AGENDA

The link to join the meeting electronically will be posted prior to the meeting at https://www.fruita.org/citycouncil/page/council-meeting-information. You may also contact the City of Fruita at (970) 858-3663 for information to connect to the meeting. This agenda is for informational purposes only and items may be added or deleted at the discretion of the City Council. An executive session may be requested for any item appearing on the agenda.

1. CALL TO ORDER AND ROLL CALL

2. AGENDA ITEMS

   A. City Council Training Refresher

3. ADJOURN

In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact the City Clerk’s Office at 970-858-3663 within 48 hours prior to the meeting in order to request such assistance.
BACKGROUND

The focus of this workshop is for the City Manager and City Attorney to conduct a refresher on the training conducted originally on April 26, 2022. This is an opportunity for City Council to discuss any questions they have regarding general Council procedures, open meetings laws, liability, conflicts of interest, norms of conduct, and rules of procedure.

In preparation for the training, we ask the City Council read through or view the following materials to use our time efficiently and focused more on discussion.

Priority Materials to Review Prior to the Training

- PowerPoint Training
- Norms of Conduct
- Rules of Procedure
- Code of Ethics
2023 Fruita Council Refresher Training

June 6, 2023
Home Rule & City Charter

- Fruita is a home rule municipality. Article XX, Section 6 of the Colorado Constitution grants municipalities home rule authority to create or amend Charters to govern local and municipal matters. As a home rule municipality, the City possesses “all the powers possible for the City to have under the Constitution and the laws of this State.” Under a home rule form of government, matters of “local concern” are controlled by local citizens through the City’s Charter, and ordinances rather than through the General Assembly and the state statutes. This provides the citizens of Fruita freedom from the need for state legislation in matters of local concern. Thus, home rule municipalities have absolute authority over issues solely of local concern, and a home rule municipality is not inferior to the General Assembly with respect to local and municipal matters that fall within this authority.
Council – Manager Form of Government

- City Council and Mayor elected, develop long-range vision & policy making.

- City Manager is a trained professional appointed Chief Administrative Officer, oversees operations & carries out the policies of the City Council.

- Flexible enough to adapt to local needs & demands.

- Began in 1908 in Staunton, VA
Roles of Elected Officials

City Charter Section 2.05 Powers and Duties of the Council: The Council is responsible for policy making. The Council shall have the power to:

A. Adopt the budget and determine the city tax levy;
B. Adopt ordinances, resolutions, and motions necessary for the orderly conduct of city affairs;
C. Review and ratify appointments made by the Mayor;
D. Appoint a City Manager and evaluate his performance;
E. Enact necessary legislation required for the operation of the city.
Roles of Elected Officials cont.

- Elected as a Council/group – not to independent seats

- Serve entire community – not only who voted for you

- Utilize different perspectives, community feedback and professional recommendations to make best decisions for community
Roles of Elected Officials cont.

• To be effective, the Council must learn to excel at solving political problems. As opposed to technical problems, a political problem (or a policy issue) is when, after all the facts are known, people can still legitimately disagree on the answer (because there are many solutions available). In these scenarios, more information is not going to help solve a political problem.

• City Manager works for entire Council, not individuals

• Council directs City Manager, City Attorney & Municipal Judge

• City Manager directs staff
Norms of Conduct

The purpose of this document is to clarify guidelines agreed to by the City Council to define the Norms of Conduct that City Council and Mayor will abide to perform the duties of their office most effectively. These guidelines are organized into 5 sections.

A. Parameters & Realities
B. Additional Norms of Conduct
C. Appendix
   A. Summaries of values found in other documents
   B. Word Cloud
   C. Slides from CIRSA training with notes from the facilitator
Parameters and Realities

• The Councils decisions are based on majority rule and effective Councils respect the will of the majority following productive discussion.

• Individuals have their own learning style. Each Council member may not be at the same spot on the “learning curve” of any given issue.

• Although the totality of your experience, background, and perspectives may have been key to your seeking/winning office, your role is as ultimate generalist setting policy and providing direction for professional staff to provide recommendations on and ultimately implement.

• Municipal government is nonpartisan.
Additional Norms of Conduct

• In addition to the Parameters & Realities, the Core Values found in the City Charter, Comprehensive Plan, Code of Ethics, City Council Handbook complete the City Council Norms of Conduct. These Core Values are:
  • Fun
  • Respectful
  • United
  • Innovative
  • Transparent
  • Authentic
Additional Norms of Conduct cont.

• Fun

• We will seek to “keep it positive.”

• Any form of humor will be in the best interest of the group, not at the expense of any member or offensive in any way to another.
Additional Norms of Conduct cont.

• Respectful
  • Respect the Mayor’s “traffic direction” role.
  • Praise in public, criticize in private.
  • Be tough on issues, but not on each other.
  • Respect on another and the staff, our limited time resources, and varying learning styles.
  • Respect equality of power in our discussions by not interrupting and listening intentionally.
  • Respect the chain of command, understanding that this must go both ways.
  • Not make assumptions – understand and clarify differences of opinion.
Additional Norms of Conduct cont.

