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[OFFICES IN ST. GEORGE, CEDAR CITY AND KANAB](#)

**DATE: January 8, 2026**

**TO: Springdale Town Council and Members of the Public**

**FROM: J. Gregory Hardman, Springdale Town Attorney**

**RE: Town Attorney's Report for January 14, 2026 Town Council Meeting Agenda Item –  
Jeff McKee's Request for Town Council to Create "Community Oversight Committee"**

In multiple email communications with the Town officials and his oral statement made during the public comment portion of the December 10, 2025 Town Council meeting, Jeff McKee ("McKee") raised allegations of a hostile work environment on behalf of himself and various other unnamed Town employees, and requested the Town Council perform an independent review of these allegations. More specifically, McKee has requested the Town form an independent "Community Oversight Committee" ("COC").<sup>1 2</sup> McKee contends that if the Town fails to form a COC to provide an independent review of these alleged grievances, he may be forced to pursue a claim under the Utah Protection of Public Employees Act, also known as the Utah Whistleblower's Act ("WBA").<sup>3</sup>

## **I. Protections Offered Under the WBA.**

Under the WBA, a public employer "may not take retaliatory action against an employee because the employee ... communicates in good faith: (i) the waste or misuse of public funds, property, or manpower; (ii) a violation or suspected violation of a law, rule, or regulation adopted under the law of this state ... [or] a political subdivision of this state...."<sup>4</sup> "[A]n employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief, damages, or both, **within 180 days** after the occurrence of the alleged violation of this chapter."<sup>5</sup>

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<sup>1</sup> See November 14, 2025 Email from Jeff McKee to Springdale Town Councilmembers and Mayor Barbara Bruno's Reply Email, dated November 18, 2025, submitted herewith as **Exhibit 1**.

<sup>2</sup> "Community Oversight Committee" ("COC") is a term of art used by McKee in his various communications with the Town Council. COC is not a term utilized in the Utah Code. For ease of reference here, we will use this term of art and its acronym as used by McKee.

<sup>3</sup> Utah Code Ann. § 67-21-1 *et seq.*, submitted herewith as **Exhibit 2**.

<sup>4</sup> U.C.A. § 67-21-3(1)(a).

<sup>5</sup> U.C.A. § 67-21-4(1)(a) (emphasis added).

## **Town Attorney's Report for January 14, 2026 Town Council Meeting Agenda Item – Jeff McKee's Request for Town Council to Create "Community Oversight Committee"**

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Utah courts have held that "a plaintiff seeking relief under the WBA is required to 'file a notice of claim [under the Governmental Immunity Act] *and* a civil action—i.e., a district court complaint—within 180 days of the adverse employment decision."<sup>6</sup>

While the WBA provides that "[a] political subdivision **may** adopt an ordinance to establish an independent personnel board to hear and take action on a complaint alleging retaliatory action," the creation of an independent personnel board is permissive and not required of the Town.<sup>7</sup>

### **II. Supporting Materials.**

In addition to the WBA, McKee cites to a number of additional sources in ostensible support of his request for the Town to form a COC, including the Open and Public Meetings Act, notes from the Utah Office of the State Auditor Hotline of Frequently Asked Questions ("FAQs"), and the Springdale Tourism Report. While it is clear that the Open and Public Meetings Act requires the Town to "take [its] actions openly ... and conduct [its] deliberations openly" it does not require or even suggest the formation of a COC in the pursuit of such actions.<sup>8</sup> Indeed, public participation under the Open and Public Meetings Act is defined as "the ability to communicate with all the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication."<sup>9</sup> While public meetings such as those held by the Town Council must be open and observable to citizens, the Town Council is not required under the Open and Public Meetings Act to create or implement any type of COC in the performance of its duties.

Under the Utah Office of the State Auditor Hotline FAQs, there is no mention of recommendations for establishing a COC or advisory committee as suggested in McKee's November 14, 2025 email to Town officials, though the website does specify that "[d]isagreements with management decisions or actions taken by elected officials that are deemed to be within their authority or management discretion will not be investigated."<sup>10</sup> Furthermore, "[w]hile the State Auditor is a designated receiver for whistleblower complaints, the State Auditor does not have the authority to investigate alleged adverse actions by the complainant's employer and cannot advocate on the employee's behalf. Should a public employer take adverse action in violation of the statute against a public employee, the burden of contesting that action remains with the employee. Complainants should consider consulting private legal counsel."<sup>11</sup> Anyone wishing to file a complaint with the State Auditor Hotline must "provide credible information and substantiated data with each complaint ... [that] includes specifics on 'who, what, where, when'

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<sup>6</sup> *Pead v. Ephraim City*, 2020 UT App 113, ¶ 15, 473 P.3d 175, 180, citing *Thorpe v. Washington City*, 2010 UT App 297, ¶ 20, 243 P.3d 500 (cleaned up), submitted herewith as **Exhibit 3**.

<sup>7</sup> U.C.A. § 67-21-3.6(1)(a) (emphasis added).

<sup>8</sup> U.C.A. § 52-4-102(2) ; *see also* U.C.A. § 52-4-101, *et seq.*, submitted herewith as **Exhibit 4**.

<sup>9</sup> U.C.A. § 52-4-103(6).

<sup>10</sup> *See* Utah State Auditor Hotline FAQ's at <https://auditor.utah.gov/hotline/hotline-faqs/>, "What is the Screening and Prioritization Process for Complaints About Improper Government Activities?" - submitted herewith as **Exhibit 5**.

<sup>11</sup> *Id.*, "What is Whistleblower Protection?"

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as well as any other details that may be important such as information on other witnesses, documents, and pertinent evidence."<sup>12</sup>

In McKee's November 14, 2025 email to the Town Council, he states in the first paragraph as follows: "This structure [referring to COCs] mirrors successful models in other Utah municipalities (e.g., citizen advisory boards in Park City and Moab)." In support of this assertion, he referenced the following: "Sample Charter from Park City Municipal Oversight Board: A Utah example of a resident-led committee with subpoena-like record access powers, adopted in 2022 to address similar ethics concerns (reference: [parkcity.org/departments/city-clerk/boards-commissions](https://parkcity.org/departments/city-clerk/boards-commissions))." You will note that the weblink McKee provided in his communication to Park City's website does not work.<sup>13</sup>

Furthermore, Rick Wixom reached out to representatives of Park City and Moab City to inquire about their COCs as represented by McKee. According to Rick, Park City Recorder Michelle Kellogg reported that Park City does not have a COC. Instead, only committee that might be similar to a COC in Park City is the Police Complaint Review Committee, which reportedly includes three residents and the chief of police. Details about this Park City committee may be found on the Park City Boards and Commissions website (<https://parkcity.gov/government/boards-commissions>).<sup>14</sup> Rick also spoke to Moab City Manager Michael Black. Like Park City, Mr. Black said Moab City does not have a COC. Moab City does have an audit committee, which includes one member of the community and has specific duties relative to the preparation of the annual audit. Details about this Moab City committee can be found on the Moab City Boards and Commissions website (<https://www.moabcity.gov/145/Boards-Commissions>). Moab City's ordinance establishing its Audit Committee was adopted in 2023, a copy of which is attached.<sup>15</sup>

Thus, notwithstanding McKee's representations, neither Park City nor Moab City has enacted a COC on the order of what he is proposing for the Town of Springdale to do. Similarly, while McKee's reference to the Springdale Tourism Report indicates the large number of visitors the Town receives each year, there is nothing to indicate that such visitation is dependent upon the creation of a COC or independent personnel board.

### **III. Review and the Town's Personnel Policies and Procedures Manual for Employee Grievances.**

For many years, the Town of Springdale has had written personnel policies and procedures to address employee grievances. The most current version, entitled "Springdale Personnel Policies and Procedures Manual," was adopted in April 2023 (the "Personnel Policy").<sup>16</sup> The Personnel Policy provides clear directions for Town employees who wish to file a formal grievance with the Town regarding conditions with their employment. A grievance is "defined as any dispute

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<sup>12</sup> *Id.*, "What Information and Data Do I Need to Provide?"

<sup>13</sup> See inoperable Park City weblink, submitted herewith as **Exhibit 6**.

<sup>14</sup> See Park City Website, Boards and Commissions Page, submitted herewith as **Exhibit 7**.

<sup>15</sup> Moab City Ordinance 2023-09, submitted herewith as **Exhibit 8**.

<sup>16</sup> Springdale Personnel Policies and Procedures Manual (rev. April 2023), submitted herewith as **Exhibit 9**.

**Town Attorney's Report for January 14, 2026 Town Council Meeting Agenda Item – Jeff McKee's Request for Town Council to Create "Community Oversight Committee"**

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regarding the meaning, interpretation, application, or alleged violation of the terms and provisions of the personnel policies and procedures" of the Town.<sup>17</sup> The Personnel Policy states that "[g]rievances should be resolved at the lowest administrative level possible. Employees and supervisors shall attempt to resolve grievances informally by discussing the grievance issues before any formal written grievance is filed."<sup>18</sup> A Town employee must first "advise his or her immediate supervisor of [the] employee's grievance within ten (10) calendar days following the occurrence or event giving rise to the grievance or within ten (10) calendar days of when the employee acquired knowledge of the occurrence or event."<sup>19</sup> Thereafter, the employee's "supervisor shall respond to the employee's grievance within ten (10) working days of the receipt of the grievance" and "may use an additional ten (10) working days to respond to the grievance if extenuating circumstances exist and if the employee agrees to this extension."<sup>20</sup> If the supervisor fails to respond in this time period or if the employee finds the response unacceptable "the employee may proceed to the formal process."<sup>21</sup>

In order to pursue a formal employment grievance with the Town, an employee must prepare and submit a written grievance appeal containing the following information:

- a) Name of the employee;
- b) Date the occurrence or action underlying the grievance occurred;
- c) Nature of the grievance;
- d) Historical information related to the grievance;
- e) Requested resolution; and
- f) Signature of the employee filing the grievance and date filed.<sup>22</sup>

The written grievance must be filed "with the Town Manager or Police Chief within five (5) working days after receipt of the supervisor's response," who will then commence and conclude an investigative period regarding the matter within ten (10) working days after receipt of the grievance and issue a written decision within five (5) working days after the investigation has concluded, after which "[t]he decision of the Town Manager or Police Chief shall be final and binding on all parties."<sup>23</sup> All "[w]ritten grievances shall be considered private data under the Government Records Access Management Act of the State of Utah (GRAMA)" and "[t]he Mayor and Town Council may declare the grievance documents to be confidential and/or order the entire record, or any part of it, sealed."<sup>24</sup>

While there is no direct provision for an alternate grievance review process if the police chief or town manager are the basis for the employee's grievance, there are other provisions in the Personnel Policy that support designating the Town Council as the appropriate body to review

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<sup>17</sup> *Id.* at 79.

<sup>18</sup> *Id.* at 81.

<sup>19</sup> *Id.* at 80.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 81.

<sup>23</sup> *Id.* at 81–82.

<sup>24</sup> *Id.* at 82–83.

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such matters, such as an appeal for disciplinary actions.<sup>25</sup> Any such appeal to the Town Council must include "a written request for an appeal to the Town Clerk within ten (10) calendar days" after a final written grievance decision has been issued.<sup>26</sup>

**IV. Political Subdivisions Ethics Review Commission**

Allegations against the Town from McKee include various ethical violations, which may fall under the Municipal Officers' and Employees' Ethics Act (the "MOEEA").<sup>27</sup> McKee was previously directed to the Political Subdivisions Ethics Review Commission ("PSERC") as an independent body to which he could pursue such allegations.<sup>28</sup> The MOEEA allows but does not require municipalities to create a municipal ethics commission to review such allegations.<sup>29</sup> As the Town has never opted to form such a committee under the MOEEA, the PSERC provides an independent panel that could review such matters as set forth under Utah law.

**V. Conclusion**

In sum, there does not appear to be any statutory or case law provisions on which McKee can demand that the Town Council create a COC. Furthermore, the creation of municipal committees under the WBA and the MOEEA are voluntary and discretionary. The Town has a comprehensive employee grievance procedure set forth in the Personnel Policy. These provisions provide a clear and open process for Town employees to seek review of any alleged grievance against the Town as part of their employment, inclusive of the right to appeal directly to the Town Council if an employee has a grievance with the town manager or the police chief and timely requests review by the Town Council.

SNOW JENSEN & REECE, P.C.

/s/ *J. Gregory Hardman*

J. Gregory Hardman

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<sup>25</sup> *Id.* at 77.

<sup>26</sup> *Id.*

<sup>27</sup> U.C.A. § 10-3-1301, *et seq.*, submitted herewith as **Exhibit 10**.

<sup>28</sup> U.C.A. § 63A-15-101, *et seq.* submitted herewith as **Exhibit 11**.

<sup>29</sup> U.C.A. § 10-3-1311.

# EXHIBIT 1

**From:** [Barbara Bruno](#)  
**To:** [Jeff McKee](#)  
**Cc:** [Greg Hardman](#); [Rick Wixom](#)  
**Subject:** Re: Request to be on the agenda for next town council meeting  
**Date:** Tuesday, November 18, 2025 11:04:20 AM

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Jeff,

The Town Council agrees to your request to add as an agenda item at a future Town Council meeting whether the Town should form an independent Community Oversight Committee. This item will be put on the agenda for Town Council discussion at a future meeting. Thank you.

Barbara

On Fri, Nov 14, 2025 at 1:01 PM Jeff McKee <[jeffmckee001@gmail.com](mailto:jeffmckee001@gmail.com)> wrote:

**The Town of Springdale Utah Town Council Request for Agenda**

Name: Jeff A. McKee

Phone: 2088712302

Email: [jeffmckee001@gmail.com](mailto:jeffmckee001@gmail.com)

**Topic/Proposal:**

Request to discuss and consider a resolution directing the Town Clerk to initiate the formation of an independent Community Oversight Committee (COC) for the Town of Springdale, as authorized under Utah's open government and whistleblower protection frameworks (Utah Code Ann. § 67-21 et seq. and § 52-4, Open and Public Meetings Act). The COC would consist of 5-7 volunteer residents, selected via public application and lottery to ensure broad representation, with a charter granting authority to: (1) receive anonymous reports of potential waste, mismanagement, ethical concerns, or violations of law by town staff or officials; (2) conduct confidential preliminary reviews and recommend independent investigations; (3) issue advisory subpoenas for records (per Utah Code Ann. § 77-22-2, administrative subpoena powers for oversight entities); and (4) report findings publicly, excluding protected whistleblower identities, to promote accountability without fear of retaliation. The committee would operate with a modest annual budget of (TBD ~ \$5,000-\$10,000) from the general fund, meeting quarterly or as needed, and dissolving after three years unless renewed. This structure mirrors successful models in other Utah municipalities (e.g., citizen advisory boards in Park City and Moab) and aligns with state incentives for local entities to enhance whistleblower safeguards, ensuring fair, anonymous reporting channels that build resident confidence in town governance.

**Community Relevance:**

Springdale's unique position as the gateway to Zion National Park relies on a reputation for ethical, transparent leadership to sustain our tourism-driven economy (over 4.5 million

annual visitors) and small-town trust among 500+ residents. Recent state audits highlight that 70% of Utah local governments face whistleblower concerns annually, often due to limited anonymous reporting options, leading to unreported issues like resource misuse or procedural inequities that erode public faith (Utah Office of the State Auditor, 2024 Hotline Report). Forming a COC addresses this by empowering residents to safeguard town resources—such as equitable code enforcement, vendor bidding for events, and staff hiring practices—without burdening the Council or risking internal biases. It fosters proactive ethics, reduces litigation risks (e.g., under Utah's Whistleblower Protection Act, which prohibits retaliation for good-faith reports), and positions Springdale as a model for rural Utah communities. This initiative directly benefits families, businesses, and visitors by ensuring decisions prioritize community welfare, preventing small issues from escalating into costly controversies that could harm our park-adjacent identity.

### **Supporting Material:**

Utah Protection of Public Employees Act (Utah Code Ann. § 67-21-1 et seq.): Outlines state protections for anonymous reporting of waste, abuse, or ethical violations in local government; supports local mechanisms like COCs to enable compliance without direct Council involvement. (Available at: [le.utah.gov/xcode/Title67/Chapter21/67-21.html](https://leg.utah.gov/xcode/Title67/Chapter21/67-21.html))

Open and Public Meetings Act (Utah Code Ann. § 52-4-101 et seq.): Encourages citizen participation in oversight bodies to enhance transparency; relevant for chartering a COC with public reporting requirements. (Available at: [le.utah.gov/xcode/Title52/Chapter4/52-4.html](https://leg.utah.gov/xcode/Title52/Chapter4/52-4.html))

Utah Office of the State Auditor Hotline FAQs (2024): Notes that anonymous complaints invoke limited protections but recommends local supplements like advisory committees for thorough, community-led reviews. (Available at: [auditor.utah.gov/hotline/hotline-faqs/](https://auditor.utah.gov/hotline/hotline-faqs/))

Sample Charter from Park City Municipal Oversight Board: A Utah example of a resident-led committee with subpoena-like record access powers, adopted in 2022 to address similar ethics concerns (reference: [parkcity.org/departments/city-clerk/boards-commissions](https://parkcity.org/departments/city-clerk/boards-commissions)).

Local Economic Data: Springdale Tourism Report (2023), showing \$150M+ annual visitor spend reliant on governance trust ([springdaletown.com/economic-development](https://springdaletown.com/economic-development)).



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**BARBARA BRUNO**

Mayor of Springdale

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# EXHIBIT 2

## Chapter 21

### Utah Protection of Public Employees Act

#### 67-21-1 Short title.

This chapter is known as the "Utah Protection of Public Employees Act."

Enacted by Chapter 216, 1985 General Session

#### 67-21-2 Definitions.

As used in this chapter:

- (1) "Abuse of authority" means an arbitrary or capricious exercise of power that:
  - (a) adversely affects the employment rights of another; or
  - (b) results in personal gain to the person exercising the authority or to another person.
- (2) "Communicate" means a verbal, written, broadcast, or other communicated report.
- (3) "Damages" means general and special damages for injury or loss caused by each violation of this chapter.
- (4) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.
- (5)
  - (a) "Employer" means the public body or public entity that employs the employee.
  - (b) "Employer" includes an agent of an employer.
- (6) "Good faith" means that an employee acts with:
  - (a) subjective good faith; and
  - (b) the objective good faith of a reasonable employee.
- (7) "Gross mismanagement" means action or failure to act by a person, with respect to a person's responsibility, that causes significant harm or risk of harm to the mission of the public entity or public body that employs, or is managed or controlled by, the person.
- (8) "Judicial employee" means an employee of the judicial branch of state government.
- (9) "Legislative employee" means an employee of the legislative branch of state government.
- (10) "Political subdivision employee" means an employee of a political subdivision of the state.
- (11) "Public body" means any of the following:
  - (a) a state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution, or any other body in the executive branch of state government;
  - (b) an agency, board, commission, council, institution member, or employee of the legislative branch of state government;
  - (c) a county, city, town, regional governing body, council, school district, special district, special service district, or municipal corporation, board, department, commission, council, agency, or any member or employee of them;
  - (d) any other body that is created by state or local authority, or that is primarily funded by or through state or local authority, or any member or employee of that body;
  - (e) a law enforcement agency or any member or employee of a law enforcement agency; and
  - (f) the judiciary and any member or employee of the judiciary.
- (12) "Public entity" means a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government.
- (13) "Public entity employee" means an employee of a public entity.
- (14) "Retaliatory action" means the same as that term is defined in Section 67-19a-101.

(15) "State institution of higher education" means the same as that term is defined in Section 53B-3-102.

(16) "Unethical conduct" means conduct that violates a provision of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

Amended by Chapter 16, 2023 General Session

**67-21-3 Reporting of governmental waste or violations of law -- Employer action -- Exceptions.**

- (1)
- (a) An employer may not take retaliatory action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith:
    - (i) the waste or misuse of public funds, property, or manpower;
    - (ii) a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States; or
    - (iii) as it relates to a state government employer:
      - (A) gross mismanagement;
      - (B) abuse of authority; or
      - (C) unethical conduct.
  - (b) For purposes of Subsection (1)(a), an employee is presumed to have communicated in good faith if the employee gives written notice or otherwise formally communicates the conduct described in Subsection (1)(a) to:
    - (i) a person in authority over the person alleged to have engaged in the conduct described in Subsection (1)(a);
    - (ii) the attorney general's office;
    - (iii) law enforcement, if the conduct is criminal in nature;
    - (iv) if the employee is a public entity employee, public body employee, legislative employee, or a judicial employee:
      - (A) the state auditor's office;
      - (B) the president of the Senate;
      - (C) the speaker of the House of Representatives;
      - (D) the Office of Legislative Auditor General;
      - (E) the governor's office;
      - (F) the state court administrator; or
      - (G) the Division of Finance;
    - (v) if the employee is a public entity employee, but not an employee of a state institution of higher education, the director of the Division of Purchasing and General Services;
    - (vi) if the employee is a political subdivision employee:
      - (A) the legislative body, or a member of the legislative body, of the political subdivision;
      - (B) the governing body, or a member of the governing body, of the political subdivision;
      - (C) the top executive of the political subdivision; or
      - (D) any government official with authority to audit the political subdivision or the applicable part of the political subdivision; or
    - (vii) if the employee is an employee of a state institution of higher education:
      - (A) the Utah Board of Higher Education or a member of the Utah Board of Higher Education;
      - (B) the commissioner of higher education;
      - (C) the president of the state institution of higher education where the employee is employed;or

- (D) the entity that conducts audits of the state institution of higher education where the employee is employed.
- (c) The presumption described in Subsection (1)(b) may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.
- (2) An employer may not take retaliatory action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body.
- (3) An employer may not take retaliatory action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.
- (4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document:
  - (a) the waste or misuse of public funds, property, or manpower;
  - (b) a violation or suspected violation of any law, rule, or regulation; or
  - (c) as it relates to a state government employer:
    - (i) gross mismanagement;
    - (ii) abuse of authority; or
    - (iii) unethical conduct.

Amended by Chapter 174, 2022 General Session

**67-21-3.5 Administrative review of retaliatory action against a public entity employee.**

- (1) A public entity employee who believes that the employee's employer has taken retaliatory action against the employee in violation of this chapter may file a grievance with the Career Service Review Office in accordance with Section 67-19a-402.5 and subject to Section 67-21-4.
- (2) If the Career Service Review Office determines that retaliatory action is taken in violation of this chapter against the public entity employee, the Career Service Review Office may order:
  - (a) reinstatement of the public entity employee at the same level held by the public entity employee before the retaliatory action;
  - (b) the payment of back wages, in accordance with Subsection 67-19a-406(5)(b);
  - (c) full reinstatement of benefits;
  - (d) full reinstatement of other employment rights; or
  - (e) if the retaliatory action includes failure to promote, as described in Subsection 67-19a-101(11)(d), a pay raise that results in the employee receiving the pay that the employee would have received if the employee had been promoted.
- (3) A public entity employer has the burden to prove by substantial evidence that the public entity employer's action was justified.
- (4) A public entity employee or public entity employer may appeal a determination of the Career Service Review Office as provided in Section 67-19a-402.5.

Amended by Chapter 174, 2022 General Session

**67-21-3.6 Administrative review for political subdivision employees.**

- (1)

- (a) A political subdivision may adopt an ordinance to establish an independent personnel board to hear and take action on a complaint alleging retaliatory action.
- (b) The ordinance described in Subsection (1)(a) shall include:
  - (i) procedures for filing a complaint and conducting a hearing; and
  - (ii) a burden of proof on the employer to establish by substantial evidence that the employer's action was justified by reasons unrelated to the employee's good faith actions under Section 67-21-3.
- (2) If a political subdivision adopts an ordinance described in Subsection (1), a political subdivision employee may file a complaint with the independent personnel board alleging retaliatory action.
- (3) If an independent personnel board finds that retaliatory action is taken in violation of the ordinance described in Subsection (1)(a), the independent personnel board may order:
  - (a) reinstatement of the employee at the same level as before the retaliatory action;
  - (b) the payment of back wages;
  - (c) full reinstatement of fringe benefits;
  - (d) full reinstatement of seniority rights; or
  - (e) if the retaliatory action includes failure to promote, as described in Subsection 67-19a-101(11)(d), a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.

Amended by Chapter 174, 2022 General Session

**67-21-3.7 Administrative review for state institution of higher education employees.**

- (1)
  - (a) As used in this section, "independent personnel board" means a board where no member of the board:
    - (i) is in the same department as the complainant;
    - (ii) is a supervisor of the complainant; or
    - (iii) has a conflict of interest in relation to the complainant or an allegation made in the complaint.
  - (b) A state institution of higher education shall adopt a policy to establish an independent personnel board to hear and take action on a complaint alleging retaliatory action.
  - (c) The policy described in Subsection (1)(b) shall include:
    - (i) procedures for filing a complaint and conducting a hearing; and
    - (ii) a burden of proof on the employer to establish by substantial evidence that the employer's action was justified by reasons unrelated to the employee's good faith actions under Section 67-21-3.
- (2)
  - (a) An employee of a state institution of higher education may file a complaint with the independent personnel board described in Subsection (1)(b) alleging retaliatory action.
  - (b) An independent personnel board that receives a complaint under Subsection (2)(a) shall hear the matter, resolve the complaint, and take action under Subsection (3) within the later of:
    - (i) 30 days after the day on which the employee files the complaint; or
    - (ii) a longer period of time, not to exceed 30 additional days, if the employee and the independent personnel board mutually agree on the longer time period.
- (3) If an independent personnel board finds that retaliatory action is taken in violation of the policy described in Subsection (1)(b), the independent personnel board may order, or recommend to a final decision maker:
  - (a) reinstatement of the employee at the same level as before the retaliatory action;

- (b) the payment of back wages;
  - (c) full reinstatement of fringe benefits;
  - (d) full reinstatement of seniority rights; or
  - (e) if the retaliatory action includes failure to promote, as described in Subsection 67-19a-101(11)(d), a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.
- (4) A final decision maker who receives a recommendation under Subsection (3) shall render a decision and enter an order within seven days after the day on which the final decision maker receives the recommendation.

