

# Kearns Planning Commission Training



**Nathan S. Bracken, City Attorney**

February 5, 2024

# Laws, Ordinances, and Policies that Govern the Planning Commission

- ▶ The Kearns Planning Commission is governed by the following:
  - ▶ **The Land Use Development Act (LUDMA), UCA 10-9a-101, et seq.**
  - ▶ **The Utah Municipal Officers' and Employees Ethics Act, UCA 10-3-1301, et seq.**
  - ▶ **Section 19.12.030 of the Kearns Code (primary responsibilities)**
  - ▶ **The Planning Commission's Rules of Order and Procedure**
    - ▶ Largely summarizes statutory requirements but includes additional requirements regarding conflicts of interest and ex parte communications
  - ▶ **Applicable Kearns policies, particularly its Social Media Policy**

# Planning Commission Authority

## Planning Commissions - UCA 10-9a-301 & -302

- ▶ Each municipality must create a planning commission by ordinance
  - ▶ **Kearns' ordinance is KMC 19.12.030**
- ▶ Planning Commissions are primarily advisory in nature – they are not policymaking bodies like the Kearns Council
- ▶ Planning Commissions make recommendations to the Council regarding
  - ▶ **General plans and related amendments**
  - ▶ **Land use ordinances and related amendments**
  - ▶ **Zoning changes**
  - ▶ **Other matters designed by the Council**
- ▶ The Council is not bound by Planning Commission recommendations

# Planning Commission Authority

## Planning Commissions - UCA 10-9a-302

- ▶ The Kearns Council can authorize the Planning Commission to act as the land use authority for certain types of applications
- ▶ In Kearns, the Planning Commission acts as the administrative land use authority on
  - ▶ **Conditional use permits (KMC 19.12.030 & 19.16.040); and**
  - ▶ **Preliminary plan approvals greater than 5 lots that do not require legislative action (KMC 18.08.010)**

# “Formal Consideration” Duty

- ▶ The Planning Commission has a duty “to protect the right of each land use applicant and adversely affected party to require **formal consideration** of any application....to appeal a land use authority’s decision to a separate appeal authority; and...to be heard in each public hearing on a contested application.” UCA 10-9a-302(1)(e)(ii)(A)
- ▶ Art. VII, Section 3 of the Planning Commission’s Rules of Order and Procedure **prohibits ex parte communications regarding any land use application before the Planning Commission**
- ▶ **Best Practice: Act as if you are a judge and refrain from ex parte communications and public discussion on any matters that will or may come before the Planning Commission**

# ULCT Powers and Duties: Handbook for Utah City Officials

*“Some confusion has arisen over what power a planning commission, or individual planning commissioner, really has. The answer is not much. **Planning commissions are not policy making bodies. They recommend policy to policy makers.** The requirement of state law is that the planning commission is to be involved in making recommendations to the municipality’s legislative body regarding certain land use regulations. A municipal council must consider the recommendation but does not have to take it. A city council can just say, ‘thanks, but no thanks,’ to any recommendation of the planning commission. **If the municipality’s council does not accept the recommendations, there is nothing the planning commission can do.** The state code specially provides that the municipality’s council can ‘adopt a recommended ordinance, reject it, or revise it.’*

*This is not to say that planning commissions are not important. **City councils and mayors, because they have to also be politicians, have a great need for well thought out and studied recommendations in the area of planning and zoning. Planning commissioners who provide this service are invaluable to a community.***

**PLANNING COMMISSIONERS WHO SEE THEIR ROLES AS REPRESENTING SPECIAL INTERESTS OR SPECIFIC NEIGHBORHOODS ARE NOT AS HELPFUL IN THE PLANNING PROCESS AND MAY ACTUALLY HINDER GOOD PLANNING.**” (Emphasis added).

