



AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: PLANNING & DEVELOPMENT DEPARTMENT

DATE: OCTOBER 19, 2021

RE: ORDINANCE 2021- 22, 2ND READING - AN ORDINANCE AMENDING TITLE 2 OF THE FRUITA MUNICIPAL CODE CONCERNING POWERS AND DUTIES OF THE COMMUNITY DEVELOPMENT DEPARTMENT, THE PLANNING COMMISSION, THE BOARD OF ADJUSTMENT, AND THE HISTORIC PRESERVATION BOARD.

BACKGROUND

This is a request to amend portions of Title 2 related to the Planning Commission, Board of Adjustment, the Community Development Department, and to add a new section related to the Historic Preservation Board. When Staff and Design Workshop started the Land Use Code amendments in early 2020, one of the outcomes was for better organization. The amendments proposed are minor and primarily meant to clean up the current language. The addition of the Historic Preservation Board is to relocate from Title 17 (the Land Use Code) to Title 2.

FISCAL IMPACT

No fiscal impact is expected from this proposed Ordinance.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The primary goal is to maintain consistency and organization within the Land Use Code and Municipal Code. This proposed Ordinance is meant to accomplish this objective.

OPTIONS AVAILABLE TO COUNCIL

1. Adopt Ordinance 2021-22, A request to approve an Ordinance amending Title 2 of the Fruita Municipal Code concerning powers and duties of the Community Development Department, the Planning Commission, the Board of Adjustment, and the Historic Preservation Board.

2. Direct Staff to research any concerns the City Council has with regards to the proposed Ordinance.
3. Denial of the proposed Ordinance.

RECOMMENDATION

Staff recommends that the City Council move to:

Adopt Ordinance 2021-22, A request to approve an Ordinance amending Title 2 of the Fruita Municipal Code concerning powers and duties of the Community Development Department, the Planning Commission, the Board of Adjustment, and the Historic Preservation Board.

ORDINANCE NO. 2021-22

AN ORDINANCE AMENDING TITLE 2 OF THE FRUITA MUNICIPAL CODE CONCERNING POWERS AND DUTIES OF THE COMMUNITY DEVELOPMENT DEPARTMENT, THE PLANNING COMMISSION, THE BOARD OF ADJUSTMENT, AND THE HISTORIC PRESERVATION BOARD.

WHEREAS, Title 2 of the City of Fruita (the “City”) Municipal Code (the “Code”) sets forth powers, duties and responsibilities of administration and personnel of the City;

WHEREAS, Chapter 20 of Title 2 of the Code sets forth the establishment of city departments pursuant to the Fruita City Charter including the Community Development Department;

WHEREAS, Chapter 39 of Title 2 of the Code sets forth the establishment of the Planning Commission;

WHEREAS, Chapter 40 of Title 2 of the Code sets forth the establishment of the Board of Adjustment;

WHEREAS, Title 2 of the Code does not include the establishment of the Fruita Historic Preservation Board;

WHEREAS, to provide better organization within the Code, the City wishes to amend Title 2 of the Code.

WHEREAS, this Ordinance was introduced at first reading on September 21, 2021 pursuant to Section 2.13(B) of the City Charter; and

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the requirement of Section 2.13(B) of the City Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence and that approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, has determined to take final action on this Ordinance prior to concluding the public hearing on second reading.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Amendments and Additions to Title 2. Title 2 of the Code is hereby amended to read as shown in the attached Exhibit A.

Section 3. Codification of Amendments. The codifier of the City’s Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Code. The City Clerk is authorized to correct, or approve the

correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after final adoption in accordance with Section 2.13(G) of the Fruita Home Rule Charter.

Section 6. 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 7. Publication. The City Clerk is ordered to publish this Ordinance in accordance with Chapter 2.13(F) of the Code.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL ON THIS
19TH DAY OF OCTOBER 2021.**

CITY OF FRUITA

Joel Kincaid, Mayor

ATTEST:

Margaret Sell, City Clerk

EXHIBIT A TO ORDINANCE 2021-22

~~strike out~~ indicating language to be deleted and underline indicating language to be adopted:

Chapter 2.20 CITY DEPARTMENTS

2.20.30 COMMUNITY DEVELOPMENT DEPARTMENT.

- A. ~~The Community Development Department is responsible for the oversight of current and long range planning and zoning including implementation and enforcement of Title 17, Land Use Code; Title 15, Building and Construction; and other duties and responsibilities as may be prescribed.~~ The Community Development Department shall perform all planning and building functions for the City, shall provide technical support and guidance for action on development applications and building permits, and shall review and perform such other actions as may be requested by the City Council or other decision-making body as set forth in this Title. The Community Development Director is responsible for oversight of the Department.
- A. _____
- B. The position of Code Enforcement Officer shall be under the administration and operational control of the Community Development Director. Such Code Enforcement Officer shall have the power, together with the Community Development Director and the City Attorney, to enforce all terms and provisions contained in Title 17 of the Fruita Municipal Code concerning Land Use and Development, as well as the terms and conditions of any permits or other land use approvals granted pursuant to Title 17. Such Code Enforcement Officer shall also have the authority, together with the City Attorney and members of the Fruita Police Department, to enforce provisions contained in Title 6 concerning Animals, Title 8 concerning Health and Safety, Title 9 concerning Public Peace, Morals and Welfare, Title 10 concerning Vehicles and Traffic, Title 12 concerning Public Improvements and Title 15 concerning Building and Construction, as well as other provisions of the Fruita Municipal Code as may be determined from time to time by the City Council. The Code Enforcement Officer shall have the authority to issue notices of violation, compliance orders, and may issue citations or summons and complaints in the Fruita Municipal Court. Provided, however, such Code Enforcement Officer need not be a "peace officer" as defined by Title 18, C.R.S., and if the Code Enforcement Officer is not a "peace officer," shall not be permitted to carry a firearm or conduct arrests.
- C. The Building Inspector shall perform all required inspections within the City pursuant to Title 15, Building and Construction. The Building Inspector may be an employee of the City or may be a person or entity under contract with the City to perform building inspections within the City.

Chapter 2.39
PLANNING COMMISSION

Sections:

2.39.010 Creation; Membership

2.39.020 Meetings of the Planning Commission

2.39.030 Quorum and Voting

2.39.040 Planning Commission Officers

2.39.050 Powers and Duties of Planning Commission

2.39.010 CREATION; MEMBERSHIP.

- A. In accordance with the City Charter, there shall be a Planning Commission consisting of seven (7) members. Members shall reside within the City and shall serve without compensation.
- B. Planning Commission members shall be appointed by the Mayor, with approval of the City Council, for three (3) year overlapping terms. The members may continue to serve until their successors have been appointed. All vacancies may be shall be filled by the City Council for the unexpired term only.
- C. Members may be appointed to successive terms without any limitation. The Mayor or one (1) City Council member shall serve as a member of the Planning Commission. The City Council member or Mayor shall be appointed by the City Council immediately following the regular municipal election held every two (2) years.
- D. Planning and Zoning Commission members may be removed by the City Council at any time for failure to attend two (2) unexcused consecutive meetings or for the failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period, or for any other good cause related to performance of duties. Upon request by the member proposed for removal, the City Council shall hold a hearing on the proposed removal before it becomes effective.
- E. Chapter 2.70 of the Fruita Municipal Code concerning the Code of Ethics for City Officials and Sections 24-18-101, *et. seq.*, C.R.S. shall apply to all members of the Planning Commission.

2.39.020 MEETINGS OF THE PLANNING COMMISSION.

- A. The Planning Commission shall establish a regular meeting schedule and shall meet as frequently as necessary to perform its duties in conformance with Title 17 of the Fruita Municipal Code.
- B. Minutes shall be kept of all Planning Commission proceedings.

- C. All Planning Commission meetings shall be subject to the Colorado Open Meetings Law, Sections 24-6-401, *et. seq.*, C.R.S.
- D. Whenever the Planning Commission is required to hold a public hearing pursuant to the City's Land Use Code, Title 17 of the Fruita Municipal Code, the Community Development Department shall notify the public of the date, time and place of such hearing in accordance with Section 17.01.130 of the Fruita Municipal Code. The quasijudicial procedures set forth in Chapter 2.60 of the Fruita Municipal Code shall apply to all land use hearings.
- ~~D.E.~~ The Planning Commission can hold work sessions. At work sessions, agenda items for consideration for future meetings are brought forward and discussed. Unless previously announced, there is no voting that takes place at a work session. Although the public and applicants are invited to attend, no testimony on the record is taken from members of the public. Applicants and the public may provide comment when recognized by the Chair of the Planning Commission.