Amended by Chapter 174, 2022 General Session

**67-21-4 Choice of forum -- Remedies for employee bringing action -- Proof required.**

- (1)
- (a) Except as provided in Subsection (1)(b) or (d), and subject to Subsections (1)(d) through (e), an employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief, damages, or both, within 180 days after the occurrence of the alleged violation of this chapter.
  - (b) Except as provided in Subsection (1)(d):
    - (i) an employee of a political subdivision that has adopted an ordinance described in Section 67-21-3.6:
      - (A) may bring a civil action described in Subsection (1)(a) within 180 days after the day on which the employee has exhausted administrative remedies; and
      - (B) may not bring a civil action described in Subsection (1)(a) until the employee has exhausted administrative remedies; and
    - (ii) an employee of a state institution of higher education:
      - (A) may bring a civil action described in Subsection (1)(a) within 180 days after the day on which the employee has exhausted administrative remedies; and
      - (B) may not bring a civil action described in Subsection (1)(a) until the employee has exhausted administrative remedies.
  - (c) Except as provided in Subsection (1)(d), a public entity employee who is not a legislative employee or a judicial employee may bring a claim of retaliatory action by selecting one of the following methods:
    - (i) filing a grievance with the Career Service Review Office in accordance with Section 67-19a-402.5; or
    - (ii) bringing a civil action for appropriate injunctive relief, damages, or both, within 180 days after the occurrence of the alleged violation of this chapter.
  - (d)
    - (i) A claimant may bring an action after the 180-day limit described in this Subsection (1) if:
      - (A) the claimant originally brought the action within the 180-day time limit;
      - (B) the action described in Subsection (1)(d)(i)(A) failed or was dismissed for a reason other than on the merits; and
      - (C) the claimant brings the new action within 180 days after the day on which the claimant originally brought the action under Subsection (1)(d)(i)(A).
    - (ii) A claimant may commence a new action under this Subsection (1)(d) only once.
  - (e) A public entity employee who files a grievance under Subsection (1)(d)(i):
    - (i) may not, at any time, bring a civil action in relation to the subject matter of the grievance;
    - (ii) may seek a remedy described in Subsection 67-21-3.5(2); and

- (iii) waives the right to seek a remedy or a type of damages not included in Subsection 67-21-3.5(2).
- (f) A public entity employee who files a civil action under Subsection (1)(d)(ii) may not, at any time, file a grievance with the Career Service Review Office in relation to the subject matter of the civil action.
- (2) An employee who brings a civil action under this section shall bring the action in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has the person's principal place of business.
- (3)
  - (a) An employee who brings an action under this section has the burden of proving by a preponderance of the evidence that the employee, in good faith, engaged in protected reporting and suffered a retaliatory action.
  - (b) If the employee satisfies the burden described in Subsection (3)(a), the employer has the burden of proving by substantial evidence that the employer's action was justified.
  - (c) If the employer satisfies the burden described in Subsection (3)(b), the employee has the burden of proving by a preponderance of the evidence that the employer's justification is pretextual.

Amended by Chapter 174, 2022 General Session

**67-21-5 Court orders for violation of chapter.**

- (1) A court, in rendering a judgment in an action brought under this chapter, may order reinstatement of the employee at the same level, the payment of back wages, full reinstatement of fringe benefits and seniority rights, damages, or any combination of these remedies.
- (2) A court shall award the complainant all or a portion of the costs of litigation, which are defined to include reasonable attorney fees and witness fees, if the court determines that the complainant prevails.

Amended by Chapter 427, 2013 General Session

**67-21-6 Civil fine.**

- (1)
  - (a) A person who violates this chapter is liable for a civil fine of not more than \$500.
  - (b) The person who takes a retaliatory action against an employee in violation of this chapter, and not the public body that employs the employee, shall, after receiving notice and an opportunity to be heard, pay the civil fine under this Subsection (1).
  - (c) If a person is ordered to pay a civil fine under this Subsection (1), the employer may dismiss the person who took the retaliatory action in violation of this chapter.
- (2) A civil fine ordered under this chapter shall be submitted to the state treasurer for deposit in the General Fund.
- (3) The civil fine described in this section may be imposed if a violation of this chapter is found by:
  - (a) an independent personnel board described in Subsection 67-21-3.6(1)(a) or 67-21-3.7(1)(a);
  - (b) the Career Service Review Office; or
  - (c) a court.

Amended by Chapter 174, 2022 General Session



**67-21-7 No impairment of employee rights under collective bargaining agreement.**

This chapter shall not be construed to diminish or impair the rights of an employee under any collective bargaining agreement.

Enacted by Chapter 216, 1985 General Session

**67-21-8 No compensation when participation in public inquiry.**

This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by a public body in accordance with Section 67-21-3.

Enacted by Chapter 216, 1985 General Session

**67-21-9 Notice of contents of this chapter -- Posting.**

- (1) An employer shall post notices and use other appropriate means to keep employees informed of their protections and obligations under this chapter.
- (2) An employer shall provide an employee with a copy of this chapter:
  - (a) when the employee is hired;
  - (b) upon a request by the employee; and
  - (c) when the employee files a grievance under this chapter.

Amended by Chapter 178, 2018 General Session

**67-21-10 False accusations.**

- (1) An employee violates this chapter if the employee knowingly makes a false accusation against an employer under this chapter.
- (2) An employee who violates Subsection (1), is subject to:
  - (a) a fine not to exceed \$5,000; and
  - (b) dismissal from employment.

Enacted by Chapter 427, 2013 General Session

# EXHIBIT 3

473 P.3d 175

Court of Appeals of Utah.

Darren PEAD, Appellee,

v.

EPHRAIM CITY, Appellant.

No. 20190416-CA

|

Filed August 6, 2020

Opinion

POHLMAN, Judge:

¶1 Ephraim City appeals the district court's denial of its motion to dismiss Darren Pead's complaint against it for violations of Utah's Whistleblower Act. The City argues that Pead's complaint is time-barred and that, in concluding otherwise, the district court erroneously calculated the applicable sixty-day period for the City to respond to Pead's notice of claim. On this basis, the City asks that we reverse and remand the case with instructions to dismiss Pead's claim with prejudice. We agree and reverse.

BACKGROUND<sup>1</sup>

¶2 Between October 2015 and June 28, 2017,<sup>2</sup> Pead was employed as a police officer for the City. In early June, Pead and other officers reported to the City illegal misconduct in the police department involving incomplete reports and uninvestigated crimes. Following an investigation by Utah County, Pead resigned effective June 28. In his notice of resignation, Pead explained that he had no choice but to resign given the illegal conduct and retaliation against him.

¶3 On October 25, Pead filed a written notice of claim with the City pursuant to the Governmental Immunity Act of Utah (the GIA), *see* [Utah Code Ann. §§ 63G-7-401 to -403](#) (LexisNexis 2016 & Supp. 2017), claiming that he had been wrongfully terminated in violation of the Utah Protection of Public Employees Act—also known as the Whistleblower Act (the WBA), *see id.* § 67-21-4 (2016); *see also id.* § 63G-7-301(2) (f) (Supp. 2017) (providing that immunity from suit is waived for “actual damages” suits “under Title 67, Chapter 21,” of the WBA).<sup>3</sup> Pead then filed suit in federal district court on December 26, claiming violations of the WBA and the First Amendment to the United States Constitution. As of December 26, 181 days had elapsed since Pead's resignation in June.

¶4 The federal court dismissed Pead's First Amendment claim and declined to exercise supplemental jurisdiction over the whistleblower *\*178* claim. Pead then filed the present action in state district court, again alleging violations of the WBA.

## Synopsis

**Background:** After police officer's federal action against city was dismissed, [2018 WL 6573128](#), officer filed suit against city in district court, alleging that his termination was in violation of the Whistleblower Act (WBA). The Sixth District Court, Manti Department, M. James Brady, J., denied the city's motion to dismiss. City petitioned for interlocutory appeal.

**Holdings:** The Court of Appeals, [Pohlman, J.](#), held that:

officer failed to comply with notice provisions of Governmental Immunity Act (GIA), and

officer could not maintain WBA action against city where earliest date that office could file complaint after city's 60-day period for responding to claim had passed was outside the WBA's 180-day statute of limitations.

Reversed and remanded.

**Procedural Posture(s):** Interlocutory Appeal; Motion to Dismiss for Lack of Subject Matter Jurisdiction.

*\*177* Sixth District Court, Manti Department, The Honorable [M. James Brady](#), No. 190600006

## Attorneys and Law Firms

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Judge [Jill M. Pohlman](#) authored this Opinion, in which Judges [Kate Appleby](#) and [Ryan M. Harris](#) concurred.

¶5 The City moved to dismiss the complaint. It argued that the district court was deprived of subject matter jurisdiction because Pead had not timely complied with the intersecting filing requirements of the GIA and the WBA. *See generally Thorpe v. Washington City*, 2010 UT App 297, ¶¶ 18–21, 243 P.3d 500 (construing the GIA and the WBA to require an employee “to file a notice of claim *and* a civil action—i.e., a district court complaint—within 180 days” of the adverse employment action (cleaned up)).

¶6 As applied to Pead, the City explained that under the GIA, it had sixty days from the filing of Pead's notice of claim to approve or deny it and that Pead could not file a legal action until after the City responded or the sixty days elapsed. Pead filed his notice of claim on October 25, and the sixtieth day fell on December 24. Noting that December 24 was a Sunday, and Monday, December 25 was a legal holiday, the City invoked a statutory rule of construction to argue that December 24 and December 25 were excluded from the time period calculation and that the time for it to respond to the notice of claim did not elapse until Tuesday, December 26. *See Utah Code Ann. § 68-3-7 (LexisNexis 2016)* (excluding weekends and legal holidays from the last day of any time period provided by law to “perform an act”). As a result, the City contended that, under the GIA, the earliest Pead could have filed his WBA action would have been December 27. Thus, his December 26 complaint was filed prematurely under the GIA, and a filing on December 27 (182 days from the date of his resignation) would have been too late under the WBA's 180-day statute of limitations.

¶7 In response, Pead argued that the GIA's sixty-day period for responding to the notice of claim could not be extended under computation of time rules because the claim was deemed denied by operation of law on the sixtieth day—in this case, December 24. Pead also asserted that he timely filed his complaint within the 180-day limitations period under the WBA, arguing that [rule 6 of the Utah Rules of Civil Procedure](#) applied to extend the last day for filing his complaint from December 25—a legal holiday and the 180th day after his resignation—to December 26, the date he filed his original complaint in federal court. *See Utah R. Civ. P. 6(a)* (explaining how to compute time periods specified in court rules, court orders, and statutes that do not specify a method for computing time).

¶8 The district court denied the City's motion. Noting that the timeliness of Pead's complaint was “determined by the intersection” of the GIA and the WBA, the court first

concluded that the complaint was timely filed under the 180-day limitations period of the WBA. The court applied [rule 6 of the Utah Rules of Civil Procedure](#) to determine that, although the “terminal date” from Pead's resignation was December 25, [rule 6](#) operated to extend the filing period to December 26. The court then determined that the sixty-day notice of claim period under the GIA ended on December 24. Rejecting the City's argument for time computation under [Utah Code section 68-3-7](#), the court relied on Utah caselaw to support its conclusion that the “60-day cutoff [under the GIA] ends at precisely 60 days, even when it occurs on a weekend.” On this basis, the court determined that the sixty-day period ended on December 24, sixty days from the date the notice of claim was filed on October 25. As a result, the court concluded that Pead satisfied both statutes by filing his complaint on December 26.

¶9 Pursuant to [rule 5 of the Utah Rules of Appellate Procedure](#), the City petitioned for interlocutory appeal of the district court's denial of its motion to dismiss, and we granted the petition.

## ISSUES AND STANDARDS OF REVIEW

¶10 The City challenges the district court's denial of its motion to dismiss. Specifically, the City argues that the district court “erroneously concluded that the statutory notice of claim period terminated after 60 days, despite the final day landing on a weekend.” Second, and relatedly, the City argues that the court erred in denying its motion to dismiss because Pead failed to “file his notice \*179 of claim with sufficient time under the [GIA] to allow him to comply with the 180-day statute of limitations under the [WBA].” “A trial court's decision to dismiss a case based on governmental immunity is a determination of law that we afford no deference.” *Hall v. Utah State Dep't of Corr.*, 2001 UT 34, ¶ 11, 24 P.3d 958. Likewise, the City's challenge requires that we interpret the relevant statutes, and we “review questions of statutory interpretation for correctness, affording no deference to the district court's legal conclusions.” *Grimm v. DxNA LLC*, 2018 UT App 115, ¶ 14, 427 P.3d 571 (cleaned up).

## ANALYSIS

¶11 The City argues that the district court erred by concluding that the sixty-day notice of claim response period under the GIA ended on December 24 and, by extension, that

Pead's complaint was timely filed under the WBA's 180-day limitations period. We agree.

¶12 This case involves the intersection of timelines in the GIA and the WBA. The GIA generally immunizes “each governmental entity and each employee of a governmental entity ... from suit for any injury that results from the exercise of a governmental function.” [Utah Code Ann. § 63G-7-201\(1\)](#) (LexisNexis 2016). But the GIA waives that immunity in certain cases, including from suits against a governmental entity for actual damages “under Title 67, Chapter 21,” of the WBA. *See id.* § 63G-7-301(2)(f) (Supp. 2017); *see also McGraw v. University of Utah*, 2019 UT App 144, ¶ 10, 449 P.3d 943 (“[T]he GIA expressly waives immunity from suits alleging retaliation under the WBA.” (cleaned up)). The WBA, in turn, prohibits an employer from taking adverse actions against an employee for the employee’s “good faith” communications regarding, among other things, “a violation or suspected violation of a law, rule, or regulation adopted under the law of this state [or] a political subdivision of this state” or, “as it relates to a state government employer,” “gross mismanagement,” “abuse of authority,” or “unethical conduct.” [Utah Code Ann. § 67-21-3\(1\)\(a\)](#) (LexisNexis 2016). *See generally Thorpe v. Washington City*, 2010 UT App 297, ¶¶ 11–12, 243 P.3d 500 (describing the overall operation of both the GIA and the WBA).

¶13 Our courts have “consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the [GIA] are strictly followed,” in that “any conditions placed on [a statutory right of action] must be followed precisely.” *Hall v. Utah State Dep’t of Corr.*, 2001 UT 34, ¶ 23, 24 P.3d 958; *accord McGraw*, 2019 UT App 144, ¶ 18, 449 P.3d 943; *see also Wheeler v. McPherson*, 2002 UT 16, ¶ 12, 40 P.3d 632 (“Applying this rule of strict compliance, we have repeatedly denied recourse to parties that have even slightly diverged from the exactness required by the [GIA].”). Indeed, “[c]ompliance with the [GIA] is a prerequisite to vesting a district court with subject matter jurisdiction over claims against governmental entities.” *Wheeler*, 2002 UT 16, ¶ 9, 40 P.3d 632.

¶14 One of the GIA requirements that must be “strictly followed” is filing the notice of claim and allowing the governmental entity sixty days to respond before filing a complaint in court. *See Hall*, 2001 UT 34, ¶¶ 21–26, 24 P.3d 958; *accord McGraw*, 2019 UT App 144, ¶¶ 12, 18, 24–27, 449 P.3d 943; *Thorpe*, 2010 UT App 297, ¶ 12, 243 P.3d 500 (“[A]n employee may bring a WBA claim against

a governmental entity, provided that the employee satisfies the GIA requirement of filing a notice of claim.”). More specifically, under the GIA, once a notice of claim has been properly filed, *see Utah Code Ann. § 63G-7-402* (LexisNexis 2016), “[w]ithin 60 days ... the governmental entity ... shall inform the [employee] in writing that the claim has either been approved or denied,” *id.* § 63G-7-403(1)(a) (Supp. 2017). If the governmental entity does not “approve or deny the claim” “at the end of the 60-day period,” the claim is “considered to be denied.” *Id.* § 63G-7-403(1)(b). Significantly, “[o]nce a plaintiff’s notice of claim is filed, the [GIA] continues to bar its initiation in court until the [governmental entity] either denies the claim in writing or fails to act.” *Hall*, 2001 UT 34, ¶ 22, 24 P.3d 958 (“Only after the [governmental entity] has had the opportunity to consider the claim for [the requisite time period] is suit against the government \*180 allowed.”); *accord McGraw*, 2019 UT App 144, ¶ 25, 449 P.3d 943 (explaining that “existing case law ... has consistently interpreted [the GIA] to bar the act of filing a complaint in the district court until the expiration of the sixty-day waiting period”); *Thorpe*, 2010 UT App 297, ¶¶ 20–21, 243 P.3d 500.

¶15 Once the sixty-day notice of claim period has expired, the WBA’s 180-day statute of limitations applicable to whistleblower claims comes into play. *See Thorpe*, 2010 UT App 297, ¶¶ 18–21, 243 P.3d 500. Under the WBA, “an employee who alleges a violation ... may bring a civil action for appropriate injunctive relief, damages, or both, within 180 days after the occurrence of the alleged violation.” [Utah Code Ann. § 67-21-4\(1\)\(a\)](#) (LexisNexis 2016). Significantly, as this court explained in *Thorpe*, when construed and applied together, “the WBA’s provisions—including its 180-day statutory period for filing a complaint—govern over the more general GIA provisions.” 2010 UT App 297, ¶ 20, 243 P.3d 500. This means that a plaintiff seeking relief under the WBA is required to “file a notice of claim *and* a civil action—i.e., a district court complaint—within 180 days” of the adverse employment decision. *Id.* (cleaned up).

¶16 As a practical matter, plaintiffs seeking to assert claims against governmental entities under the WBA must therefore “proceed more quickly than either the WBA or the GIA would suggest when their respective terms are considered in isolation.” *Id.* ¶ 21. “[B]ecause the GIA requires that the governmental entity be allowed 60 days to review the notice of claim and approve or deny it, it follows that the plaintiff must submit the notice of claim before the elapse of 120 days from the date of the alleged WBA violation so that,

after the governmental entity either denies or fails to approve the notice of claim within 60 days, the plaintiff may still file a timely complaint within the WBA's 180-day statutory period.” *Id.* (cleaned up).

¶17 Here, neither party disputes the applicability of the sixty-day and 180-day periods under the GIA and the WBA or that both the notice of claim and the civil action filed in federal court had to be filed within 180 days of the adverse employment action—Pead’s June 28 resignation. Rather, the parties dispute how those time periods ought to be computed for purposes of counting days.

¶18 The City argues that the sixty-day notice of claim period should have been counted according to [Utah Code section 68-3-7](#) or [rule 6 of the Utah Rules of Civil Procedure](#), either one of which would have given it until December 26 to respond to Pead’s notice of claim (with the result that Pead could not have filed his complaint in federal court until December 27—182 days from his resignation). *See* [Utah Code Ann. § 68-3-7 \(LexisNexis 2016\)](#); [Utah R. Civ. P. 6\(a\) \(1\)](#).

¶19 Pead, on the other hand, argues that the district court got it right. He contends that under the relevant provisions of the GIA, his notice of claim was automatically deemed denied on the sixtieth day, regardless of whether that day fell on a weekend or a legal holiday, which would have been December 24. On this basis, he argues that his civil action under the WBA was timely filed on December 26.

¶20 The resolution of this appeal therefore hinges on whether the district court erred in its computation of the sixty-day notice of claim period. If it did not, and the sixty days expired by operation of law on December 24, then Pead’s December 26 complaint was not prematurely filed under the GIA (and was timely under the WBA). In contrast, if the district court erred in its computation and instead ought to have excluded December 24 and December 25, then the notice of claim period extended through December 26, rendering the filing premature.

¶21 This issue is one of statutory interpretation. “When interpreting statutes, our primary goal is to evince the true intent and purpose of the Legislature.” [Schleger v. State, 2018 UT App 84, ¶ 11, 427 P.3d 300](#) (cleaned up). “As we have often noted, the best evidence of the legislature’s intent is the plain language of the statute itself.” [Monarrez v. Utah Dep’t of Transp., 2016 UT 10, ¶ 11, 368 P.3d 846](#) (cleaned up).

In discerning legislative intent, “we seek to render all parts thereof relevant and meaningful, and we accordingly avoid interpretations that will render \*181 portions of a statute superfluous or inoperative.” [Thorpe, 2010 UT App 297, ¶ 18, 243 P.3d 500](#) (cleaned up). We also “do not interpret the plain meaning of a statutory term in isolation” and instead “determine the meaning of the text given the relevant context of the statute.” [Monarrez, 2016 UT 10, ¶ 11, 368 P.3d 846](#) (cleaned up). As a result, “we read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Id.* (cleaned up).

¶22 We begin by addressing whether the district court erred in determining that the sixty-day notice of claim time period under the GIA elapsed on December 24, and we ultimately conclude that the court erred. We then address the consequences of the court’s error as it pertains to the timeliness of Pead’s filing under the WBA.

#### I. Timeliness Under the GIA

¶23 As explained above, the GIA provides that governmental entities have sixty days to approve or deny a claim. *See* [Utah Code Ann. § 63G-7-403\(1\)](#) (LexisNexis Supp. 2017). However, the GIA does not instruct how to compute those sixty days. For example, the GIA does not state whether the day the notice of claim was filed is included in the computation. Similarly, and of particular significance here, the GIA does not state how the time is computed when the sixtieth day falls on a weekend or a legal holiday. *See generally id.* §§ 63G-7-101 to -904 (LexisNexis 2016 & Supp. 2017).

¶24 But the fact that the GIA does not answer these questions does not mean that the legislature has left us without guidance. Indeed, the legislature has adopted a statutory provision instructing on this very issue. Title 68, Chapter 3, of the Utah Code addresses how the legislature intends statutes of the Utah Code to be construed. *See id.* §§ 68-3-1 to -14; *see also State Board of Land Comm’rs v. Ririe, 56 Utah 213, 190 P. 59, 63 (1920)* (Thurman, J., concurring) (“Rules of construction adopted by the Legislature are entitled to serious consideration in arriving at the intent and meaning of the statutes.”). And as the City points out, [Utah Code section 68-3-7](#) expressly sets forth a specific method for computing time periods described in statutes. It provides,



(1) A person shall compute the period of time provided by law to perform an act by: (a) excluding the first day; and (b) except as provided in Subsection (2), including the last day.

(2) If the last day is a legal holiday, a Saturday, or a Sunday, then a person shall: (a) exclude the day described in this Subsection (2) from the time computation described in Subsection (1); and (b) compute the period of time to include the end of the next day that is not a legal holiday, a Saturday, or a Sunday.

Utah Code Ann. § 68-3-7 (2016). On its face, section 68-3-7 thus provides a method of computation specifically applicable to statutes that include stated time periods to perform an act, such as responding to a notice of claim filed pursuant to the GIA. See *Monarrez v. Utah Dep't of Transp.*, 2016 UT 10, ¶ 11, 368 P.3d 846; *Hall v. Utah State Dep't of Corr.*, 2001 UT 34, ¶ 15, 24 P.3d 958. In this respect, we agree with the City that section 68-3-7 provides an “unambiguous methodolog[y] for calculating statutory deadlines that fall on a weekend or holiday” as applied to the GIA’s notice of claim provisions.

¶25 Nevertheless, Pead offers several arguments against section 68-3-7’s application to this case, none of which we find persuasive.

¶26 First, the district court rejected application of section 68-3-7 to compute the notice of claim time period in large part by determining that “Utah appellate courts have found in multiple cases that [the] 60-day cutoff [for notice of claims under the GIA] ends at precisely 60 days, even when it occurs on a weekend.” Pead echoes this, arguing that “prior appellate decisions show” that his notice of claim was “denied by operation of law” on December 24.

¶27 In this respect, Pead urges that *Monarrez v. Utah Department of Transportation*, 2016 UT 10, 368 P.3d 846, in particular ought to be read as supporting the conclusion that the sixty-day period ended on Sunday, December 24, and he, like the district court, \*182 cites *Craig v. Provo City*, 2016 UT 40, 389 P.3d 423, and *Schleger v. State*, 2018 UT App 84, 427 P.3d 300, for additional support. But these cases did not render any holding with respect to *how* the sixty-day period should be computed; that question was not at issue in any of them and therefore was not decided. Indeed, none of these cases even name or note the specific day of the week on which the last of the sixty-day period apparently fell, fairly suggesting that the specific day of the week was neither sufficiently cognizable to the courts in those cases nor

imperative to their resolution. As a result, the cases relied on by Pead (and the district court) shed no light on how the sixty-day notice of claim period ought to be computed.<sup>4</sup>

¶28 Second, we are not persuaded by Pead’s argument that Utah Code section 68-3-7 cannot be applied to section 63G-7-403 to compute the notice of claim period. Pead points out that section 68-3-7 “only extends the time for the performance of an act.” And he claims that section 68-3-7 does not apply to subsection (1)(b) of section 63G-7-403 because a notice of claim is deemed denied under that provision due to inaction by the governmental entity. In other words, because the government need not act for a notice of claim to be deemed denied under subsection (1)(b), the computation rules in section 68-3-7 do not apply. We disagree.

