

TITLE 1
ADMINISTRATION

Subject	Chapter
Official City Code	1
Saving Clause	2
Definitions	3
General Penalty	4
Mayor And City Council	5
Officers And Employees	6
Municipal Elections	7
Constitutional Taking Issues	8

CHAPTER 1
OFFICIAL CITY CODE

SECTION:

- 1-1-1: Title
- 1-1-2: Acceptance
- 1-1-3: Amendments
- 1-1-4: Alterations
- 1-1-5: Incorporation Of Statutes

1-1-1: **TITLE:** Upon the adoption by the city council, this city code is hereby declared to be and shall hereafter constitute the official city code of East Carbon City. This city code of ordinances shall be known and cited as the *EAST CARBON CITY CODE* and is hereby published by authority of the city council and shall be supplemented to incorporate the most recent legislation of the city as provided in section 1-1-3 of this chapter. Any reference to the number of any section contained herein shall be understood to refer to the position of the same number, its appropriate chapter and title heading, and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this city code by title in any legal documents. (1980 Code § 1-001; amd. 2005 Code)

1-1-2: **ACCEPTANCE:** This city code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in administrative tribunals of this state as the ordinances of the city of general and permanent effect, except the excluded ordinances enumerated in section 1-2-1 of this title. (2005 Code)

1-1-3: **AMENDMENTS:** Any ordinance amending the city code shall set forth the title, chapter and section number of the section or sections to be amended, and this shall constitute sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this city code. All such amendments or revisions by

ordinance shall be immediately forwarded to the codifiers, and the said ordinance material shall be prepared for insertion in its proper place in each copy of this city code. Each such replacement page shall be properly identified and shall be inserted in each individual copy of the city code. (2005 Code)

1-1-4: **ALTERATIONS:** It shall be deemed unlawful for any person to alter, change, replace or deface in any way any section or any page of this city code in such a manner that the meaning of any phrase or order may be changed or omitted. Replacement pages may be inserted according to the official instructions when so authorized by the city council. The city recorder shall see that the replacement pages are properly inserted in the official copies maintained in the office of the city recorder. Any person having custody of a copy of the city code shall make every effort to maintain said code current as to the most recent ordinances passed. Such person shall see to the immediate insertion of new or replacement pages when such are delivered or made available to such person through the office of the city recorder. Said code books, while in actual possession of officials and other interested persons, shall be and remain the property of the city and shall be returned to the office of the city recorder when directed so to do by order of the city council. (2005 Code)

1-1-5: **INCORPORATION OF STATUTES:** Any reference or citation to any statute shall not be interpreted or construed to include, incorporate or make the citation or statute part of this code unless the provisions of this code specifically include, incorporate or make the citation or statute part of this code by reference or incorporation, and any such reference or citation not specifically included or incorporated may be changed, amended or deleted without publication on an order of the city council. (1980 Code § 1-009)

CHAPTER 2
SAVING CLAUSE

SECTION:

- 1-2-1: Repeal Of General Ordinances
- 1-2-2: Public Ways And Public Utility Ordinances
- 1-2-3: Court Proceedings
- 1-2-4: Severability Clause

1-2-1: REPEAL OF GENERAL ORDINANCES:

- A. **Repealer; Exceptions:** All general ordinances of the city passed prior to the adoption of this city code are hereby repealed, except such as are included in this city code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), and excluding the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; fee ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the city; and all special ordinances. (1980 Code § 1-002; amd. 2005 Code)
- B. **Effect Of Repealing Ordinances:** The repeal of the ordinances provided in subsection A of this section shall not affect any debt or fee which is accrued, any duty imposed, any penalty incurred, nor any action or proceeding commenced under or by virtue of the ordinances repealed or the term of office of any person holding office at the time these ordinances take effect; nor shall the repeal of any ordinance have the effect of reviving any ordinance heretofore repealed or superseded. (1980 Code § 1-003)

1-2-2: PUBLIC WAYS AND PUBLIC UTILITY ORDINANCES: No ordinance relating to railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities shall be repealed by virtue of the adoption of this city code or by virtue of the preceding section, excepting as the city code may contain provisions for such matters, in which case, this city code shall be considered as amending such ordinance or ordinances in respect to such provisions only. (2005 Code)

1-2-3: COURT PROCEEDINGS:

- A. **Prior Acts:** No new ordinance shall be construed or held to repeal a former ordinance whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture or punishment may be mitigated by any provision of a new ordinance, such provision may be, by consent of the party affected, applied to any judgment announced after the new ordinance takes effect.
- B. **Scope Of Section:** This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.
- C. **Actions Now Pending:** Nothing contained in this chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the city herein repealed, and the provisions of all general ordinances contained in this code shall be deemed to be continuing provisions and not a new enactment of the same provisions; nor shall this chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the city under any ordinance or provision thereof in force at the time of the adoption of this city code. (2005 Code)

1-2-4: **SEVERABILITY CLAUSE:** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this city code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this code, or any part thereof. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. (1980 Code § 1-007; amd. 2005 Code)

CHAPTER 3
DEFINITIONS

SECTION:

- 1-3-1: Construction Of Words
1-3-2: Definitions, General
1-3-3: Catchlines

1-3-1: CONSTRUCTION OF WORDS:

- A. Whenever any word in any section of this city code importing the plural number is used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party or person is referred to in this city code by words importing the singular number only, or a particular gender, several matters, parties or persons and the opposite gender and bodies corporate shall be deemed to be included; provided, that these rules of construction shall not be applied to any section of this city code which contains any express provision excluding such construction or where the subject matter or context may be repugnant thereto. The use of any verb in the present tense shall include the future and past tense when applicable. (2005 Code)
- B. All words and phrases shall be constructed and understood according to the common use and understanding of the language; the technical words and phrases and such other words and phrases as may have acquired a particular meaning in law shall be construed and understood according to such particular meaning. (1980 Code § 1-005A)
- C. The word "ordinance" contained in the ordinances of the city has been changed in the content of this city code to "title", "chapter", "section" and/or "subsection", or words of like import for organizational and clarification purposes only. Such change to the

city's ordinances is not meant to amend passage and effective dates of such original ordinances. (2005 Code)

1-3-2: DEFINITIONS, GENERAL: Whenever the following words or terms are used in this code, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

- AGENT:** A person acting on behalf of another with authority conferred, either expressly or by implication.
- BUSINESS:** Includes any trade, profession, calling, activity, operation or enterprise for which a license or permit is required by any ordinance of the city.
- CITY:** East Carbon City, Carbon County, Utah.
- CITY COUNCIL:** Unless otherwise indicated, the city council of East Carbon City, Utah.
- CITY RECORDER:** The individual appointed to act as the city recorder of the city.
- CODE:** The city code of East Carbon City, Utah.
- COUNTY:** Carbon County, Utah.
- EMPLOYEES:** Whenever reference is made in this code to a city employee by title only, this shall be construed as though followed by the words "of East Carbon City".
- FEE:** A sum of money charged by the city for the carrying on of a business, profession or occupation.
- GENDER:** A word importing either the masculine or feminine gender only shall extend and be applied to the other gender and to persons.
- HIGHWAY; ROAD:** Includes public bridges, and may be equivalent to the words "county way", "county road", "common road" and "state road".

- LICENSE:** The permission granted for the carrying on of a business, profession or occupation. The term "license" includes any certificate, permit or license issued by the city.
- LOCATION:** Whenever any act, conduct or offense is prohibited or required and no reference is made to location, unless the context specifically indicates otherwise, the act, conduct or offense prohibited or required shall be within the boundaries of this city.
- NUISANCE:** Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the city, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the community.
- OCCUPANT OR TENANT:** As applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.
- OFFENSE:** Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code.
- OFFICERS OR OFFICIALS:** Any elected or appointed person employed by the city, unless the context clearly indicates otherwise. Whenever reference is made in this code to a city officer or official by title only, this shall be construed as though followed by the words "of East Carbon City".
- OPERATOR:** The person who is in charge of any operation, business or profession.
- OWNER:** As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

PERSON:	Any public or private corporation, firm, partnership, association, organization, government or any other group acting as a unit, as well as a natural person.
PERSONAL PROPERTY:	Shall include every description of money, goods, chattels, effects, evidence of rights in action and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein.
PROPERTY:	Includes both real and personal property.
REASONABLE TIME:	In all cases where any ordinance requires that an act be done in a reasonable time or that reasonable notice be given, such reasonable time for such notice shall be deemed to mean such time as may be necessary for the expeditious performance of such duty or compliance with such notice.
RETAILER:	Unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things direct to the consumer.
RIGHT OF WAY:	The privilege of the immediate use of the roadway or other property.
STATE:	The state of Utah.
STREET:	Includes alleys, lanes, courts, boulevards, public ways, public squares, public places, sidewalks, gutters and culverts, crosswalks and intersections.
TENANT OR OCCUPANT:	As applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

TIME COMPUTED: The time within which an act is to be done as provided in any ordinance or in any resolution or order of the city, when expressed in days, shall be determined by excluding the first day and including the last day, except if the last day be a Sunday or a legal holiday, then the last day shall be the day next following such Sunday or legal holiday which is not a Sunday or legal holiday. When time is expressed in hours, Sunday and all legal holidays shall be excluded.

WEEK: Shall be construed to mean any seven (7) day period.

WHOLESALE: The terms "wholesaler" and "wholesale dealer", as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things to persons who purchase for the purpose of resale.

WRITTEN, IN WRITING: May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person, or in case such person is unable to write, by such person's proper mark. (1980 Code § 1-005; amd. 2005 Code)

1-3-3: CATCHLINES: The catchlines of the several sections of the city code are intended as mere catchwords to indicate the content of the section and shall not be deemed or taken to be titles of such sections, nor be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division or section hereof, nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. (1980 Code § 1-006; amd. 2005 Code)

CHAPTER 4
GENERAL PENALTY

SECTION:

- 1-4-1: Sentencing
- 1-4-2: Offenses Designated; Classified
- 1-4-3: Administrative Hearings

1-4-1: SENTENCING:

A. Penalty For Violation Of Ordinance¹:

1. Criminal: The city council may impose a minimum criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code Annotated section 76-3-301 or by a term of imprisonment up to six (6) months, or by both the fine and term of imprisonment.

