of the Evaluation weren't required (Cultural) so we cancelled the contract and finished the Evaluation, UDOT then stated they couldn't sign the Evaluation without the Cultural portion but if we wanted to sign it they would accept it. Because of the change in funding UDOT is learning how to manage these projects.</p> <p>This resolution will accept the results of the Evaluation. Bottom line is that there are some wet lands on the north end of the project but less than 1/10 acres so we do not have a mitigation problem. We will have to get a permit from the Army Corps of Engineers, we have started that process.</p>	
<b>ALTERNATIVE ACTIONS:</b> In the past Lynn Vinzant has been the Environmental Reviewing Official for CDBG projects. Designate Lynn the Environmental Reviewing Official for this project.	
<b>ATTACHMENTS:</b> Resolution No. 19-14	
<b>REFERENCED DOCUMENTS:</b> Environmental Evaluation – 3000 West Clinton City / 4300 West Hooper City – 1400 North to 6000 South.	

# RESOLUTION NO. 19-14

## A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE ENVIRONMENTAL EVALUATION FOR THE 3000 WEST CLINTON CITY / 4300 WEST HOOPER CITY – 1400 NORTH TO 6000 SOUTH PROJECT NO. S-LC11(51) AND ACCEPTING THE EVALUATION

**WHEREAS**, Clinton City has entered into an Interlocal Agreement with Hooper City to manage and process the Hooper 4300 West 2300 North to 6000 South Project; and,

**WHEREAS**, Clinton City has contracted with UDOT to conduct the 3000 West 1400 to 2300 North Project; and,

**WHEREAS**, Both of these projects have been merged into a State Funded Project designated as The 3000 West Clinton City / 4300 West Hooper City – 1400 North To 6000 South Project No. S-Lc11(51); and,

**WHEREAS**, The City has caused an Environmental Evaluation to be accomplished found that the results of the Evaluation are satisfactory for going forward with the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CLINTON CITY COUNCIL THAT THE COUNCIL HAS PASSED A MOTION AUTHORIZING THE MAYOR TO SIGN THE ENVIRONMENTAL EVALUATION 3000 WEST CLINTON CITY / 4300 WEST HOOPER CITY – 1400 NORTH TO 6000 SOUTH PROJECT NO. S-LC11(51):**

**SECTION 1.** By majority vote on a motion before the Clinton City Council the 3000 West Clinton City / 4300 West Hooper City – 1400 North To 6000 South Project No. S-Lc11(51) is accepted by the City and the Mayor is authorized to sign the document.

**SECTION 2.** Effective date. This Resolution shall become effective upon signature and posting.

PASSED BY MOTION AND ORDERED PUBLISHED by the Council of Clinton City, Utah, this 28<sup>th</sup> day of October, 2014.

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L. MITCH ADAMS  
MAYOR

ATTEST:

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DENNIS W. CLUFF  
CITY RECORDER

Posted: \_\_\_\_\_

**CLINTON CITY COUNCIL MINUTES**

**Mayor  
L. Mitch Adams**

**City Council  
Councilmember Mike Petersen  
Councilmember Karen Peterson  
Councilmember Barbara Patterson  
Councilmember Brice Mitchell  
Councilmember Anna Stanton**