2.39.030 QUORUM AND VOTING.

- A. Quorum for the Planning Commission shall consist of a majority of the Commission membership, excluding vacant positions. A quorum shall be necessary for the Planning Commission to take official action.
- B. All official actions of the Planning Commission shall be taken by a majority vote, requiring a quorum being present. A simple majority vote is required for all official actions. In the event there is a tied vote, this shall constitute a failed motion and shall not be considered an action. The no action shall have occurred, and the matter shall be considered active until a motion receives a majority vote.
- C. A roll call vote shall be taken upon the request of any member.

2.39.040 PLANNING COMMISSION OFFICERS.

- A. In its first meeting in April of each year, the Planning Commission shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as ~~chairman~~ who shall preside over the Commission's meetings, and one (1) member to serve as vice chairman. The persons so designated shall serve in such capacities for a term of one (1) year. A vacancy in these offices may be filled for the unexpired term by a majority vote of the Commission membership, excluding vacant positions.
- B. The ~~chairman~~ and vice-~~chairman~~ may take part in all deliberations of the Planning Commission and vote on all matters.

2.39.050 POWERS AND DUTIES OF PLANNING COMMISSION.

A. The Planning Commission may:

1. Make studies and recommend to the City Council plans, goals and objectives related to the growth, development and redevelopment of the City and the surrounding extraterritorial planning area.
2. Develop and recommend to the City Council policies, ordinances, administrative procedures, and other means for carrying out land use planning in a coordinated and effective manner.
3. Adopt bylaws, rules and procedures for the conduct of Planning Commission business, not inconsistent with any provisions of the Fruita Municipal Code.

B. The Planning Commission shall:

1. Conduct public hearings and make recommendations to the City Council concerning land use applications in accordance with the requirements of the City's Land Use Code, Title 17 of the Fruita Municipal Code.
2. Perform such additional duties as assigned by the City Council.

Chapter 2.40 BOARD OF ADJUSTMENT

Sections:

2.40.010 Creation;— Membership

2.40.020 Meetings of the Board of Adjustments

2.40.030 Quorum

2.40.040 Voting

2.40.050 Board of Adjustment Officers

2.40.060 Powers and Duties of Board of Adjustment

2.40.010 CREATION; —MEMBERSHIP.

- A. In accordance with the City Charter, there shall be a Board of Adjustment and appeals for the City consisting of five (5) regular members and two (2) alternates. Members shall reside within Fruita and shall serve without compensation.
- B. Board of Adjustment regular members and alternates shall be appointed by the Mayor, with approval of the City Council, for three (3) year overlapping terms, but both regular members and alternates may continue to serve until their successors have been appointed.

- C. All vacancies shall be filled by the City Council. Members may be reappointed by the City Council to successive terms without limitation.
- D. Regular members of the Board of Adjustment may be removed by the City Council at any time for failure to attend two (2) unexcused consecutive meetings or for failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period, or for any other good cause related to performance of their duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures. Upon request by the member proposed for removal, the City Council shall hold a hearing on such removal before it becomes effective.
- E. Chapter 2.70 of the Fruita Municipal Code, concerning the Code of Ethics for City Officials, and Sections 24-18-101, *et. seq.*, C.R.S. shall apply to all members of the Board of Adjustment.

2.40.020 MEETINGS OF THE BOARD OF ADJUSTMENT.

- A. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with the requirements of the City's Land Use Code, Title 17 of the Fruita Municipal Code.
- B. The Board shall conduct its meetings in accordance with quasi-judicial procedures set forth in Chapter 2.60 of the Fruita Municipal Code.
- C. Whenever the Board of Adjustment is required to hold a public hearing pursuant to the City's Land Use Code, Title 17 of the Fruita Municipal Code, the Community Development Department shall notify the public of the date, time and place of such hearing in accordance with Section 17.01.130 of the Fruita Municipal Code.
- D. All meetings of the Board of Adjustment shall comply with the Colorado Open Meetings Law, Section 24-6-401, *et. seq.*, C.R.S. Whenever feasible, an agenda for each Board of Adjustment meeting shall be made available to the public in advance of such meeting.

