

## TOOELE CITY CORPORATION

### ORDINANCE 2026-05

#### AN ORDINANCE OF TOOELE CITY ENACTING A TEMPORARY LAND USE REGULATION AMENDING TOOELE CITY CODE SECTION 7-26-3 REGARDING WATER RIGHTS EXACTIONS.

WHEREAS, Utah Constitution, Article XI, Section 5 directly confers upon Utah's charter cities, including Tooele City, "the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law"; and,

WHEREAS, Utah Code Section 10-8-84 enables Tooele City to "pass all ordinances and rules, and make all regulations . . . as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city"; and,

WHEREAS, Utah Code Section 10-20-504 enables Tooele City to "enact an ordinance establishing a temporary land use regulation," without prior Planning Commission recommendation or public hearings, upon the City Council finding a "compelling, countervailing public interest" in doing so, with "temporary" meaning not to exceed six months; and,

WHEREAS, the Utah Supreme Court case of *Western Land Equities v. Logan City* (1980) identified and established a common law principle called the Pending Ordinance Rule, which provides that a land use or development "application for a permitted use cannot be refused **unless a prohibiting ordinance is pending at the time of application**"; further, "if a city...has initiated proceedings to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning designation" (emphasis added); and,

WHEREAS, like UCA Section 10-20-504, the Pending Ordinance Rule requires a legislative finding of a compelling, countervailing public interest; and,

WHEREAS, *Western Land Equities* also established Utah's vested development rights rule that, except for the Pending Ordinance Rule, a land use application establishes the date on which development rights vest, as well as the set of land use ordinances applicable to the approved land use; and,

WHEREAS, *Western Land Equities* recognizes the unfairness and the threat to the public interest where the announcement of a future zoning ordinance change would trigger a race to file and vest land use applications prior to the municipality's ability to follow the established lengthy process for amending land use ordinances, thus subverting and undermining the very public policies supporting the need for the zoning ordinance amendment; and,

WHEREAS, on May 6, 1998, the City Council approved Ordinance 1998-10, announcing a pending ordinance to require the exaction of water rights for new developments in Tooele City; and,

WHEREAS, on August 18, 1998, the City Council approved Ordinance 1998-31, enacting Tooele City Code Chapter 7-26 (Water Rights) regarding the exaction of water rights for new developments in Tooele City; and,

WHEREAS, between 1998 and the present time, the City has exacted water rights under Chapter 7-26, and has continuously developed water sources as state-approved points of diversion for those exacted water rights; and,

WHEREAS, upon the conveyance of water rights to the City, payment of culinary water impact fees, and compliance with other standard development regulations, the City is required to provide culinary water for developments after they receive City land use approval; and,

WHEREAS, the Utah Division of Water Rights has long determined that the eastern and central areas of the Tooele Valley are over-appropriated for water rights, meaning there is less water in the eastern and central Tooele Valley hydrologic system than there are the rights to divert that water, with the result that at some future point in time all the available water in those areas will be put to beneficial use without fully satisfying all appropriated water rights; and,

WHEREAS, the City is experiencing increased difficulty in locating developable culinary water sources in the Tooele Valley; and,

WHEREAS, TCC Section 7-26-3 current provides that the City “may refuse to accept any right which it determines to be...deficient,” including for reasons of insufficient quantity and quality of water; and,

WHEREAS, the City Administration recommends that Section 7-26-3 be amended in the manner shown below, in order to clarify and expand the City’s discretion to reject deficient water rights, including water rights not associated with a developed or identified developable water source:

**7-26-3. Type of Water Rights Acceptable for Conveyance.**

(1) Water rights proposed for conveyance to the City shall be municipal or municipal-type water rights. Prior to acceptance of such water rights, the City shall evaluate the rights proposed for conveyance and, **in its discretion,** may refuse to accept any right which it determines to be insufficient in annual quantity or flow rate, unsuitable for municipal use, not reasonably likely to be approved for change to municipal purposes within the City by the State Engineer, **not associated with a developed or identified developable water source,** or otherwise deficient. The City’s refusal of such rights shall not constitute a waiver of, and shall not relieve an applicant from complying with, the requirements of this Chapter. In determining the quantity of water available under the water rights, the City will evaluate the priority of the water rights, the historic average quantities of water associated with the water rights, **water source sufficiency, water quality,** and other relevant factors. The City will require an approved application for the

change of use and change of point of diversion, as applicable, with the State Engineer in order to quantify and verify the water rights.