2. Civil:

a. Except as provided in subsection A2b of this section, the city council may prescribe a minimum civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code Annotated section 76-3-301.

b. A municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance. (2005 Code)

B. Term Of Imprisonment For Misdemeanors²: A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

1. In the case of a class B misdemeanor, for a term not exceeding six (6) months;

1. UCA § 10-3-703.
2. UCA § 76-3-204.

2. In the case of a class C misdemeanor, for a term not exceeding ninety (90) days. (1980 Code § 1-322)

C. Infractions¹:

1. A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture and disqualification, or any combination.

2. Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor. (1980 Code § 1-323; amd. 2005 Code)

D. Fines Of Persons²: A person convicted of an offense may, in addition to any term of imprisonment imposed, be sentenced to pay a fine not to exceed:

1. Class B Misdemeanor: One thousand dollars (\$1,000.00) when the conviction is of a class B misdemeanor conviction; and

2. Class C Misdemeanor; Infraction: Seven hundred fifty dollars (\$750.00) when the conviction is of a class C misdemeanor conviction or infraction conviction. (1980 Code § 1-331; amd. 2005 Code)

E. Fines Of Corporations³: The sentence to pay a fine, when imposed upon a corporation, association, partnership or governmental instrumentality for an offense defined in this code, or the ordinances of the city, or for an offense defined outside of this code over which this city has jurisdiction, for which no special corporate fine is specified, shall be to pay an amount fixed by the court, not exceeding:

1. Class B Misdemeanor: Five thousand dollars (\$5,000.00) when the conviction is for a class B misdemeanor conviction; and

2. Class C Misdemeanor; Infraction: One thousand dollars (\$1,000.00) when the conviction is for a class C misdemeanor conviction or for an infraction conviction. (1980 Code § 1-332; amd. 2005 Code)

1. UCA § 76-3-205.

2. UCA § 76-3-301.

3. UCA § 76-3-302.

1-4-2: OFFENSES DESIGNATED; CLASSIFIED:**A. Sentencing In Accordance With Chapter:**

1. A person adjudged guilty of an offense under this code or the ordinances of this city shall be sentenced in accordance with the provisions of this chapter.

2. Ordinances enacted after the effective date hereof which involve an offense should be classified for sentencing purposes in accordance with this chapter, unless otherwise expressly provided. (1980 Code § 1-311)

B. Designation Of Offenses: Offenses are designated as misdemeanors or infractions. (1980 Code § 1-312)**C. Misdemeanors Classified¹:**

1. Misdemeanors are classified into two (2) categories:

- a. Class B misdemeanors;
- b. Class C misdemeanors.

2. An offense designated as a misdemeanor or any act prohibited or declared to be unlawful in this code or any ordinance of this city when no other specification as to punishment or category is made, is a class B misdemeanor. (1980 Code § 1-313)

D. Infractions:

1. Infractions are not classified.

2. Any offense which is made an infraction in this code or other ordinances of this city, or which is expressly designated an infraction and any offense designated by this code or other ordinances of this city which is not designated as a misdemeanor and for which no penalty is specified is an infraction. (1980 Code § 1-314)

E. Continuing Violation: In all instances where the violation of this code or any ordinance hereinafter enacted is a continuing violation, a separate offense shall be deemed committed on each day during or

1. UCA § 76-3-104.

on which the violation occurs or continues to occur. (1980 Code § 1-315)

1-4-3: ADMINISTRATIVE HEARINGS:

- A. Request:** Unless otherwise specifically provided in any ordinance of the city or any code adopted by reference, a hearing before the city council may be requested by any person:
- 1. Who is denied or refused a permit or license by any officer, agent or employee of this city.**
 - 2. Whose permit or license is revoked, restricted, qualified or limited from that for which it was first issued. (1980 Code § 1-411)**
- B. Form Of Request:** The request for hearing must be made in writing to the mayor or city recorder and made within thirty (30) days following the date notice denying, refusing, revoking, qualifying or restricting the license or permit is mailed by the city to the applicant or license holder at his address as it appears on the application or license. (1980 Code § 4-412)
- C. Procedure:**
- 1. Time And Place:** Following receipt of a request for hearing, the city council shall inform the person requesting a hearing of the time and place the hearing is to be held.
 - 2. Witnesses; Evidence:** At the hearing, the aggrieved party shall have the right to hear and examine any witnesses the city may produce to support its decision and to present his own evidence in support of his contention.
 - 3. Decision Of City Council:** The city council shall, within ten (10) days following the conclusion of the hearing, in writing, inform the person who requested the hearing of the decision of the city council. (1980 Code § 1-413)
- D. Not Additional Remedy:** This section shall not be construed so as to afford any aggrieved party more than one hearing before the city council, nor shall the hearing provided in this section apply to any criminal complaint or proceeding. (1980 Code § 1-414)

CHAPTER 5

MAYOR AND CITY COUNCIL**SECTION:**

- 1-5-1: Eligibility And Residency Requirements
- 1-5-2: Membership; Terms
- 1-5-3: Mayor As Member Of City Council
- 1-5-4: Municipal Administration
- 1-5-5: Meetings; Procedure And Conduct
- 1-5-6: Ordinances And Resolutions; Procedures

1-5-1: ELIGIBILITY AND RESIDENCY REQUIREMENTS:

- A. Declaration Of Candidacy: A person filing a declaration of candidacy for a city office shall:
 - 1. Have been a resident of the city in which the person seeks office for at least three hundred sixty five (365) consecutive days immediately before the date of the election; and
 - 2. Meet the other requirements of Utah Code Annotated section 20A-9-203.
- B. Annexed Areas: A person living in an area annexed to the city meets the residency requirement of this section if that person resided within the area annexed to the city for at least three hundred sixty five (365) consecutive days before the date of the election.
- C. Registered Voter: Any person elected to city office shall be a registered voter in the city.
- D. Residency Maintained: Each elected officer of the city shall maintain residency within the boundaries of the city during the officer's term of office.
- E. Residence Outside City: If an elected officer of the city establishes a principal place of residence, as provided in Utah Code Annotated

section 20A-2-105, outside of the city during the officer's term of office, the office is automatically vacant.