<b>Clinton City Council Meeting</b>	<b>September, 23 2014</b>	<b>Call to Order: 7:09 P.M.</b>	<b>2267 N 1500 W Clinton UT 84015</b>
Staff Present	City Manager Dennis Cluff, Community Development Director Lynn Vinzant and Lisa Titensor recorded the minutes.		
Citizens Present	Kelly Boehmer, Jeremy Bruening, Andrea Bruening, Darryl and Angela Armstrong, Jordan Sam, Bruce Logan, Susan Bates, Ariane Barker, Kirtstee Buston, Jacob Woolley, Spencer Belnap, Cade Woolley, Josh Clapham, Joey Mashburn, Garrett Gellespie, River Krey, Kaleb Kohler, Tim Tomlin, Brycen Rackham, Kara Cooper		
Roll Call & Attendance	Mayor Adams asked for a roll call of City Councilmember’s present.		
Excused Were	Councilmember Brice Mitchell		
Pledge	Kaleb Kohler		
Invocation	Joey Mashburn		
<b>A. DEPARTMENT HEAD OF THE 2<sup>ND</sup> QUARTER OF 2014 – SHANNON MULLINS</b>			
Petitioner	Dennis Cluff		
Discussion	<p>Mr. Cluff reported that Shannon Mullins is the Court Administrator for the Clinton Municipal Court. She has worked for Clinton City for 13 years. Shannon does a great job as she and her one full-time clerk diligently process and maintain the massive amount of records, documents and legal paperwork that is required for Court. She represents the City well with the public and the professional organizations she works with. She is very knowledgeable in her field of work. She is also a great person to work with and a valuable member of the City’s Management Team. Mr. Cluff said he is happy to recognize Shannon as the Dept Head for the 2nd Quarter of 2014.</p> <p>Ms. Mullins said she feels fortunate to work for such a great City and appreciates and enjoys working with the staff.</p> <p>Mayor Adams expressed appreciation for Shannon’s work ethic and dedication. He presented her with a gift card and an award.</p>		
<b>B. REQUEST FOR FUNDING FOR THE ANNUAL “FUN RUN” FOR THE SUNSET JR HIGH DRUG AWARENESS WEEK</b>			
Petitioner	Dennis Cluff		
Discussion	Mr. Cluff explained that for the last seven years during the second week of October Sunset Jr. High promotes Red Ribbon Drug Awareness and Prevention week. Clinton City has donated \$200 each year towards the Fun Run/Walk event that will be held on Friday October 10 <sup>th</sup> starting at 2:15 p.m.		
<b>CONCLUSION</b>	<b>Councilmember Patterson moved to authorize the donation of \$200 to the Sunset Jr. High Drug Awareness Fun Run. Councilmember Stanton seconded the motion. All those present voted in favor of the motion.</b>		
<b>C. RE-APPOINTMENT TO THE PARKS ADVISORY BOARD</b>			
Petitioner	Dennis Cluff		
Discussion	Mr. Cluff identified it is time to reappoint two members of the Clinton City Parks Board. Angela and Darryl Armstrong have been very active members of the Parks Advisory Board and desire to continue working on the City’s parks issues. These re-appointments to the Parks Advisory Board would be for a term ending the end of April 2016.		

<p><b>CONCLUSION</b></p>	<p><b>Councilmember K. Peterson moved to ratify Mayor Adams’ re-appointment of Darryl and Angela Armstrong to the Clinton City Parks Board to a term ending April 2016. Councilmember Stanton seconded the motion. All those present voted in favor of the motion.</b></p>
<p><b>D. 7:45 PM PUBLIC HEARING – RESOLUTION 16-14, REVIEW AND ACTION UPON A RESOLUTION CONCERNING A REQUEST FOR APPROVAL OF LONNIE CAMPBELL SUBDIVISION, LOCATED AT APPROXIMATELY 900 N</b></p>	
<p>Petitioner</p>	<p>Lonnie Campbell, representing Lakeside Community Church-AG</p>
<p>Discussion</p>	<p>Mr. Vinzant reported that Pastor Campbell was unable to attend due to a church emergency.</p> <p>Mr. Vinzant reviewed the following with the City Council as identified in the staff report:</p> <p>Normally, this subdivision would not go through the Council for approval due to the size, however because a variance was required and the impending improvements on 1000 West, staff opted to process it as a subdivision requiring approval by the City Council.</p> <ol style="list-style-type: none"> <li>1. This subdivision will correct an illegal subdivision that was recorded without City approval and resulted in a Certificate of Noncompliance being filed against all of the land in the subdivision.</li> <li>2. This subdivision will create two lots, one with frontage on 800 North and one with frontage on 1000 West.</li> <li>3. Lot 1 of this subdivision required a variance because of the inadequate frontage on 1000 West,</li> </ol> <p>The BZA unanimously agreed to the following determination:</p> <ol style="list-style-type: none"> <li>A. The Board of Zoning Adjustments has reviewed the matter referred to above, case number 2014-04Z, and has found the following facts with respect thereto:             <ol style="list-style-type: none"> <li>1. Literal enforcement of the Zoning Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Zoning Ordinance; due to the overall size of the lot with limited frontage the impact of the smaller frontage is not detrimental to the use or neighborhood considering the use to be Lakeside Community Church-AG, a conditional use within the Zone.</li> <li>2. There are special circumstances attached to the property that do not generally apply to other properties in the same district; specifically the Jordan Valley Water District easement.</li> <li>3. Granting variance is essential to the enjoyment of a substantial property right, granting this variance provides a specific use, a conditional use, other than vacant land, namely Lakeside Community Church-AG</li> <li>4. The variance will not substantially affect the general plan, the use, a church is a conditional use and based upon the 4.555 acre lot size the possibility of the use is not affected by the frontage.</li> <li>5. The spirit of the Zoning Ordinance is observed, the large size of the property is compatible with the proposed use, occasional access requirements, and restricted frontage which is only going to be used as an access point and not for construction of a building.</li> </ol> </li> <li>B. This Variance is granted based upon the following stipulations and conditions:             <ol style="list-style-type: none"> <li>1. This variance is limited to this use, Lakeside Community Church-AG, and if another use is proposed a new variance will need to be secured from the Clinton City Board of Zoning Adjustments.</li> <li>2. The proposed use is Lakeside Community Church-AG.</li> <li>3. If Lot 2 is acquired by Lakeside Community Church-AG or if additional frontage is obtained on 1000 West that, combined with the frontage of lot 1, creates a frontage that meets the requirements of the Zone this variance becomes null and void once the subdivision is amended to either create one lot or create valid frontage on Lot 1.</li> <li>4. The Lakeside Community Church-AG will file with the Davis County Recorders Officer documents related to Lot 2 that indicate a first right of refusal and agreement from the owner of Lot 2 that they are willing to sell to Lakeside Community Church-AG when the Jordan Valley Water pipeline is to be installed.</li> </ol> </li> </ol> <p>Mayor Adams opened the public hearing at 8:00 p.m.</p>