• United
  • Compromise
  • Speak with one voice after a decision has been reached. Respect the will of the majority and continue to be constructive even if we were a dissenting vote/voice.
  • Seek to understand differing points of view, especially when there isn’t an agreement.
  • Ensure everyone has had the opportunity to have a say, uninterrupted, before discussion commences.
  • Listen to understand, not just to respond.
  • Wait to commit to a position until we have heard everyone’s point of view.
Additional Norms of Conduct cont.

• **Innovative**
  • Be open to changing our own perspective
  • Ask and encourage questions
  • Maintain a sense of flexibility

• **Transparent**
  • Honor transparency as a Core Value
  • Believe in equality of power, information, and time
  • Understand the importance of perception management as our roles carry actual as well as perceived powers

• **Authentic**
  • Arrive with the best of intentions and assume the best intentions of others
  • Manage our tone and body language when communicating
Appendix

• Charter
  • “We, not I” – Council powers; also respect Mayoral role
  • Highest ethical standards – removal for violations
  • Transparency – open meetings, limited executive sessions
  • Inclusive – Diverse viewpoints
  • Respective governance/administration “lanes”

• Fruita in Motion Comprehensive Plan
  • Friendly, neighborly, fun
  • Collaborative, open-minded
  • Inclusive, diverse

• Code of Ethics
  • Courtesy, fairness, impartiality, equality under the law
  • Public interest over private interest
Appendix cont.

• Council Handbook
  • Collective action and teamwork
  • Consider others’ viewpoints, disagree respectfully
  • Respect and “speak with one voice” once collective action is taken
  • Collaboration, search for shared points of agreement
  • Seek differing viewpoints, be comfortable in debate
  • Pursue best solutions, not individual agendas
  • Provide/receive information in equal manner, operate from same “base” of information
  • Positive and welcoming
Word Cloud

Inputted Values from the Council Workshop on Norms of Conduct, June 28, 2022.
Rules of Procedure

• General Guidelines

  • Mayor Serves as Parliamentarian.
  
  • Abstaining from Voting is not Permitted.
  
  • A Conflict-of-Interest Mandates a Recusal from Voting.
  
  • A Motion is Not a Prerequisite to Discussion or Debate on a Matter
Rules of Procedure cont.

• General Rules Governing the Meeting
  • Quorum Required
  
  • No Interruptions or Side Discussions
  
  • Second Required for Debate
  
  • Vote Requirement
  
  • Aye or Nay Vote Required
  
  • Explanation of Vote
Open Meetings

• All meetings of three or more members of council must be open to the public and noticed 24 hours in advance – however, case law may be changing this (Douglas County School Board).

• A Meeting is “any kind of gathering convened to discuss public business in person, by telephone, electronically, or by other means of communication”
  • E-mails among 3 or more council members discussing public business constitutes a meeting
  • Chance meetings and social gatherings at which discussion of public business is not the central purpose are NOT considered a meeting

• Council can only act at properly-noticed meetings

• Any action taken at a meeting that does not comply with the Open Meetings law is void
Open Meetings cont.

• **Executive Sessions not required to be open to public**
  • Enumerated purposes including:
    • Personnel matters unless involving a specific employee who has requested open session
    • Receiving legal advice
    • Discussing a property transaction
    • Negotiation strategies
  • Specific procedures to be followed
  • Must be noticed

• **Public Hearings**
  • Only apply to certain matters (e.g., land use applications, budget)
  • Require additional noticing provisions to be completed by land use applicant
Colorado Open Records Act
C.R.S. & 24-72-201, *et seq.*

- All public records are open for inspection by any person at reasonable times

- A public record is any writing:
  - Made, maintained, or kept by the City
  - For use in the exercise of functions authorized by law or rule
  - Or involving receipt or expenditure of public funds

- Content of record is key as to whether disclosure is required
Colorado Open Records Act  
C.R.S. & 24-72-201, *et seq.*

- **“Record” Includes:**
  - e-mails, recordings, meeting minutes, memos, and any other documentary material
  - Following 2017 amendments to CORA, electronic documents must be produced in their native format (e.g., the actual e-mail not a paper copy or .pdf version of it)

- **City has adopted its own CORA policy that describes the process for requesting the City’s records**
Colorado Open Records Act
C.R.S. & 24-72-201, *et seq.*

- Government official’s correspondence is subject to CORA unless it is:
  - Work product (advisory or deliberative materials, e.g. memos)
  - Without a demonstrable connection to official functions
  - From a constituent and clearly intended to be private and confidential

- Records not kept in “official capacity” are not subject to CORA BUT
  - Cannot use personal e-mail to avoid CORA
  - Discussing public business/official functions through personal e-mail may subject personal e-mail account to search and/or disclosure
  - Be careful with use of social media
  - Only use City e-mail to discuss official business
Communication

• Email, no reply all, blind copy
  • iPad usage, phones, etc.
• Weekly Update
• 1:1 meetings with City Manager
• Constituency Requests
• Social Media
• Text
• Media
Council Meetings

• Rules of Procedure
• Agenda Orientation
• Meetings v. Workshops
• Preparing for Meetings – Council Packet
• Use of iPad
• Proclamations & Presentations
• Minutes
• Consent Agenda
• Public Hearings
• Administrative Updates
• Council Updates
• Executive Sessions
Public Hearings: Legislative vs. Quasi-Judicial