- F. **Continuous Absence From City:** If an elected city officer is absent from the city any time during the officer's term of office for a continuous period of more than sixty (60) days without the consent of the city council, the city office is automatically vacant. (1980 Code § 3-301; amd. 2005 Code)

1-5-2: MEMBERSHIP; TERMS:

- A. **Composition:** The city shall have a governing body that consists of six (6) council members, of which one is a mayor, who shall vote only in the case of a tie or in the appointment or dismissal of a city manager under Utah Code Annotated section 10-3-830 and who exercises ceremonial and administrative functions, and five (5) are council members. (1980 Code § 3-105; amd. 2005 Code)
- B. **Election; Terms:** The election and terms of office of the officers shall be as follows:
1. The offices of mayor and approximately half the council members shall be filled in municipal elections held in 1977. The terms shall be for four (4) years. These offices shall be filled every four (4) years in municipal elections.
 2. The offices of the remaining council members shall be filled in a municipal election held in 1979. The terms shall be for four (4) years. These offices shall be filled every four (4) years in municipal elections. (1980 Code § 3-205; amd. 2005 Code)
- C. **Vacancy In Office:** Mayor or city council vacancies shall be filled as provided in Utah Code Annotated section 20A-1-510. (1980 Code § 3-303; amd. 2005 Code)

1-5-3: MAYOR AS MEMBER OF CITY COUNCIL:

- A. **Administration Vested In Mayor:** The administrative powers, authority and duties are vested in the mayor. (1980 Code § 3-808; amd. 2005 Code)
- B. **Presiding Officer; Mayor Pro Tempore:** The mayor shall be the chairperson and preside at the meetings of the city council. In the

absence of the mayor or because of his inability or refusal to act, the city council may elect a member of the city council to preside over the meeting as mayor pro tempore, who shall have all the powers and duties of the mayor during his absence or disability. The election of a mayor pro tempore shall be entered in the minutes of the meeting. (1980 Code § 3-403; amd. 2005 Code)

C. Powers And Duties:

1. The mayor is the chief executive officer to whom all employees of the city shall report.

2. The mayor shall:

a. Keep the peace and enforce the laws of the city;

b. Remit fines and forfeitures;

c. Report remittances under subsection C2b of this section to the city council at its next regular session;

d. Perform all duties prescribed by law, resolution or ordinance;

e. Ensure that all the laws, ordinances and resolutions are faithfully executed and observed;

f. Report to the city council the condition of the city and recommend for city council consideration any measures that the mayor considers to be in the best interests of the city;

g. When necessary, call on the residents of the city over the age of twenty one (21) years to assist in enforcing the laws of the state and ordinances of the city;

h. Appoint, with the advice and consent of the city council, persons to fill city offices or vacancies on commissions or committees of the city; and

i. Report to the city council any release granted under subsection C4b of this section.

3. Subsection C2h of this section does not apply to the appointment of a city manager under Utah Code Annotated section 10-3-830.

4. The mayor may:

a. At any reasonable time, examine and inspect the official books, papers, records or documents of the city or of any officer, employee or agent of the city; and

b. Release any person imprisoned for violation of any city ordinance. (1980 Code § 3-809; amd. 2005 Code)

D. No Veto: The mayor shall have no power to veto any act of the city council, unless otherwise specifically authorized by statute. (1980 Code § 3-404; amd. 2005 Code)

1-5-4: **MUNICIPAL ADMINISTRATION:**

A. Prescribe Additional Powers And Duties: The city council may, by resolution, prescribe additional duties, powers and responsibilities for any elected or appointed official which are not prohibited by any specific statute, except that the mayor may not serve as city recorder and neither the mayor nor the city recorder may serve as city treasurer. A justice court judge may not hold any other city office or position of employment with the city. (1980 Code § 3-810; amd. 2005 Code)

B. Members Of Council May Be Appointed To Administration: The mayor may, with the advice and consent of the majority of the city council, assign or appoint any member or members of the city council to administer one or more departments of the city and shall by ordinance provide the salary for the administrator or administrators. (1980 Code § 3-811; amd. 2005 Code)

C. Change Of Duties: The mayor may, with the concurrence of a majority of the city council, change the administrative assignment of any member of the city council who is serving in any administrative position in the city government. (1980 Code § 3-812; amd. 2005 Code)

D. General Administrative Powers: The city council shall, from time to time, prescribe the powers and duties to be performed by the superintendents, supervisors, department directors and all of its officers and employees. (1980 Code § 3-813; amd. 2005 Code)

- E. **Personnel Assigned To One Or More Departments:** The city council may assign any individual to one or more positions in one or more departments. (1980 Code § 3-814; amd. 2005 Code)
- F. **Rules And Regulations For Administration:** The city council shall prescribe rules and regulations which are not inconsistent with the laws of this state, as it deems best for the efficient administration, organization, conduct and business of the city. (1980 Code § 3-815; amd. 2005 Code)
- G. **Residency Requirements For Appointed Officers:** The city council may require by ordinance that any or all appointed officers reside in the city. (1980 Code § 3-816; amd. 2005 Code)

1-5-5: MEETINGS; PROCEDURE AND CONDUCT:

- A. **Regular Meetings:** The city council shall conduct two (2) regular monthly meetings, which shall be held on the second and fourth Tuesday of each month at East Carbon City Hall, 101 W. Geneva Drive, East Carbon City, Utah, which meetings shall begin promptly at six thirty o'clock (6:30) P.M.; provided, that:
 - 1. If the meeting date is a legal holiday, then the meeting shall be held at the same time and place above described on the next day which is not a legal holiday.
 - 2. The city council may, by resolution, provide for a different time and place for holding regular meetings of the city council. (1980 Code § 3-502; amd. Ord. 01-02, 12-11-2001)
- B. **Special Meetings:** If at any time the business of the city requires a special meeting of the city council, such meeting may be ordered by the mayor or any two (2) members of the city council. The order shall be entered in the minutes of the city council. The order shall provide at least three (3) hours' notice of the special meeting and notice thereof shall be served by the city recorder on each member who did not sign the order by delivering the notice personally or by leaving it at the member's usual place of abode. The personal appearance by a council member at any specially called meeting constitutes a waiver of the notice required in this subsection. (1980 Code § 3-503; amd. 2005 Code)

