ORDINANCE NO. 2006 – 09

AN ORDINANCE OF THE CITY OF WENDOVER, TOOELE COUNTY, UTAH ADOPTING THE UTAH GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT, DESIGNATING A RECORDS OFFICER AND APPEALS PROCESS, AND SETTING FEES FOR THE REPRODUCTION OF CITY RECORDS

WHEREAS, the City is subject to the Utah Government Records Access and Management Act, U. C. A. § 63-2-101, *et. seq.;* and

WHEREAS, the City has previously passed an ordinance relating to public access to its records, but several years have passed since the adoption of said ordinance; and

WHEREAS, the laws of the State of Utah have been amended over the course of time, necessitating the adoption of a new Ordinance by the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF WENDOVER, COUNCIL OF THE CITY OF WENDOVER, TOOELE COUNTY, UTAH THAT:

1. Repealer. All previous ordinances relating to the public's access to the City's records are repealed.

2. Adoption of Ordinance. Attached hereto as Exhibit "A" are rules and regulations which accomplish the following: (a) adopt by reference the Utah Government Records Access and Management Act; (b) set fees for the reproduction of copies of City records; (c) designate a records officer for the City; (d) set an appeal procedure for decisions of the records officer; and (e) specify a penalty for violation of the ordinance. Said rules and regulations, entitled "Wendover City Government Records Access and Management Ordinance" are adopted by this reference.

3. Severability. The provisions of the Wendover City Government Records Access and Management Ordinance are severable. If any provisions thereof is found unenforceable, for any reason, the remainder shall remain in full force and effect.

//
//
//
//
//

4. Effective Date. This ordinance shall become effective 20 days after publication or posting, or 30 days after final passage by the Governing Body, whichever is sooner.

PASSED and ADOPTED this 20th day of December, 2006

The City of Wendover, Utah

By: Brett Shelton
Its: Mayor

ATTEST:

Margaret L. Wheeler Clerk

Seal:

Date of first publication/posting: December 27, 2006.

EXHIBIT A
Pages 1 through 5 inclusive

WENDOVER CITY GOVERNMENT RECORDS ACCESS AND MANAGEMENT ORDINANCE

1-101. SHORT TITLE.

This Ordinance shall be known as the Wendover City Government Records Access and Management Ordinance.

1-102. PURPOSE AND INTENT.

It is the purpose and intent of Wendover City, Utah (the "City") to provide, in accordance with the Government Records Access and Management Act, Chapter 2 of Title 63 of the Utah Code Annotated, 1953 as amended, an ordinance acknowledging and complying with said Act and providing for its application in the City. The City shall also comply with other federal and state statutory and regulatory record-keeping requirements.

1-103. ADOPTION OF UTAH GOVERNMENT RECORDS ACCESS MANAGEMENT ACT.

The City hereby adopts the Utah Government Records Access Management Act (Utah Code Annotated, Title 63, Chapter 2, as amended) (the "Act") and the rules, regulations, and requirements set forth therein. If the provisions of this Ordinance conflict with the Act, the Act shall govern.

1-104. CITY RECORDS OFFICER: DESIGNATION AND DUTIES.

(1) The City Administrator ("Administrator") is hereby appointed as the Records Officer to oversee and coordinate records access and management and City archives activities.

(2) The Records Officer shall comply with all requirements of this Ordinance and with the requirements of the Utah Government Records Access Management Act (Utah Code Annotated, Title 63, Chapter 2, as amended).

1-105. RECORDS MAINTENANCE PROCEDURES.

Records maintenance procedures shall be developed by the Records Officer to ensure that due care is taken to maintain and preserve City records safely and accurately over the long term.

1-106. STORAGE MEDIUM.

The City retains and reserves to itself the right to use any type of non-verbal or non-written format for the storage, retention and retrieval of government records, including, but not limited to, audio tapes, video tapes, microforms, any type of computer, data processing, imaging or electronic information storage or processing equipment or systems, which are not prohibited by state statute and do not compromise legal requirements for records storage, retrieval, security and

maintenance, to store and maintain City records. All computerized and non-written format records and data which are designated and classified in accordance with this Chapter shall be made available to a requester in accordance with this Chapter.

1-200 PART 2 — ACCESS AND DISCLOSURE OF RECORDS

1-201. ACCESS TO PUBLIC RECORDS; RIGHT TO INSPECT AND RECEIVE COPIES.

Every person has a right to inspect a public record, free of charge, and has the right to take a copy of a public record during normal City business hours, subject to the payment of costs and fees as set forth in this Ordinance.

1-202. NO DUTY TO CREATE A RECORD.

(1) The City has no obligation to create a record or a record series in response to a request, if the record or record series requested is not otherwise regularly maintained or kept.

(2) Upon request, the City shall provide a record in a particular format if:

(a) The City is able to do so without unreasonably interfering with the City's duties and responsibilities; and

(b) The requester agrees to pay the City for its additional costs actually incurred in providing the record in the requested format.

(3) Nothing in this section requires the City to fulfill a person's record request if the request unreasonably duplicates prior record requests from that person.

1-203. OBLIGATION TO MAKE COPIES OF LARGE RECORDS.

If a person requests copies of more than 50 pages of records, and, if the records are contained in files that do not contain records that are exempt from disclosure, the City may:

(1) Provide the requester with the facilities for copying the requested records and require that the requester make the copies himself/herself; or

(2) Allow the requester to provide his/her own copying facilities and personnel to make the copies at the City's offices and waive the fees for copying the records.

1-300 PART 3 — PROCEDURE FOR ACCESS

1-301. REQUEST FOR RECORD.

All record requests shall be directed to the City on forms provided by the City.

1-302. FEES.