¶29 Pead is correct that, at the time, section 63G-7-403 of the GIA provided two alternative avenues for the notice of claim to be denied—either a written denial under subsection (1)(a) or a deemed denial under subsection (1)(b). See *Monarrez*, 2016 UT 10, ¶¶ 10–18, 26, 368 P.3d 846 (explaining that subsections (1)(a) and (1)(b) provide “mutually exclusive” methods of denial, in that “a denial—whether by operation of law or by written notice—can occur only *once* within [the] sixty-day timeframe”). But as explained in *Monarrez*, “a claim cannot be denied in both ways,” with the result that “the time to file a lawsuit can be triggered only once.” *Id.* ¶ 18. Stated another way, regardless of which avenue a governmental entity takes, there is only one applicable time period for both—sixty days. See *id.* ¶ 26 (“We hold today that the [GIA] permits a denial to happen in only one of two mutually exclusive ways: either the government responds in writing within sixty days, or the claim is denied by operation of law *at the end of those sixty days*.” (emphasis added)).

¶30 And reading the companion provisions together, it is clear that subsection (1)(b) references the sixty-day time period first identified in subsection (1)(a)—a time period to which section 68-3-7 applies. Subsection (1)(a) states that within sixty days of filing a notice of claim, the governmental entity shall respond to the notice of claim. And subsection (1)(b) continues that if the governmental entity does not respond within “the 60-day period,” the claim will be deemed denied. Utah Code Ann. § 63G-7-403(1)(a)–(b) (emphasis added). Thus, there is no discernable basis to differentiate subsections (1)(a) and (1)(b) or to conclude that the time computation rules set forth in section 68-3-7 do not apply to “the 60-day period” referred to in subsection (1)(b).

¶31 Finally, Pead contends that [section 68-3-7](#) cannot be applied to [section 63G-7-403](#)'s notice of claim provisions, citing [Craig v. Provo City](#), 2016 UT 40, 389 P.3d 423, for the proposition that the GIA is “all-encompassing” on the timing requirements for filing a notice of claim and therefore may not be **\*183** supplemented by [section 68-3-7](#). Although the court in [Craig](#) concluded that [sections 63G-7-402](#) and [63G-7-403](#) spoke comprehensively and exclusively to the “means and timing of filing claims against the government,” 2016 UT 40, ¶ 26, 389 P.3d 423, it did not address or reject the application of common law or statutory rules of construction to the interpretation of those requirements, *see id.* ¶¶ 21–26. Rather, [Craig](#) addressed and resolved the question of whether, as a substantive matter, the GIA foreclosed the applicability of a general savings statute. *Id.* ¶¶ 19–26. And where the GIA establishes specific time periods associated with a notice of claim but does not address how those time periods should be computed, *see supra* ¶ 23, we do not read [Craig](#) as foreclosing the application of the legislature's general rules of computation to the GIA.

¶32 For these reasons, we conclude that the method described in [section 68-3-7](#) for computing time applies to [section 63G-7-403](#) to compute the sixty-day time period applicable to the approval, denial, or deemed denial of a notice of claim. *See generally* [Utah Code Ann. § 63G-7-403\(1\)](#). And applying that method here, the sixty-day time period ended, and Pead's notice of claim was deemed denied, on December 26. *See id.* § 68-3-7 (2016). Sixty days from October 25 was Sunday, December 24. Then, according to [section 68-3-7](#), December 24 and December 25 each were excluded for purposes of computing the last day, with the result that the time period was extended to Tuesday, December 26, the “next day that [was] not a legal holiday, a Saturday, or a Sunday.” *See id.* § 68-3-7(2).<sup>5</sup> On this basis, we conclude that the earliest Pead could have filed his complaint was December 27 and that his complaint filed on December 26 was therefore prematurely filed. *See Hall*, 2001 UT 34, ¶ 22, 24 P.3d 958 (“Only after the [governmental entity] has had the opportunity to consider the claim for [the requisite time period] is suit against the government allowed.”); *accord McGraw v. University of Utah*, 2019 UT App 144, ¶ 25, 449 P.3d 943; [Thorpe v. Washington City](#), 2010 UT App 297, ¶¶ 20–21, 243 P.3d 500; *see also Hall*, 2001 UT 34, ¶ 26, 24 P.3d 958 (concluding that dismissal of suit was proper where the claimant filed the notice of claim contemporaneously with the civil action, resulting in a failure to strictly comply with the requirements of the GIA, including that plaintiffs may institute a civil action “only after their claim is denied” (cleaned up)); [Yearsley v.](#)

[Jensen](#), 798 P.2d 1127, 1128–29 (Utah 1990) (dismissing a claim under the GIA where the notice of claim was filed one day late); [Schleger](#), 2018 UT App 84, ¶¶ 7–15, 427 P.3d 300 (affirming that the appellants' suit was barred by the GIA's statute of limitations where, despite the short time frame in which to make the required filings, their filings were untimely).

¶33 Accordingly, the district court erred when it denied the City's motion to dismiss on the basis that Pead had complied with the notice of claim requirements under the GIA.

## II. Timeliness Under the WBA

¶34 As explained above, an employee is not permitted to file an action in district court until the notice of claim has been denied. *See Hall v. Utah State Dep't of Corr.*, 2001 UT 34, ¶¶ 21–26, 24 P.3d 958. Further, the GIA and the WBA are construed together to require an employee to “file a notice of claim *and* a civil action—i.e., a district court complaint—within 180 days” of the adverse employment action. [Thorpe v. Washington City](#), 2010 UT App 297, ¶¶ 18–21, 243 P.3d 500 (cleaned up).

¶35 We concluded above that the notice of claim period applicable to Pead's claim ended on Tuesday, December 26. As a result, the earliest Pead could have filed his complaint in district court would have been December 27. But the 180-day limitations period also expired at the latest on December 26. As a result, Pead did not timely file his complaint in compliance with both the GIA and the WBA.

**\*184** ¶36 In so concluding, we are sensitive to the unusual consequences in this case: Pead filed his complaint too soon under the GIA, but he also could not have then timely filed his complaint on December 27, as that would have been too late under the WBA. But as this court explained in [Thorpe](#), the 180-day limitations period applies when an employee seeks to pursue a whistleblower claim against a governmental entity, which necessarily “requires a WBA claimant to file a GIA notice early enough in the 180-day period to allow the governmental entity 60 days to evaluate the claim so that, at the elapse of that time, the claimant can file a civil action before the 180 days have passed.” *Id.* ¶ 20. Pead, however, waited too long to file his notice of claim. And the consequence of this failure is his inability to pursue his WBA claim in district court. *See Hall*, 2001 UT 34, ¶ 26, 24 P.3d 958; [Yearsley v. Jensen](#), 798 P.2d 1127, 1128 (Utah



1990); *Schleger v. State*, 2018 UT App 84, ¶¶ 7–15, 427 P.3d 300; see also *Wheeler v. McPherson*, 2002 UT 16, ¶ 11, 40 P.3d 632 (“We have consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the [GIA] are strictly followed.” (cleaned up)). On this basis, we reverse the district court's denial of the City's motion to dismiss, and remand for the entry of judgment in the City's favor.<sup>6</sup>

¶37 We conclude that the district court erred when it failed to exclude December 24 and 25 in its computation of the sixty-day notice of claim period under the GIA. The sixty-day period expired on December 26, and in filing his complaint in federal court on that day, Pead filed his complaint prematurely. Accordingly, the district court erred by denying the City's motion to dismiss, and we remand with instructions to enter judgment in the City's favor.

#### All Citations

473 P.3d 175, 2020 UT App 113

#### CONCLUSION

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#### Footnotes

- 1 In reviewing the district court's grant of a motion to dismiss, we accept the factual allegations in the complaint as true and recite the facts accordingly. *Russell v. Standard Corp.*, 898 P.2d 263, 264 (Utah 1995).
- 2 All events relevant to the issue of whether the district court erred by concluding that Pead's complaint was not time-barred occurred in 2017. For ease of reference, we refrain from including the year when identifying the dates involved.
- 3 Unless otherwise indicated, we cite the statutes in effect in 2017 at the time of the relevant events.
- 4 Pead makes much of footnote 3 in *Monarrez v. Utah Department of Transportation*, 2016 UT 10, 368 P.3d 846, as support for the idea that Pead's notice of claim was deemed denied on Sunday, December 24. That footnote was attached to a statement in the case's background section stating that Monarrez's claim “was considered to be denied no later than October 24, 2011,” and it states: “The parties treated October 24, 2011, as the cut-off date below, though it appears the actual date was October 23. Regardless of which of those two days applies, the outcome is the same in this case.” *Id.* ¶ 3 & n.3 (cleaned up).  
  
We do not view footnote 3 in *Monarrez* as rendering any helpful statement about how the notice of claim period ought to be computed. As explained, the court stated that its observation was immaterial to its decision, and it evinced no awareness of which days of the week applied to the dates it identified. Further, it is unclear what method the court used to compute its alternative cut-off date. The sixtieth day after the filing of the notice of claim was October 22, not October 23. Thus, this particular computation provides no direction.
- 5 Because we have concluded that reversal is appropriate on this issue on the basis of [Utah Code section 68-3-7](#), we do not reach the City's additional arguments under [rule 6 of the Utah Rules of Civil Procedure](#).
- 6 During oral argument, Pead conceded that if we concluded that the notice of claim period extended to December 26, the appropriate remedy would be reversal with instructions to enter judgment in the City's favor.

# EXHIBIT 4

## **Chapter 4**

### **Open and Public Meetings Act**

#### **Part 1**

#### **General Provisions**

##### **52-4-101 Title.**

This chapter is known as the "Open and Public Meetings Act."

Enacted by Chapter 14, 2006 General Session

##### **52-4-102 Declaration of public policy.**

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.
- (2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:
  - (a) take their actions openly; and
  - (b) conduct their deliberations openly.

Renumbered and Amended by Chapter 14, 2006 General Session

##### **52-4-103 Definitions.**

As used in this chapter:

- (1) "Anchor location" means:
  - (a) the physical location where the public body conducting an electronic meeting under Section 52-4-207 normally conducts meetings of the public body; or
  - (b) a location other than the location described in Subsection (1)(a) that is reasonably as accessible to the public as the location described in Subsection (1)(a).
- (2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.
- (3) "Electronic meeting" means a meeting that some or all public body members attend through an electronic video, audio, or both video and audio connection, as provided in Section 52-4-207.
- (4) "Fiduciary or commercial information" means information:
  - (a) related to any subject if disclosure:
    - (i) would conflict with a fiduciary obligation; or
    - (ii) is prohibited by insider trading provisions; or
  - (b) that is commercial in nature including:
    - (i) account owners or borrowers;
    - (ii) demographic data;
    - (iii) contracts and related payments;
    - (iv) negotiations;
    - (v) proposals or bids;
    - (vi) investments;
    - (vii) management of funds;
    - (viii) fees and charges;
    - (ix) plan and program design;
    - (x) investment options and underlying investments offered to account owners;
    - (xi) marketing and outreach efforts;

- (xii) financial plans; or
  - (xiii) reviews and audits.
- (5) "Meeting" means a gathering:
- (a) of a public body or specified body;
  - (b) with a quorum present; and
  - (c) that is convened:
    - (i) by an individual:
      - (A) with authority to convene the public body or specified body; and
      - (B) following the process provided by law for convening the public body or specified body; and
    - (ii) for the express purpose of acting as a public body or specified body to:
      - (A) receive public comment about a relevant matter;
      - (B) deliberate about a relevant matter; or
      - (C) take action upon a relevant matter.
- (6) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.
- (7)
- (a) "Public body" means:
    - (i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:
      - (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
      - (B) consists of two or more individuals;
      - (C) expends, disburses, or is supported in whole or in part by tax revenue; and
      - (D) is vested with the authority to make decisions regarding the public's business; or
    - (ii) any administrative, advisory, executive, or policymaking body of an association, as that term is defined in Section 53G-7-1101, that:
      - (A) consists of two or more individuals;
      - (B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and
      - (C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity, as that term is defined in Section 53G-7-1101.
  - (b) "Public body" includes:
    - (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in Section 11-13-103, except for the Water District Water Development Council created pursuant to Section 11-13-228;
    - (ii) a governmental nonprofit corporation as that term is defined in Section 11-13a-102;
    - (iii) the Utah Independent Redistricting Commission; and
    - (iv) a project entity, as that term is defined in Section 11-13-103.
  - (c) "Public body" does not include:
    - (i) a political party, a political group, or a political caucus;
    - (ii) a conference committee, a rules committee, a sifting committee, or an administrative staff committee of the Legislature;
    - (iii) a school community council or charter trust land council, as that term is defined in Section 53G-7-1203;
    - (iv) a taxed interlocal entity, as that term is defined in Section 11-13-602, if the taxed interlocal entity is not a project entity;

- (v) the following Legislative Management subcommittees, which are established in Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to recommend for employment, except that the meeting in which a subcommittee votes to recommend that a candidate be employed shall be subject to the provisions of this act:
  - (A) the Research and General Counsel Subcommittee;
  - (B) the Budget Subcommittee; and
  - (C) the Audit Subcommittee; or
- (vi) a search committee that selects finalists for a position as an institution of higher education president under Section 53H-3-302.
- (8) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.
- (9) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.
- (10) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.
- (11)
  - (a) "Relevant matter" means a matter that is within the scope of the authority of a public body or specified body.
  - (b) "Relevant matter" does not include, for a public body with both executive and legislative responsibilities, a managerial or operational matter.
- (12) "Specified body":
  - (a) means an administrative, advisory, executive, or legislative body that:
    - (i) is not a public body;
    - (ii) consists of three or more members; and
    - (iii) includes at least one member who is:
      - (A) a legislator; and
      - (B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and
  - (b) does not include a body listed in Subsection (7)(c)(ii) or (7)(c)(v).

Amended by Chapter 9, 2025 Special Session 1

#### **52-4-104 Training.**

- (1) The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.
- (2) The presiding officer shall ensure that any training described in Subsection (1) complies with Title 63G, Chapter 22, State Training and Certification Requirements.

Amended by Chapter 200, 2018 General Session

## **Part 2 Meetings**

#### **52-4-201 Meetings open to the public -- Exceptions.**

- (1) A meeting is open to the public unless:
  - (a) closed under Sections 52-4-204, 52-4-205, and 52-4-206; or

- (b) the meeting is solely for the School Activity Eligibility Commission, described in Section 53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002, to consider, discuss, or determine, in accordance with Section 53G-6-1004, an individual student's eligibility to participate in an interscholastic activity, as that term is defined in Section 53G-6-1001, including the commission's determinative vote on the student's eligibility.
- (2)
  - (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.
  - (b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:
    - (i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;
    - (ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;
    - (iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or
    - (iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

Amended by Chapter 524, 2024 General Session

**52-4-201.3 Local school boards -- Public comment.**

- (1) As used in this section, "local school board" means a board elected under Title 20A, Chapter 14, Part 2, Election of Members of Local Boards of Education.
- (2)
  - (a) A local school board holding a meeting that is open to the public under Section 52-4-201 shall allow a reasonable opportunity for the public to provide verbal comments that are germane to the authority of the local school board.
  - (b) Subsection (2)(a) does not apply to a meeting that is:
    - (i) a work session; or
    - (ii) an emergency meeting as described in Subsection 52-4-202(5).
- (3) No later than July 1, 2023, a local school board shall adopt a written policy that provides a reasonable opportunity for the public to provide both verbal and written comments in a meeting of the local school board that:
  - (a) is open to the public; and
  - (b) is not a meeting described in Subsection (2)(b).
- (4) The written policy described in Subsection (3) may limit public verbal and written comments to topics that are germane to the authority of the local school board.
- (5) Public comment that complies with valid time, place, manner, and germaneness restrictions in accordance with Subsections (3) and (4) does not satisfy the element of criminal trespass described in Sections 63G-8-603 and 76-6-206 regarding an intent to cause annoyance.

Amended by Chapter 485, 2025 General Session

**52-4-202 Public notice of meetings -- Emergency meetings.**

- (1)

- (a)
  - (i) A public body shall give not less than 24 hours' public notice of each meeting.
  - (ii) A specified body shall give not less than 24 hours' public notice of each meeting that the specified body holds on the capitol hill complex.
- (b) The public notice required under Subsection (1)(a) shall include the meeting:
  - (i) agenda;
  - (ii) date;
  - (iii) time; and
  - (iv) place.
- (2)
  - (a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.
  - (b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.
- (3)
  - (a) Subject to Subsection (3)(c), a public body or specified body satisfies a requirement for public notice by publishing the notice for the public body's jurisdiction, as a class A notice under Section 63G-30-102, for at least 24 hours.
  - (b) A public body whose limited resources make compliance with the requirement to post notice on the Utah Public Notice Website difficult may request the Division of Archives and Records Service, created in Section 63A-12-101, to provide technical assistance to help the public body in its effort to comply.
  - (c) A public body or specified body that is required, under this chapter and Section 63G-30-102, to post notice in a public location within the affected area may comply with the requirement by posting the notice in, on, or near:
    - (i) the anchor location for the meeting; or
    - (ii) the structure or other area where the meeting will be held.
- (4) A public body and a specified body are encouraged to develop and use additional electronic means to provide notice of their meetings under Subsection (3).
- (5)
  - (a) The notice requirement of Subsection (1) may be disregarded if:
    - (i) because of unforeseen circumstances it is necessary for a public body or specified body to hold an emergency meeting to consider matters of an emergency or urgent nature; and
    - (ii) the public body or specified body gives the best notice practicable of:
      - (A) the time and place of the emergency meeting; and
      - (B) the topics to be considered at the emergency meeting.
  - (b) An emergency meeting of a public body may not be held unless:
    - (i) an attempt has been made to notify all the members of the public body; and
    - (ii) a majority of the members of the public body approve the meeting.
- (6)
  - (a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.
  - (b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

- (c) Except as provided in Subsection (5), relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:
  - (i) listed under an agenda item as required by Subsection (6)(a); and
  - (ii) included with the advance public notice required by this section.
- (7) Except as provided in this section, this chapter does not apply to a specified body.

Amended by Chapter 100, 2023 General Session

Amended by Chapter 435, 2023 General Session

**52-4-203 Written minutes of open meetings -- Public records -- Recording of meetings.**

- (1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.
- (2)
  - (a) Written minutes of an open meeting shall include:
    - (i) the date, time, and place of the meeting;
    - (ii) the names of members present and absent;
    - (iii) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;
    - (iv) a record, by individual member, of each vote taken by the public body;
    - (v) the name of each person who:
      - (A) is not a member of the public body; and
      - (B) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;
    - (vi) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(a)(v); and
    - (vii) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.
  - (b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that minutes include the substance of matters proposed, discussed, or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided.
  - (c) A public body that has members who were elected to the public body shall satisfy the requirement described in Subsection (2)(a)(iv) by recording each vote:
    - (i) in list format;
    - (ii) by category for each action taken by a member, including yes votes, no votes, and absent members; and
    - (iii) by each member's name.
- (3) A recording of an open meeting shall:
  - (a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and
  - (b) be properly labeled or identified with the date, time, and place of the meeting.
- (4)
  - (a) As used in this Subsection (4):
    - (i) "Approved minutes" means written minutes:
      - (A) of an open meeting; and
      - (B) that have been approved by the public body that held the open meeting.
    - (ii) "Electronic information" means information presented or provided in an electronic format.



- (iii) "Pending minutes" means written minutes:
  - (A) of an open meeting; and
  - (B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.
- (iv) "Specified local public body" means a legislative body of a county, city, or town.
- (v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.
- (vi) "State website" means the Utah Public Notice Website created under Section 63A-16-601.
- (b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.
- (c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.
- (d) A public body shall require an individual who, at an open meeting of the public body, publicly presents or provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.
- (e) A state public body shall:
  - (i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;
  - (ii) within three business days after approving written minutes of an open meeting:
    - (A) post to the state website a copy of the approved minutes and any public materials distributed at the meeting;
    - (B) make the approved minutes and public materials available to the public at the public body's primary office; and
    - (C) if the public body provides online minutes under Subsection (2)(b), post approved minutes that comply with Subsection (2)(b) and the public materials on the public body's website; and
  - (iii) within three business days after holding an open meeting, post on the state website an audio recording of the open meeting, or a link to the recording.
- (f) A specified local public body shall:
  - (i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;
  - (ii) within three business days after approving written minutes of an open meeting, post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); and
  - (iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.
- (g) A public body that is not a state public body or a specified local public body shall:
  - (i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;
  - (ii) within three business days after approving written minutes of an open meeting:
    - (A) post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); or
    - (B) comply with Subsections (4)(e)(ii)(B) and (C) and post to the state website a link to a website on which the approved minutes and any public materials distributed at the meeting are posted; and
  - (iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

- (h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.
- (i) Approved minutes of an open meeting are the official record of the meeting.
- (5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.
- (6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.
- (7) Notwithstanding Subsection (1), a recording is not required to be kept of:
  - (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or
  - (b) an open meeting of a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

Amended by Chapter 438, 2024 General Session

**52-4-204 Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.**

- (1) A closed meeting may be held if:
  - (a)
    - (i) a quorum is present;
    - (ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and
  - (iii)
    - (A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;
    - (B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting;
    - (C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint;
    - (D) for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint in accordance with Section 63A-15-701, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint;
    - (E) for a project entity that is conducting an open meeting for the purposes of determining the value of an asset, developing a strategy related to the sale or use of that asset;
    - (F) for a project entity that is conducting an open meeting for purposes of discussing a business decision, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity; or

- (G) for a project entity that is conducting an open meeting for purposes of discussing a record, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential competitor of, the project entity; or
- (b)
  - (i) for the Independent Legislative Ethics Commission, the closed meeting is held for the purpose of conducting business relating to the receipt or review of an ethics complaint, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the receipt or review of ethics complaints";
  - (ii) for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, the closed meeting is held for the purpose of conducting business relating to the preliminary review of an ethics complaint in accordance with Section 63A-15-602, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the review of ethics complaints"; or
  - (iii) for the Independent Executive Branch Ethics Commission created in Section 63A-14-202, the closed meeting is held for the purpose of conducting business relating to an ethics complaint, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to an ethics complaint."
- (2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.
- (3)
  - (a) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.
  - (b)
    - (i) A public body may not take a vote in a closed meeting, except for a vote on a motion to end the closed portion of the meeting and return to an open meeting.
    - (ii) A motion to end the closed portion of a meeting may be approved by a majority of the public body members present at the meeting.
- (4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:
  - (a) the reason or reasons for holding the closed meeting;
  - (b) the location where the closed meeting will be held; and
  - (c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.
- (5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Amended by Chapter 381, 2024 General Session

Amended by Chapter 392, 2024 General Session

**52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.**

- (1) A closed meeting described under Section 52-4-204 may only be held for:
  - (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
  - (b) strategy sessions to discuss collective bargaining;
  - (c) strategy sessions to discuss pending or reasonably imminent litigation;

- (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, or to discuss a proposed development agreement, project proposal, or financing proposal related to the development of land owned by the state or a political subdivision, if public discussion would:
  - (i) disclose the appraisal or estimated value of the property under consideration; or
  - (ii) prevent the public body from completing the transaction on the best possible terms;
- (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
  - (i) public discussion of the transaction would:
    - (A) disclose the appraisal or estimated value of the property under consideration; or
    - (B) prevent the public body from completing the transaction on the best possible terms;
  - (ii) the public body previously gave public notice that the property would be offered for sale; and
  - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) investigative proceedings regarding allegations of criminal misconduct;
- (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
- (i) as relates to an ethics committee of the Legislature, a purpose permitted under Section 52-4-204;
- (j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;
- (k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
- (l) as relates to the Utah Higher Education Savings Board of Trustees and its appointed board of directors, discussing fiduciary or commercial information;
- (m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:
  - (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
  - (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
  - (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;
- (n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
- (o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
  - (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
  - (ii) the public body needs to review or discuss the information to properly fulfill its role and responsibilities in the procurement process;
- (p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:
  - (i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and

- (ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business;
  - (q) as it relates to the Cannabis Production Establishment Licensing Advisory Board, to review confidential information regarding violations and security requirements in relation to the operation of cannabis production establishments;
  - (r) considering a loan application, if public discussion of the loan application would disclose:
    - (i) nonpublic personal financial information; or
    - (ii) a nonpublic trade secret, as defined in Section 13-24-2, or nonpublic business financial information the disclosure of which would reasonably be expected to result in unfair competitive injury to the person submitting the information;
  - (s) a discussion of the board of the Point of the Mountain State Land Authority, created in Section 11-59-201, regarding a potential tenant of point of the mountain state land, as defined in Section 11-59-102; or
  - (t) a purpose for which a meeting is required to be closed under Subsection (2).
- (2) The following meetings shall be closed:
- (a) a meeting of the Health and Human Services Interim Committee to review a report described in Subsection 26B-1-506(1)(a), and a response to the report described in Subsection 26B-1-506(2);
  - (b) a meeting of the Child Welfare Legislative Oversight Panel to:
    - (i) review a report described in Subsection 26B-1-506(1)(a), and a response to the report described in Subsection 26B-1-506(2); or
    - (ii) review and discuss an individual case, as described in Section 36-33-103;
  - (c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law;
  - (d) a meeting of the Compassionate Use Board established in Section 26B-1-421 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26B-1-421;
  - (e) a meeting of the Colorado River Authority of Utah if:
    - (i) the purpose of the meeting is to discuss an interstate claim to the use of the water in the Colorado River system; and
    - (ii) failing to close the meeting would:
      - (A) reveal the contents of a record classified as protected under Subsection 63G-2-305(81);
      - (B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;
      - (C) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
      - (D) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;
  - (f) a meeting of the General Regulatory Sandbox Program Advisory Committee if:
    - (i) the purpose of the meeting is to discuss an application for participation in the regulatory sandbox as defined in Section 63N-16-102; and
    - (ii) failing to close the meeting would reveal the contents of a record classified as protected under Subsection 63G-2-305(82);
  - (g) a meeting of a project entity if:
    - (i) the purpose of the meeting is to conduct a strategy session to discuss market conditions relevant to a business decision regarding the value of a project entity asset if the terms of

the business decision are publicly disclosed before the decision is finalized and a public discussion would:

- (A) disclose the appraisal or estimated value of the project entity asset under consideration; or
- (B) prevent the project entity from completing on the best possible terms a contemplated transaction concerning the project entity asset;
- (ii) the purpose of the meeting is to discuss a record, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity;
- (iii) the purpose of the meeting is to discuss a business decision, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity; or
- (iv) failing to close the meeting would prevent the project entity from getting the best price on the market; and
- (h) a meeting of the Rules Review and General Oversight Committee to review and discuss:
  - (i) an individual child welfare case as described in Subsection 36-35-102(3)(c); or
  - (ii) information that is subject to a confidentiality agreement as described in Subsection 36-35-102(3)(c).
- (3) In a closed meeting, a public body may not:
  - (a) interview a person applying to fill an elected position;
  - (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or
  - (c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Amended by Chapter 391, 2025 General Session

#### **52-4-206 Record of closed meetings.**

- (1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:
  - (a) shall make a recording of the closed portion of the meeting; and
  - (b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.
- (2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.
- (3) The recording and any minutes of a closed meeting shall include:
  - (a) the date, time, and place of the meeting;
  - (b) the names of members present and absent; and
  - (c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.
- (4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.
- (5) A recording, transcript, report, and written minutes of a closed meeting are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records:
  - (a) may be disclosed under a court order only as provided under Section 52-4-304; and

- (b) shall be disclosed, upon request, to the Office of the Legislative Auditor General under Section 36-12-15.
- (6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):
  - (a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a),(1)(f), or (2); and
  - (b) the provisions of Subsection (1) of this section do not apply.