- C. **Open Meetings:** Every meeting is open to the public, unless closed pursuant to Utah Code Annotated sections 52-4-4 and 52-4-5. (1980 Code § 3-601; amd. 2005 Code)

1-5-6: ORDINANCES AND RESOLUTIONS; PROCEDURES:

- A. **Power Exercised By Ordinance:** The city council may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by statute or any other provision of law. An officer of the city shall not be convicted of a criminal offense where he relied on or enforced an ordinance he reasonably believed to be a valid ordinance. It shall be a defense to any action for punitive damages that the official acted in good faith in enforcing an ordinance or that he enforced an ordinance on advice of legal counsel. (1980 Code § 3-702; amd. 2005 Code)
- B. **Form Of Ordinance:** Any ordinance passed by the city council shall contain and be in substantially the following order and form:
1. A number;
 2. A title which indicates the nature of the subject matter of the ordinance;
 3. A preamble which states the need or reason for the ordinance;
 4. An ordaining clause which states "Be it ordained by East Carbon City:";
 5. The body or subject of the ordinance;
 6. When applicable, a statement indicating the penalty for violation of the ordinance or a reference that the punishment is covered by an ordinance which prescribes the fines and terms of imprisonment for the violation of the city ordinance; or, the penalty may establish a classification of penalties and refer to such ordinance in which the penalty for such violation is established;
 7. A statement indicating the effective date of the ordinance or the date when the ordinance shall become effective after publication or posting as required by this section;

8. A line for the signature of the mayor or acting mayor to sign the ordinance;

9. A place for the city recorder to attest the ordinance and affix the seal of the city. (1980 Code § 3-704; amd. 2005 Code)

C. Requirements As To Form; Effective Date:

1. Ordinances passed or enacted by the city council shall be signed by the mayor, or if he is absent, by the mayor pro tempore, or by a quorum of the city council, and shall be recorded before taking effect. No ordinance shall be void or unlawful by reason of its failure to conform to the provisions of Utah Code Annotated section 10-3-704(1), (2), (3) or (4). (1980 Code § 3-705; amd. 2005 Code)

2. Ordinances shall become effective twenty (20) days after publication or posting, or thirty (30) days after final passage by the city council, whichever is closer to the date of final passage, but ordinances may become effective at an earlier or later date after publication or posting if so provided in the ordinance.

3. Ordinances which do not have an effective date shall become effective twenty (20) days after publication or posting, or thirty (30) days after final passage by the city council, whichever is sooner. (1980 Code § 3-712; amd. 2005 Code)

D. Publication And Posting Of Ordinances:

1. Before an ordinance may take effect, except an ordinance enacted under Utah Code Annotated sections 10-3-706 through 10-3-710, the city council shall:

a. Deposit a copy of the ordinance in the office of the city recorder; and

b. (1) Publish a short summary of the ordinance at least once:

(A) In a newspaper published within the city; or

(B) If there is no newspaper published within the city, in a newspaper of general circulation within the city; or

(2) Post a complete copy of the ordinance in three (3) public places within the city.

2. a. Any ordinance, code or book, other than the state code, relating to building or safety standards, municipal functions, administration, control or regulations, may be adopted and shall take effect without further publication or posting, if reference is made to the code or book, and at least one copy has been filed for use and examination by the public in the office of the city recorder prior to the adoption of the ordinance by the city council.

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

c. The ordinance adopting the code or book shall be published in the manner provided in this subsection. (1980 Code § 3-711; amd. 2005 Code)

E. Recording, Numbering And Certification Of Passage:

1. The city recorder shall record, in a book used exclusively for that purpose, all ordinances passed by the city council. The city recorder shall give each ordinance a number, if the city council has not already so done. Immediately following each ordinance, or codification of ordinances, the city recorder shall make or cause to be made a certificate stating the date of passage and of the date of publication or posting, as required. The record and memorandum, or a certified copy thereof, shall be prima facie evidence of the contents, passage and publication or posting of the ordinance or codification. (1980 Code § 3-713; amd. 2005 Code)

2. The city recorder, insofar as possible, shall assign all ordinances of a general nature a number, which shall conform to the numbering system used in this code and shall indicate upon the face of the ordinance the date adopted.

3. The city recorder shall keep all ordinances of a local, private or temporary nature, including franchises, grants, dedications, bond issues and tax levies, in a separate book of "special ordinances" properly indexed and organized according to date adopted. The first number of such an ordinance shall be the last two (2) digits of the year the ordinance is adopted, followed by a dash which is followed by a number indicating the order in which such special ordinance was adopted during the year.