	<p>Jeremy Bruenig commented that this development will affect his family’s daily lives. He worries that if the church fails something less desirable will come in its place.</p> <p>Susan Bates asked if there is a drainage system underneath this lot and if there are requirements for how far the building has to be from the pipe?</p> <p>Mayor Adams responded that Jordan Valley Water has an easement on this property, which will dictate a significant distance.</p> <p>With no further public comment, Mayor Adams closed the public hearing at 8:06 p.m.</p> <p>He explained that although it is a legitimate concern that the church won’t be there forever; the property owner has the right to sell the property.</p> <p>Mr. Vinzant explained the BZA decision is recorded with the plat. The Conditional Use is approved by the Planning Commission and according to state law cannot be denied unless there is an impact that cannot be mitigated.</p>
<p style="text-align: center;"><b>CONCLUSION</b></p>	<p><b>Councilmember Patterson moved to adopt Resolution 16-14 approving the Lonnie Campbell Subdivision with the following stipulations identified in the Resolution:</b></p> <ol style="list-style-type: none"> <li><b>1 Compliance with the findings and requirements outlined in the Determination of the Board of Zoning Adjustments for Case Number 2014 – 04Z.</b></li> <li><b>2 At the time of this review and action the street frontages of both lots in the subdivision are fully developed, however Lot 1 does not have utility laterals into the property.</b></li> <li><b>3 All laterals from 1000 West shall be installed prior to the reconstruction of 1000 West scheduled to be accomplished by the City in the spring/summer of 2015.</b></li> <li><b>4 All laterals from 1000 West shall be installed or an escrow established and filed with the City as established in the Subdivision Ordinance prior to the plat being recorded.</b></li> <li><b>5 It is the developer/contractor’s responsibility to comply with all Clinton City Standards, Ordinances, Staff, Engineer and requirements established during the approval process. Wherever there is a discrepancy between these drawings and City Standards the more stringent requirement will apply. If there is any doubt as to the requirement the developer is to seek clarification from the Community Development Department and obtain the determination in writing. Copies of the Standards are available at the Community Development Department.</b></li> <li><b>6 The developer/contractor is responsible for insuring that all required inspections are performed by the Clinton City Public Works Department. If the developer is unsure of what inspections are required he can obtain a list from Public Works. The developer is cautioned not to proceed past an inspection point without insuring that the inspection has been performed and work passed by Public Works.</b></li> <li><b>7 It is the developer/contractor’s responsibility to insure adequate dust, trash and weed control practices are observed while any of the lots are under their control.</b></li> </ol> <p><b>Councilmember Stanton seconded the motion. Voting by roll call is as follows: Councilmember Stanton, aye; Councilmember K. Peterson, aye; Councilmember Patterson, aye; Councilmember M. Petersen, aye.</b></p>
<b>E. SUBDIVISION CONDITIONAL ACCEPTANCE - VOYAGE ACADEMY</b>	
<p>Petitioner</p>	<p>Tyler Bodero</p>
<p>Discussion</p>	<p>Mr. Vinzant reported:  This is a request from the developer of the project and depositor of the escrow funds. The petitioner will request that the city declare final acceptance and release all funds. The escrow agreement reads:  “At such time as the improvements required by the City Subdivision Ordinance are completed, with the exceptions outlined in the Subdivision Ordinance, the Subdivider shall</p>