• Legislative actions:
  • enacting laws, policies, and regulations of general applicability
  • subject to substantive and procedural due process requirements

• Quasi-Judicial actions: applying laws to specific facts (e.g., approving land use applications)
  • Decisions to be based on the record
    • No ex parte communications
    • Beware of social media
    • Any communications had or facts learned outside public hearing must be stated on the record
  • Procedural due process
  • Substantive due process
  • 28 days to challenge per CRCP 106 (abuse of discretion)
  • Federal challenges
Role of Council vs. Staff

- **Council’s Role**: help establish policies for City as a whole; set overall goals and priorities; enact legislation; exercise duties and powers assigned to Council

- **Staff’s Role**: manage and accomplish work assigned by Council or otherwise delegated to staff through the City Manager; execute and implement policies adopted by Council; day-to-day administration of City business, including HR matters
Chain of Command

- Council not to interfere with Manager-Employee relations
- Grievances:
  - If regarding another employee, go to Direct Supervisor
  - If regarding Direct Supervisor, go to Department Head
  - If regarding Department Head, go to City Manager
  - If regarding City Manager, go to City Council or City Attorney
  - If regarding a Councilmember, go to City Manager or City Attorney
Personnel Matters

**Council should:**
- set general HR policies or rules
- determine personnel budget, pay plans, benefits, etc.
- select and supervise staff that reports directly to Council (City Manager, Attorney, Municipal Judge)

**Council should avoid:**
- Interfering with or influencing hiring, firing, and disciplinary decisions for staff members that don’t report directly to Council
- Bypassing chain of command
- Interfering in staff-level decisions
- Directing staff that doesn’t report directly to Council
Workplace Liability

• Sexual harassment
  • Quid pro quo
  • Disparate treatment
  • Hostile work environment

• Race, religion, nationality, etc.

• Disability
  • Reasonable accommodations

• Age

• Retaliation for Reporting

• Risk of Councilmember’s personal liability for employment matters goes down if chain of command respected.
Personal Liability

• Liability under Fruita Code Chapter 2.70 and the Board of Ethics
• Immune from tort claims under Colorado Governmental Immunity Act
• 42 U.S.C. § 1983 Actions
  • Lawsuit regarding violation of right, privilege, or immunity granted by US constitution or federal law
  • Can be sued in official and/or individual capacity
    • Official capacity: action that violated rights taken pursuant to official policy or custom of the City; City pays damages, if any
    • Personal capacity: action that violated rights taken while acting in furtherance of official duties; individually responsible for damages
Ethics

- Must carry out duties for the benefit of the people you serve
- Avoid conduct that violates or appears to violate the public trust
- Abstain from personal financial gain beyond the compensation established in the Charter
- Must not use position to gain an unfair advantage
- Guiding Principle: what is the right thing for the City?
Gifts

• State and local laws restrict gifts to public officials

• Fruita Code Sec. 2.70.20(E): Council members prohibited from accepting gifts that they “would not be offered or given to him if he were not an official”
Conflicts of Interest

• Private interests (both financial and non-financial) that infringe on Councilmember’s ability to objectively perform duties

• Colorado Code of Ethics (C.R.S. §§ 24-18-101, *et seq.*) establishes:
  • ethical standards
  • prohibited conduct
  • civil and criminal liability for failing to comply

• Financial Interests include
  • Ownership interest in a business
  • Being a director or officer of a business
  • Employment or prospective employment
  • Ownership of real or personal property
Conflicts of Interest cont.

- If a councilmember has a “personal or private interest” in any matter proposed or pending before Council, he or she must disclose such interest, shall not vote, and must avoid influencing other members (best to leave the room). Although the Colorado statutes would allow the councilmember to vote in certain circumstances, the Fruita Code at Section 2.70.020 prohibits any participation in deliberation or voting. (State conflict of interest laws found at C.R.S. § 24-18-101 et seq. but since Fruita is home rule, its Code trumps the statute).

- If a councilmember serves on the board of a nonprofit entity:
  - It is NOT a conflict of interest or breach of any duty for the member to vote on matters affecting the nonprofit, provided that the member announces his or her involvement before voting
  - The Councilmember need only file a disclosure statement and refrain from voting if the member has a financial interest in or receives services from the nonprofit that are independent of his or her duties as a member of the board of directors

- Fruita Code Section 2.70.020 CONFLICT OF INTEREST. Financial or personal interest.
  - A. No official, either on his own behalf or on behalf of any other person shall have any financial or personal interest in any business or transaction with any public body unless he shall first make full public disclosures of the nature and extent of such interest.
  - B. Disclosure and disqualification. Whenever the performance of his official duties shall require any official to deliberate and vote on any matter involving his financial or personal interest, he shall publicly disclose the nature and extent of such interest and disqualify himself from participating in the deliberation as well as in the voting.
  - C. Incompatible employment. No official shall engage in private employment with, or render services for, any private person who has business transactions with any public body unless he shall first make full public disclosure of the nature and extent of such employment or services.
  - D. Representation of private persons. No official shall appear on behalf of any private person, other than himself, before any public body in the city.