4. Failure to comply with this subsection shall not affect or render invalid any ordinance of the city. (1980 Code § 1-008)

F. Resolutions:

1. Purpose: Unless otherwise required by law, the city council may exercise all administrative powers by resolution, including, but not limited to: a) establishing water and sewer rates; b) charges for garbage collection and fees charged for city services; c) establishing personnel policies and guidelines; and d) regulating the use and operation of the city property. Punishment, fines or forfeitures may not be imposed by resolution. (1980 Code § 3-717; amd. 2005 Code)

2. Form: Any resolution passed by the city council shall be in a form and contain sections substantially similar to that prescribed for ordinances. (1980 Code § 3-718; amd. 2005 Code)

3. Publication; Effective Date: Resolutions may become effective without publication or posting and may take effect on passage or at a later date as the city council may determine, but resolutions may not become effective more than three (3) months from the date of passage. (1980 Code § 3-719; amd. 2005 Code)

CHAPTER 6
OFFICERS AND EMPLOYEES

SECTION:

- 1-6-1: **Creating Offices; Filling Vacancies**
- 1-6-2: **Compensation**
- 1-6-3: **Bond Requirements**
- 1-6-4: **Oaths**
- 1-6-5: **Official Neglect And Misconduct**
- 1-6-6: **City Recorder And City Treasurer**
- 1-6-7: **City Attorney**
- 1-6-8: **Administrative Assistant**
- 1-6-9: **Discharge Or Transfer; Appeal Board**

1-6-1: CREATING OFFICES; FILLING VACANCIES:

- A. **Offices Created By Council:** The city council may create any office deemed necessary for the government of the city and provide for filling vacancies in elective and appointive offices. (1980 Code § 3-901; amd. 2005 Code)
- B. **Mayor To Appoint And Fill Vacancies:** The mayor, with the advice and consent of the city council, may appoint and fill vacancies in all offices provided for by law or ordinance.
- C. **Continuation In Office:** All appointed officers shall continue in office until their successors are appointed and qualified. (1980 Code § 3-916; amd. 2005 Code)

1-6-2: COMPENSATION:

- A. **Schedule Adopted:** The salary and wage schedule attached to the ordinance codified herein, as may be amended from time to time, is hereby adopted as the salary and wage schedule of the city.

- B. **Monthly:** All officers and employees of the city shall be paid at least monthly the salary or wage set forth in the salary and wage schedule, as may be amended from time to time, according to their range and step on said schedule. (1980 Code § 3-818; amd. Ord. 3-818, 6-26-1980, eff. 7-1-1980; 2005 Code)
- C. **Benefits:** In addition to the salary paid the officers and employees of the city, they shall receive the following benefits:
1. The employees' share of the social security tax.
 2. Health and accident insurance for themselves and their families on such basis and cost to the employee or officer as the city council may from time to time establish by resolution.
 3. Vacation and sick leave on such basis as the city council may from time to time establish by resolution.
 4. Participation in the Utah state retirement program on such basis and cost as the city council may from time to time establish by resolution.
- D. **Serving Two Or More Positions:** Whenever any person serves in two (2) or more positions either as officers or employees of this city, unless otherwise specifically provided in the employment agreement, by ordinance or by resolution, that person shall receive the salary or compensation of the office or employment paying the greater amount.
- E. **Reimbursement For Travel Expenses:** In addition to all other compensation or salaries, any officer or employee of the city may receive, following the submission to the city recorder of a claim, travel expenses and per diem established by the state department of finance for expense actually incurred by the person for attending any meeting, conference, seminar or training session, provided attendance shall have been approved by the city council. (1980 Code § 3-818)

1-6-3: BOND REQUIREMENTS:

- A. **Approval Of Bonds:** The bonds of the council members shall be approved by the mayor and the bond of the mayor shall be approved by the city council at the first meeting of the city council in January following a city election. (1980 Code § 3-822; amd. 2005 Code)

- B. Premium Paid By City:** The premium charged by a corporate surety for any bond required by the city shall be paid by the city. (1980 Code § 3-823; amd. 2005 Code)
- C. Additional Bonds:** The city council may at any time require further and additional bonds of any or all officers elected or appointed. All bonds given by the officers, except as otherwise provided by law, shall be filed with the city recorder, except that the bond of the city recorder shall be filed with the city treasurer. (1980 Code § 3-825; amd. 2005 Code)
- D. Bond Amounts:** Before taking the oath of office and entering on the duties of their respective office, the following named city officials shall each give a bond with good and sufficient securities, payable to the city, conditioned for the faithful performance of the duties of their office and the payment of all monies received by such officers according to law and the ordinances of the city, in the following amounts:

Mayor	\$ 5,000.00
Council members	5,000.00
City treasurer	16,000.00
City recorder	5,000.00
Chief of police	5,000.00
Justice of the peace	5,000.00
Administrator/auditor	5,000.00

(1980 Code § 3-819A)

- E. Treasurer's Bond:**
1. The city treasurer's bond, or the bond of any person who acts as city treasurer, may be set by resolution or ordinance in any amount not less than that established by the state money management council. (1980 Code § 3-821; amd. 2005 Code)
 2. The city treasurer's bond shall be superseded by any rule, regulation or directive of the state money management council when such rule, regulation or directive is binding on the city. (1980 Code § 3-819B)
- F. Blanket Bond:** The bond required in this section may be a blanket bond. (1980 Code § 3-819D)

1-6-4: OATHS:

- A. **Constitutional Oath Of Office:** All officers, whether elected or appointed, before entering on the duties of their respective offices shall take, subscribe and file the constitutional oath of office. (1980 Code § 3-827; amd. 2005 Code)
- B. **Filing:** The oath of office required under this section shall be administered by any judge, notary public or by the city recorder. Elected officials shall take their oath of office at twelve o'clock (12:00) noon on the first Monday in January following their election or as soon thereafter as is practical. Appointed officers shall take their oath at any time before entering on their duties. All oaths of office shall be filed with the city recorder. (1980 Code § 3-828; amd. 2005 Code)
- C. **Acts Of Officials Not Voided:** No official act of any city officer shall be invalid for the reason that he failed to take the oath of office. (1980 Code § 3-829; amd. 2005 Code)