2.40.030 QUORUM.

- A. A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths (4/5) of the regular Board membership, excluding vacant positions. A quorum shall be necessary for the Board to take any official action.
- B. A member who has withdrawn from a meeting without being excused shall be counted as present for purposes of determining whether a quorum is present.

2.40.040 VOTING.

- A. The concurring vote of four-fifths (4/5) of the regular Board membership, excluding vacant positions, shall be necessary to reverse any order, requirement, decision, or determination of the administration; to decide in favor of an applicant on any matter upon which it is required to render a decision under the Fruita Municipal Code; or to grant any variance. All other actions of the Board shall be taken by majority vote, a quorum being present. In the event there is a tied vote, this shall constitute a failed motion and shall not be considered an action. The no action shall have occurred, and the matter shall be considered active until a motion receives a majority vote.
- B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (C) or has been allowed to withdraw from the meeting in accordance with subsection (D).
- C. A member shall be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - 1. The member has direct financial interest in the outcome of the matter at issue, or
 - ~~2.~~—The matter at issue involves the members own official conduct, or
 - ~~2.~~—

Participation in the matter might violate the letter or spirit of the City's Code of Ethics for City Officials, Chapter 4

 - 3. of the Fruita Municipal Code, or the Standards of Conduct for Local Government Officials, Sections 24-18-101, *et. seq.*, C.R.S., or
 - 4. ~~5.~~—A member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound objective judgment in the public interest.
- D. A member may be allowed to withdraw from the entire remainder of a meeting by a majority vote of the remaining members present for any good and sufficient reason, other than the member's desire to avoid voting on matters to be considered at that meeting.
- E. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- F. A roll call vote shall be taken upon the request of any member.

2.40.050 BOARD OF ADJUSTMENT OFFICERS.

- A. At its first regular meeting in April, the Board of Adjustment shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as chairman who shall preside over the Board's meetings, and one (1) member to serve as vice-chairman. The person so designated shall serve in such capacity for a term of one (1) year. A vacancy may be filled for an unexpired term only by majority vote of the Board's membership, excluding vacant positions.
- B. The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the Board.
- C. The chairman and vice-chairman may take part in all deliberations and vote on all matters.

2.40.060 POWER AND DUTIES OF BOARD OF ADJUSTMENT.

- A. The Board of Adjustment shall hear and decide:
 - 1. Appeals from any order, decision, requirement or interpretation made by the Community Development Director, building official, or any other zoning, building or code enforcement officer.
 - 2. Applications for variances in accordance with the standards set forth in Title 17 of the Fruita Municipal Code.
 - 3. Questions involving interpretations of the City's Official Zoning Map, including disputed district boundary lines and lot lines.
 - 4. All other matters referred to it under the provisions of Titles 15 and 17 of the Fruita Municipal Code, or other ordinances of the City, or any Codes adopted by reference by the City.
- B. The Board may adopt bylaws, rules and regulations governing its procedures and meetings not inconsistent with any provisions of the Fruita Municipal Code.

Chapter 2.43

HISTORIC PRESERVATION BOARD

Sections

2.43.010 Creation; Membership

2.43.020 Meetings of the Historic Preservation Board

2.43.030 Quorum and Voting

2.43.40 Historic Preservation Board Officers

2.43.050 Powers and Duties of Historic Preservation Board

2.43.010 CREATION; MEMBERSHIP.

- A. There is hereby established an Historic Preservation Board, which shall have principal responsibility for matters of historic preservation.
- ~~A.B.~~ The Board shall consist of a minimum of five (5) members and not more than seven (7) members providing a balanced, community- wide representation. The Director of the Community Development Department and/or appointed department representatives shall serve as staff to the Board. There shall be one (1) member representative of the downtown merchants. Members shall reside within the City and shall serve without compensation.
- C. Historic Preservation Board members shall be appointed by the City Council for three (3) year staggered terms from the date of appointment. Members may continue to serve until their successors have been appointed. Appointments to fill vacancies on the Board shall be made by the City Council. Members may be appointed to successive terms without any limitation.
- D. Members of the Board may be removed by the City Council without cause being stated. Historic Preservation Board members may be removed by the City Council at any time for failure to attend two (2) unexcused consecutive meetings or for the failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period, or for any other good cause related to performance of duties. Upon request by the member proposed for removal, the City Council shall hold a hearing on the proposed removal before it becomes effective.
- ~~B.~~ The Director of the Community Development Department and/or appointed department representatives shall serve as staff to the Board.
- E. Chapter 2.70 of the Fruita Municipal Code concerning the Code of Ethics for City Officials and Sections 24-18-101 *et. seq.* C.R.S. shall apply to all members of the Historic Preservation Board.