Amended by Chapter 21, 2023 General Session

**52-4-207 Electronic meetings -- Authorization -- Requirements.**

- (1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may conduct a meeting that some or all members of the public body attend through an electronic video, audio, or both video and audio connection, in accordance with this section.
- (2)
  - (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.
  - (b) A resolution, rule, or ordinance described in Subsection (2)(a) that governs an electronic meeting shall establish the conditions under which a remote member is included in calculating a quorum.
  - (c) A resolution, rule, or ordinance described in Subsection (2)(a) may:
    - (i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
    - (ii) require a quorum of the public body to:
      - (A) be present at a single anchor location for the meeting; and
      - (B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic video, audio, or both video and audio connection;
    - (iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;
    - (iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability;
    - (v) if the public body is statutorily authorized to allow a member of the public body to act by proxy, establish the conditions under which a member may vote or take other action by proxy;
    - (vi) provide a procedure for recording votes of members, including defining circumstances under which a roll call vote is required; or
    - (vii) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.
- (3) A public body that conducts an electronic meeting shall:
  - (a) give public notice of the electronic meeting in accordance with Section 52-4-202; and
  - (b) except as otherwise provided in a rule of the Legislature applicable to the public body, at least 24 hours before the electronic meeting is scheduled to begin, provide each member of the public body a description of how to connect to the meeting.
- (4)

- (a) Except as provided in Subsection (5), a public body that conducts an electronic meeting shall provide space and facilities at an anchor location for members of the public to attend the open portions of the meeting.
  - (b) A public body that conducts an electronic meeting may provide means by which members of the public may participate remotely by electronic means.
- (5) Subsection (4)(a) does not apply to an electronic meeting if:
- (a)
    - (i) the chair of the public body determines that:
      - (A) conducting the meeting as provided in Subsection (4)(a) presents a substantial risk to the health or safety of those present or who would otherwise be present at the anchor location; or
      - (B) the location where the public body would normally meet has been ordered closed to the public for health or safety reasons; and
    - (ii) the public notice for the meeting includes:
      - (A) a statement describing the chair's determination under Subsection (5)(a)(i);
      - (B) a summary of the facts upon which the chair's determination is based; and
      - (C) information on how a member of the public may participate in the meeting remotely by electronic means;
  - (b)
    - (i) during the course of the electronic meeting, the chair:
      - (A) determines that continuing to conduct the electronic meeting as provided in Subsection (4)(a) presents a substantial risk to the health or safety of those present at the anchor location; and
      - (B) announces during the electronic meeting the chair's determination under Subsection (5)(b)(i)(A) and states a summary of the facts upon which the determination is made; and
    - (ii) in conducting the electronic meeting, the public body has provided means by which members of the public who are not physically present at the anchor location may participate in the electronic meeting remotely by electronic means;
  - (c)
    - (i) the public body is a special district board of trustees established under Title 17B, Chapter 1, Part 3, Board of Trustees;
    - (ii) the board of trustees' membership consists of:
      - (A) at least two members who are elected or appointed to the board as owners of land, or as an agent or officer of the owners of land, under the criteria described in Subsection 17B-1-302(2)(b); or
      - (B) at least one member who is elected or appointed to the board as an owner of land, or as an agent or officer of the owner of land, under the criteria described in Subsection 17B-1-302(3)(b)(ii);
    - (iii) the public notice required under Subsection 52-4-202(3)(a) for the electronic meeting includes information on how a member of the public may participate in the meeting remotely by electronic means; and
    - (iv) the board of trustees allows members of the public to participate in the meeting remotely by electronic means;
  - (d)
    - (i) the public body is a special service district administrative control board established under Title 17D, Chapter 1, Part 3, Administrative Control Board;
    - (ii) the administrative control board's membership consists of:



- (A) at least one member who is elected or appointed to the board as an owner of land, or as an agent or officer of the owner of land, under the criteria described in Subsection 17D-1-304(1)(a)(iii)(A) or (B), as applicable; or
  - (B) members that qualify for election or appointment to the board because the owners of real property in the special service district meet or exceed the threshold percentage described in Subsection 17D-1-304(1)(b)(i);
  - (iii) the public notice required under Subsection 52-4-202(3)(a) for the electronic meeting includes information on how a member of the public may participate in the meeting remotely by electronic means; and
  - (iv) the administrative control board allows members of the public to participate in the meeting remotely by electronic means; or
  - (e) all public body members attend the meeting remotely through an electronic video, audio, or both video and audio connection, unless the public body receives a written request, at least 12 hours before the scheduled meeting time, to provide for an anchor location for members of the public to attend in person the open portions of the meeting.
- (6) A determination under Subsection (5)(a)(i) expires 30 days after the day on which the chair of the public body makes the determination.
- (7) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.
- (8) Unless a public body adopts a resolution, rule, or ordinance described in Subsection (2)(c)(v), a public body that is conducting an electronic meeting may not allow a member to vote or otherwise act by proxy.

Amended by Chapter 381, 2024 General Session

Amended by Chapter 388, 2024 General Session

Amended by Chapter 392, 2024 General Session

**52-4-208 Predetermining public body action prohibited -- Exception.**

- (1) Individuals constituting a quorum of a public body may not act together outside a meeting in a concerted and deliberate way to predetermine an action to be taken by the public body at a meeting on a relevant matter.
- (2) Subsection (1) does not apply to an individual acting as a member of a body that is not a public body under Subsection 52-4-103(7)(c).

Repealed and Re-enacted by Chapter 392, 2024 General Session

**52-4-209 Electronic meetings for charter school board.**

- (1) Notwithstanding the definitions provided in Section 52-4-103 for this chapter, as used in this section:
  - (a) "Anchor location" means a physical location where:
    - (i) the charter school board would normally meet if the charter school board were not holding an electronic meeting; and
    - (ii) space, a facility, and technology are provided to the public to monitor and, if public comment is allowed, to participate in an electronic meeting during regular business hours.
  - (b) "Charter school board" means the governing board of a school created under Title 53G, Chapter 5, Charter Schools.
  - (c) "Meeting" means the convening of a charter school board:

- (i) with a quorum who:
      - (A) monitors a website at least once during the electronic meeting; and
      - (B) casts a vote on a website, if a vote is taken; and
    - (ii) for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the charter school board has jurisdiction or advisory power.
  - (d) "Monitor" means to:
    - (i) read all the content added to a website by the public or a charter school board member; and
    - (ii) view a vote cast by a charter school board member on a website.
  - (e) "Participate" means to add content to a website.
- (2)
- (a) A charter school board may conduct an electronic meeting in accordance with Section 52-4-207.
  - (b) A charter school board may conduct an electronic meeting in accordance with this section that is in writing on a website if:
    - (i) the chair verifies that a quorum monitors the website;
    - (ii) the content of the website is available to the public;
    - (iii) the chair controls the times in which a charter school board member or the public participates; and
    - (iv) the chair requires a person to identify himself or herself if the person:
      - (A) participates; or
      - (B) casts a vote as a charter school board member.
- (3) A charter school that conducts an electronic meeting under this section shall:
- (a) give public notice of the electronic meeting:
    - (i) in accordance with Section 52-4-202; and
    - (ii) by posting written notice at the anchor location as required under Section 52-4-207;
  - (b) in addition to giving public notice required by Subsection (3)(a), provide:
    - (i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;
    - (ii) a description of how the members and the public may be connected to the electronic meeting;
    - (iii) a start and end time for the meeting, which shall be no longer than 5 days; and
    - (iv) a start and end time for when a vote will be taken in an electronic meeting, which shall be no longer than four hours; and
  - (c) provide an anchor location.
- (4) The chair shall:
- (a) not allow anyone to participate from the time the notice described in Subsection (3)(b)(iv) is given until the end time for when a vote will be taken; and
  - (b) allow a charter school board member to change a vote until the end time for when a vote will be taken.
- (5) During the time in which a vote may be taken, a charter school board member may not communicate in any way with any person regarding an issue over which the charter school board has jurisdiction.
- (6) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.
- (7)
- (a) Written minutes shall be kept of an electronic meeting conducted as required in Section 52-4-203.

- (b)
    - (i) Notwithstanding Section 52-4-203, a recording is not required of an electronic meeting described in Subsection (2)(b).
    - (ii) All of the content of the website shall be kept for an electronic meeting conducted under this section.
  - (c) Written minutes are the official record of action taken at an electronic meeting as required in Section 52-4-203.
- (8)
- (a) A charter school board shall ensure that the website used to conduct an electronic meeting:
    - (i) is secure; and
    - (ii) provides with reasonably certainty the identity of a charter school board member who logs on, adds content, or casts a vote on the website.
  - (b) A person is guilty of a class B misdemeanor if the person falsely identifies himself or herself as required by Subsection (2)(b)(iv).
- (9) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Amended by Chapter 392, 2024 General Session

#### **52-4-210 Electronic message transmissions.**

Nothing in this chapter may be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in a meeting.

Amended by Chapter 392, 2024 General Session

### **Part 3 Enforcement**

#### **52-4-301 Disruption of meetings.**

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

Enacted by Chapter 14, 2006 General Session

#### **52-4-302 Suit to void final action -- Limitation -- Exceptions.**

- (1)
- (a) Any final action taken in violation of Section 52-4-201, 52-4-202, 52-4-207, 52-4-208, or 52-4-209 is voidable by a court of competent jurisdiction.
  - (b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a) if:
    - (i) the posting is made for a meeting that is held before April 1, 2009; or
    - (ii) (A) the public body otherwise complies with the provisions of Section 52-4-202; and

(B) the failure was a result of unforeseen Internet hosting or communication technology failure.

- (2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.
- (3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.
- (4) In a suit under this section to void a final action in violation of Section 52-4-208, a court may award a prevailing plaintiff a reasonable attorney fee and costs.

Amended by Chapter 392, 2024 General Session

**52-4-303 Enforcement of chapter -- Suit to compel compliance.**

- (1) The attorney general and county attorneys of the state shall enforce this chapter.
- (2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.
- (3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:
  - (a) compel compliance with or enjoin violations of this chapter; or
  - (b) determine the chapter's applicability to discussions or decisions of a public body.
- (4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

Renumbered and Amended by Chapter 14, 2006 General Session

Amended by Chapter 263, 2006 General Session

**52-4-304 Action challenging closed meeting.**

- (1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:
  - (a) review the recording or written minutes of the closed meeting in camera; and
  - (b) decide the legality of the closed meeting.
- (2)
  - (a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.
  - (b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.
- (3) Nothing in this section may be construed to affect the ability of a public body to reclassify a record, as defined in Section 63G-2-103, as provided in Section 63G-2-307.

Amended by Chapter 425, 2018 General Session

**52-4-305 Criminal penalty for closed meeting violation.**

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

Enacted by Chapter 263, 2006 General Session

**EXHIBIT**

**6**

# Server Error in '/' Application.

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*The resource cannot be found.*

**Description:** HTTP 404. The resource you are looking for (or one of its dependencies) could have been removed, had its name changed, or is temporarily unavailable. Please review the following URL and make sure that it is spelled correctly.

**Requested URL:** /departments/city-clerk/boards-commissions

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**Version Information:** Microsoft .NET Framework Version:4.0.30319; ASP.NET Version:4.7.4136.0

# EXHIBIT 5





TINA M. CANNON  
UTAH STATE AUDITOR

[Home](#) » [Hotline](#) » **Hotline FAQs**

# State Auditor Hotline FAQ's



## What Types of Complaints Does the State Auditor Consider for Investigation?

The State Auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state. The office has constitutional and statutory authority to review a variety of financial and compliance-related matters in state and local governments and any entity that receives public funds. In addition, state statute designates us as a receiver of “whistleblower” complaints. Finally, the state legislature has mandated that our office receive certain compliance related complaints. The various categories are outlined below:

## Alleged Improper Government Activities

*Utah Code §67-3-1* authorizes the state auditor to conduct various special purpose audits, examinations, and reviews of any entity that receives public funds. The office will consider complaints that involve:

- The honesty and integrity of fiscal affairs
- Accuracy and reliability of financial statements and systems
- Adequacy of financial controls and compliance with the law
- Compliance with legislative intent (generally financial related)
- Certain aspects of programmatic or operational effectiveness

The resources of the Office are limited and require us to screen and prioritize complaints based on factors such as significance, financial impact, and substantiality of evidence. Therefore, we may refer some complaints to other entities and may decline to investigate certain complaints or aspects of a complaint based on established screening criteria, State Auditor discretion, and/or prioritization. Complaints that are supported by verifiable evidence may be deemed a higher priority for acceptance and investigation.

## Reporting of Governmental Waste or Violations of Law (Whistleblower Statute)

*Utah Code §67-21-3* identifies the State Auditor as one of many officials to whom public employees may report their concerns about:

- Waste or misuse of public funds, property, or manpower
- Violations of a law, rule, or regulation applicable to the government
- Gross mismanagement
- Abuse of authority
- Unethical conduct

These types of complaints can be reported using the “Improper Government Activity” form. If the complainant is an employee who wishes to invoke protections, they should click the box of the form indicating:

As an employee of the subject entity, I request WHISTLEBLOWER STATUS under Utah Code §67-21. I have read and understand the provisions of this statute and understand that the State Auditor cannot prevent adverse employment actions

When a complainant indicates they want to invoke “whistleblower protection”, the Office will make a record of the complaint in accordance with the statute. Then consideration will be given as to whether the subject matter is within our purview and expertise as government auditors. If a complaint is not accepted for review by the State Auditor due to lack of jurisdiction, authority, or expertise, the Office will direct the complainant to appropriate resources whenever possible.

## Alleged Improper Privacy Practices

Utah Code §67-3-1(19) and §67-3-13(2)(d) authorize the State Auditor to oversee the State Privacy Auditor. Among other duties, the State Privacy Auditor responds to requests from individuals to audit a governmental entity’s privacy practices and their handling of personal data, including how that data is collected, used, shared, or stored. Individuals with concerns about a governmental entity’s handling of data may report their concerns on the [Improper Government Activity](#) form.

## Legislatively Mandated Compliance Complaints

The state legislature has mandated that the State Auditor receive and investigate alleged violations of the following Utah Code sections:

- [Utah Code §63G, Chapter 31, Distinctions on the Basis of Sex](#)
- [Utah Code §67-27-107 through §67-27-109, Equal Opportunity issues](#)
- [Utah Code §63G-1-704, Display of Flags](#)

### What Types of Complaints Does the Office of the Utah State Auditor Not Investigate?

The State Auditor determines how best to use the resources of the office and may decline to investigate complaints based on established screening criteria or other factors including but not limited to:

- Any matter that is considered outside our purview and expertise.
- Current resources and caseload may prevent us from addressing the complaint in a timely manner.
- The complaint could be better addressed by another entity or other method.
- The subject matter is deemed to be lower priority due to lack of significance , lack of specificity, lack of available evidence, or other factors.
- The complainant has not sufficiently attempted to resolve their concerns directly with the entity when possible. The Office does not act as an intermediary to obtain information for individuals that they can obtain.
- Issues that are currently involved in litigation

In addition, resources exist to address many common concerns. Please review the list below to see if another office would be a more appropriate venue for resolving the concern. This list is not comprehensive, and we may refer complaints to other entities to help expedite resolution of concerns.

Type of Complaint	Resource
Violations of <i>Utah Code</i> §52 – 4, the Open and Public Meetings Act (OPMA)	Submit complaint to Attorney General Online Complaint Form
State employee personnel grievances	<a href="mailto:hrcommunication@utah.gov">hrcommunication@utah.gov</a>
Unethical conduct by executive branch, legislative branch, or political subdivision officials	The applicable Ethics Commission investigates allegations of certain unethical conduct by public officials. See information at <a href="https://ethics.utah.gov">ethics.utah.gov</a> .
Concerns or conflicts regarding collections of child support services involving the Office of Recovery Services (ORS)_	Call <a href="tel:801-536-8901">801-536-8901</a> or email <a href="mailto:orswebslc@utah.gov">orswebslc@utah.gov</a> attn: constituent affairs
Misuse of State fleet vehicles	Online complaint at <a href="https://fleet.utah.gov">fleet.utah.gov</a> – then select “Comment on a Driver”

Concerns and disputes over procurement contract awards	Contact the Division of Purchasing at <a href="https://purchasing.utah.gov">purchasing.utah.gov</a> or call <a href="tel:8019577160">(801) 957-7160</a> .
Disputes over access to government records (GRAMA-related issues)	Visit <a href="https://archives.utah.gov/transparency-services/government-records-ombudsman/">https://archives.utah.gov/transparency-services/government-records-ombudsman/</a>
Concerns regarding Division of Child and Family Services (DCFS) Cases	Contact the Office of Child Protection Ombudsman at <a href="tel:8015384589">(801) 538-4589</a> or <a href="mailto:dhhscustomerexp@utah.gov">dhhscustomerexp@utah.gov</a>
Misconduct by Utah Law Enforcement Officers	Contact Peace Officer Standards and Training at <a href="https://post.utah.gov/contact/">post.utah.gov/contact/</a>
Elections related concerns	Email <a href="mailto:elections@utah.gov">elections@utah.gov</a> or call <a href="tel:8015381041">801-538-1041</a>
Fraud or misuse of assistance programs such as Food stamps (SNAP), Medicaid, Financial assistance, childcare assistance	Contact Department of Workforce Services Fraud Hotline at <a href="tel:8009552210">800-955-2210</a> or email <a href="mailto:wsinv@utah.gov">wsinv@utah.gov</a>
Fraud regarding unemployment benefits	Call <a href="tel:8015264400">801-526-4400</a>
Property Rights Issues	<a href="mailto:propertyrights@utah.gov">propertyrights@utah.gov</a>

## How Do I File a Complaint?

Complaints must be submitted in writing using the applicable [Hotline Reporting Form](#). Use of this form helps complainants effectively communicate essential information regarding their complaint.

Complainants should list any evidence that supports their complaint in the reporting form. Due to limited resources, the Office is unable to accept complaints that are not specific in nature or that are not well supported by credible evidence. Documentary evidence can be submitted via email at [auditorhotline@utah.gov](mailto:auditorhotline@utah.gov). Please reference the entity and the assigned case number, if available, in the subject line of the email.

If you have questions, please contact the Hotline team:

- Email: [auditorhotline@utah.gov](mailto:auditorhotline@utah.gov)
- US Mail: OSA Hotline, PO Box 142310, SLC, Utah 84114-2310
- Phone: (801) 538-9777

## What Information and Data Do I Need to Provide?

An important step in establishing the significance of reported concerns is to provide credible information and substantiated data with each complaint. Essential information includes specifics on ‘who, what, where, when’ as well as any other details that may be important such as information on other witnesses, documents, and pertinent evidence. The [Hotline Reporting Form](#) has specific questions designed to guide complainants through the submission process and ensure necessary details are included. Evidence can be submitted via email at [auditorhotline@utah.gov](mailto:auditorhotline@utah.gov). Please reference the entity and assigned case number, if available, in the subject line of the email.

Providing specific examples and documentation that directly support the reported allegations will increase the likelihood that the Office will be able to pursue the complainant’s concerns. If the complaint is too broad, vague, or unsubstantiated, staff may not be able to perform an effective investigation, and the complaint will likely be declined.

Complainants can obtain evidence from a variety of sources. Below is a list of common resources that have proven helpful. This list is not exhaustive.

1. **Access financial information through Transparent Utah.** The State Auditor collects and publishes government entity financial and other information on <https://transparent.utah.gov/>.
2. **Submit a formal Government Records Access and Management Act (GRAMA) request.** Utah Code 63G-2, Government Records Access and Management Act, gives residents the right to inspect or request a copy of unrestricted public records. Documents that provide evidence for your complaint should be requested through the centralized [Open Records Portal](#) or contact the entity’s records officer.
3. **Research the Entity’s website for written policies and procedures to help determine whether expenditures or other transactions in question are either specifically allowed or prohibited by policy.** The written policies and procedures may

- also provide information regarding the Entity’s procurement process and required purchase approvals.
4. **Review the Entity’s annual financial reports and budgets.** These documents can help you gain an understanding of the Entity’s financial position and operations, as well as compliance with certain legal requirements. Annual financial reports and other required reports can be found at <https://reporting.auditor.utah.gov/searchreports/s/>
  5. **Review public meeting Agendas, minutes, and audio for the entity.**These are available through the Utah Public Meeting Notice Website at <https://www.utah.gov/pmn/>

## What is the Screening and Prioritization Process for Complaints About Improper Government Activities?

We screen and prioritize complaints based on significance, financial impact, internal resources, and other factors. The following represents some of the factors that are considered during the screening and prioritization process.

- **Auditor authority:** Does the complaint involve actions by an entity subject to the Office of the Utah State Auditor’s authority? The entity must be subject to oversight by the State Auditor. The drop-down box on the complaint form allows the complainant to choose the specific entity. If the entity is not on the list, choose “other/unknown.” Examples of entities under our oversight authority include:
  - Utah State agencies, departments, offices, commissions, etc.
  - Local government entities such as counties, cities, towns, metro townships. Note: statute limits our authority at counties to certain subject matters.
  - Special and special service districts.
  - Local Education Agencies such as school districts and charter schools. Note: many complaints regarding these entities should first be submitted to Utah State Board of Education Internal Auditor at <https://schools.utah.gov/internalaudit/index>.
  - Other non-federal public entities such as state and local courts, colleges, universities, and not-for-profit entities that receive public funds.
- **Improper governmental activities:** Does the complaint pertain to improper governmental activities? Disagreements with management decisions or actions taken by elected officials that are deemed to be within their authority or management discretion will not be investigated.
- **Attempts to resolve:** Has the complainant taken appropriate steps to resolve the issue with the entity? If the entity is not responsive, the concern relates to top management, or the complainant desires anonymity, the Hotline may be contacted first.
- **Timing and frequency:** What is the timing and frequency of alleged improper activity? Allegations of improper activities that are recent and/or ongoing may receive a higher priority.
- **Referral to other entities:** Should the allegation be investigated by another entity? In some cases, we may refer complaints to internal/external auditors or other entities, as considered appropriate. We will generally discuss these options with the complainant.
- **Investigative feasibility:** Can the complaint be efficiently and effectively investigated? Overly broad or vague complaints or complaints where evidence is unavailable may be declined or receive a low priority.

## What is Whistleblower Protection?

*Utah Code* §67-21-3 prohibits public employers from taking adverse action against their employees for reporting government waste or violations of law in good faith, to the appropriate authorities. A public employee who reports a concern in writing to the State Auditor or another entity as designated in the statute, is given the presumption of having acted in good faith according to the statute. This presumption may aid the employee in a civil legal proceeding if adverse action is taken by the employer.

While the State Auditor is a designated receiver for whistleblower complaints, the Office does not have the authority to investigate alleged adverse action by the complainant’s employer and cannot advocate on the employee’s behalf. Should a public employer take adverse action in violation of the statute against a public employee, the burden of contesting that action remains with the employee. Complainants should consider consulting private legal counsel.

## Will My Identity Be Protected?

Complainant identity is considered protected information under the Utah Government Records Access and Management Act (GRAMA) and, if requested by the complainant, will be kept confidential unless otherwise required by law or court order. (See *Utah Code* §67-3-1(17))

Complaints may be submitted anonymously to the Hotline. However, we prefer that the complainant provide their name and contact information to allow us to ask follow-up questions. Also, please note that anonymous complaints do not invoke Whistleblower protections.

# Hotline

- Hotline
- Submit Hotline Complaint
- Hotline FAQs**
- Contact the Hotline



TINA M. CANNON  
UTAH STATE AUDITOR

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**OFFICE OF THE STATE AUDITOR**

Utah State Capitol, Suite 260  
Utah State Capitol Complex  
Salt Lake City, Utah 84114  
(801) 538-1025

**STATE AUDITOR HOTLINE**

- [Report a Concern](#)
- [Privacy and Protection for Complainants](#)
- [Submit Hotline Complaint](#)

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# EXHIBIT 7



# BOARDS & COMMISSIONS

## Appeal Panel

On May 15, 2025, the City Council adopted [Ordinance No. 2025-08](#) amending land use appeal authorities. The Appeal Panel is now dissolved. Moving forward, appeals of Planning Commission final action will be heard by an administrative hearing officer.