- Fruita Code Section 2.70.020(H) prohibits nepotism.

- Personal conflicts not within Colorado Code of Ethics or City Code may nonetheless raise the “appearance of impropriety” and warrant recusal.
Conflicts of Interest – Civil Liability

Fruita Code Section 2.70.025-2.70.040: Provides the process by which conflict of interest allegations are heard with the appointment of a Board of Ethics. If a willful violation is found, the Council member will be discharged from their Council seat.

• Basis for liability under the Colorado Revised Statutes:
  • Disclosing or using confidential information acquired through official duties to further personal financial interests;
  • Accepting a gift or other thing of substantial economic value;
  • Engaging in a substantial financial transaction for private business purposes with a person whom the official inspects or supervises in the course of official duties;
  • Performing an official act that directly and substantially bestows an economic benefit on a business or other undertaking in which the official has a substantial financial interest or is engaged as counsel, consultant, representative, or agent;
  • Accepting goods or services for the official’s personal benefit from a person who is at the same time providing goods or services to the official’s governmental body or receiving compensation in any way from that governmental body

• Public official is personally responsible for any monetary damages or other consequences resulting from prohibited action
Conflicts of Interest – Criminal Liability

• Basis for liability
  • Having a financial interest in any contract made by the official in his/her official capacity or by any body, agency, or board of which he/she is a member or employee
  • failing to disclose an actual or potential conflict of interest before exercising a discretionary governmental function regarding a government contract or other pecuniary transaction
  • Conflict exists if member owns or controls directly or indirectly a substantial interest in any non-governmental entity participating in a transaction
  • Violation constitutes Class 1 or Class 3 Misdemeanor
Tips for Strategic Governing

• Be prepared
• Ask questions
• Listen
• Speak up
• Be ok with honest differences of opinion
• Recognize different views are representative of varied community-wide opinions
• Remember who your bosses are
• Avoid Distractions—focus on priorities, connect budget to policy goals
• Think long-term
• Use workshops effectively
• Clear Direction to Staff—help staff prepare
Tips for Strategic Governing cont.

• Be consistent
• Embrace strategic change v. “way we’ve always done it”
• Embrace Community Vision – Enable staff to implement
• Evaluate professional recommendations and make decisions—no decision is still deciding and may not be best one
• Publicly praise, but avoid criticism of fellow Council members and staff
• Tough on issues, easy on people
• Avoid surprising your colleagues
• Avoid promises you can’t keep
• Ok to say “I don’t know, but will find out”
Tips for Strategic Governing cont.

• Communicate, collaborate and compromise

• Once a vote is taken, move forward in unity

• Adopt protocols for elected behavior (CIRSA workshop)

• Respect chain of command within City

• Partnerships are critical for success
Upcoming Training Opportunities

May 16: Effective Governance Webinar

- One of CML's most popular trainings is back as a webinar ahead of our 100th Annual Conference. During this two-hour, virtual Effective Governance mini-workshop, attendees will hear from CML Executive Director Kevin Bommer about the roles and responsibilities of elected officials and maintaining positive council/board relationships; CML General Counsel Robert Sheesley on open meeting and records; and CML Executive Board President Bob Widner on effective meetings.

CML Annual Conference

- June 21-24, 5 attending

ICMA Webinar Series

- Session 1 | April 27: Introduction to Form of Government and Strategies for Success
- Session 2 | May 3: Roles and Responsibilities of the Councilmember
- Session 3 | May 11: Strategic Planning and Budgeting
- Session 4 | May 17: Public Relations
- Session 5 | May 24: Leadership
- Session 6 | June 1: Ethics
- Recordings available, $795 for group

CIRSA Workshop?
City of Fruita Mayor & City Council Norms of Conduct

Updated Sept. 27, 2022

Purpose

The purpose of this document is to clarify guidelines agreed to by the City Council that define Norms of Conduct the City Council and Mayor will abide to perform the duties and roles of their office most effectively. The guidelines are organized with the following sections: (1) Parameters & Realities and (2) additional Norms of Conduct. The Appendix contains (3) summaries of values found in other documents, (4) a word cloud of inputted values from the Norms of Conduct Workshop on June 28, 2022, and (5) The slides from the CIRSA training with notes in red font from the facilitator Tami Tanoue.

Parameters & Realities

Certain Parameters and Realities exist the City Council has agreed to, which are listed below.

- The Council’s decisions are based on majority rule and effective Councils respect the will of the majority following productive discussion.
- As individuals, you have different learning styles and approaches, and you may not all be at the same spot on the “learning curve” of any given issue.
- Although the totality of your experience, background, and perspectives may have been key to your seeking/winning office, your role in office is as ultimate generalists setting policy and providing direction for professional staff to provide recommendations on and ultimately implement.
- Municipal government is nonpartisan.

Additional Norms of Conduct

In the spirit of values found in the City Charter, the Fruita in Motion Comprehensive Plan, Code of Ethics, City Council Handbook, and organizational Core Values, the following guidelines make up the City Council Norms of Conduct, in addition to the Parameters & Realities. These are organized by the organizational Core Values below.