(1) The City may charge a reasonable fee to cover its actual cost of duplicating a record, compiling a record in a form other than that maintained by the City, postage or any other fee reasonably related to the request for the record consistent with this Chapter.

(2) The City may fulfill a record request without charge, when it determines that:

(a) Releasing the record primarily benefits the public rather than a person;

(b) The individual requesting the record is the subject of the record; or

(c) The requester's rights are directly implicated by the information in the record, and the requester is impecunious.

(3) Fees to be charged under this section shall be as follows, or as later set forth in a resolution adopted by the City:

(a) $0.25 per page;

(b) For requests requiring more than fifteen (15) minutes time to compile the records, $0.25 per page, plus $20.00 per hour or part thereof, billed in quarter-hour (15minute) increments; and

(c) Postage at actual cost.

(4) The City shall not charge a fee for:

(a) Reviewing a record to determine whether it is subject to disclosure; or

(b) Inspecting a record.

1-400 PART 4 — APPEALS

1-401. APPEAL TO MAYOR.

(1) Any person aggrieved by an access determination of the Records Officer under this Chapter may appeal the determination to the Mayor of the City of Wendover (the "Mayor") by filing a notice of appeal with the City no later than thirty (30) calendar days of receiving notice of denial.

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

(3) If the appeal involves a record that is the subject of a business confidentiality claim, the City shall:

(a) Send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice of the appeal; except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(b) Send notice of the business confidentiality claim to the requester within three

business days after receiving notice of the requester's appeal.

(4) The notice of appeal shall contain the following information:
   (a) The petitioner's name, mailing address and daytime telephone number;
   (b) A copy of any denial of the records request;
   (c) The relief sought; and
   (d) A short supporting statement, including a statement of facts, and a recitation of the reasons and legal authority in support of the appeal.

(5) No later than five (5) business days after receiving a notice of appeal, the City shall:
   (a) Schedule a hearing for the Mayor to hear the appeal. Unless otherwise agreed to by all the parties, the hearing shall be held no sooner than 15 days and no later than 45 days after receiving the notice of appeal;
   (b) Send a copy of the notice of hearing to the petitioner; and
   (c) Send a copy of the notice of appeal, supporting statement and a notice of the hearing to:
      (i) The Mayor;
      (ii) The Records Officer;
      (iii) The City's Legal counsel; and
      (iv) Any person who made a business confidentiality claim under this Chapter for a record that is the subject of the appeal.

(6) Any person whose legal interest may be substantially affected by the appeal may file a request for intervention before the Mayor. Any written statement of facts, reasons and legal authority in support of the intervener's positions shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceeding before the Mayor. A Request for Intervention and all supporting materials must be filed with the City and served upon all interested parties at least five (5) days before any hearing.

(7) The Mayor shall hold a hearing no sooner than 15 days and no later than 45 days after receiving the notice of appeal.

(8) At the hearing, the Mayor shall allow the parties to testify, present evidence and comment on the issues. The Mayor may allow other interested persons to comment on the issues.

(9) The Mayor may review the disputed records.
   (a) The review shall be in camera; and
   (b) The Mayor may not disclose any information or record reviewed by the Mayor in camera, unless the disclosure is otherwise authorized by this Chapter.

(10) No later than ten business days after the hearing, the Mayor shall issue a signed order either granting the petition in whole or in part, or upholding the determination of the Records Officer in whole or in part.

(11) The Mayor may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or non-disclosure, order the disclosure of information properly classified as private, controlled or protected, if the public interest favoring access outweighs the interest favoring restriction of access. In making a determination under this section, the Mayor shall consider and, where appropriate, limit the requester's use and further

disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests and privacy interests or the public interest in the case of other protected records.

(12) The order of the Mayor shall include:

(a) A statement of reasons for the decision;

(b) A description of the record or portions of the record to which access was ordered or denied, or to which it refuses to amend, provided that the description does not disclose private, controlled or protected information;

(c) A statement that any party to the appeal may appeal the Mayor's decision to the District Court; and

(d) A brief summary of the appeal and a notice that, in order to protect its right on appeal, the party may wish to seek advice from an attorney.

(13) If the Mayor fails to issue a decision within ten business days after the hearing, said failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the Mayor, in writing, if he considers the appeal denied.

1-402. JUDICIAL REVIEW.

Any party to a proceeding before the City may petition for judicial review by the District court of the Mayor order. The petition shall be filed no later than 30 days after the date of the Mayor's decision.

1-500 PART 5 – PENALTIES

1-501. DISCIPLINARY ACTION.

The City may take disciplinary action, which may include suspension or discharge, against any employee who intentionally violates any provision of this Chapter.

//
//
//
//
//

MAYOR
Brett Shelton

CITY ADMINISTRATOR
Glenn Wadsworth

CITY COUNCIL
Ms. Gertrude Tripp
Mr. Florencio Bermejo
Mr. Karl Jorgenson
Mr. Mike R. Crawford
Mr. Gary Bean

CERTIFICATE OF POSTING CITY ORDINANCES

I, THE DULY APPOINTED AND ACTING CITY CLERK/RECORDER FOR THE CITY OF WENDOVER, UTAH, HEREBY CERTIFY THAT COPIES OF THE FOREGOING ORDINANCE-2006-09 WAS POSTED AT THREE PUBLIC PLACES WITHIN THE MUNICIPALITY THIS 27TH DAY OF DECEMBER 2006 WHICH PUBLIC PLACES ARE:

1. **FRED'S MARKET**
2. **WENDOVER, UTAH CITY OFFICES**
3. **WENDOVER, UTAH POST OFFICE**

DATED THIS 27TH DAY OF DECEMBER 2006.

RECORDER: Margaret L. Wheeler

100 South 9th Street P.O. Box 430 Wendover, Utah 84083 (435) 665-7030 Fax (435) 665-2523