2.43.020 MEETINGS OF THE HISTORIC PRESERVATION BOARD

- A. The Historic Preservation Board shall establish a regular meeting schedule and shall meet as frequently as necessary to perform its duties in conformance with Title 17 of the Fruita Municipal Code.
- B. Minutes shall be kept of all Historic Preservation Board proceedings.
- C. ~~The Board shall conduct its business in accordance with the State's Public Meetings Act, Open Records Act and other laws applicable to local public bodies.~~ All Board meetings shall be subject to the Colorado Open Meetings Law, Sections 24-6-401, et. seq., C.R.S.
- D. Whenever the Historic Preservation Board is required to hold a public hearing pursuant to the City's Land Use Code, Title 17 of the Fruita Municipal Code, the Community Development Department shall notify the public of the date, time and place of such hearing in accordance with Section 17.01.130 of the Fruita Municipal Code. The quasijudicial procedures set forth in Chapter 2.60 of the Fruita Municipal Code shall apply to all land use hearings.

2.43.030 QUORUM AND VOTING.

- A. Quorum for the Historic Preservation Board shall consist of a majority of the Board membership, excluding vacant positions. A quorum shall be necessary for the Board to take official action.
- B. All official actions of the Historic Preservation Board shall be taken by a majority vote, requiring a quorum being present. A simple majority vote is required for all official actions. In the event there is a tied vote, this shall constitute a failed motion and shall not be considered an action. The no action shall have occurred, and the matter shall be considered active until a motion receives a majority vote.
- C. A roll call vote shall be taken upon the request of any member.

2.43.40 HISTORIC PRESERVATION BOARD OFFICERS.

- A. In its first meeting in April of each year, the Historic Preservation Board shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as chairman who shall preside over the Board's meetings, and one (1) member to serve as vice chairman. The persons so designated shall serve in such capacities for a term of one (1) year. A vacancy in these offices may be filled for the unexpired term by a majority vote of the Board membership, excluding vacant positions.
- B. The chairman and vice-chairman may take part in all deliberations of the Historic Preservation Board and vote on all matters.

2.43.50 POWERS AND DUTIES OF THE HISTORIC PRESERVATION BOARD.

A. The Historic Preservation Board may

- 1. ~~The Board shall propose to the City Council for approval bylaws as the Board deems necessary.~~ The Board may adopt bylaws, rules and procedures for the conduct of Historic Preservation Board business, not inconsistent with any provisions of the Fruita Municipal Code.**

B. The Historic Preservation Board shall:

- 1. ~~after solicitation of public comment and at a properly noticed public meeting~~ Conduct public hearings and make recommendations to the City Council concerning land use applications in accordance with the requirements of the City's Land Use Code Title 17 of the Fruita Municipal Code. This shall include the ability to:÷**

- i. Recommend eligibility criteria for the designation of historic resources and for review of proposals to alter designated resources.
- ii. Review and determine qualifications of properties nominated for designation as either an historic structure, site or district and recommend to City Council approval or denial of a designation.
- iii. Review and make recommendations to the owner(s) on proposed alterations or demolitions to a designated historic structure, site or district.
- iv. Advise and assist owners of historic properties on physical and financial aspects of preservation, renovation, rehabilitation and reuse, including nomination to the City Register, the State Register and the National Register of Historic Places.
- v. Develop and assist in public education programs including, but not limited to, walking tours, brochures, a marker program for historic properties, lectures, exhibits and conferences.
- vi. Conduct surveys of historic sites, properties, and areas for the purpose of defining those of historic significance, and prioritizing the importance of identified historic areas. The Board may create a list of structures of historical or archeological merit, which have not been designated.
- vii. Advise the City Council on matters related to preserving the historic character and substance of the City and recommend easements, covenants, licenses and other methods which would implement the completion of purposes of this Chapter.

viii. Actively pursue financial assistance for preservation-related programs.

- 2. Perform such additional duties as assigned by the City Council.**