1-6-5: OFFICIAL NEGLIGENCE AND MISCONDUCT: In case any city officer shall at any time wilfully omit to perform any duty, or wilfully and corruptly be guilty of oppression, malconduct, misfeasance or malfeasance in office, the person is guilty of a class A misdemeanor¹, shall be removed from office and is not eligible for any city office thereafter. (1980 Code § 3-826; amd. 2005 Code)

1-6-6: CITY RECORDER AND CITY TREASURER:

- A. **Appointment:** On or before the first Monday in February following a city election, the mayor, with the advice and consent of the city council, shall appoint a qualified person to each of the offices of city recorder and city treasurer.
- B. **Ex Officio Auditor:** The city recorder is ex officio the city auditor and shall perform the duties of that office. (1980 Code § 3-916; amd. 2005 Code)

1. UCA § 76-3-204 for penalty provisions.

1-6-7: CITY ATTORNEY: The city attorney:

- A. May prosecute violations of city ordinances;
- B. May prosecute, under state law, infractions and misdemeanors occurring within the boundaries of the city;
- C. Has the same powers in respect to violations as are exercised by a county attorney or district attorney, except that a city attorney's authority to grant immunity shall be limited to:
 - 1. Granting transactional immunity for violations of city ordinances; and
 - 2. Granting transactional immunity under state law for infractions and misdemeanors occurring within the boundaries of the city;
- D. Shall represent the interests of the state or the city in the appeal of any matter prosecuted in any trial court by the city attorney; and
- E. May cooperate with the office of the attorney general during investigations, including those described in Utah Code Annotated section 67-5-18(3)(f). (1980 Code § 3-928; amd. 2005 Code)

1-6-8: ADMINISTRATIVE ASSISTANT:

- A. Created: Pursuant to Utah Code Annotated section 10-3-901, the city council creates the office of administrative assistant to the mayor.
- B. Appointment: Pursuant to Utah Code Annotated section 10-3-817, the mayor shall have sole right to appoint the person or persons to fill the office created by subsection A of this section.
- C. Powers Of Mayor Not Delegated: Pursuant to Utah Code Annotated section 10-3-830, the creation of this office does not delegate any of the legislative and judicial powers of the mayor, his position as chairperson of the city council or any ex officio positions the mayor may hold.
- D. Abolishment: Pursuant to Utah Code Annotated section 10-3-901, the city council may at any time abolish this office.
- E. Compensation: The position of administrative assistant to the mayor shall be a part time position with a salary as established by the city

council, plus reimbursable expenses. (Ord. 94-4, 7-12-1994; amd. 2005 Code)

1-6-9: DISCHARGE OR TRANSFER; APPEAL BOARD:

- A. **Purpose:** Utah Code Annotated section 10-3-1106 requires that municipalities establish an appeal board to which appointed officers and employees may appeal in cases of discharge or transfer to a position with less remuneration and to prescribe the terms of office and method of selecting said appeal board.
- B. **Applicability:** Appointive officers and employees for the purposes of this section shall include those full time officers and employees which are considered to be subject to wage and hour requirements; excepting, as provided in Utah Code Annotated section 10-3-1105, members of the police department and fire department.
- C. **Established; Membership:** An appeal board is hereby established to take appeals from appointed officers and employees who have been discharged or transferred to a position with less remuneration. Said appeal board shall have five (5) members, three (3) of whom shall be selected from among the said appointive officers and employees of the city and two (2) of whom shall be members of the city council. The term of office and method of selection shall be as follows:
1. The three (3) members of the appeal board who are appointive officers and/or city employees shall be elected by the appointive officers and/or city employees by ballot, which shall list all such officers and city employees eligible for the position. Each eligible person shall vote for three (3) persons among those appearing on the ballot and the positions will be filled by the three (3) persons receiving the largest number of votes. The ballots shall be prepared, distributed and collected by the city treasurer. The results of the election shall be reviewed by the city council and appointments made to the appeal board at the second regular council meeting in January of each even numbered year; the term of appointment being two (2) years. Vacancies in the positions held by appointive officers and/or city employees shall be filled as needed by the same procedure described above with the number of candidates being voted upon being the same as the number of vacancies to be filled.
 2. The two (2) members of the appeal board who are members of the city council shall be appointed by the mayor. The term of appointment shall be two (2) years coinciding with the terms of the

appointive employees terms. Vacancies shall be filled by appointment by the mayor.

3. City council members who are also appointive officers and/or employees of the city shall be eligible for appointment to the board as representatives from the city council only, and shall not be eligible to participate in the election process of appointive officers and/or employees.

4. The mayor shall not be eligible for self-appointment to the appeal board.

- D. Personnel Policy And Procedures Manual: This section shall become a part of the city personnel policy and procedures manual and shall be referenced therein. (Ord. 99-2, 12-14-1999)

CHAPTER 7
MUNICIPAL ELECTIONS

SECTION:

- 1-7-1: Conduct
1-7-2: Primary Election; When Required

1-7-1: **CONDUCT:** Election for mayor and council members shall be conducted according to the municipal election section of Utah Code Annotated section 20A-9-404(1) and (2). (Ord. 95-3, 3-28-1995)

1-7-2: **PRIMARY ELECTION; WHEN REQUIRED:** This section provides for the candidates for mayor and council members to be nominated at a primary election, if required. A primary election will be held only when the number of candidates filing for an office exceeds twice the number to be elected. The candidates nominated at the primary election, plus candidates that were not required to run in the primary, are to be placed on the November ballot. (Ord. 95-3, 3-28-1995)