## Board of Adjustment

This is a legislative board that hears and decides appeals from zoning decisions to applying special exceptions to the Land Management Code. The board also makes determinations regarding modifications of non-conforming uses and hears appeals on determination non-conforming or non-complying status. [Click here for more information](#)

## Board of Appeals

The Board of Appeals hears and decides appeals on building and housing code decisions through City Council appointed community members qualified by experience and training in building construction. [Click here for more information.](#)

## Historic Preservation Board

This is a board created pursuant to Utah Code to preserve and encourage compatible infill to protect Park City's mining heritage according to Land Management Code Chapters 15-11 and 15-13. [Click here for more information.](#)

## Library Board

The Library Board of Trustees, representing the citizens of Park City, and working in partnership with the Library Director, evaluates library services and community needs, establishes library policies, and sets goals to be implemented by the director and staff. Board members inform others about library services, needs, and accomplishments to foster a positive public image and build community support. [Click here for more information.](#)

## Nonprofit Services Advisory Committee

The newly formed Nonprofit Services Advisory Committee is comprised of Park City residents, workers, volunteers, property owners, and business owners. Committee members review applications from local nonprofit organizations and make funding recommendations to the City Council. [Click here for more information.](#)

## Planning Commission

The Commission acts as a non-political, long range planning body for Park City. Review of specific projects is limited to matters requiring their consideration. The scope of these reviews is outlined in the Land Management Code and includes: general plan review, annexation review, subdivision approval, subdivision and record of survey plat and plat amendment review, master planned development approval, conditional use permit approval, appeals of staff decisions, termination of inactive applications, and sensitive land review. [Click here for more information.](#)

## Police Complaint Review Committee

All complaints regarding police personnel or policy are first reviewed by an internal investigation. If a complainant is unsatisfied with the result of that investigation, s/he can request a review by the Police Complaint Review Committee, which is comprised of Park City residents. The purpose of the Park City Police Complaint Review Committee is to act in the capacity of an advisory body, which will review proposed complaint dispositions of complaints filed against police personnel and/or police procedure, if formally requested and to provide findings, conclusions, and recommendations to the Chief of Police on those complaints reviewed.

The Committee will provide their findings, conclusions, and recommendations to the Chief of Police, who will make the final determination. [Click here for more information.](#)

## Public Art Advisory Board

The function of the Public Art Advisory Board is to perform an assessment of Park City's cultural art needs, create a public art plan, procure funds for art, establish guidelines for public art, process and review art and ultimately make recommendations to the City Council on art projects, programs, and funding. [Click here for more information.](#)

## Recreation Advisory Board

The function of the Recreation Advisory Board is: to advise the City Council and staff on parks and recreation policy and projects, to support and promote the policies and programs of the Library and Recreation Departments, to advise and support staff on staff recommended budget priorities, to serve as liaison between the community and public agencies on parks, to stimulate community involvement and support for City Council annual and long term goals and priorities, and all parks, recreation and beautification projects. [Click here for more information.](#)



## COMPLAINT REVIEW PROCESS

All complaints regarding police personnel or policy are first reviewed by an internal investigation. If a complainant is unsatisfied with the result of that investigation, s/he can request a review by the Police Complaint Review Committee, which is comprised of Park City residents. The purpose of the Park City Police Complaint Review Committee is to act in the capacity of an advisory body, which will review proposed complaint dispositions of complaints filed against police personnel and/or police procedure, if formally requested and to provide findings, conclusions, and recommendations to the Chief of Police on those complaints reviewed.

# EXHIBIT 8

**CITY OF MOAB**  
**ORDINANCE NO. 2023-09**  
**AN ORDINANCE ENACTING MOAB MUNICIPAL CODE 2.94**  
**TO CREATE AND ESTABLISH AN AUDIT COMMITTEE**

**WHEREAS** Utah Code Ann. § 10-3-702 authorizes the Moab City Council to pass any ordinance to regulate, require, prohibit, govern, control, or supervise any activity, business, conduct or condition authorized by this act or any other provision of law; and

**WHEREAS** Utah Code Ann. § 10-3-707 authorizes the Moab City Council to revise, codify and compile ordinances of the municipality of a general and permanent character and to make such changes, alterations, modifications, additions, and substitutions therein; and

**WHEREAS** Utah Code Ann. § 10-3-708 authorizes the Moab City Council to arrange its ordinances in such order as the governing body may decide; and

**WHEREAS** the City of Moab desires to enhance public accountability for its stewardship of public resources; and

**WHEREAS** the Utah State Auditor's Office, the Government Finance Officers Association, and the Institute of Internal Auditors recommend establishment of an audit committee; and

**WHEREAS** the Moab City Council intends to create and establish an audit committee to provide independent review and oversight of the government's financial reporting processes, internal controls, and independent auditors.

**NOW, THEREFORE, BE IT ORDAINED** by the Moab City Council, Moab, Utah, as follows:

Title 2. Administrative and Personnel Provisions. Chapter 2.94, Moab Audit Committee is hereby enacted:

**2.94.010 Creation and Composition of the Moab Audit Committee.**

- A. There is created the Moab Audit Committee which shall consist of three voting members. One member shall be an elected Council Member of the City of Moab. One member shall be a staff member of the City of Moab. This staff member shall not have any formal relationship, whether as supervisor or direct or indirect report of the Finance Director. One member shall have demonstrated knowledge and experience in audit, finance, risk and controls and shall have no affiliation to the City as an employee or elected official. This member may be compensated at a fair market rate as determined by the City Manager.

- B. The Finance Director shall serve as chair of the Audit Committee. The chair shall conduct the meeting but is not a voting member of the Committee.

**2.94.020. Appointment Process.**

Each committee member shall be appointed by the Mayor and confirmed by action of the City Council.

**2.94.030. Terms of Office.**


The membership term is three years. For the first committee appointments, one member shall be appointed for a one-year term, one for a two-year term, and one for a three-year term. Each appointment after the initial formation of the committee shall serve for a full three-year term.

**2.94.040. Committee Responsibilities and Meeting Schedule.**


- A. The Audit Committee responsibilities include:
- a. Adopt bylaws.
  - b. Meet at least once annually to receive and review the draft annual audit report and accompanying draft management letter.
  - c. Make a recommendation to the City Council on accepting the annual audit report.
  - d. Review any corrective action plan developed by the external auditor, state auditors' office or City Council, and oversee implementation of such plan.
  - e. Provide oversight and serve as primary point of contact for the external auditors on organizational matters.
  - f. Oversee the selection process and make recommendations for a contract award for the transition of external auditors every 5 years, or when the Council or committee deems appropriate.
  - g. Assist in the oversight of the internal audit function, including reviewing the annual internal audit plan to ensure that high risk areas and key control activities are periodically evaluated and tested.
  - h. Participate in the performance evaluation process of the internal audit function.
- B. The Audit Committee may conduct additional meetings as necessary with the consent of the majority of the committee members.

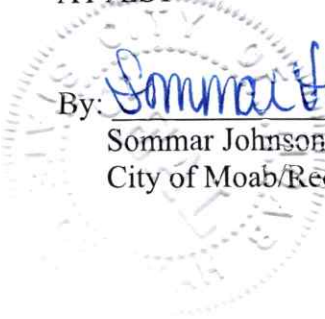
C. This Ordinance shall be effective upon passage.

**APPROVED AND ADOPTED** by the Moab City Council, Moab, Utah, this 23<sup>rd</sup> day of May 2023.

By:   
Joette Langianese, Mayor

ATTEST

By:   
Sommar Johnson  
City of Moab/Recorder



# EXHIBIT 9



# PERSONNEL POLICIES AND PROCEDURES MANUAL

Revised: as of April 2023

**This document supersedes all Personnel Policies and Procedures previously established or approved by the Town of Springdale.**

While it is the policy of the Town of Springdale to establish reasonable rules of employment conduct and to ensure compliance with these rules through a program consistent with the best interests of the Town of Springdale and its employees, **THIS MANUAL IS NOT, AND SHALL NOT BE CONSTRUED AS, AN EXPLICIT OR IMPLIED CONTRACT AND SHALL NOT MODIFY ANY EXISTING “AT-WILL” STATUS OF ANY TOWN OF SPRINGDALE EMPLOYEE.**

# INTRODUCTION

---

Welcome:

The purpose of the Town of Springdale Personnel Policies and Procedures Manual is to provide a written guide for all Town employees. This manual not only outlines the policies regarding various phases of the employer-employee relationship, it also indicates how these policies are to be administered. This manual will prove to be a great resource for you during your employment with the Town of Springdale. It will serve as a policy guide for you when personnel questions or concerns arise. Utilizing this manual will help give you a deeper understanding of your role within this organization through well-defined guidelines. As an employee of the Town of Springdale you will be expected to read, understand, and follow the Personnel Policies and Procedures contained in this Manual.

It is the policy of the Town of Springdale to comply with Federal and State Equal Employment Opportunity guidelines, and it is the obligation of each officer, manager, supervisor, and employee of the Town of Springdale to conduct themselves in conformity with the principle of Equal Employment Opportunity at all times. To this end, the Town of Springdale will not engage in any unlawful discrimination against any employee or applicant.

It is the policy of the Town of Springdale to strive for safety in all activities and operations, and to carry out our commitment of compliance with health and safety laws applicable to our business by enlisting the help of all employees to ensure that public and work areas are free of hazardous conditions.

No employee, officer, agent or other representative of the Town of Springdale has any authority to enter into any agreement for employment for any specified period of time or to make any agreement or representation, verbally or in writing, which alters, amends, or contradicts the provisions of this Personnel Policies and Procedures Manual.

The Town of Springdale reserves the right to change any of its policies and/or procedures at any time in the future for any reason. When the Town changes any of its policies and procedures, all employees will be provided with a copy of the change for their records.

This Personnel Policies and Procedures Manual is not, and shall not, be construed as an explicit or implied contract, shall not modify any existing employment “at-will” status of any employee and shall not create any due process requirement in excess of Federal or State constitutional or statutory requirements.

We hope that your employment with the Town proves to be rewarding, challenging and gratifying. Our organization strives for excellence and requires its employees to provide outstanding service to the community. Our combined efforts will ensure that this organizational desire becomes a reality.

---

Mayor Barbara Bruno



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## **CHAPTER ONE – THE WORKPLACE**

### **SECTION A: EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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#### **1. GENERAL POLICY**

Every qualified person has an equal opportunity for hire, assignment, and advancement without regard for race, color, religion, sex (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age (40 or older), disability, genetic information, sexual orientation, gender identity, or any other class or expression protected by law. All employees are expected to work in harmony with others and treat each other with courtesy, respect, and professionalism. This policy applies to all employees, including managers, supervisors, co-workers, and non-employees such as customers, clients, vendors, consultants, etc.

Employees who believe they have been subject to prohibited discrimination should immediately report the incident to their supervisor, department manager, the Town HR Director, or Town Manager. Reports are treated as discreetly and confidentially as possible. No employee is retaliated against for lodging a complaint with management under this policy or participating in an investigation of such a complaint. Any employee who believes he or she is being subjected to retaliation should promptly report this to one of the individuals listed above.

Any employee found to have engaged in discriminatory conduct is subject to immediate disciplinary action, up to and including termination.

#### **Disability & religious accommodation**

In accordance with federal and state law, reasonable accommodations may be made for qualified employees with known disabilities unless doing so causes an undue hardship for the Town of Springdale or causes a direct threat to the health or safety. Accommodations may be made for employees whose religious belief, practice, or observance conflicts with a workplace requirement unless doing so causes an undue hardship for the Town. Reasonable accommodations may also be provided for employees based on gender identity in dress/grooming standards and facilities. Employees may request a reasonable accommodation by contacting their department manager or the Town HR Director.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION A: EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

---

#### **2. SUPERVISOR RESPONSIBILITIES**

The Town Manager and each department manager/supervisor will ensure that the Town of Springdale follows all the personnel policies and procedures within this manual, including all EEO standards. It is the policy of this Town that each employee will receive a copy of this Personnel Policies and Procedures Manual and that the employee will sign and date a Policy Statement and Acknowledgment Form stating receipt of this manual. The Town HR Director will file the signed and dated Policy Statement and Acknowledgment Form in the employee's personnel file.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION A: EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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#### **3. EMPLOYEE RESPONSIBILITIES**

Each employee is responsible for reading this Personnel Policy and Procedures Manual completely and fully understanding all policies, practices, and benefits set forth herein. If the employee is unclear of any policy, procedure or benefit described within this manual, it is the employee's responsibility to seek further explanation from their supervisor, the Town HR Director, or the Town Manager.

It is the obligation of all employees of the Town of Springdale to conduct themselves in conformity with the principle of Equal Employment Opportunity always.



## CHAPTER ONE – THE WORKPLACE

### SECTION B: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT

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#### 1. GENERAL ETHICS POLICY

It is the policy of the Town of Springdale to abide by the *Utah Municipal Officers and Employees Ethics Act* (Utah Code Ann. 10-3-1301 et. seq, (1977, as amended). The purpose of this Utah State Law is to establish standards of conduct for Town officers and employees and to require a disclosure of actual or potential conflicts of interest between public duties and personal interests. *The Utah Municipal Officers and Employees Ethics Act* applies to all elected and any appointed officials and employees (full and part-time) within a city or town. For the purposes of this manual, we will address only Town of Springdale management and staff. However, be aware that any violation of this act applies to any elected or appointed official of the Town of Springdale or fellow employee and must be reported immediately.

## CHAPTER ONE – THE WORKPLACE

### SECTION B: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT

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#### 2. EMPLOYEE CODE OF ETHICS

##### Prohibited Conduct

No current employee or officer, as specified, shall:

1. Disqualification from Acting on Town of Springdale Business.
  - a. Engage in any transaction or activity, which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of official duties, or which impairs, or would to a reasonable person appear to impair, the employee's independence of judgment or action in the performance of official duties and fail to disqualify him or herself from official action in those instances where conflict occurs;
  - b. Have a financial or other private interest, direct or indirect, personally or through a member of his or her immediate family, in any matter upon which the employee is required to act in the discharge of his or her official duties, and fail to disqualify him or herself from acting or participating;
  - c. Fail to disqualify him or herself from acting on any transaction which involves the Town of Springdale and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership;
  - d. Have a financial or other private interest, direct or indirect, personally or through a member of his or her immediate family, in any contract or transaction to which the Town of Springdale or any Town agency may be a party, and fails to disclose such interest to the appropriate authority prior to the formation of the contract or the time the Town of Springdale or Town agency enters into the transaction; provided, that this paragraph shall not apply to any contract awarded through the public bid process in accordance with applicable law.
2. Improper Use of Official Position.
  - a. Use his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the employee, rather than primarily for the benefit of the Town of Springdale; or to achieve a private gain or an exemption from duty or responsibility for the employee or any other person;
  - b. Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any Town of Springdale funds or property, for a purpose which is, or to a reasonable person would appear to be, for something other than a legitimate purpose.
  - c. Except in the course of official duties, assist any person in any transaction where the employee's assistance is, or to a reasonable person would appear to be, enhanced by that employee's position with the Town; provided that this subsection shall not apply to: any employee appearing on his or her own behalf or

- representing himself or herself as to any matter in which he or she has a proprietary interest, if not otherwise prohibited by ordinance;
- d. Regardless of prior disclosure thereof, have a financial interest, direct or indirect, personally or through a member of his or her immediate family, in a business entity doing or seeking to do business with the Town of Springdale, and influence or attempt to influence the selection of, or the conduct of business with that business or entity.
3. Accept Gifts or Loans.
- a. Ask for or receive, directly or indirectly, any compensation, gift, gratuity, or thing of value, or promise thereof, for performing or for omitting or deferring the performance of any official duty; except that the following shall be allowed:
    - i. Unsolicited flowers, plants, and floral arrangements;
    - ii. Unsolicited advertising or promotional items of nominal value, such as pens and notepads;
    - iii. Unsolicited token or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
    - iv. Unsolicited food items given to a department when the contents are shared among employees and the public;
    - v. Unsolicited items received for the purpose of evaluation or review provided the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the Town of Springdale;
    - vi. Information material, publications, or subscriptions related to the recipient's performance of official duties;
    - vii. Food and beverages consumed at hosted receptions where attendance is related to official duties;
    - viii. Meals, beverages, and lodging associated with retreats or other meetings where the official serves as a representative, designee or is otherwise assigned to another organization or entity from the Town of Springdale;
    - ix. Travel costs, lodging, and tuition costs associated with the Town of Springdale sanctioned training or education when not provided by a private entity under contract with the Town of Springdale;
    - x. Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization and other officials or employees of similar agencies are in attendance;
    - xi. Unsolicited gifts from dignitaries from another entity or other jurisdiction that are intended to be personal in nature;
    - xii. Campaign contributions; and
    - xiii. Unsolicited gifts with an aggregate economic value of \$50.00 or less from a single source in a calendar year received either directly or indirectly by the official or employee.
4. Disclose Privileged Information.
- Disclose or use any privileged or proprietary information gained by reason of his or her official position for the immediate or anticipated personal gain or benefit of the employee or any other person or entity; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is

available to the public on request.

5. Financial or Beneficial Interest in Transactions.

Regardless of prior disclosure an employee or officer may not participate in or benefit from (personally or through his or her family) a contract or agreement where that employee or officer acted as an agent of the Town of Springdale. This includes receiving compensation, gratuity or other benefit from an interested party of an agreement or contract with the Town of Springdale.

6. Nepotism.

- a. Violate *Utah Code* § 52-3, which prohibits employment of relatives, with few exceptions.

7. Misuse of Public Resources or Property.

- a. Violate *Utah Code* § 76-8-4, which delineates the unlawful use of public funds and destruction of property, including records.

8. Outside Employment.

- a. Retain secondary employment outside of the Town of Springdale employment, which, as determined by Town Council, and according to Utah Administrative Code R477-9-2:
  - i. Interferes with an employee's performance.
  - ii. Conflicts with the interests of the Town of Springdale or the State of Utah.
  - iii. Gives reason for criticism or suspicion of conflicting interests or duties.

9. Political Activity.

- a. Except as otherwise provided by law:
  - i. The partisan political activity, political opinion, or political affiliation of an applicant for a position with the Town of Springdale may not provide a basis for denying employment to the applicant.
  - ii. A Town of Springdale officer's or employee's partisan political activity, political opinion, or political affiliation may not provide the basis for the officer or employee's employment, promotion, disciplinary action, demotion, or dismissal.
  - iii. A Town of Springdale employee may not engage in political campaigning or solicit political contributions during hours of employment.
  - iv. A Town of Springdale officer or employee may not use Town equipment while engaged in campaigning or other political activity.
  - v. A Town of Springdale officer or employee may not directly or indirectly coerce, command, or advise another Town officer or employee to pay, lend, or contribute part of the officer's or employee's salary or compensation, or anything else of value to a political party, committee, organization, agency, or person for political purposes.
  - vi. A Town of Springdale officer or employee may not attempt to make another officer or employee's employment status dependent on the officers or employee's support or lack of support of a political party, affiliation, opinion, committee, organization, agency, or person engaged in political activity.
- b. A Town of Springdale employee who has filed a declaration of candidacy may:

- i. be given a leave of absence for the period between the primary election and the general election; and
    - ii. Use any vacation or other leave available to engage in campaign activities.
  - c. Neither the filing of a declaration of candidacy nor a leave of absence under this section may be used as the basis for an adverse employment action, including discipline and termination, against the employee.
  - d. Nothing in this chapter shall be construed to:
    - i. prohibit a Town of Springdale officer or employee's voluntary contribution to a party or candidate of the officer or employee's choice; or
    - ii. Permit a Town of Springdale officer or employee partisan political activity that is prohibited under federal law.
  - e. No Town of Springdale officer or employee shall solicit or participate in soliciting any assessment, subscription, or contribution to any political party during working hours on the premises of any Town of Springdale property.
  - f. No Town of Springdale officer or employee shall promise any appointment to any position with the Town of Springdale as a reward for any political activity.
  - g. A Town of Springdale employee who is elected to an office with the Town of Springdale shall terminate Town employment prior to being sworn into the elected office.
- 10. Fair and Equal Treatment.
  - a. No person shall be appointed to, removed from, or in any way favored or discriminated against with respect to any appointive public office because of such person's race, color, age, religion, sex, national origin, or functional limitation as defined by applicable state or federal laws, if otherwise qualified for the position or office.
  - b. No Town of Springdale officer or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.
- 11. Prohibited Conduct After Leaving the Town of Springdale:
  - a. No former employee shall, during the period of one (1) year after leaving the Town of Springdale office or employment:
    - i. Disclose or use any privileged or proprietary information gained by reason of his/her Town of Springdale employment for his/her gain or anticipated gain, or for the gain or anticipated gain of any person, unless the information is a matter of public knowledge or is available to the public on request;
    - ii. Assist any person in proceedings involving an agency of the Town of Springdale with which he/she was previously employed, involving a matter in which he or she was officially involved, participated or acted in the course of duty;
    - iii. Represent any person as an advocate in any matter in which the former employee was officially involved with a Town of Springdale employee;
    - iv. Participate as a competitor in any competitive selection process for a Town of Springdale contract in which he or she assisted the Town in determining the project or work to be done or the process to be used.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION B: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT**

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#### **3. CONSEQUENCES**

Any person who is proven to have knowingly and intentionally violates the above referenced sections of the Ethics Act (except the disclosure requirement) shall be subject to discipline, up to an including termination, and will be referred to the proper law enforcement authorities for criminal prosecution fir the commission of a felony or misdemeanor as prescribed by the Act.

## CHAPTER ONE – THE WORKPLACE

### SECTION B: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT

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#### 4. DISCLOSURE OF CONFLICT

Two types of disclosures for conflicts of interest are required, *written and oral*. All employees are required to make a disclosure in writing and submit it to the Mayor. The employee must also disclose the information both in writing and orally to their immediate supervisor. In the case of the Town Manager, that conflict shall be given in writing to the Mayor. The written statement must be sworn and give certain minimal information describing the conflict of interest. The second required disclosure is oral and must be made public during the next Town Meeting.

The following must be disclosed:

- A. Agreements to receive compensation for assisting any person or business entity in any transaction involving the Town.
- B. Whether a Town employee is an officer, director, agent, owner, or employee of a substantial interest in any business entity that is subject to the regulation of the Town.
- C. Interests in a business entity doing business with the Town.
- D. Any personal interest or investment by a Town employee that creates a conflict between personal interest and appointed duties.
- E. The nature of the personal conflict of interest, including if applicable, the position held and the nature and value of a business interest held in a regulated business or one which is doing business with the Town.
- F. If the conflict involves an agreement to assist a person for compensation in their business with the Town, the disclosure must contain:
  - 1) The name and address of the Town employee;
  - 2) The name and address of the person or business entity being or to be assisted or in which the Town employee has a substantial interest; and
  - 3) A brief description of the transaction as to which service is rendered or is to be rendered and the nature of the service performed or to be performed.

**The employee should file the statement required upon first hire and whenever the nature of the conflict changes. In the case of compensation, the employee must make the required oral and written statements ten days before the assistance starts or**

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION B: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT**

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#### **4. DISCLOSURE OF CONFLICT - continued**

**compensation is received. The oral disclosure must be made public during the next Town Meeting. The disclosure shall be made part of the official meeting minutes. The written statement is public information and must be available for examination by the public. If any transaction is entered into in connection with a violation of the disclosure requirements of the Town, the following will occur:**

- A. An employee who has been proven to have knowingly and intentionally violated the disclosure requirements shall be dismissed.
- B. The Town may rescind or void any contract or subcontract entered into pursuant to that transaction without returning any part of the consideration received by the Town.



## CHAPTER ONE – THE WORKPLACE

### SECTION B: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT

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#### 5. COMPLAINTS

If you believe that a violation has taken place, a complaint must be filed with the Town Manager who then will submit the complaint to the Mayor. In the case of the complaint being lodged against the Town Manager, the complaint is to be filed directly to the Mayor. A subsequent investigation will be carried out under the direction of the Town Manager and shall give the person so charged an opportunity to be heard. A written report of the findings along with the recommendation of the Town Manager shall be filed with the Town Council. If the Town Council finds that the person has indeed committed a violation it may dismiss, suspend, or take such other appropriate action with respect to the employee.

In addition, complaints of criminal conduct will be investigated by the Washington County Attorney's Office and when deemed necessary, the Utah Attorney General's Office.

**The Ethics Act does not require any employee who complies with the disclosure provisions to abstain from doing business with or within the Town.**

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **1. EMPLOYMENT**

Job Descriptions defining the essential functions of the vacant position shall be drafted and adopted before the vacancy is posted or otherwise advertised.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **2. RECRUITMENT**

All recruitment shall be conducted in accordance with the State of Utah and the Town of Springdale's equal opportunity laws, specifically the Utah Antidiscrimination Act (UCA 34A-5-101 through 108) and Springdale Town Code Chapter 1-11, Equal Employment.

- A. Each Job Opening Notice shall contain a statement indicating that the Town of Springdale is an equal opportunity employer.
- B. Job Opening Notices may be advertised in any appropriate media and Utah Department of Workforce Services.

## CHAPTER ONE – THE WORKPLACE

### SECTION C: EMPLOYEE HIRING

---

#### 3. SELECTION

##### A. **Nepotism**

It is the policy of the Town of Springdale to comply with the provisions of Utah's Anti-Nepotism Act, Utah Code 52-3-1.

##### B. **Employment of Minors**

It is the policy of the Town of Springdale that no one under the age of eighteen (18) shall be hired for any position.