# The Utah Municipal Officers' and Employees Ethics Act, UCA 10-3-1301, et seq.

- ▶ UCA 10-3-1303(1) defines an “appointed officer” as “any person appointed to any statutory office or position,” such as a planning commission and includes “persons serving on special, regular, or full-time committees, agencies, or boards whether or not such persons are compensated for their services.”
  - ▶ **“Appointed officers” are not “officers” of the municipality they serve (i.e., they don’t have the same responsibilities and liabilities as a city councilmember)**
- ▶ UCA 10-3-1304(2)(a) makes it an offense to disclose certain types of information – private, controlled, protected – if acquired by reason of their official position or in the course of their official duties and to disclose such information. KMC 2.07.040(B) includes similar prohibitions.
- ▶ UCA 10-3-1304(b) makes it an offense for planning commissioners to use their position to further their personal economic interest or to secure privileges
- ▶ **Best Practice: Don’t disclose any information you receive as a Planning Commissioner outside of a duly noticed public meeting and limit any disclosures made during such meetings to publicly available information** (e.g., staff reports, meeting packets, etc.)

# The Utah Municipal Officers' and Employees Ethics Act – Conflicts of Interests

- ▶ UCA 10-3-1305 prohibits planning commissioners from receiving compensation for assisting applicants and regulated entities that may appear before the Planning Commission and from voting on a matter with some exceptions.
- ▶ **However**, Article VII, Section 2 of the Planning Commission's Rules of Order and Procedure **require planning commissioners with a "restricted" conflict of interest (i.e., a financial conflict of interest) to recuse themselves** and not to participate in any voting. See also Section 2.07.040 of the KMC.
  - ▶ **Planning Commissioners may vote on "unrestricted conflicts of interest" (all non-financial conflicts of interest) after declaring the conflict of interest**



# The Utah Municipal Officers' and Employees Ethics Act – Conflicts of Interests, Cont.

- ▶ UCA 10-3-1306 requires planning commissioners to disclose any “substantial interests” that are subject to the regulation of the municipality
  - ▶ **This disclosure must be made in a sworn statement to the Mayor and should be updated**
  - ▶ **Does not apply to interests that are worth less than \$2,000 or to life insurance policies and annuities**
- ▶ UCA 10-3-1307 requires planning commissioners to disclose “substantial interests” in any business entity that does or anticipates doing business with the municipality
  - ▶ **Must make this disclosure prior to any discussion by the planning commission concerning matters related to the business entity**
- ▶ UCA 10-3-1308 – planning commissioners must disclose any personal interest or investment that creates a conflict between their personal interests and their public duties.
  - ▶ **Must be disclosed in a sworn statement to the Mayor**
- ▶ 10-3-1309 – class A misdemeanor for any person to induce or seek to induce a planning commissioner to violate the Ethics Act
  - ▶ **Best Practice: Another reason not to engage in ex parte or other communications outside of a planning commission meeting about matters that may come before the Planning Commission**

# The Utah Municipal Officers' and Employees Ethics Act - Penalties

- ▶ Violations of the Ethics Act can result in:
  - ▶ **Removal from office**
  - ▶ **A 2<sup>nd</sup> degree felony if the value of the compensation, conflict of interest, or assistance exceeds \$1,000**
  - ▶ **A 3<sup>rd</sup> degree felony if the value of the compensation, conflict of interest, or assistance is between \$250 to \$1,000**
  - ▶ **A class A misdemeanor if the value of the compensation, conflict of interest, or assistance is between \$100 and \$250**
  - ▶ **A class B misdemeanor if the value of the compensation, conflict of interest, or assistance is \$100 or less**

# Kearns Social Media Policy

***Adopted March 13, 2023***

Kearns personnel should not use personal social network accounts, user IDs, or email accounts when commenting in their official capacity on Kearns social media accounts or when otherwise conducting official Kearns business on non-Kearns social media accounts. **Any personnel representing Kearns on any social media account will conduct themselves at all times as a representative of Kearns and in a manner that is professional, exhibits proper decorum, complies with [this policy's Rules of Conduct], and is otherwise conducive to orderly government.** Conversely, Kearns personnel should not use their Kearns user IDs or Kearns email accounts when acting in their personal capacity on non-Kearns social media accounts or otherwise conducting personal business.

Section V.11.

