ORDINANCE NO. 26-22

AN ORDINANCE DECLARING THE FORM OF MUNICIPAL GOVERNMENT UNDER WHICH TREMONTON CITY OPERATES

WHEREAS, Utah Code Annotated § 10-3b-103 recognizes the council-mayor form, the six-member council form, the five-member council form, and, for a municipality operating under it on May 4, 2008, the council-manager form of municipal government; and

WHEREAS, Utah Code Annotated § 10-3b-301 provides that the powers of municipal government in a municipality operating under the six-member council form are vested in "a council consisting of six members, one of which is a mayor"; and

WHEREAS, the governing body of Tremonton City consists of a Mayor and five Council members, and City Council minutes examined at intervals including 1934, 1945, 1955, 1965, 1975, 1977, 1984, and 1985 show that same composition continuously, with no period of different composition identified; and

WHEREAS, Ordinance No. 1-85, adopted June 18, 1985, and Ordinance No. 90-08, adopted April 17, 1990, each recite that "there is hereby established a Manager Form of Government" and create the office of City Manager, and each recites as its authority former Utah Code Annotated § 10-3-924, which provided that "the governing body of any city or town may by ordinance establish a manager form of government and appoint any person to be known as the manager"; and

WHEREAS, although former § 10-3-924 ostensibly authorized a city council to establish a council-manager form of government by ordinance, that interpretation is contradicted by former Utah Code § 10-3-1203, which expressly required approval by a majority of registered voters voting at a special election to adopt the distinct council-manager form of municipal government provided in former Utah Code Title 10, Chapter 3, Part 12; and, given the resulting statutory ambiguity concerning whether a city council could effectuate such a change by ordinance alone, Ordinances No. 1-85 and 90-08, even if intended to change the City's form of municipal government, did not lawfully effectuate such a change, but instead established the office of City Manager without altering the City's existing form of municipal government; and

WHEREAS, the minutes of the special meeting of the City Council held April 17, 1985 record that the Council was advised, before acting, that the council-manager form of government was adopted by election and that the duties of a manager could alternatively be established by ordinance, and the Council thereafter proceeded by ordinance; and

WHEREAS, Utah Code Annotated § 10-3b-303(1)(b)(iii)(A) authorizes the council in a six-member council municipality to appoint a manager to perform executive and administrative duties delegated by ordinance, and Utah Code Annotated § 10-3b-103(2) provides that a municipality operating under the six-member council form on May 4, 2008 continues under that form thereafter

"whether or not the council has adopted an ordinance appointing a manager for the municipality"; and

WHEREAS, a municipality may change its form of municipal government only upon approval of the voters at an election held for that purpose, as provided in Utah Code Annotated Title 10, Chapter 3b, Part 6, and previously in former § 10-3-1203; and

WHEREAS, the City Recorder, by certificate dated September 10, 2026, certified that a search of the City's electronic and physical records of elections, resolutions, and ordinances covering the period from 1922 through the date of the certificate located no record of any election held for the purpose of changing or adopting the City's form of municipal government, and no ordinance or resolution adopting an optional form of municipal government other than Ordinance No. 1-85 and Ordinance No. 90-08; and

WHEREAS, the Box Elder County Clerk and the Office of the Lieutenant Governor have each reported in writing that no such record exists in their holdings; and

WHEREAS, the City Attorney, by written memorandum to the City Council and the City Manager dated September 10, 2026, concluded that Tremonton City operates under the Six-Member Council Form of Municipal Government and that the City's appointment and retention of a City Manager does not change that form of government; and

WHEREAS, the Legal Director of the Utah League of Cities and Towns independently advised in writing on September 9, 2026 that the statutory council-manager form and the appointment of a city manager by ordinance are separate legal concepts, and that Tremonton appears to be a six-member council municipality with a city manager appointed by ordinance; and

WHEREAS, the City Attorney has reviewed this ordinance, including the recitals concerning Ordinances No. 1-85 and 90-08 and the text of former § 10-3-924 as published in the Utah Code Annotated, and has approved this ordinance as to form; and

WHEREAS, Revised Ordinances Title 3 contains provisions that are inconsistent with one another regarding the City's form of government, and the City Council finds it in the best interest of the City to state the City's form of municipal government plainly and of record;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF TREMONTON CITY AS FOLLOWS:

1. **Declaration.** Tremonton City operates, and has at all relevant times operated, under the six-member council form of municipal government as provided in Utah Code Annotated Title 10, Chapter 3b, Part 3.

2. **No Change in Powers, Duties, or Positions.** This ordinance is declaratory only. Nothing in this ordinance creates, alters, removes, delegates, or reinstates any power, duty, or function of the

Mayor, the City Council, the City Manager, or any officer or employee of the City. The office of City Manager is continued, and the City Manager's authority remains as delegated by the City Council in Revised Ordinances § 3-1025 and as otherwise provided by the ordinances of the City and by Utah Code Annotated § 10-3b-303.

3. **Vote of the Mayor.** Because this ordinance is declaratory only, it is not intended to enlarge or restrict any power, duty, or function of the Mayor. To the extent this ordinance is deemed to invoke Utah Code Annotated § 10-3b-302(1)(b)(ii)(B) or § 10-3b-303(2), the Mayor votes as a voting member of the City Council on its adoption.

4. **Record and Notice.** The City Recorder shall retain in the permanent records of the City the Certificate of the City Recorder dated September 10, 2026, the written memorandum of the City Attorney dated September 10, 2026, Ordinances No. 1-85 and 90-08, the minutes of the City Council for April 17 and June 18, 1985, the text of former Utah Code Annotated § 10-3-924 as published, and the supporting research record, and shall transmit a certified copy of this ordinance to the Office of the Lieutenant Governor and to the Utah League of Cities and Towns.

5. **Conflicting Ordinances.** This ordinance shall supersede any conflicting ordinance previously adopted by the City Council to the extent of the conflict.

6. **Severability.** If any provision of this ordinance is held invalid, that holding shall not affect the remaining provisions, which shall remain in full force and effect.

7. **Effective Date.** This ordinance shall become effective upon passage and publication or posting as required by law.

PASSED AND DATED this _____ day of _____ 2026.

TREMONTON CITY, a Utah Municipal
Corporation

_____
Bret Rohde, Mayor

ATTEST:

_____
Cynthia Nelson, City Recorder

Publication or Posting Date: _____

STATE OF UTAH)

: ss.

County of Box Elder)

I, CYNTHIA NELSON, the City Recorder of Tremonton, Utah, do hereby certify that the above and foregoing is a full and correct copy of Ordinance No. 26-22, entitled **"AN ORDINANCE DECLARING THE FORM OF MUNICIPAL GOVERNMENT UNDER WHICH TREMONTON CITY OPERATES"** adopted and passed by the City Council of Tremonton, Utah, at a regular meeting held on the 20th day of October 2026, and that the same was published or posted as required by law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City this _____ day of _____ 2026.

_____
Cynthia Nelson, City Recorder

(S E A L)