**Fun -**

- We will seek to “keep it positive”
- Any form of humor will be in the best interest of the group, not at the expense of any member or offensive in any way to another.
Respectful -

- We will respect the Mayor’s “traffic direction” role
- We will praise in public, criticize in private
- We will be tough on the issues, but not on each other
- We will respect one another and the staff, our limited time resources, our varying learning styles
- We will respect equality of power in our discussions by not interrupting and by listening intentionally
- We will respect the chain of command with the understanding that this respect must flow both ways
- We will not make assumptions about one another’s views – we will seek to understand and clarify differences of opinion

United -

- We will look for points of compromise
- We will speak with one voice after a decision has been reached, respect the will of the majority, and continue to be constructive even if we were a dissenting vote/voice
- We seek to understand one another’s viewpoints, especially when there isn’t agreement
- We will ensure everyone has the opportunity to have a say, uninterrupted, before debate commences
- We will listen to understand, and not just listen to respond
- We will wait to commit to a position until after we’ve had the opportunity to hear others’ views

Innovative -

- We are open to changing our own perspective
- We will ask questions and encourage questions
- We will maintain a sense of flexibility

Transparent -

- We honor transparency as a core value
- We believe in equality of power – information – time
- We understand the importance of perception management, given that our roles carry actual as well as perceived powers

Authentic -

- We will arrive with best intentions, and presume best intentions of others
- We will manage our tone and body language when communicating
APPENDIX

Values Summary from Other Documents

Charter:
- “We, not I” – Council powers; but also respect for Mayoral role
- Highest ethical standards – removal for ethics violations
- Transparency – open meetings, limited executive sessions
- Inclusive – diverse viewpoints - array of boards and commissions
- Respecting governance/administration “lanes” – “no interference” provisions

Fruita in Motion Comprehensive Plan:
- Friendly, neighborly, fun
- Collaborative, open-minded
- Inclusive, diverse

Code of Ethics:
- Courtesy, fairness, impartiality, equality under the law
- Public interest over private interest

Council handbook:
- Collective action and teamwork
- Consider others’ viewpoints, disagree respectfully
- Respect and “speak with one voice” once the collective action is taken
- Collaboration, search for shared points of agreement
- Seek differing viewpoints, be comfortable in debate
- Collective action and teamwork
- Consider others’ viewpoints, disagree respectfully
- Respect and “speak with one voice” once the collective action is taken
- Collaboration, search for shared points of agreement, respect majority rule
- Seek differing viewpoints, be comfortable in debate
- Pursue best solutions, not individual agendas
- Provide/receive information in equal manner, operate from same “base” of information
- Positive and welcoming

Core Values
- Fun – caring – positive approach and attitude
- Respectful – tough on issues, easy on people
- United as a team – work purposefully together – agree to disagree and move forward
- Innovative – constructive feedback, continuous improvement
- Transparent – trustworthy – assume positive intentions
- Authentic – embrace differences – open minded-- honest
Word Cloud of Inputted Values from the Council Workshop on Norms of Conduct, June 28, 2022
Slides from the CIRSA Training with Facilitator Tami Tanoue, Executive Director, CIRSA

(Attached)
Purpose
The purpose of these guidelines is to establish a record approved by City Council to meet its Charter obligation and make its own rules and order of business. For Council Procedures, see the Fruita City Charter, Article II, The City Council 2.07 – 2.14. For Council meeting order of operations, please see the official City Council meeting agenda for the specific meeting.

Terminology
Certain words and phrases are used throughout to refer to actions or persons involved in a meeting. Some of these words and phrases are capitalized to remind the reader that the word or phrase has a specifically defined meaning.

Amendment (or to Amend) - An amendment is a motion to change, to add words to, or to omit words from a pending motion. The amendment is usually intended to clarify or improve the wording of the original motion and must be germane to that motion.

Body – The City Council, which is the formally constituted organization commissioned with the obligation and duty to act on behalf of the City of Fruita by ordinance, resolution or motion.

Chairperson – The Mayor is elected to preside over Council meetings.

Floor – The privilege or right to speak to the body.

Member – The City Councilors elected to hold office as a recognized participant of the body.

Motion – A formal proposal seeking specific action by the body typically preceded by the words “I move that ...” or “I make a motion that ....” Motions are generally introduced by voice but may be presented to the body in writing.

Moving Party – The Member presenting a motion or point for action by the body.

Second – An oral declaration by a Member to express that a motion offered to the body should receive debate or discussion.
General Guidelines

Certain guidelines are incorporated into the Rules of Order. Each of these guidelines are subject to rejection or modification by the Council.

These Guidelines are clarified below:

- **The Mayor Serves as the Parliamentarian.**

  During a meeting, decisions regarding the proper application of the Rules will be required. For example, a determination will need to be made during a meeting that a particular motion is, or is not, Out of Order (i.e., appropriate for presentation under the Rules). “Parliamentarian” is the customary term used to identify the person with a solid understanding of the meeting rules and who is commissioned to render decisions on the applicable and proper procedure. The Mayor serves as the Parliamentarian.