# Kearns Social Media Policy - Rules of Conduct

- ▶ When representing Kearns, Section V.4 prohibits Kearns representatives from, among other things:
  - ▶ **Promoting, endorsing, or opposing the candidacy of any person, petition, or referendum;**
  - ▶ **Posting fraudulent, deceptive, or misleading information;**
  - ▶ **Posting threatening, harassing, obscene, indecent, or profane language or content;**
  - ▶ **Making slanderous or defamatory attacks against any person, including but not limited to Kearns personnel;**
  - ▶ **Promoting discrimination; or**
  - ▶ **Disclosing private, protected, or confidential material as defined or classified by applicable law, regulation, or policy**

# KMC and Rules of Order and Procedure- Penalties

- ▶ “The Mayor, with the advice and consent of the Council, may remove a member of the Planning Commission **for cause** after filing written charges against the member. The member will be provided with a hearing on the charges if requested by the member being removed.” KMC 19.12.030.B
- ▶ “Removal from the Commission shall be in accordance with Kearns Metro Township Ordinance by the Kearns Metro Township Council. **If the Commission determines, by a majority vote of all Members, that it is in the best interest of the Commission and the Kearns Metro Township that a Member be removed, the Commission shall make a recommendation to the Kearns Metro Township Council to initiate removal proceedings.**” Art. II, Section 9 of the Planning Commission Rules of Order and Procedure

# First Amendment Considerations

- ▶ Planning Commissioners still have First Amendment rights, but courts have long held that government entities have an interest in promoting effective and efficient government.
- ▶ The law is extremely murky on the First Amendment rights of public officials, including planning commissioners, so exercise extreme caution when commenting on matters involving Kearns
- ▶ However, your speech will usually be protected if:
  - ▶ **You are speaking as a private citizen and not in your official capacity as a Kearns Planning Commissioner;**
  - ▶ **Your speech is about a matter of public concern; and**
  - ▶ **Your speech does not interfere with your duties as a Planning Commissioner (e.g., it doesn't violate the rules discussed in this presentation)**

# First Amendment Best Practices

- ▶ Be extremely careful about speech that may:
  - ▶ **Disclose information you gained through your role on the commission;**
  - ▶ **Look like you are engaging in “political activities” in your official capacity as a planning commissioner;**
  - ▶ **Violate the rules discussed in this presentation;**
  - ▶ **Disrupt Kearns’ right to efficient and effective government; and**
  - ▶ **Hinder your ability to act impartially as a planning commissioner**
- ▶ **Best Practice: Make clear that any comments you make are not being done in your capacity as a Planning Commissioner**

# First Amendment Considerations – What you can say and do

- ▶ Speak about matters of “public concern” (e.g., a teacher’s public comment at a community meeting about the school board budget)
  - ▶ **Not internal personnel disputes or other grievances**
- ▶ Speak about non-confidential matters, but still exercise caution
- ▶ In your personal capacity
  - ▶ **Contribute money to political groups and candidates in partisan elections, post political signs in your yard, participate in campaigns, etc.**
  - ▶ **Express opinions about political issues and partisan groups and candidates**



# Training Requirements

- ▶ UCA 10-9a-302(6)(b) requires **1.0 hour** of training each year on **general powers and duties** (i.e., this training)
- ▶ UCA 10-9a-302(6)(b) also requires **3.0 hours** of training on **land use matters** (to be covered in a subsequent training)
- ▶ UCA 52-4-104 requires planning commissioners to take an annual training on the Open and Public Meetings Act, which can be taken online at: <https://training.auditor.utah.gov/courses/open-and-public-meetings-act-training-2024>.
- ▶ **Best Practice**: Sections 2.07.020 and 2.07.040 of the KMC require ethics training (i.e., this training) every two years for elected officials and employees, but it's a good idea to do this training for the Planning Commission as well

# Recommended Changes to Rules of Order and Procedure

- ▶ Include a **more defined process** by which the Planning Commission may ask staff to investigate or research issues of interest to the Planning Commission
- ▶ Include **more detail on the statutory requirements**, particularly the ethics requirements, that apply to planning commissions
- ▶ Include a **“tie-in”** to the Kearns social media policy
- ▶ Make other changes needed for rules of order and procedure to be a **“one-stop-shop”** that summarizes the rules and statutes that apply to the Kearns Planning Commission

Questions?



SMITH HARTVIGSEN<sup>PLLC</sup>  
ATTORNEYS AT LAW



Nathan S. Bracken  
[nbracken@shutah.law](mailto:nbracken@shutah.law)  
(801) 413-1600