	<p>apply for Conditional Acceptance to the Director in writing.” This is the first request for Conditional Acceptance.</p>
<b>CONCLUSION</b>	<p><b>Councilmember Patterson moved to grant conditional acceptance and authorize the release of funds being held in escrow with the exception of the seal coat funds and 15% guarantee. Councilmember K. Peterson seconded the motion. Voting by roll call is as follows: Councilmember M. Petersen, No, because he feels the final should be final when all is complete. Councilmember Stanton, aye; Councilmember K. Peterson, aye; Councilmember Patterson, aye.</b></p>
<b>Approval of Minutes</b>	<p><b>Councilmember Patterson moved to approve the September 9, 2014 City Council Meeting as amended removing the second specifically from the last paragraph of Agenda Item A. Councilmember Stanton seconded the motion. All those present voted in favor of the motion.</b></p>
<b>Accounts Payable</b>	<p><b>Councilmember Stanton moved to pay the bills. Councilmember M. Petersen seconded the motion. All those present voted in favor of the motion.</b></p>
<b>Planning Commission Report</b>	<p>Mayor Adams reported on the August 19, 2014 Planning Commission meeting as recorded in the minutes.</p>
<b>City Manager Report</b>	<ul style="list-style-type: none"> <li>• Identified fall clean up is scheduled for Saturday October 4, from 8:00 am to 1:00 pm.</li> <li>• Asked the Council to consider cancelling the October 14, 2014 City Council meeting.</li> </ul> <p>The Council directed staff to cancel the October 14, 2014 City Council meeting.</p> <ul style="list-style-type: none"> <li>• Reported that November 11, 2014 is Veteran’s Day and the City offices will be closed. The Council directed staff to cancel the November 11, 2014 City Council meeting. They agreed they will meet on November 25.</li> </ul>
<b>Mayor Adams Report</b>	<ul style="list-style-type: none"> <li>• Nothing at this time.</li> </ul>
<b>Councilmember M. Petersen</b>	<ul style="list-style-type: none"> <li>• Nothing at this time.</li> </ul>
<b>Councilmember K. Peterson</b>	<ul style="list-style-type: none"> <li>• Attended the Chamber of Commerce Meeting</li> <li>• Is pleased with the sidewalk at Veteran’s Park</li> <li>• is working with staff to re-write the Personnel Policies</li> </ul>
<b>Councilmember Mitchell</b>	<ul style="list-style-type: none"> <li>• Excused</li> </ul>
<b>Councilmember Patterson</b>	<ul style="list-style-type: none"> <li>• Reported the Parks Board is looking into equipment for special needs kids to place at a Clinton City park.</li> </ul>
<b>Councilmember Stanton</b>	<ul style="list-style-type: none"> <li>• Suggested the City Council attend a tour of the sewer plant</li> </ul>
<b>Mr. Vinzant</b>	<p>Mr. Vinzant reported that there are a lot of new projects coming up. Staff will be meeting every other week for staff to discuss the projects to keep everyone involved updated.</p>
<b>ADJOURNMENT</b>	<p><b>Councilmember Patterson moved to adjourn. Councilmember Stanton seconded the motion. All those present voted in favor of the motion. The meeting adjourned at 9:02 p.m.</b></p>