  Per the City Charter, the Mayor has the following powers and duties pertaining to Council meetings:
  - Preside over Council meetings;
  - Call special meetings;
  - Subject to Council review and approval, appoint members of boards and commissions;
  - Recommend ordinances, resolutions, and motions;
  - Vote in the event of a tie vote of the Council;
  - Be recognized as the political head of the city government;
  - Approve or disapprove ordinances in accordance with Colorado Revised Statutes and any amendments, revisions and renumbering of that statute; and
  - Other powers and duties as designated by the City Council.

- **Abstaining from Voting is not Permitted.**

  Members agree to perform the duties of the position unless prevented by law. A member may wish to “abstain” (i.e., not declare a formal vote or position) due to a myriad of reasons which may include a simple desire to avoid being placed on the record in support or opposition of a proposition. Such an abstention for personal reason or convenience constitutes a neglect of the duty freely accepted by the elected or appointed member to represent the body and the public and, therefore, is not permitted by these Rules of Order.

- **A Conflict-of-Interest Mandates Recusal from Voting.**

  When a member faces a lawfully recognized conflict of interest, the member shall recuse themselves from all participation in the matter and shall not vote. Moreover, the conflicted member shall not be permitted to influence the body by participation in the consideration, deliberation, or debate on the matter and may not seek to influence individual members outside of the public meeting or the hearing. Mandating that a member recuse themselves from advocating and voting on a matter due to a conflict of interest is lawfully permitted and a member has no personal constitutional right to participate or vote where a conflict exists.

  What constitutes a conflict of interest is difficult to summarize. The body’s attorney should
always be consulted in advance of the meeting regarding a potential conflict of interest. In nearly all situations, the determination of a legally recognized conflict of interest will involve an evaluation of the particular facts surrounding the conflict, the form of decision pending before the body, and the potential for a vote to be entered notwithstanding a conflict of interest.

Recusal from participation due to a conflict of interest should be offered before the body prior to or at the initial opening of the matter on the agenda. The conflicted member, following declaration of recusal, shall leave the dais of the body and take a seat outside the meeting room for the entire consideration of the matter.

- **A Motion is Not a Prerequisite to Discussion or Debate on a Matter.**

Oftentimes, discussion on a problem or proposition sets the basis or background that will lead to an appropriately stated motion. The basis or background more often enables the motion to be tailored to the viewpoints and comments offered during discussion offered prior to any motion. It is not infrequent that a hastily stated motion is later withdrawn or modified following discussion. As a result, efficiency is achieved by permitting motions to be made at an appropriate time which may be before, during, or following robust discussion or deliberation on a matter. Once a motion and a second are on the floor, the Mayor will offer the opportunity for final discussion prior to a vote of the body. This provides a clear record for the public and an opportunity for members to clearly state their positions, if desired.

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1 See A Conflict-of-Interest Mandates Recusal from Voting, below. 2 Recusal is not the equivalent to abstention. Abstention is “the withholding of a vote;” whereas recusal is “the [removal] of oneself as judge or policy maker in a particular matter, especially because of a conflict of interest.” Black’s Law Dictionary (8th Ed. 2004). Abstention, if allowed, permits the member to participate in the proceeding and, prior to the vote, to make a declaration that the member will not vote for reasons often unstated, and which can include personal preference, indifference, lack of information, or possibly a perceived conflict of interest. In contrast, recusal precludes the member from participation in any aspect of the matter because to participate or to vote would subject the member or the member’s organization to liability. 3 Nevada Commission on Ethics v. Carrigan, 564 U.S. 117 (2011)
General Rules Governing the Meeting

**Quorum Required.** Per the City Charter, four members of Council shall constitute a quorum for the transaction of business at all meetings where a quorum is required. In the absence of a quorum, the Mayor, Mayor Pro Tem, or City Manager may announce that the meeting is continued due to lack of a quorum and such announcement may include the date, time, and place at which the meeting will be re-convened. In the event any meeting is adjourned to a later date, the City Manager shall prepare and cause to be delivered to each member of Council timely notice setting forth the date and hour to which such meeting has been continued. Any announcement of a continuation without a public announcement of the date, time, and place of the continued meeting shall require the issuance of new notice for any public hearings or other matters that require notice.

**No Interruptions or Side Discussions.** To maintain a clear recorded meeting record, only one person shall speak at any one time. Interrupting a person who has the floor or engaging in side-discussions while another person has the floor is out of order.

**Second Required for Debate.** While discussion may begin prior to a motion, all motions must receive a second before debate or discussion may begin on a particular motion. A second does not connote approval of the motion but only that the Member offering the second supports fuller discussion of the motion. The Member who makes the motion can amend or withdrawal a motion prior to a second.

**Vote Requirement.** A majority vote of the quorum is required for any motion unless a different requirement is set by applicable law.

**Aye or Nay Vote Required.** A vote of aye or nay (or another form of affirmative or negative declaration such as “yes” or “no”) shall be taken upon motions. Every Member, when present, must vote aye or nay unless:

1. The Member is excused by the Chairperson due to the Member’s declaration of a conflict of interest at the introduction of the agenda item or immediately upon discovery of a legally recognized conflict of interest; or

2. The Member is excused by the Chairperson because the member is without sufficient information upon which to enable an informed vote due to an absence at a prior meeting, e.g., the member did not attend the meeting for which meeting minutes are moved for approval.