WHEREAS, providing potable water to its residents and businesses is a core and quintessential municipal service provided by city governments, and Tooele City in particular due to the lack of a regional water district in the Tooele Valley; and,

WHEREAS, in addition to satisfying the requirements of *Western Land Equities* for a pending ordinance, this ordinance satisfies the requirements of UCA 10-20-504 for temporarily dispensing with the public process required for land use regulations by finding a compelling, countervailing public interest in protecting the City and its current water rights holdings, current culinary water sources, and existing development projects from water rights conveyed to the City under the City's exaction requirement for new developments when those water rights are not associated with a developed or identified developable water source; and,

WHEREAS, following approval of this Ordinance and the temporary land use regulation proposed herein, the City Council will have a maximum of six months to comply with the statutory land use regulation enactment and amendment process to enact a permanent regulation:

NOW, THEREFORE, BE IT ORDAINED BY THE TOOELE CITY COUNCIL as follows:

1. This Ordinance 2026-05 is hereby approved; and,
2. The temporary land use regulation enumerated and described in this Ordinance 2026-05 is hereby temporarily enacted (namely, the above-referenced amendment of TCC Section 7-26-3(1)); and,
3. This Ordinance 2026-05, and the temporary land use regulation enacted thereby, are effectively immediately, as authorized by the Tooele City Charter; and,
4. For the duration of this temporary land use regulation, the City may reject water rights conveyed as part of a land use application that the City deems deficient, including for not being associated with a developed or identified developable water source; and,
5. This Ordinance 2026-05 shall be in effect until a land use regulation is enacted following the regular Planning Commission and City Council public processes required by the Utah Code and the Tooele City Code, but in no event for longer than six months; and,
6. The City Administration is hereby instructed to prepare an ordinance consistent with this Ordinance 2026-05 for consideration by the Planning Commission and City Council; and,

7. Should a new land use regulation governing water rights exactions not be enacted within the six-month period referenced above, the existing City Code provisions will govern; and,
8. This Ordinance 2026-05 and its temporary zoning regulation shall have binding application upon all land use applications submitted after the date on which proceedings formally began to amend the TCC Section 7-26-3, that date being March 4, 2026 (the date of the City Council work meeting agenda for which the subject matter of this Ordinance was identified and noticed); and,
9. As required by Utah Code Section 10-20-504 and *Western Land Equities*, the City Council hereby makes a finding of a compelling, countervailing public interest in retaining the discretion to refuse water rights for reasons of insufficiency, including for not being associated with a developed or identified developable water source, as described in the recitals, above; and,
10. Similarly, the City Council hereby finds that in failing to approve this Ordinance 2026-05 and enact this temporary land use ordinance, land use applications could be approved and vested contrary to the legislative policies otherwise enacted by the City Council, including in TCC Chapter 7-26.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, and welfare of Tooele City and its residents and businesses and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is approved by the Tooele City Council this 18<sup>th</sup> day of March, 2026.

TOOELE CITY COUNCIL

(For)

(Against)

  
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Melodi Aochu  
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Justin Brady  
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ABSTAINING: \_\_\_\_\_

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

  
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(If the mayor approves this ordinance, the City Council passes this ordinance with the Mayor's approval. If the Mayor disapproves this ordinance, the City Council passes the ordinance over the Mayor's disapproval by a super-majority vote (at least 4). If the Mayor neither approves nor disapproves of this ordinance by signature, this ordinance becomes effective without the Mayor's approval or disapproval. UCA 10-3-704(11).)

ATTEST:

  
Shilo Baker, City Recorder



Approved as to Form:

  
Matthew C. Johnson, City Attorney