##### C. **Rehires**

Job applications received from former employees will be processed using the same procedures and standards that govern all other non-employee applications. The Town HR Director or Town Manager will review the former employee's personnel records and the circumstances surrounding the termination of their employment with the Town of Springdale.

##### D. **Job Applications**

All interested job applicants shall complete a Job Application.

##### E. **Job Applicant Disqualification**

A job application may be rejected for, but not limited to, the following reasons. When the job applicant:

- 1) Does not meet minimum qualifications established for the position.
- 2) Is physically or mentally unable to perform the essential duties and responsibilities of the position with, or without, reasonable accommodation(s) (determined only after a conditional offer of employment, pending the results of a medical examination, has been extended to a job applicant).
- 3) Has falsified a material fact or failed to complete the application.
- 4) Has failed to file the application in a timely manner.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

---

#### **3. SELECTION - continued**

- 5) Has an unsatisfactory employment history or poor work references.
- 6) Has failed to successfully pass any required examination.

#### **G. Interviewing**

The Town HR Director and department manager will select applicants to interview from those who have passed applicable preliminary screening tests and the job application review. The Town HR Director and department manager may create a committee to interview candidates. Job related duties and qualifications shall provide the basis for the initial screening of job applicants. During the interview, all job applicants should be advised that any and all of the information provided (both written and oral) will be verified.

#### **H. Reference Checks**

The Town of Springdale will contact the references listed by each job applicant and ask job-related questions.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **4. PLACEMENT / JOB OFFERS**

Following the completion of the interview process, the Town HR Director will notify the successful applicant of their conditional selection by way of a written job offer.

- A. The conditional job offer letter shall include the following:
  - 1) The employee's job title.
  - 2) The employee's supervisor.
  - 3) A summary of the job description.
  - 4) Salary and benefit conditions.
  - 5) Any relocation commitments, if applicable.
  - 6) The Town of Springdale's at-will employment policy.
  - 7) Notice that offer is contingent upon successfully passing drug/alcohol tests and verification of applicable records/certifications.
  - 8) The length of the employee's probationary period.
  - 9) Notice that offer is contingent upon successfully passing a physical exam if applicable under Pre-Employment Physical Examinations section below.
- B. The conditional job offer letter shall clearly state that the offer is not accepted until the candidate signs the letter and returns it to the Town of Springdale by the requested date.
- C. The original job offer letter is then filed in the employee's file.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **5. PRE-EMPLOYMENT PHYSICAL EXAMINATIONS**

An applicant, who has been extended a conditional offer of employment in Water, Sewer, Streets, Parks, or Police Departments, as well as other positions that require frequent heavy lifting or strenuous exertion, may be required to pass a pre-employment physical examination to ascertain general health and/or fitness for duty. This includes temporary and part-time positions.

Individuals who have been employed in non-physical types of positions, who request or apply for transfer to a position that requires a employment physical exam, may be required to pass a physical exam as a condition of transfer to that position.

All required physical examinations will be performed at Intermountain WorkMed or other location determined by the Town. Results of physical exams will be kept in a separate confidential file in the Town HR Director's office. The Town of Springdale will pay for required physical exams.

If the results of the exam are acceptable for fitness of duty requirements, the Town HR Director will complete hiring procedures.

If the results of the exam indicate a disabling condition or physical restriction on activity, the Town HR Director, Town Manager, department manager, and supervisor will determine whether reasonable accommodations can be made for the disabling condition or physical restriction in order to perform the essential functions of the position. This determination and reasons will be documented with the individual's application record. Accommodation will be described in writing and will be kept in the individual's personnel file, if employed in the position.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **6. JOB REJECTION LETTERS**

Within five (5) working days after the final choice for an employee has been determined, a job rejection letter must be sent to each job applicant who was not selected for the position.



## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **7. REINSTATEMENTS**

Any person who is reinstated as an employee of the Town of Springdale may maintain their original anniversary date for seniority purposes as well as for those benefit programs governed by the anniversary date. The policy will be as follows:

##### **A. Layoffs**

Employees who are terminated because of reduction in work force will maintain their original anniversary date for seniority purposes if they are re-employed by the Town of Springdale within one (1) year after date of termination.

##### **B. Voluntary Resignations**

Employees who voluntarily terminate their employment with the Town of Springdale may maintain their original anniversary date, subject to Mayor and the Town Council's approval, if they are re-employed by the Town of Springdale within six (6) months after date of termination.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **8. HIRING NEW EMPLOYEES**

The Town HR Director is responsible for having **all** new employees fill out all pre-employment forms, benefit applications, enrollment forms and providing the Town of Springdale's Policies and Procedures Manual on the employee's first day of work.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **9. ORIENTATION**

Newly hired Town of Springdale employees shall complete all required paperwork and receive an orientation on their first (1<sup>st</sup>) day of work.

- A. In accordance with the Immigration Reform and Control Act of 1986, all new employees shall provide proof of identity and U.S. Citizenship. If the employee is not a U. S. Citizen, then the employee must show proof that he/she is a lawful permanent resident alien, or an alien otherwise authorized for U.S. employment.
- B. All new employees shall complete and sign a Form W-4 Federal Withholding Statement.
- C. All new employees shall be given a tour of the workplace with a brief overview of company rules and benefits.
- D. All new employees shall be given a complete description and explanation of job duties and expectations.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION C: EMPLOYEE HIRING**

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#### **10. PROBATIONARY PERIOD**

- A. All new employees shall be subject to a six (6) month probationary period. During this period, probationary employees may be terminated with or without notice for any or no reason without any right to due process, notice, explanation, or appeal in connection with said termination.
- B. Probationary periods begin on the first day of employment and continue for six (6) months. Management will provide guidance to probationary employees so they understand work requirements.
- C. Sick leave shall accrue from the employee's date of hire. Probationary employees may use accrued sick leave with the approval of the department manager.
- D. Probationary employees may take holidays in accordance with this policy.
- E. Vacation leave shall accrue from the employee's date of hire.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

---

#### **1. GENERAL POLICY / PURPOSE**

In accordance with the Drug-Free Workplace Act of 1988, the Town of Springdale prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during work hours, on Town property, or other work sites.

The Town of Springdale is committed to a safe, healthy, and productive work environment for all employees, free from the effects of illegal or non-prescribed drugs and alcoholic beverages. Use of drugs and alcohol alters employee judgment resulting in increased safety risks, employee injuries, and faulty decision making. Therefore, the possession, use, sale of controlled substances or alcohol on Town premises or during work time is prohibited. This includes working after the apparent use of marijuana, regardless of marijuana's legal status. Furthermore, working after the use of alcohol, a controlled substance or abuse of any other substance is prohibited.

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## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

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#### **2. EMPLOYEE DRUG FREE RESPONSIBILITIES**

It is a condition of employment that:

- A. No employee shall unlawfully manufacture, dispense, possess, use, distribute or sell any illegal drugs or controlled substance.
- B. No employee shall use or possess prescription drugs unless such drugs are properly prescribed by a licensed physician and are being properly used to treat a current illness or injury. If the use of prescribed drugs has any possibility of impairing performance of duties, the employee shall report that fact to the department manager, Town HR Director, or Town Manager before reporting for duty.
- C. No employee shall be on duty while under the influence of any drug (prescription or non-prescription) or alcohol that renders the person incapable of safely and adequately performing job duties.
- D. No employee shall operate a motor vehicle or machinery under the influence of any drug or alcohol that renders the person incapable of safely and adequately operating the vehicle or machinery while on duty for the Town of Springdale.
- E. No employee shall engage in off-duty drug and alcohol use that could impair the ability to perform job duties and provide quality public service.
- F. No employee shall represent the Town of Springdale in an official capacity while impaired by alcohol, illegal drugs, or medication.
- G. No employee shall refuse to submit a sample for drug and alcohol testing purposes when that sample is requested.
- H. Any employee convicted under a federal or state criminal drug statute regulating controlled substances shall notify the Town HR Director or Town Manager within five days after the conviction.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

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#### **2. EMPLOYEE RESPONSIBILITIES - continued**

- I. An employee who has reason to believe that the performance of another employee is impaired by alcohol, illegal drugs, and/or medication shall immediately notify their department manager, Town HR Director, or Town Manager.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

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#### **3. PROHIBITION OF DRUGS AND ALCOHOL**

In order for the Town of Springdale to provide a drug and alcohol-free work environment, it reserves the right to conduct or require drug/alcohol testing of any employee who is on the Town's premises, engaged in Town business, operating Town equipment, attending Town sponsored events, or any prospective employees unless prohibited by applicable law. The Town of Springdale maintains the right to conduct unannounced inspections of Town owned property, vehicles, workstations, equipment, desks, cabinets, etc. The Town of Springdale maintains the right to utilize any detection method necessary for the enforcement of this policy including blood, urine, or other tests, and the use of electronic detection equipment and trained animals.



## CHAPTER ONE – THE WORKPLACE

### SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES

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#### 4. DRUG AND ALCOHOL TESTING PROCEDURES

A. Drug and Alcohol Testing will occur as follows:

- 1) **Pre-Employment Testing:** An applicant who has been extended a conditional offer of employment with the Town of Springdale shall undergo an alcohol and drug screen test to detect the presence of alcohol and illegal drugs in the body. Use of an illegal drug or controlled substance, use of a prescription drug without an authorized prescription, or refusal to take the drug-screening test shall be grounds for denial of employment. An applicant whose test detects a Blood Alcohol Content of 0.02 or higher may be denied employment. All conditional offers of employment shall be subject to the results of the drug test and conditioned upon passing the drug test.
- 2) **Post-Accident Investigation:** In any circumstance in which an employee is involved in an accident or incident that results in property damage, personal injury or death, a drug/alcohol test shall be given as part of the accident investigation. The presence of drugs/alcohol or their metabolites discovered in the drug/alcohol test or the refusal to submit to the drug/alcohol test shall result in appropriate disciplinary action, up to and including termination.
- 3) **Periodic Unannounced Testing:** Employees who advise management of a drug or alcohol problem prior to discovery by other means, shall agree as a condition of rehabilitation to submit to such periodic unannounced drug and alcohol testing as may be appropriate. Such drug and alcohol testing shall be conducted upon the advice of a Utah State licensed rehabilitation treatment provider and shall be used to determine if the employee is making adequate progress towards successful rehabilitation. A positive test may subject the employee to immediate discharge.

## CHAPTER ONE – THE WORKPLACE

### SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES

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#### 4. DRUG AND ALCOHOL TESTING PROCEDURES - continued

- 4) **Condition of Employment:** All drug and alcohol testing shall be considered a condition of employment, placement, or continued employment or placement.

**Regular Work Period:** Any drug or alcohol testing of an employee shall be deemed work time for purposes of compensation and benefits.

**Sample Collection and Testing:** All sample collection materials and testing shall be performed by a properly certified agency or individual pursuant to requirements of Utah Code Section 34-41-104 (1998, as amended).

**Second Test After Positive Result – Employee Request:** Any employee receiving a confirmed positive test result for drugs/alcohol under this policy may at personal option and expense request that the original sample be sent to a second, certified testing laboratory for test verification. Such request shall be made in writing to the Town HR Director or Town Manager within 24 hours of being advised of the positive test result. The employee will be placed on unpaid leave while the additional testing takes place. If the result of the additional testing is negative, the employee will be reinstated and paid for the full period of suspension.

**Second Test – Employee Request:** Any employee required to submit to a drug test under the provisions of this policy may at personal option and expense submit a second drug test sample for further testing in accordance with the provisions of the law and within six (6) hours after the first drug test sample is taken.

**Confidentiality:** In all drug testing and sample collection procedures, any transmittal or reporting of test results shall be conducted with due regard for confidentiality.

## CHAPTER ONE – THE WORKPLACE

### SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES

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#### 4. DRUG AND ALCOHOL TESTING PROCEDURES - continued

1. **Need to Know:** Drug test activities and result reports may be made available only to Town HR Director, department manager, Police Chief, and Town Manager with an immediate need-to-know about those procedures and results.
2. **Disciplinary Action:** Testing procedures and results may be made available and communicated as needed for the purposes of any disciplinary action.
3. **Testing Information:** All information, interviews, reports, statements, memoranda, or test results received by the Town of Springdale pursuant to this policy are confidential communications and are not to be used or received as evidence; obtained in discovery; or disclosed in any public or private proceedings, except to those having a demonstrated need-to-know or in a proceeding related to any disciplinary action taken by the Town of Springdale, or in defense of any action brought against the Town of Springdale, or by court order, or as required by law.
4. **GRAMA:** Records regarding test results are generally considered protected documents under the provision of the Government Records Access and Management Act, Utah Code Section 63-2-304(8) and corresponding Town ordinances.

## CHAPTER ONE – THE WORKPLACE

### SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES

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#### 5. CONSEQUENCES OF POSITIVE DRUG / ALCOHOL TEST–DISCIPLINARY AND REHABILITATIVE ACTION

Upon receipt of a verified and confirmed positive test result that violates this policy, or upon the refusal of any employee to submit to testing, or to provide a sample, the Town of Springdale may use that positive test result, refusal to submit to testing, or refusal to provide a sample as the basis for disciplinary or rehabilitative action.

- A. **Discipline:** An employee testing positive for drugs or alcohol may be disciplined in accordance with the provisions of this policy, which discipline may include suspension without or without pay or termination. If an employee refuses to provide a sample for drug/alcohol testing in accordance with the provisions of this policy, then the result shall be immediate termination of employment with the Town of Springdale.
- B. **Rehabilitation:** An employee testing positive for drugs or alcohol may be given the opportunity to undergo a rehabilitation program in conjunction with the Town of Springdale's Employee Assistance Program. It shall be the Town's sole and exclusive decision whether to offer rehabilitation to an employee who has tested positive for drugs or alcohol, taking into account such factors as whether the abused substance is an illegal drug, the employee's assigned job duties, and the amount of drugs or alcohol in employee's system at the time of testing. Any employee who is offered and consents to undergo rehabilitation shall be subject to the following:
  - 1) **Relief from Duty:** An employee impaired by drugs or alcohol during work hours shall be relieved from duty immediately.
  - 2) **Change of Assignment:** The Town Manager may change an employee's work assignment while the employee is using prescription drugs that may impair normal functioning.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

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#### **5. CONSEQUENCES OF POSITIVE DRUG / ALCOHOL TEST–DISCIPLINARY AND REHABILITATIVE ACTION – continued**

##### **3) Terms and Conditions of Rehabilitation Program:**

- i. Employee shall undergo an evaluation by a substance abuse professional and when necessary, enroll in a rehabilitation, treatment, or counseling and education program approved by the Town of Springdale and offered by a properly licensed and certified agency or professional.
- ii. Employee shall sign a release to allow communication between the Town HR Director and the treatment provider. All such information shall be maintained in a confidential file separate from the employee's personnel file.
- iii. The substance abuse professional determines that the employee has successfully complied with any required rehabilitation.
- iv. Employee shall undergo and pass a return-to-duty test with a verified, negative result for the presence of alcohol/drugs.
- v. The employee will be required to sign a document agreeing to the following conditions in order to remain employed with full rights and benefits.

## CHAPTER ONE – THE WORKPLACE

### SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES

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#### 5. CONSEQUENCES OF POSITIVE DRUG / ALCOHOL TEST--DISCIPLINARY AND REHABILITATIVE ACTION - continued

- vi. Any employee for whom treatment is recommended will be responsible for costs not covered by insurance. The employee will be required to use accrued compensatory time, annual vacation leave, and then sick leave until all leave is expended. The Town of Springdale will continue to pay the employee's benefit package during the allotted treatment time. However, wages will be maintained through the use of accrued leave. Once such leave is exhausted, wages will end. Each incident will be reviewed on a case-by case basis.
  - vii. If the required treatment or rehabilitation program involves confinement, the employee's position may be held for the determined length of the treatment and the employee restored to employee's former position upon successful completion of the substance abuse rehabilitation. Each incident will be reviewed on a case-by-case basis.
  - viii. If an employee refuses to meet with a substance abuse professional and refuses to participate in a treatment program, the employee will be dismissed from employment with the Town of Springdale.
- 4) **Follow-up Testing:** Employees who have violated this policy and continue to work for the Town of Springdale shall be subject to periodic unannounced drug/alcohol testing for a period of not less than one (1) year and not more than five (5) years. Employees subject to periodic unannounced drug/alcohol testing will be tested a minimum of four (4) times in the first twelve (12) months following their return to duty.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

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#### **5. CONSEQUENCES OF POSITIVE DRUG / ALCOHOL TEST--DISCIPLINARY AND REHABILITATIVE ACTION - continued**

- i. Follow-up testing beyond one (1) year shall be based on a need assessment provided by a substance abuse professional.
- ii. An employee who receives a second, positive test result at any time during this five-year period will be dismissed from employment with the Town of Springdale.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION D: ALCOHOL AND DRUG FREE WORKPLACE POLICIES AND PROCEDURES**

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#### **6. DRUG AND ALCOHOL TESTING DISCLOSURE STATEMENT**

This Drug and Alcohol Testing Policy is the unilateral action of the Town of Springdale and does not constitute an express or implied contract with any person affected by or subject to this policy. Neither this policy nor any action taken pursuant to this policy assures or guarantees employment or any terms of employment to any person for any period of time. The Town of Springdale may alter, terminate, or make exceptions to this policy at any time, at its sole discretion.



# CHAPTER ONE – THE WORKPLACE

## SECTION E: HARASSMENT

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### 1. PROHIBITED CONDUCT

Harassment has no place at work. It is against Town policy and a violation of the law. It must be avoided and will not be tolerated. Any harassment, whether based on race, color, religion, sex, (including pregnancy, childbirth, pregnancy-related conditions, breastfeeding, or medical conditions related to breastfeeding), national origin, age (40 or older), disability, genetic information, sexual orientation, gender identity, or any other class or expression protected by law is prohibited.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other offensive conduct that is either sexual in nature or directed at someone because of his or her gender. Sexual harassment undermines the employment relationship by creating an intimidating, hostile, or offensive work environment.

Harassment, whether sexual or based on the other protected classes listed above, may take many forms including but not limited to:

- Verbal Conduct - such as epithets, derogatory jokes or comments, name calling, innuendos, demeaning slurs, or unwanted sexual advances;
- Visual Conduct - such as leering, derogatory and/or sexually-oriented posters, photography, cartoons, drawings, graffiti, electronic mail, or gestures;
- Physical Conduct - such as assault, offensive touching, blocking of normal movement, or interfering with work; or
- Threats or Demands - to submit to sexual requests as a condition of continued employment benefits.

## CHAPTER ONE – THE WORKPLACE

### SECTION E: HARASSMENT

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#### 1. **PROHIBITED CONDUCT - continued**

If you observe such conduct, or believe it has happened to you, tell the harasser the behavior is offensive and that you want it to stop. Immediately report the incident to your supervisor, department manager, the Town HR Director, or the Town Manager. Management will initiate a prompt, thorough investigation and will take remedial action, as appropriate.

We encourage employees to report incidents directly to their immediate supervisor, but any employee who is concerned or apprehensive may instead report any incident to the Town HR Director or Town Manager.

Reports of alleged harassment are treated as discreetly and confidentially as possible. No employee is retaliated against for lodging a complaint with management under this policy or participating in an investigation of such a complaint. Any employee who believes he or she is being subjected to retaliation should promptly report this to one of the individuals listed above

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION E: HARASSMENT**

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#### **2. DISCIPLINARY ACTION**

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The Town of Springdale does not tolerate harassment of any type. Employees who violate this policy are subject to immediate and appropriate discipline, up to and including termination.

## **CHAPTER ONE – THE WORKPLACE**

### **SECTION E: HARASSMENT**

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#### **3. VICTIM PROTECTION**

- A. Individual complaints, either verbal or written, are confidential.
- B. Victims of alleged harassment shall not be required to confront the accused outside of a formal proceeding.
- C. The accused shall not contact the victim regarding the alleged harassment.
- D. Retaliation or reprisals are prohibited against any employee who opposed a practice forbidden under this policy, or who has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing.
  - 1) Any employee engaging in prohibited retaliatory activities shall be subject to disciplinary action up to, and including, termination.
  - 2) Retaliation is an additional and separate disciplinary offense.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **1. PROFESSIONALISM**

The Town of Springdale is a professional association whose purpose, among others, is to provide professional services to its citizens. Its employees must adhere to the highest standards of public service that emphasize professionalism and courtesy. Employees are required to carry out efficiently the work items assigned at them, to maintain good moral conduct, and to do their part in maintaining good relationships with supervisors and fellow employees, the public, and Town officials.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **2. PRIVILEGED INFORMATION**

Springdale Town employees possessing information of significant public interest may not use this privileged information neither for personal gain nor to benefit friends or acquaintances. If an employee has an outside interest that could be affected by any Springdale Town plan or activity, the employee must report this situation to the Town Manager immediately. Each employee is charged with the responsibility of ensuring that only information that should be made public is released.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **3. CONFIDENTIALITY**

Employees have a complete right to expect that all personal information about themselves (e.g., their illness, their family and financial circumstance) be kept strictly confidential. Every employee has an obligation to protect this confidence. Never discuss privileged information with others who are not authorized to receive it, either inside or outside the office. Employee personnel files are confidential. Access is limited to the employee, department manager, Town HR Director, and Town Manager.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **4. GIFTS AND GRATUITIES**

Springdale Town employees are prohibited from soliciting or accepting any gift, gratuity, favor, entertainment, loan or item of monetary value from any person seeking to obtain business and / or a permit with the Town. It is also against policy to accept any gift of the types mentioned above from any person within or outside the Town of Springdale employment whose interests may be affected by the employee's performance or nonperformance of official duties.



## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **5. ATTENDANCE**

Regular attendance and punctuality are essential to providing high quality work, service to customers, and to avoid extra work for fellow employees. Therefore, when the employee is going to be late or will not be able to report to work, the employee must notify employee's supervisor prior to the scheduled work time. If the employee is ill or has an emergency, the employee should notify his or her supervisor as soon as possible on each day of absence. However, notification may not eliminate the possibility of disciplinary action for frequent absenteeism.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **6. APPEARANCE**

The Town of Springdale expects its employees to present a favorable impression during any contact with the public. All employees are expected to maintain a neat and clean personal appearance. Standards of dress shall be appropriate to the job and the tasks to be accomplished.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **7. SMOKING**

In compliance with the Utah Indoor Clean Air Act, smoking is not permitted in Springdale Town facilities, including Town-owned vehicles.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **8. PERSONAL USE OF PUBLIC PROPERTY**

Permission may be granted by the Town Manager, Police Chief, or their designee for employee to use or possess public property for incidental personal use in addition to the primary purpose of fulfilling the employee's duties as a public servant. This permission may apply to electronic equipment such as computers, tablets, and cell phones, or other public property provided by the Town at the discretion of the above individuals.

- A. No pornography or sexually explicit material shall be accessed, stored, or viewed/reviewed on Town-owned computer equipment or cell phones.

#### **B. Postage Meters**

Metering machines may not be used at any time for posting and mailing any personal material.

#### **C. Copy Machines**

Any employee desiring to use an office owned copy machine for personal materials may do so after paying for such use at the rate that is in effect at the time of use.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **9. TIME CARDS**

All hourly employees of the Town of Springdale are required to maintain an accurate and legible record of all hours worked on a time card. Time cards will be signed and dated by the employee and employee's supervisor. Time cards are then forwarded to the Town HR Director for review and payment.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **10. OUTSIDE ACTIVITIES**

Town of Springdale employees shall not use Town-owned property for outside interests and activities without specific approval from the Town Manager. Town employees are also prohibited from:

- A. Pursuing any outside activity during the employee's work time; or
- B. Receiving any telephone, mail or visitor contact related to the outside interest at the Town office or work site.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **11. POLITICAL ACTIVITY**

- A. An employee shall not be coerced to support a political activity.
- B. An employee shall not engage in political activity during work hours unless on approved leave.
- C. An employee shall not use Town owned equipment, supplies or resources, and other attendant expenses (diskettes, paper, computer online and access charges, etc.) in the support of any political activity.
- D. An employee shall not discriminate in favor of or against, any person or applicant for employment based on political activities.
- E. An employee shall not use their Town employment title or position while engaging in political activity.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **12. SECONDARY AND OUTSIDE EMPLOYMENT**

Town employees may engage in secondary or outside employment provided such employment does not interfere with their ability to perform all duties and responsibilities of their position with the Town, and employees do not use their position with the Town as a means of furthering such secondary or outside employment. Employees who engage in secondary or outside employment are expressly prohibited from engaging in any activity in furtherance of such secondary or outside employment during the time for which they are also being paid by the Town. Violations of this section may result in disciplinary action up to and including termination.



## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

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#### 13. TOWN OWNED AND LEASED VEHICLE USE

- A. Purpose. The purpose of this policy is to provide Town of Springdale employees with guidelines and requirements for Town-owned vehicle usage during both duty and off-duty hours. For purposes of this manual “Town Vehicle” is defined as a vehicle either owned or leased by the Town of Springdale.
- B. Use of Town vehicles shall conform to the highest standards of responsibility. Persons driving Town vehicles are expected to drive courteously, to drive in a manner consistent with minimum fuel consumption, and to exhibit responsible behavior which reflects positively upon the Town of Springdale and the individual employee.
  - 1) **Public Safety Officers:** It is the policy of the Town of Springdale that all sworn, full-time public safety officers are assigned a Town patrol vehicle. All Officers will be allowed to take their vehicles home due to the fact that they are subject to call for emergency situations and incidents which may arise that would require emergent quick response. During work hours, officers shall use their assigned vehicle during the normal course of their duties, including patrol in the jurisdictional coverage area and any travel associated with their duties. Use of the vehicle outside of the coverage boundaries shall be restricted to official business use only, traveling to and from work from their residence, traveling to and from court, traveling to approved training courses, or any other approved work-related activity. This authorization may be revoked at any time by action of the Chief of Police when it is determined to be in the best interest of the Town or if the officer has failed to comply with departmental rules and regulations.
    - i. IRS guidelines define police vehicles, including unmarked vehicles, as Qualified Nonpersonal Use Vehicles. As such, use of police vehicles, including commuting, is excludable to the employee as a working condition fringe benefit.

## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

---

#### 13. TOWN OWNED AND LEASED VEHICLE USE - continued

- 2) **Public Works Employees:** It is the policy of the Town of Springdale that Town employees working with streets, water and sewer may be assigned a Town vehicle. These employees, as approved by the Public Works Superintendent and Town Manager, will be allowed to take their vehicles home due to the fact they are subject to call for emergency situations such as water line breaks or associated emergencies. During work hours, approved employees shall use their assigned vehicle during the normal course of their duties within the Town of Springdale. Use of the vehicles outside of Springdale shall be restricted to official Town business only, traveling to and from work from their residence, traveling to approved training courses, or any other approved work-related activity.
  - i. IRS guidelines define a Qualified Specialized Utility Repair Truck as a Qualified Nonpersonal Use Vehicle if the truck is designed to carry tools and equipment; has permanent interior construction, including shelves and racks, and; the employer requires the employee to commute for emergency call-outs to restore or maintain utility services (for example, gas, water and sewer).
  - ii. Based on the above IRS guidelines, use of Public Works vehicles, including commuting, is excludable to the employee as a working condition fringe benefit.
- 3) **Parks Employees:** It is the policy of the Town of Springdale that Parks Department employees may be assigned a Town vehicle. These employees, as approved by the Parks and Recreation Director and Town Manager, will be allowed to take their vehicles home due to the fact that these employees are required to drop off or pick up equipment and supplies outside Zion Canyon. Additionally, Parks employees may be called upon to flag for emergencies depending on their availability.
  - i. Based on IRS guidelines, Parks vehicles are used for both business and personal purposes. Commuting is the only personal use allowed, and is taxable to the employee as wages.
  - ii. The Town of Springdale has chosen to use the IRS Commuting Valuation Rule to calculate the employee's taxable benefit.

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **13. TOWN OWNED AND LEASED VEHICLE USE - continued**

- 4) All other Town-owned vehicles, even if assigned to a specific department or employee, shall not be taken home except for de minimis use related to scheduled training or other approved event.

## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

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#### 13. TOWN OWNED AND LEASED VEHICLE USE - *continued*

C. **General Rules and Regulations.** The following rules and regulations shall apply to all Town of Springdale personnel while operating a Town vehicle. Violations of this policy subjects the individual to loss of authorization of driving privileges and disciplinary action, up to and including termination.

- 1) Each operator shall possess a valid Utah driver's license and be at least twenty-one (21) years of age. Operation of specialized vehicles (dump trucks, etc.) shall require a specialized license, i.e. Commercial Driver's License (CDL), as Utah law requires. All operators must maintain an acceptable driving record and be qualified to operate town vehicles as provided for in 13-E below.
- 1) The operator of a Town vehicle is responsible for the protection and safe operation of the vehicle. The operator must observe all traffic laws and rules for safe driving. The operator is responsible for traffic violations and fines, including parking violations. The Town will not pay any fines, penalties or other charges the operator may incur while driving a Town-owned or personal vehicle on Town business.
- 3) Employees shall not operate Town vehicles while off-duty, unless the nature of the business is referred to in Section B (2) above, or the off duty activity is previously approved by the department manager and Town Manager.
- 4) All operators of Town vehicles, and any passengers, shall wear their seat belts at all times.
  - a) Passengers during work hours may include other town employees, work-related persons and town volunteers.
  - a) Employees may transport family members as the employee travels to/from work (i.e., drop kids off at school, wife at work) if the destination is between the employee's home and Springdale and if

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

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#### **13. TOWN OWNED AND LEASED VEHICLE USE - continued**

approved by the department manager.

- 5) Consumption or possession of alcohol in Town vehicles is prohibited. No person shall operate Town vehicles or equipment within four (4) hours of having consumed an alcoholic beverage or while legally under the influence of alcohol. Town vehicles shall not be used in the transportation of alcoholic beverages under any circumstances, except for transportation of such beverages that have been confiscated as evidence or investigation purposes, or used in intoxication detection training conducted by Public Safety personnel.
- 6) Driving any Town vehicle or operating any Town equipment while under the influence of, or in possession of, any illegal drug, except for the transportation of such drugs (by Public Safety personnel), is strictly prohibited.
- 7) No person shall operate vehicles or equipment if taking any medications that may impair their ability to operate a vehicle safely. Employees taking medications that may impact or impair their ability to safely operate a vehicle and/or equipment shall immediately notify their supervisor.
- 8) Any Town employee, who operates a Town vehicle, who has been charged with DUI, open container, or a drug offense, shall lose their driving privilege pending the resolution of the charges. If convicted, any employee whose job description includes operating a Town vehicle or equipment shall be subject to disciplinary action, up to and including termination.
- 9) Operators shall limit their use of cell phones while operating a Town vehicle. If practical, operators shall pull off the side of the road to communicate on cell phones, unless the event is an emergency.
- 10) Operators shall immediately report any observed mechanical problems or problems with the operation of the vehicle to their respective departments.
- 11) Operators are responsible for fueling vehicles. Operators are also responsible for checking oil and water levels, tire pressure and condition

## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

---

#### 13. TOWN OWNED AND LEASED VEHICLE USE - **continued**

while fueling, or not less than once per month. Operators shall maintain the cleanliness of Town vehicles and equipment.

- 12) Persons who are not employed by the Town, therefore not covered under the Town vehicle operation insurance policy, shall not operate a Town vehicle, unless authorized by the Town Manager or department manager.
- 13) Employees who are assigned a take-home vehicle must report any change of address to the Human Resource Department within five (5) calendar days. Failure to do so may result in suspension of the assigned vehicle.
- 14) All Town vehicles are subject to inspection and/or search at any time by a supervisor without notice and without cause. No employee assigned to or operating such vehicle shall be entitled to any expectation of privacy with respect to the vehicle or its contents.
- 15) Drivers with a vehicle accident and/or traffic violations, regardless of scope, involving Town vehicles and private vehicles operated on Town business will follow these procedures:
  - a) Notify employee's immediate supervisor.
  - b) Immediately file a traffic accident report with a non-related law enforcement agency (i.e. UHP, Washington County Sheriff, etc.)
  - c) Submit to a drug test per Town policy.
  - d) File a report with the Town Human Resources representative.

Any operator involved in a property damage or personal injury accident while on Town business may be subject to disciplinary action. Accidents shall be reviewed by the employee's department manager and Town

## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

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#### 13. TOWN OWNED AND LEASED VEHICLE USE - **continued**

Manager. The findings shall then be submitted to the Human Resources representative for the employee's personnel file.

Making false statements on vehicle accident reports is strictly prohibited and could result in disciplinary or legal action.

- 16) An employee may carry a firearm in a Town-owned vehicle if the employee is using the vehicle with proper authorization from the Town. An employee who carries a firearm in a Town-owned vehicle must –
- a) adequately secure the firearm to prevent accidental discharge;
  - b) file a Firearm Disclosure form with the Chief of Police that specifies the type of firearm that the employee is carrying or transporting in the Town-owned vehicle;  
exercise prudent judgment in regards to the firearm, including but not limited to locking it in the vehicle at any time it is unattended;  
and
  - d) notify the employee's supervisor, the Chief of Police, and the Town Manager immediately following any event or issue arising in connection with the firearm that is being carried in the Town-owned vehicle, including but not limited to the discharge or brandishing of the firearm.

An employee who carries a firearm while in the employ of the Town must comply with all state and federal regulations affecting the use and possession of the firearm while carrying out his or her job functions. The Town is not liable for any loss, theft, or damage to employee's firearm.

An employee who carries a firearm in a Town-owned vehicle does so at his or her own risk. The election to carry a firearm in a Town-owned vehicle in no way encourages employees to act in a public-safety capacity. An employee (other than a police officer) who carries a firearm in a Town-owned vehicle does not have public-safety responsibilities.

## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

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#### 13. TOWN OWNED AND LEASED VEHICLE USE - continued

D. **Public Safety Rules and Regulations.** The following rules and regulations shall apply to Public Safety personnel while operating a Town patrol vehicle. Violations of this policy subjects the individual to loss of authorization of driving privileges and disciplinary action, up to and including termination.

- 1) Officers shall carry an authorized duty weapon, police identification, a flashlight, ticket books, report forms, flares or cones, and other required equipment.
- 2) Officers shall not operate Town vehicles while off-duty, unless the nature of the business is referred to in Section B(1) above, or the off duty activity is previously approved by the Chief of Police and Town Manager.
- 3) When driving a police vehicle off-duty, officers shall dress appropriately to represent the Town of Springdale professionally in public contact.
- 4) When in a police vehicle, off-duty officers must keep the police radio on and, if necessary, be available to respond to emergency calls. If in the vicinity, the officer should respond to in progress crimes or other major calls. The officer shall notify the dispatcher of the response and should continue to assist until relieved or until the problem is concluded.
  - a) Non-sworn passengers should not be in police vehicles while responding to emergencies or dangerous calls. They should be left in a safe place prior to arrival at the scene.
  - b) Officers should not transport young children unless a responsible person is present who can care for the children should the officer need to leave the passengers before responding to an emergency.
- 5) Officers who are assigned a Town vehicle shall only be allowed to drive that vehicle to and from their residence if they reside less than twenty-five (25) miles from the coverage area (Springdale, Rockville and Virgin Town limits).



## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

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#### 13. TOWN OWNED AND LEASED VEHICLE USE - continued

- 6) Work time required as a result of an off-duty officer responding to a call or performing other police services will be compensated consistent with Town of Springdale compensatory time/overtime policies.
- 7) Unattended vehicles shall be locked at all times.
- 8) Under no circumstances will vehicles be operated by officers who are under the influence of alcoholic beverages or any substances that would impair driving ability.
- 9) Employees who are sick, injured, or on light duty shall not operate a police vehicle until they are cleared to return to full duty by their doctor and documentation is given to the Chief of Police. Any exception to this rule must be approved by the Chief of Police.

#### E. Driver Qualification.

Safety is critical to our operations, therefore all employees or volunteers operating a Town vehicle or who operate any vehicle while conducting business for or on behalf of the Town must be qualified as an “Acceptable” driver per this Driver Qualification Policy prior to operating said vehicle on any public roadway. Drivers, or potential drivers’ Motor Vehicle Record (MVR) will be screened pre-hire and monitored thereafter. Drivers will be qualified as “Acceptable”, “Borderline”, or “Unacceptable.” Drivers whose qualification is “Borderline” will require approval from the Town Manager in consultation with the Police Chief before operating a town vehicle or any other vehicle while conducting, or traveling for, Town business. Drivers with a “Borderline” qualification so authorized to by the Town Manager to drive may do so on a probationary basis.

Drivers with an “Unacceptable” qualification will not be allowed to operate Town vehicles or any vehicle while conducting, or traveling for, Town business.

The driver qualification evaluation will be based on the driver’s MVR and other work-related motor vehicle incidents, whether or not the incident is reported to the Driver License Division and recorded on the driver’s MVR. All violations or

## CHAPTER TWO – STAFF

### SECTION A: EMPLOYEE CODE OF CONDUCT

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#### 13. TOWN OWNED AND LEASED VEHICLE USE - continued

incidents recorded on the MVR, whether they occurred while on the job or not, are included in the driver qualification evaluation.

“Acceptable”, “Borderline”, and “Unacceptable” qualification will be determined using the following criteria:

<b>Moving Violations</b>	<b>At-Fault Accidents</b>			
	<b><u>0</u></b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>
<b><u>0</u></b>	Acceptable	Acceptable	Borderline	Unacceptable
<b><u>1</u></b>	Acceptable	Acceptable	Borderline	Unacceptable
<b><u>2</u></b>	Borderline	Borderline	Unacceptable	Unacceptable
<b><u>3</u></b>	Unacceptable	Unacceptable	Unacceptable	Unacceptable
<b><u>4</u></b>	Unacceptable	Unacceptable	Unacceptable	Unacceptable

Any single major violation may result in an “Unacceptable” qualification as determined by the Town Manager, and may subject the employee to disciplinary actions up to and including termination per this policy. Major violations include the following or an equivalent:

- Driving under the influence of alcohol/drugs
- Failure to stop/report an accident
- Reckless driving/speeding contest
- Driving while impaired
- Making a false accident report
- Vehicular homicide, manslaughter or assault

## **CHAPTER TWO – STAFF**

### **SECTION A: EMPLOYEE CODE OF CONDUCT**

---

#### **13. TOWN OWNED AND LEASED VEHICLE USE - continued**

- Driving while license is suspended/revoked
- Careless driving
- Attempting to elude a police officer
- Other violations as determined by the Town Manager in consultation with the Police Chief

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

---

#### **1. GENERAL POLICY**

Every employee shall observe rules of conduct necessary for the proper operation of the Town. Administrative procedures have been established for the handling of disciplinary measures when required. Disciplinary action, up to and including termination, may be imposed for violations of this policy. Written documentation concerning employee disciplinary action taken will become a permanent part of an employee's Personnel Record.

The Town Manager shall inform the Mayor and Town Council of all suspensions and terminations. This notice shall only provide basic information so as to not prejudice the Council should it be called upon to sit as an appellate body.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

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#### **2. TYPES OF DISCIPLINARY ACTION**

##### **A. Verbal Warning**

Whenever grounds for disciplinary action exist and the Town Manager or employee's supervisor determines that more severe action is not immediately necessary, the problem should be verbally communicated to the employee. The employee's supervisor and the Town HR Director shall maintain a record of the verbal warning. Whenever possible, sufficient time for improvement should precede additional disciplinary action. Two verbal warnings for the same problem or situation will result in a written reprimand. However, the issuance of a verbal warning is not a necessary prerequisite to the issuance of a written reprimand.

##### **B. Written Reprimand**

A supervisor or Town Manager may reprimand an employee under their direct supervision. The employee's supervisor or Town Manager shall furnish the employee with a written copy of the reprimand that describes the reasons for the disciplinary action and its expected resolution. The employee and the employee's supervisor or Town Manager shall sign this written copy of the reprimand, and it shall be a permanent record and placed in the employee's personnel file. If the employee refuses to sign the form, it will be so noted. If the employee does not take adequate corrective action, the employee may be terminated in accordance with this policy.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

---

#### **2. TYPES OF DISCIPLINARY ACTION - continued**

##### **C. Termination**

- 1) The Town Manager may terminate an employee for cause.
- 2) On or before the effective date of the termination for cause, the Town Manager shall furnish the employee with a written notification of employment termination clarifying the reason(s) for termination.
- 3) A copy of this notice to terminate employment signed by the Town Manager and the employee shall become a permanent record and placed in the employee's personnel file. If the employee refuses to sign the form, the Town Manager will so state.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

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#### **3. CAUSES FOR DISCIPLINARY ACTION**

Causes for disciplinary action, up to and including termination, may include, but are not limited to, the following:

- A. Violations of the laws of the State of Utah or the United States, other than minor traffic offenses.
- B. Violation of the Employee Code of Conduct.
- C. Conduct that endangers the peace and safety of others or poses a threat to the public interest.
- D. Unjustified interference with work of other Springdale Town employees.
- E. Misconduct.
- F. Malfeasance (wrongful conduct by a public official).
- G. Misfeasance (performance of a lawful action in an illegal manner).
- H. Incompetence.
- I. Negligence.
- J. Insubordination.
- K. Failure to maintain skills.
- L. Inadequate performance of duties.
- M. Unauthorized absence or tardiness.
- N. Falsification or unauthorized alteration of records.
- O. Violation of Springdale Town policies.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

---

#### **3. CAUSES FOR DISCIPLINARY ACTION - continued**

- P. Falsification of employment application.
- Q. Discrimination in hiring, assignment, or promotion.
- R. Harassment.
- S. Violation of the Personnel Policies and Procedures.
- T. Use of alcohol or drugs, other than medication prescribed by a physician, that affect job performance.
- U. Falsifying Springdale Town Records.
- V. Knowingly marking the time slip of another employee, authorizing one's time slip to be marked by another employee, or unauthorized alteration of a time slip.
- W. Unauthorized possession of firearms, weapons, or explosives on Springdale Town owned property with the obvious exception of police officers.
- X. Carelessness that affects the safety of personnel.
- Y. Threatening, intimidating, coercing, or interfering with fellow employees on the job, or doing the same with the public at large while on the job.
- Z. Theft or removal of any Town property, or the property of any employee from the work area, without proper authorization.
- AA. Gambling or engaging in a lottery at any Town work area.
- BB. Misusing, destroying, or damaging any Town property or the property of any employee.



## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

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#### **3. CAUSES FOR DISCIPLINARY ACTION - continued**

- CC. Deliberately restricting work output of yourself or others.
- DD Sleeping during working hours with the obvious exception of firefighter employees.
- EE. Fighting (verbal or physical) on Springdale Town premises, or while on Town business, or in a Town uniform.
- FF. Any act which might endanger the safety or lives of others.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

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#### **4. CONDUCTING AN INVESTIGATION**

The Town Manager, Town HR Director, department manager, or third-party agency may conduct an investigation into the allegations that form the grounds for disciplinary action. During an investigation to determine the facts upon which disciplinary action may be imposed, the Town Manager may place an employee on administrative leave with pay. The investigation shall include an opportunity for the employee to respond to the allegations.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION A: DISCIPLINARY ACTION**

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#### **5. IMPOSING DISCIPLINARY ACTION**

- A. The Town Manager and Police Chief shall conduct disciplinary action in a consistent manner.
- B. Each employee shall be afforded prior access to the Town of Springdale's Personnel Policies and Procedures manual.
- C. Prior to the Town Manager or Police Chief imposing disciplinary action, the employee shall have the opportunity to review the disciplinary action with the Town Manager or Police Chief. The employee shall have the opportunity to respond to the allegations. The employee's written response, if any, and other related documents shall be placed in the employee's Personnel File.
- D. In determining the type and severity of the disciplinary action the Town Manager or Police Chief may consider aggravating and mitigating circumstances which include, but are not limited to, the repeated nature of misconduct; prior disciplinary action imposed; the severity of the misconduct; the employee's work record; the effect on Springdale Town operations; and/or the potential of misconduct to harm person(s) or property.
- E. For disciplinary action other than a verbal reprimand, the Town Manager or Police Chief shall notify the employee, in writing, of the findings of the investigation. This notice shall be considered the notice of disciplinary action. The written notice shall contain:
  - 1) The grounds for disciplinary action, including a description of the specific misconduct for which the disciplinary action is being imposed.
  - 2) Any prior disciplinary action imposed.
  - 3) The disciplinary action to be imposed.
  - 4) The effective date and duration of the disciplinary action.
  - 5) The corrective action necessary, if any, for the employee to avoid further disciplinary action.

## CHAPTER THREE - MANAGEMENT

### SECTION A: DISCIPLINARY ACTION

---

#### 6. APPEAL PROCEDURES

- A. “Probationary employees” and appointed officers have no appeal rights.
- B. Employees have no “verbal warning” appeal rights.
- C. Employees may only appeal a “written reprimand” involving a suspension.

D. **Appealing to the Town Council.**

Upon written receipt of a notice of disciplinary action beyond a verbal warning or written reprimand not involving a suspension, non-exempt employees have the right to appeal the disciplinary process and action imposed by the Town Manager or Police Chief to the Town Council.

- 1) An employee must submit his or her written request for an appeal to the Town Clerk within ten (10) calendar days of their receipt of the written notice of disciplinary action, or the employee will be deemed to have waived all appeal rights.
- 2) The decision of the Town Council shall be final.

## CHAPTER THREE - MANAGEMENT

### SECTION A: DISCIPLINARY ACTION

---

#### 6. APPEAL PROCEDURES - continued

##### E. Appealing to the Springdale Town Council.

- 1) The Springdale Town Council shall meet to consider the employee's appeal within ten (10) calendar days of the Town Clerk's receipt of the request for appeal.
- 2) The Council may request written responses to questions from the employee and/or the Town Manager or Police Chief.
- 3) The Town Council shall issue a written decision within five (5) calendar days of its meeting to consider the appeal.
- 4) The decision of the Town Council shall either support or overturn the Town Manager or Police Chief's decision regarding disciplinary action. Copies of the decision will be delivered to both parties.
- 5) If the Town Council overturns the Employee Disciplinary Action,
  - a) The Springdale Town Council shall reinstate any loss of pay associated with the Employee Disciplinary Action,
  - b) The record of the disciplinary action shall be removed from the employee's personnel file, and
  - c) The employee shall be reinstated to his or her previous position.
- 6) If the Town Council upholds the Employee Disciplinary Action, the employee has no additional appeal rights.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION B: GRIEVANCE PROCEDURES**

---

#### **1. GENERAL POLICY**

Employees who perceive that they have a grievance against the Town of Springdale should follow the administrative procedure described in this policy before addressing their grievance using any other forum. Grievance shall be defined as any dispute regarding the meaning, interpretation, application, or alleged violation of the terms and provisions of the personnel policies and procedures.

## CHAPTER THREE - MANAGEMENT

### SECTION B: GRIEVANCE PROCEDURES

---

#### 2. **EMPLOYEE GRIEVANCE PROCESS**

- A. The employee must advise his or her immediate supervisor of employee's grievance within ten (10) calendar days following the occurrence or event giving rise to the grievance or within ten (10) calendar days of when the employee acquired knowledge of the occurrence or event.
- B. The supervisor shall respond to the employee's grievance within ten (10) working days of the receipt of the grievance.
- C. The supervisor may use an additional ten (10) working days to respond to the grievance if extenuating circumstances exist and if the employee agrees to this extension.
- D. If the supervisor fails to respond within the allotted time or if the employee considers the response to be unacceptable, the employee may proceed to the formal process.

## CHAPTER THREE - MANAGEMENT

### SECTION B: GRIEVANCE PROCEDURES

---

#### 3. ADMINISTRATIVE GRIEVANCE PROCESS

- A. Grievances should be resolved at the lowest administrative level possible. Employees and supervisors shall attempt to resolve grievances informally by discussing the grievance issues before any formal written grievance is filed. The grievance procedure is not available to review matters of a policy nature, such as the establishment of wages or benefits, the terms and conditions of employment and employee evaluations.
- B. Formal Process
  - 1) Each employee pursuing a formal grievance must prepare and submit a separate written grievance appeal. Written grievances shall contain, at a minimum, the following information:
    - a) Name of the employee.
    - b) Date the occurrence or action underlying the grievance occurred.
    - c) Nature of the grievance.
    - d) Historical information related to the grievance.
    - e) Requested resolution.
    - f) Signature of the employee filing the grievance and date filed.
  - 2) The employee must file a written grievance with the Town Manager or Police Chief within five (5) working days after receipt of the supervisor's response.
  - 3) The Town Manager or Police Chief shall investigate the matter and issue a written decision. The investigation may consist of a review of the written documents, conferences with the affected individuals or a meeting with the employee and appropriate representatives from the Town. The Town Manager or Police Chief will decide if one or all of these options will be included in the investigation.



## CHAPTER THREE - MANAGEMENT

### SECTION B: GRIEVANCE PROCEDURES

---

#### 3. ADMINISTRATIVE GRIEVANCE PROCESS - continued

- 4) The investigation period shall be concluded within ten (10) working days after receipt of the employee's written grievance.
- 5) The Town Manager or Police Chief shall issue a written decision within five (5) working days of the conclusion of the investigation period. The decision will be delivered to the employee and the employee's supervisor.
- 6) The decision of the Town Manager or Police Chief shall be final and binding on all parties.
- 7) Employees will be allowed a reasonable amount of time during work to prepare written grievances.

## **CHAPTER THREE - MANAGEMENT**

### **SECTION B: GRIEVANCE PROCEDURES**

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#### **4. CONFIDENTIALITY**

Written grievances shall be considered private data under the Government Records Access Management Act of the State of Utah (GRAMA). The Mayor and Town Council may declare the grievance documents to be confidential and/or order the entire record, or any part of it, sealed.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION B: GRIEVANCE PROCEDURES**

---

#### **5. FILING**

- A. No document relating to a grievance shall be placed in the employee's Personnel File.
- B. If any disciplinary action against an employee is rescinded as a result of the grievance process, the Town Manager or Police Chief shall remove the record of the disciplinary action from the employee's personnel file.
- C. If any disciplinary action against an employee is modified as a result of the grievance process, the unmodified record of the disciplinary action shall be removed from the employee's Personnel File and the modified record of the disciplinary action shall be placed in the employee's Personnel File.