**Explanation of a Vote.** If they desire, a member can explain why they are voting a certain way after a motion has been made and seconded and the chairperson has called for additional discussion.
ORDINANCE NO. 2022-28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO
REPEALING AND REPLACING CHAPTER 2.70 OF THE FRUITA MUNICIPAL CODE
CONCERNING A CODE OF ETHICS FOR CITY OFFICIALS

WHEREAS, the City of Fruita (the “City”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Fruita City Charter (“Charter”); and

WHEREAS, Chapter 2.70 of the Fruita Municipal Code (“Code”) outlines the City’s Code of Ethics for City Officials; and

WHEREAS, C.R.S. § 24-18-101, et seq., provides state-wide ethics standards that have been subject to uniform interpretation, and Article XXIX § 3 of the Colorado Constitution contains certain gift bans; and

WHEREAS, there are conflicts between the City’s Code of Ethics and C.R.S. § 24-18-102 and the Colorado Constitution; and

WHEREAS, to promote consistency in ethics rules across the State of Colorado, the City Council desires to repeal and replace the City’s Code of Ethics to conform to state-wide standards as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, as follows:

Section 1. Recitals. The above recitals are hereby incorporated as findings of the City Council in support of the enactment of this Ordinance.

Section 2. Repeal and Replace. The City Council hereby repeals Chapter 2.70 of the Fruita Municipal Code in its entirety and replaces it as set forth in Exhibit A, attached hereto.

Section 3. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 4. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. Effective Date. This Ordinance shall become effective thirty (30) days after final adoption in accordance with Section 2.13(G) of the Charter.

Section 6. Publication. The City Clerk shall publish notice of this Ordinance in accordance with Chapter 2.13(F) of the Fruita City Charter.
PASSED and ADOPTED by the Fruita City Council on this 6th day of December, 2022.

CITY OF FRUITA

__________________________
Joel Kincaid, Mayor

ATTEST:

__________________________
Margaret Sell, City Clerk
Exhibit A

Chapter 2.70

A CODE OF ETHICS FOR CITY OFFICIALS

Sections:

2.70.010 Purpose
2.70.020 Definitions
2.70.030 Public Trust – Breach of Fiduciary Duty
2.70.040 Ethical Principles for City Officials and Employees
2.70.050 Rules of Conduct for City Officials and Employees
2.70.060 Interests in Contracts, Sales, or Purchases
2.70.070 Voluntary Disclosure
2.70.080 Enforcement and Penalties

2.70.010 PURPOSE. The City Council recognizes the importance of promoting public confidence in the City government and that those citizens who hold public office or are employed by the City may have conflicts arise between their public duty and their personal and or financial interests. Therefore, to promote consistency in ethics rules across the State of Colorado, the City Council desires to conform to state-wide ethics standards as set forth in C.R.S. § 24-18-101, et seq.

2.70.020 DEFINITIONS. As used in this Code of Ethics, unless the context otherwise requires:

A. “Board” means the boards, commissions, committees, or other authorities operating on behalf of the City as the City Council may, from time to time, create.

B. “Board member” means a member of any Board, including regular and alternate members, but does not include any Employee of the City.

C. “Business” means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

D. “Compensation” means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

E. “Council Member” means a duly elected member of the Fruita City Council.

F. “Employee” means any temporary or permanent employee of the City, except an employee under contract to the City.

G. “Financial interest” means a substantial interest held by an individual which is:

1. An ownership interest in a business;

2. A creditor interest in an insolvent business; an employment or a prospective employment for which negotiations have begun;
3. An ownership interest in real or personal property;
4. A loan or any other debtor interest; or
5. A directorship or officership in a business.

H. “Immediate family” means spouse and any dependents living in the City official or employee’s household.
I. “Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
J. “City” means the City of Fruita, Colorado.
K. “City Council” means the duly elected Fruita City Council.
L. “City official” means an elected or appointed official of the City and includes any Board member, but does not include any Employee of the City.

2.70.030 PUBLIC TRUST – BREACH OF FIDUCIARY DUTY.

A. The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of local government officials and employees. A City official or employee shall carry out their duties for the benefit of the people of the City.

B. A City official or employee whose conduct departs from their fiduciary duty is liable to the people of the City as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of their trust. The City Attorney may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the City. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such City official or employee.

2.70.040 ETHICAL PRINCIPLES FOR CITY OFFICIALS AND EMPLOYEES.

A. The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in local government.

B. A City official or employee should not acquire or hold an interest in any business or undertaking which they have reason to believe may be directly and substantially affected to its or its immediate family’s economic benefit by official action to be taken by an agency over which they have substantive authority.

C. A City official or employee should not, within six months following the termination of their office or employment, obtain employment in which they will take direct advantage, unavailable to others, of matters with which they were directly involved during their term of employment. These matters include rules, other than rules of general application, which
they actively helped to formulate and applications, claims, or contested cases in the consideration of which they were an active participant.