CHAPTER 8

CONSTITUTIONAL TAKING ISSUES**SECTION:**

- 1-8-1: Policy Considerations
- 1-8-2: Definition
- 1-8-3: Guidelines Advisory
- 1-8-4: Review Of Decision
- 1-8-5: Reviewing Guidelines
- 1-8-6: Results Of Review

1-8-1: **POLICY CONSIDERATIONS:** There is an underlying policy in the city, strongly favoring the careful consideration of matters involving constitutional taking claims, in fairness to the owner of private property bringing the claim and in view of the uncertainty and expense involved in defending lawsuits alleging such issues. At the same time, the legitimate role of government in lawfully regulating real property must be preserved and the public's right to require the dedication or exaction of property consistent with the constitution. Consistent with this policy, it is desired that a procedure be established for the review of actions that may involve the issue of a constitutional taking. These provisions are to assist governments in considering decisions that may involve constitutional takings. It is intended that a procedure for such a review is to be provided, as well as guidelines for such considerations. This chapter is further intended and shall be construed to objectively and fairly review claims by citizens that a specific government action should require payment of just compensation, yet preserve the ability of the city to lawfully regulate real property and fulfill its other duties and functions. (Ord. 95-1, 2-14-1995)

1-8-2: **DEFINITION:**

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

1. The fifth or fourteenth amendment to the constitution of the United States;
 2. Article 1, section 22, of the Utah constitution;
 3. Any court ruling governing the physical taking or exaction of private real property by a government entity.
- B. Actions by the city involving the physical taking or exaction of private real property is not a constitutional taking if the physical taking or exaction:
1. Bears an essential nexus to a legitimate governmental interest; and
 2. Is roughly proportionate and reasonably related, on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest. (Ord. 95-1, 2-14-1995)

1-8-3: **GUIDELINES ADVISORY:** The guidelines adopted and decisions rendered pursuant to the provisions of this chapter are advisory, and shall not be construed to expand or limit the scope of the city's ability for a constitutional taking. The reviewing body or person shall not be required to make any determination under this chapter, except pursuant to section 1-8-4 of this chapter. (Ord. 95-1, 2-14-1995)

1-8-4: **REVIEW OF DECISION:** Any owner of private real property who claims there has been a constitutional taking of their private real property shall request a review of a final decision of any officer, employee, board, commission or council. The following are specific procedures established for such a review:

- A. **Final Determination Required:** The person requesting a review must have obtained a final and authoritative determination, internally, within the city, relative to the decision from which they are requesting review.
- B. **Request For Review:** Within thirty (30) days from the date of the final decision that gave rise to the concern that a constitutional taking has occurred, the person requesting the review shall file in writing, in the office of the city recorder, a request for review of that decision. A copy shall also be filed with the city attorney.

- C. **Review Time Set:** The city council, or an individual or board designated by the city council, shall immediately set a time to review the decision that gave rise to the constitutional takings claim.
- D. **Required Information; Materials:** In addition to the written request for review, the applicant must submit prior to the date of the review, the following:
1. Name of the applicant requesting review;
 2. Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for profit or not for profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership or joint venture, name and address of all principal shareholders or partners;
 3. A detailed description of the grounds for the claim that there has been a constitutional taking;
 4. A detailed description of the property taken;
 5. Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of that same property before and after the alleged constitutional taking, the name of the party from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired;
 6. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
 7. Terms (including sales price) of any previous purchase or sale of a full or partial interest in the property in the three (3) years prior to the date of application;
 8. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three (3) years prior to the date of application;
 9. The assessed value of and ad valorem taxes on the property for the previous three (3) years;
 10. All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender,

current interest rate, remaining loan balance and term of the loan and other significant provisions, including, but not limited to, right of purchasers to assume the loan;

11. All listings of the property for sale or rent, price asked and offers received, if any, within the previous three (3) years;

12. All studies commissioned by the petitioner or agents of the petitioner within the previous three (3) years concerning feasibility of development or utilization of the property;

13. For income producing property, itemized income and expense statements from the property for the previous three (3) years;

14. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and

15. The city council or their designee may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a constitutional taking.

- E. **Certification Of Application:** An application shall not be deemed to be "complete" or "submitted" until the reviewing body or official certifies to the applicant that all the materials and information required above have been received by the city. The reviewing body or official shall promptly notify the applicant of any incomplete application.
- F. **Evidence Considered:** The city council, or an individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, city or any other interested party.
- G. **Approval, Rejection; Time Limit:** A final decision on the review shall be rendered within fourteen (14) days from the date the complete application for review has been received by the city recorder. The decision of the city council regarding the results of the review shall be given in writing to the applicant and the office, employee, board, commission or council that rendered the final decision that gave rise to the constitutional takings claim.
- H. **Failure To Review:** If the city council fails to hear and decide the review within fourteen (14) days, the decision appealed from shall be presumed to be approved. (Ord. 95-1, 2-14-1995)

1-8-5: **REVIEWING GUIDELINES:** The city council shall review the facts and information presented by the applicant to determine whether or not the action by the city constitutes a "constitutional taking", as defined in section 1-8-2 of this chapter. In doing so, they shall consider:

- A. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.
- B. Whether a legitimate governmental interest exists for the action taken by the city.
- C. Is the property and exaction taken roughly proportionate and reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed. (Ord. 95-1, 2-14-1995)

1-8-6: **RESULTS OF REVIEW:** After completing the review, the reviewing person or body shall make a determination regarding the above issues and, where determined to be necessary and appropriate, shall make a recommendation to the officer, employee, board, commission or council that made the decision that gave rise to the constitutional takings claim. (Ord. 95-1, 2-14-1995)