D. A City official or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when they have a substantial financial interest in a competing firm or undertaking.

E. City officials and employees are discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom the officer, official, or employee is in a position to reward with official action or has rewarded with official action in the past.

2.70.050 RULES OF CONDUCT FOR CITY OFFICIALS AND EMPLOYEES.

A. Proof beyond a reasonable doubt of commission of any act enumerated in this Section is proof that the actor has breached their fiduciary duty and the public trust. A City official or employee shall not:

1. Disclose or use confidential information acquired in the course of their official duties in order to further substantially their personal financial interests; or

2. Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

   (a) Which would tend improperly to influence a reasonable person in their position to depart from the faithful and impartial discharge of their public duties; or

   (b) Which they know or which a reasonable person in their position should know under the circumstances is primarily for the purpose of rewarding them for official action they have taken.

B. An economic benefit tantamount to a gift of substantial value includes without limitation:

1. A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or

2. The acceptance by a City official or employee of goods or services for their own personal benefit offered by a person who is at the same time providing goods or services to the City under a contract or other means by which the person receives payment or other compensation from the City, as applicable, for which the official or employee serves, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the
official or employee does not receive any substantial benefit resulting from their official or governmental status that is unavailable to members of the public generally.

3. The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this Section:

(a) Campaign contributions and contributions in kind reported as required by C.R.S. § 1-45-108;

(b) An unsolicited item of trivial value;

(b.5) A gift with a fair market value of sixty-five dollars ($65.00) or less that is given to the City official or employee by a person other than a professional lobbyist.

(c) An unsolicited token or award of appreciation as described in Section 3 (3)(c) of Article XXIX of the Colorado Constitution;

(c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the City official or employee;

(d) Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with the provisions of Section 3 (3)(f) of Article XXIX of the Colorado Constitution;

(e) Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in accordance with the provisions of Section 3 (3)(e) of Article XXIX of the Colorado Constitution;

(f) A gift given by an individual who is a relative or personal friend of the City official or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by City official or employee in accordance with the provisions of Section 3 of Article XXIX of the Colorado Constitution that are reported pursuant to C.R.S. § 24-6-203 (3)(d);

(h) Payment of salary from employment, including other government employment;

(i) A component of the compensation paid or other incentive given to the City official or employee in the normal course of employment; and
(j) Any other gift or thing of value a City official or employee is permitted to solicit, accept, or receive in accordance with the provisions of Section 3 of Article XXIX of the Colorado Constitution, the acceptance of which is not otherwise prohibited by law.

C. The provisions of this Section are distinct from and in addition to the reporting requirements of C.R.S. §§ 1-45-108 and 24-6-203, and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this Section, if such reporting provisions apply.

D. The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this Section shall be identical to the amount of the gift limit under Section 3 of Article XXIX of the Colorado Constitution, which is adjusted for inflation from time to time by the Colorado Independent Ethics Commission.

2.70.060 INTERESTS IN CONTRACTS, SALES, OR PURCHASES.

A. City officials or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six (6) months following the termination of their employment, contract or be employed by an employer who contracts with the City involving matters with which they were directly involved during their employment. For purposes of this Section, the term:

(1) “Be interested in” does not include holding a minority interest in a corporation.

(2) “Contract” does not include:

(a) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(b) Merchandise sold to the highest bidder at public auctions;

(c) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;

(d) A contract with an interested party if, because of geographic restrictions, the City could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that the City could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the City is greater than ten percent (10%) of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(e) A contract with respect to which any City official or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with C.R.S. §§ 24-18-109 (3)(b) or 31-4-404 (3). Any such
disclosure shall be made to the City Council, for City officials and employees.

B. City officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

C. Any contract made in violation of this Section shall be voidable at the instance of any party to the contract except the City official or employee interested therein.

2.70.070 VOLUNTARY DISCLOSURE. A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a City official, or an employee may, prior to acting in a manner which may impinge on their fiduciary duty and the public trust, disclose the nature of their private interest. Such disclosure shall be made in writing to the City Manager and City Attorney, listing the amount of their financial interest, if any, the purpose and duration of their services rendered, if any, and the compensation received for the services or such other information as is necessary to describe their interest. If the Board member, City official, or employee then performs the official act involved, they shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

2.70.080 ENFORCEMENT AND PENALTIES.

A. The City Council and Boards have the duty to bring a matter concerning an alleged violation to the City Council.

B. Any Council members found to have violated any provision of this Code of Ethics, by clear and convincing evidence, shall be subject to a public reprimand by the City Council and may be subject to a censure if deemed appropriate by the City Council.

C. Any Board members found to have violated any provision of this Code of Ethics, by clear and convincing evidence, shall be subject to a public reprimand by the City Council and may be subject to a censure if deemed appropriate by the City Council. Furthermore, upon such a finding, the City Council shall have good cause to remove such Board member from the Board upon which they sit.

D. The penalties contained herein shall not limit the City from bringing any action at law or equity, including civil or criminal action under federal, state, or local law for violation of this Code of Ethics, a breach of public trust, a breach of fiduciary duty, or any other related violation. The City shall be entitled to its costs and expenses in pursing such action, including reasonable attorneys’ fees.