## CHAPTER 3 - MANAGEMENT

### SECTION C: EMPLOYEE STATUS

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#### 1. TYPES OF TERMINATION

- A. **Retirement:** Voluntary termination at the end of an employee's career.
- B. **Voluntary Resignation:** When an employee wishes to leave employment with the Town of Springdale, the employee will submit the resignation in writing at least two (2) weeks in advance of employee's anticipated final workday. The letter of resignation shall be submitted to the department manager or Town HR Director.
- C. **Resignation in Lieu of an Involuntary Termination Agreement:** The Town Manager may conclude that an employee should be involuntarily terminated for no reason (for probationary employees) or for cause. If Involuntary Termination proceedings have begun, but have not been completed and an employee suggests that they would like to voluntarily resign, the Town Manager may agree to a Resignation In Lieu Of An Involuntary Termination Agreement. This agreement would allow the employee's separation to appear as a resignation in the official files.
- D. **Involuntary Termination:** The Town Manager may conclude that an employee should be involuntarily terminated for no reason (for probationary employees) or for cause.
- E. **Medical:** The Americans with Disabilities Act (ADA) prohibits discrimination by certain employers against an "otherwise qualified individual with a disability." Consequently, an employee should not be terminated for medical reasons without prior consultation with legal counsel and adequate documentation from a physician.
- F. **Death:** If an employee of the Town of Springdale dies, his or her estate or designated beneficiary receives all pay due and any earned and payable benefits (such as payment for compensatory time, annual vacation leave, and overtime) as of the date of death.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION C: EMPLOYEE STATUS**

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#### **2. REQUIRED NOTICE PRIOR TO TERMINATION**

- A. All employees, including “at-will” employees, must notify the Town of Springdale at least two (2) weeks before retiring or voluntarily resigning to be eligible for rehire or future employment consideration.
- B. The Town of Springdale shall follow the notice requirements associated with any disciplinary action of an employee before terminating his or her employment.
- C. Unused, accrued vacation leave, accrued holiday time, compensatory time and overtime will always be paid for resignations, terminations of employment involving reductions in force/layoffs, medical reasons, and deaths.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION C: EMPLOYEE STATUS**

---

#### **3. TERMINATION PROCEDURES**

- A. A written notice of voluntary resignation shall be submitted to the Town HR Director or department manager at least two (2) weeks prior to the final workday.. The notice must state a final work date, and must be signed and dated by the employee.
- B. Involuntary Terminations/Separations for Cause require the Town of Springdale to provide its terminating employees with written notification in accordance with the disciplinary policy.
- C. A Resignation in Lieu of an Involuntary Termination Agreement, signed by the employee and the Town Manager may be utilized in situations where a negotiated termination seems beneficial. A Resignation In Lieu of an Involuntary Termination Agreement will serve as notice to the terminating employee.

## CHAPTER 3 - MANAGEMENT

### SECTION C: EMPLOYEE STATUS

---

#### 3. TERMINATION PROCEDURES - continued

- D. A written notice of retirement shall be submitted to the Town HR Director or department manager at least two (2) weeks prior to the final workday. The notice must state a final work date, and must be signed and dated by the employee.
  
- E. Outstanding Pay
  - 1) Arrange for distribution of any paychecks which may be due the employee, including pay for any hours worked but not paid; pay for unused, accrued vacation leave up to a maximum of 120 hours, pay for unused, accrued holiday time up to a maximum of 112 hours, compensatory time and/or overtime.
  - 2) Under Utah State law, the required timing of the final payment at termination is:
    - a) A Voluntary Resignation. Next regular pay day.
    - b) An Involuntary Termination/Separation for Cause. Within 24 hours.
  
- F. The terminating employee will return all Town of Springdale supplies and/or equipment to the department manager upon termination.
  
- G. All terminating employees should complete an exit interview with the Town HR Director. The employee and the Town HR Director should sign notes taken during the exit interview.

**SECTION C: EMPLOYEE STATUS**

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**4. POST-EMPLOYMENT INSURANCE**

Any employee who is eligible for benefits, that is separated from the Town of Springdale is entitled to a continuation of insurance coverage per the mandates of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

- A. The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Qualified individuals may be required to pay the entire premium for coverage up to 102% of the cost to the plan.

COBRA generally requires that group health plans sponsored by employers with 20 or more employees in the prior year offer employees and their families the opportunity for a temporary extension of health coverage (called continuation coverage) in certain instances where coverage under the plan would otherwise end.

Contact Human Resources for COBRA information.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

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#### **1. GENERAL POLICY**

Employees and supervisors utilize a 3A+ Performance Meeting process to identify performance objectives and measure impact and effort.

The purpose of the 3A+ Performance Meeting is for the employee and supervisor to discuss roles, objectives, tasks, and challenges. Employee and supervisor rate the current performance of the employee based on Arbinger 3A+ criteria of capability, impact, and effort.

It is Springdale Town policy that 3A+ Performance Meetings will be conducted in a manner to ensure fair treatment and an objective evaluation of employee performance.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

---

#### **2. GOAL SETTING**

- A. Goal setting is critical for the development of performance plans. Goals help define activities that will aid the employee in reaching a higher standard of performance skills, adding value to the organization, and improving customer service within the employee's area of work.
- B. Goal setting is participatory in nature. The employee plays the primary role in goal setting. However, the supervisory may suggest goals for the employee to considering in goal setting.
- C. Employees should understand that they will be fully supported by their supervisors in pursuing the achievement of their goals.
- D. Each employee shall be given a time frame in which to attain the goal that has been agreed upon.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

---

#### **3. PERFORMANCE PLANNING**

- A. As part of the initial 3A+ conversation, supervisors should complete a written performance plan with their new employees. Performance planning will be a continuing and collaborative process.
- B. Initial performance plans should specify the skills to be achieved during an employee's employment.
- C. Detailed job descriptions are vital to successful performance planning. Job descriptions should be reviewed on an annual basis and updated as needed.
- D. Organizational Context. In the process of initially creating a performance plan, each employee should understand the larger picture and how their work contributes to the organization. This is the responsibility of each supervisor.
- E. Performance Objectives. Objectives must be simple, clearly defined and understood by both employees and their supervisors. They must be measurable and time based. There must be clear agreement on resources that will be available to the employee and that periodic reviews will be conducted.
- F. The performance plan shall include prioritized objectives, analysis of needed improvement, and mutually acceptable actions needed to improve performance.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

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#### **4. PERFORMANCE EVALUATION**

Employees and supervisors utilize a 3A+ Performance Meeting process to identify performance objectives and measure impact and effort.

Supervisors and the Town Manager determine an appropriate departmental 3A+ meeting interval (monthly, bimonthly, quarterly) depending on the needs of the department. To qualify for a merit increase, 3A+ meetings must be held no less than four (4) times per year.

The 3A+ Performance Meeting will be used by employees and supervisors to jointly identify measurable and time-based performance objectives for the next evaluation period and define priorities for identified objectives.

3A+ Performance Meetings utilize ratings as outlined below.

Employees are encouraged to identify individual goals that will enable them to add value to the organization, and to improve customer service within the employee's area of work. While goals should be measurable and time-based, there may be situations where long term goals can be pursued over several evaluation periods. For example, an employee seeking an advanced college degree.

The responsibility for scheduling and preparing for a 3A+ Performance Meeting rests with the employee. The purpose of this departure from traditional performance evaluation procedure is to encourage employees to take accountability for defining objectives and managing time. To qualify for a merit increase, employees must schedule and attend at least the minimum number of 3A+ meetings required for their department.

Employees will prepare the 3A+ worksheet prior to meeting with their supervisor. Both supervisor and employee will keep a copy of the worksheet. The supervisor will use the worksheets to prepare the 3A+ Year-End Wrap.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

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#### **4. PERFORMANCE EVALUATION - continued**

Employees who disagree with a supervisor's 3A+ worksheet rating may prepare and attach an explanation of the disagreement. Disputes resulting from rating disagreements will be handled through adopted grievance policies and procedures.

## CHAPTER 3 - MANAGEMENT

### SECTION D: PERFORMANCE EVALUATIONS

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#### 5. 3A+ PERFORMANCE MEETING RATINGS

Current performance under each role is rated by employee and supervisor on the following criteria:

Capability: Employee capability and technical competency to achieve the results they are responsible to achieve. Capability is rated on a scale of one (1), two (2), or three (3).

1. Employee does not have the capability to perform in the assigned role.  
Cannot reasonably become a 3 in the role.
2. With training and/or experience, could be a 3 in the assigned role.
3. Employee has all necessary capabilities to succeed in the assigned role.

Impact: Employee's impact on those they interact with – their eagerness to adjust efforts to ensure that their work and attitude helps others. Employee impact on customers, peers, supervisors/managers, and direct reports is rated on a scale of A, B, or C.

- A. Employee has a positive impact on others.
- B. Employee has a neutral or mixed impact on others.
- C. Employee has a negative impact on others.

Effort: Employee's work ethic, initiative, and diligence in delivering results is rated with a "+" or "-".

- "+". Using a scale from 1-10, a "+" in effort relates to a 9 or 10.
- Anything less than a 9 in effort would result in a "-".

## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

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#### **6. PERFORMANCE PERIODS**

##### **A. Probationary employees.**

- 1) During their probationary period, employees will schedule a 3A+ Performance Meeting with their supervisor each month. After the end of the probationary period, 3A+ meetings will continue based on the approved departmental schedule.
- 2) The monthly 3A+ Performance Meeting is used to provide feedback to the employee and help the supervisor ensure that performance is consistent with both the supervisor and employee's standards and expectations.
- 3) Probationary employees must realize that the results of their 3A+ Performance Meetings will not obligate the Town of Springdale to any particular employment action. The 3A+ Performance Meetings shall not be construed to create any property or due process rights in regard to the probationary employee's job or position with the Town.

##### **B. Full-time non-exempt employees.**

- 1) The 3A+ Year-End Wrap will be completed in March of each year to facilitate budgeting for the next fiscal year. Employees and supervisors will participate in 3A+ Performance Meetings according to the approved departmental schedule.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION D: PERFORMANCE EVALUATIONS**

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#### **7. CONFIDENTIALITY**

- A. Completed 3A+ Performance Meeting and Year-End Wrap worksheets will become a permanent record in the employee's personnel file.
- B. 3A+ Performance Meeting worksheets may be used in decisions concerning advancement, future training needs, performance related salary adjustments and contested disciplinary actions.
- C. 3A+ Performance Meeting and Year-End Wrap worksheets are to be considered confidential and treated as all other information in the employee's personnel file.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **1. GENERAL POLICY**

Federal law requires employers to keep detailed data about their employees.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **2. CONFIDENTIALITY**

Employee records are maintained in compliance with the law.

- A. Confidentiality must be maintained at all times with access limited to employees and their supervisory chain.
- B. The Town of Springdale policy is that only relevant, job-related information is maintained regarding its employees. This information is held in strict confidence, and access is limited only to those who require it for legitimate business reasons.
- C. Employees have the opportunity to review their own files in the presence of the HR Director in the Town offices during regular business hours.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **3. PERSONNEL FILES REQUIREMENTS**

- A. Personnel files are maintained for each employee and kept by the Town HR Department. The record copy (original) of all appropriate personnel information shall be filed in the employee's personnel file.
- B. No information from an employee's personnel file will be released to any person or organization except by the HR Director.
- C. Employees, or their representative designated in writing, may examine the employee's personnel file upon request during normal working hours at the Springdale Town Offices. When a supervisor requires access to the personnel file of an employee under their supervision for the handling of personnel matters, the supervisor must obtain authorization from the HR Director.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **4. CONTENTS**

The following are records that can be included in an employee's personnel file.

- A. An employment record; including the employee's job application, resume, Employee's Withholding Allowance Certificate (Form W-4), and I9-Insurance form, etc.
- B. A signed copy of the employee's acknowledgment of receiving a copy of the Personnel Policies and Procedures Manual; and the performance standards for the employee's position.
- C. Election form to disclose or keep confidential, the employee's home address and home telephone number.
- D. All personnel action forms, including:
  - 1. Performance evaluations.
  - 2. Promotions or transfers.
  - 3. Salary rate changes.
  - 4. Disciplinary actions.
- E. Any information the employee wants included in response to any of the above actions.
- F. Records of citations for excellence or awards for good performance.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **4. CONTENTS - continued**

- G. Record of any other pertinent information having a bearing on the employee's status.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **5. EMPLOYEE INFORMATION / CHANGE OF EMPLOYEE STATUS**

Employees are responsible for ensuring that personal employee information contained in their personnel files is current and accurate. Employee information (any change in number of dependents, marital status, address, telephone number, etc.) should be updated and submitted to the HR Department as soon as the change occurs.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **6. GIVING REFERENCES**

The Town of Springdale limits information given for a reference to the following:

- A. Verification that the employee worked, full-time or part-time, for the Town of Springdale during a stated period.
- B. A description of the position held.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **7. OTHER FILES REQUIREMENTS**

Records related to the items listed below should be kept for a period of at least one (1) year. In addition, records should be examined annually to keep Personnel Files current and to save those records that management feels should be kept longer.

- A. Job applications.
- B. Any advertisements or notices relating to job openings, promotions, training programs, or opportunities for overtime work.
- C. Records of promotion, demotion, selection for training, layoff, rehire, or termination of any employee. The employee should sign these.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **8. SALARY/WAGE REQUIREMENTS**

The Federal Labor Standards Act (FLSA) requires the Town of Springdale to keep all of the following data on all employees for a period of at least three (3) years.

- A. Employee's sex and occupation.
- B. Time and day workweek begins.
- C. Hours worked each day and total hours worked each week.
- D. Total daily or weekly straight-time earnings.
- E. Total additions to, or deductions from wages paid each pay period, including an explanation of items that make up additions and deductions.
- F. Date of payment and pay period covered.
- G. Total overtime above regular hours for each workweek.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION E: RECORD KEEPING**

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#### **9. OTHER REQUIREMENTS**

There are also record keeping requirements under other federal and state laws, which require that Personnel Files be kept for a certain amount of time.

- A. Occupational Safety and Health Act (OSHA) record of injuries.
- B. Employee Retirement Income Security Act (ERISA) record of pensions.
- C. The Immigration Reform and Control Act (IRCA) of 1986 requires verification of status forms to be kept for as long as the employee works for the employer. Once employment is terminated, the I-9 record must be kept three (3) years after the person is hired or for one (1) year after employment is terminated, whichever is later.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **1. GENERAL POLICY**

The Town of Springdale will pay at least minimum wage and compensatory time/overtime to all employees except those who are specifically exempt from minimum wage and overtime under the Fair Labor Standards Act (FLSA) of 1938. The Town of Springdale will also provide equal pay to all employees doing similar work which requires substantially equal skill, effort, and responsibility and performed under similar working conditions in accordance with the Fair Labor Standards Act of 1938 and the Equal Pay Act of 1963.

## CHAPTER 3 - MANAGEMENT

### SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION

#### 2. EMPLOYMENT CLASSIFICATIONS

There are four classifications of employees within the Town of Springdale:

A) **Full-time**

An employee hired for an indefinite period in a position for which the normal work schedule is forty (40) hours per week. Depending on employment status (see Section B, “Employment Status”) the employee will qualify for specific Town of Springdale benefits.

B) **Part-time**

An employee hired for an indefinite period in a position for which the normal work schedule is less than forty (40) hours per week. Part-time employees do not qualify for Town of Springdale benefits.

C) **Temporary**

An employee hired for a position that is required for only a specific period of time, usually less than six (6) months. Temporary employees do not qualify for Town of Springdale benefits.

D) **Seasonal**

An employee hired for a position that is required only for the summer or winter months. Summer or winter only employees do not qualify for Town of Springdale benefits.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **3. EMPLOYMENT STATUS**

To facilitate provisions of the Fair Labor Standards Act, employees shall also be classified as either exempt or non-exempt, with respect to eligibility for overtime payment. They shall be defined as:

##### **A) Exempt**

Positions of a managerial, administrative, or professional nature, as prescribed by Federal and State Labor Statutes shall be exempt from minimum wage and mandatory overtime payment regulations.

##### **B) Non-exempt**

Positions of a clerical, technical, or service nature, as defined by Federal and State Labor Statutes, which are covered by provisions for minimum wage and mandatory overtime payment regulations.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **4. WORK WEEK**

- A) Begins on Wednesday morning at 12:01 a.m.
- B) Ends on Tuesday evening at midnight.
- C) Employees engaged in “public safety” activities, such as Law Enforcement and Fire Protection Departments: as established by the Mayor and Town Council.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **5. WORK DAYS/HOURS**

Town Hall hours of operation are Monday – Friday from 9:00 a.m. to 5:00 p.m.

Employees may work an additional ½ hour each day to compensate for a lunch break. Supervisors are responsible for departmental schedules and will ensure adequate coverage.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **6. ATTENDANCE**

Employees shall be in attendance at their workstations during normal working hours.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **7. CALL OUTS**

The nature of certain job classifications requires the employee to be available for call out during an emergency. Employees on call outs will be paid one (1) hour for call outs lasting one (1) hour or less. Call outs lasting more than one (1) hour will be compensated as regular weekly work hours pursuant to this policy, entitling an employee to overtime pay or compensatory time off if as a result of responding to a call out the employee works more than forty (40) hours during that particular week.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **8. BREAKS AND LUNCH PERIODS**

##### **A) Full-time:**

##### **1) Breaks**

Two (2) optional fifteen (15) minute paid breaks during a standard workday. Breaks shall not be used to extend the lunch period or shorten an employee's work hours.

##### **2) Lunch**

Full-time employees may take a half hour (.5) unpaid lunch period during a standard workday.

Police and Parking Enforcement Officers are exempt from this policy.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **9. LACTATION BREAKS**

In compliance with the Fair Labor Standards Act and Utah Code 34-49-202, the Town will provide reasonable breaks and appropriate facilities to accommodate any employee desiring to express milk for her infant nursing child for up to one year after the child's birth.

- A. Reasonable breaks shall be permitted each time the employee has the need to express breast milk. The supervisor should consult with the employee to determine frequency and duration of the breaks.

Lactation breaks shall, to the extent possible, run concurrently with any other break period otherwise provided to the employee. While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding the regularly scheduled break time will be unpaid.

- B. Reasonable efforts will be made to accommodate employees with the use of an appropriate room or other location to express milk in private. Such room or place shall be in close proximity to the employee's work area, have an electrical outlet, and shall not be a bathroom or toilet stall. The room must be maintained in a clean and sanitary condition, and provide privacy from view of and intrusion from co-workers or the public.
- C. The Town shall provide access to a clean and well-maintained refrigerator or freezer for the temporary storage of the employee's breast milk.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **10. PAYROLL PROCEDURE**

- A) Timecards are to be completed by the employee, signed and submitted to the supervisor at the end of the employee's last shift of the pay period. Falsification of timecards will result in disciplinary action.
- B) After supervisor review and approval, timecards will be submitted to the HR Department no later than 3:00 p.m. on Wednesday after the pay period ends.
- C) Employees will be paid biweekly through direct deposit
- D) No paychecks shall be issued in advance of regular pay periods.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **11. OVERTIME PAY**

- A) It is Town policy to avoid the necessity of overtime whenever possible; however, the Town recognizes that overtime may sometimes be necessary to meet emergency situations and/or seasonal or peak workload requirements of a critical nature. Department managers are responsible for the planning required to minimize the need for overtime. If, in the judgment of the Town Manager or Police Chief, work beyond the normal workday or workweek is required, overtime may be authorized for non-exempt employees. Overtime must be approved in writing prior to being worked. Overtime during emergency situations may be approved verbally by the Town Manager or Police Chief, followed by a written approval. Unapproved overtime will not be compensated. Exempt employees are not eligible for overtime.
- B) For all non-exempt employees, overtime pay applies to over forty (40) hours worked in a workweek at the rate of one and one-half (1 ½) times the regular hourly rate of the employee. Vacation, holidays, sick, or other leave shall not constitute hours worked for the calculation of overtime.
- C) All overtime must be paid in the period in which it is earned. Overtime for pay shall not be accrued, except in the case of compensatory time off (see below).

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **12. COMPENSATORY TIME OFF**

- A) Employees may receive compensatory time off in lieu of overtime pay at the Town's discretion as authorized by the Town Manager, Police Chief, or department managers. The employee must schedule the use of compensatory time with his or her supervisor.
- B) Accrual of Comp Time
  - 1) Non Public Safety Personnel. No more than forty (40) hours of compensatory time may be held at any time. The Town Manager may on a case-by-case basis allow more than forty (40) hours for emergency situations or when scheduling requires additional employee work.
  - 2) Public Safety Personnel. No more than one-hundred and twenty (120) hours of compensatory time may be held at any time.
- C) Compensatory time cannot be used before it is earned.
- D) Compensatory time will be accumulated at the rate of one and one-half (1-½) hours for every overtime hour worked.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **13. VACATION LEAVE**

- A) Persons hired on an emergency, part-time, seasonal, temporary or contract basis shall not accrue annual vacation leave. Persons hired on an emergency, part-time, seasonal, temporary or contract basis who become full time employees will be eligible for vacation leave beginning on the date they become full-time employees; and their full-time date of hire will be the beginning date used for eligible vacation benefits.
- B) Full-time employees are eligible for vacation time off with pay according to the following schedule:

Up to five years of service: Two weeks (80 hours) per year (accrual 3.08/pay period).

Six or more years of service: Three weeks (120 hours) per year (accrual 4.62/pay period).
- C) New full-time employees shall accrue annual vacation leave from the date of hire.
- D) The maximum annual vacation leave that can be accrued and carried forward from one calendar year to the next is one-hundred twenty (120) hours.
- E) No more than fifteen (15) days of annual vacation leave may be taken in any calendar month without the approval of the Town Manager. In no case may more than forty (40) days of annual vacation leave be taken in any calendar year. In no instance will annual vacation leave be granted unless it has been previously earned.
- F) All annual vacation leave requests should be submitted to employee's supervisor a reasonable time in advance of the desired time off. If an excessive number of employees request annual vacation leave for the same time period, annual vacation leave shall be granted only to the number of employees who would not leave the department ineffective and in order of application (first-come-first-served) at the discretion of the supervisor.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **14. SICK LEAVE**

- A) Sick leave shall not be considered as a privilege or as additional vacation that an employee may use at his or her discretion, but shall be requested and allowed only in case of necessity and actual sickness or disability of the employee or immediate family of the employee.
- B) Sick leave may be used at any time with approval of the employee's supervisor for the following reasons:
  - 1) When the employee is unable to perform his or her regular duties or other temporary work to which they may be assigned.
  - 2) Visits to hospitals, clinics, doctor's and dentists' offices for diagnosis or treatment of illness, injury or examination. The minimum time that may be taken by non-exempt employees is one (1) hour.
- C) Sick leave shall be available to all Full-time employees. Part time, Seasonal, or Temporary employees are not eligible for sick leave. Sick leave may be used during an employee's probation period with approval of the employee's supervisor.
- D) Sick leave is accrued at the rate of one (1) day per month or twelve (12) days per year. The employee will begin to accrue sick leave immediately upon hire. Sick leave shall not accrue if an employee is in a leave-without-pay status. The Town HR Director will keep sick leave accrual records
- E) Sick leave shall be charged against non-exempt employees in not less than one (1) hour increments. Advance sick leave is not allowed.
- F) No employee shall be compensated for unused accrued sick leave.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **14. SICK LEAVE - continued**

##### **G) Payments**

- 1) In order to qualify for sick leave payments, an employee must notify their supervisor no later than one (1) hour after normal starting time on each day of absence unless the circumstances surrounding the absence make such notification impossible. The supervisor should also be kept advised of the employee's progress and expected date of return to duty.
- 2) Employee will be paid only when the employee (or a member of his immediate family if the employee is incapacitated) notifies the supervisor within one (1) hour after the employee's scheduled reporting time.

H) Any absence for illness beyond accrued sick leave will result in the employee being carried on leave status until all vacation leave, comp time, and holiday accruals are exhausted, then carried in a leave-without-pay status.

I) Certification of Illness: For sick leave in excess of three (3) consecutive working days, or if abuse of sick leave is indicated, the supervisor may require a certificate from the attending physician stating that such illness prevented the employee from working.

J) Long Term Illness: Illness or injury that requires long term absence in excess of five (5) consecutive working days shall be reported to the employee's supervisor, who shall approve the use of sick leave. During illness or recovery, the employee shall provide documentation from the attending physician on a weekly basis, advising the supervisor of employee's status, expected date of recovery and expected date of return to work.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **15. HOLIDAY ACCRUAL**

- A) Holiday time will be accrued as holidays occur during the year. Employees may not use holiday time prior to the date of the holiday, but may use the accrued time during the subsequent twelve (12) months. Employees may not accrue more than 112 hours of holiday time. Any accrual in excess of 112 hours will be forfeited by the employee.
- B) Holiday time may be used at any time after accrual with approval of employee's supervisor.
- C) Holiday time shall be available to all full-time employees. Part time, seasonal, or temporary employees are not eligible for holiday accrual. Holiday time shall be available for use by an employee during the employee's probation period.
- D) Upon termination, unused holiday accrual will be paid to the employee as part of the final paycheck.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **16. INSURANCE**

##### **A) Medical Health Insurance**

It is the policy of the Town of Springdale to pay the cost of health insurance for each individual full-time employee and the employee's dependents.

In the event that the Town Council opts to offer employees a high-deductible health plan, the Town will contribute a specified amount to the employee's Health Savings Account. This amount will be determined by the Town Council as part of the annual budgeting process.

Employees will receive Health Savings Account contributions on July 1 or at the date of hire.

- i. Health Savings Accounts of new employees hired between January 1 and June 30 of any given year will be funded at a rate of 1/12<sup>th</sup> of the annual contribution for each month employed from hire date to June 30. An annual contribution will be made on July 1. If an employee already has insurance coverage and chooses to opt out of the Town's medical insurance program, the Town will either 1) contribute the amount equal to the cost of the lowest-priced individual insurance policy available to the Town to a 401k, 457, or other retirement savings program of the employee's ownership, or 2) increase the employee's wage commensurate to the cost of said individual policy, whichever option is selected in writing by the employee.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **16. INSURANCE - continued**

If an employee has other health insurance coverage and chooses to opt out of the Town's medical insurance program, and in the event the Town Council offers the option, the Town will either 1) contribute an amount equal to the lowest annual Health Savings Account contribution amount (i.e. single coverage amount) approved by the Town Council for that budget year, to the employee's 401k, 457, or other retirement savings program of the employee's ownership, or 2) increase the employee's wage commensurate to the cost of the annual Health Savings Account contribution approved by the Town Council for that budget year. This contribution will be made annually on or about July 1.

This compensation provision is not subject to COBRA extension if and when employment terminates.

#### **B) Life Insurance**

A basic life insurance policy is provided free of charge for each full-time employee at the Town of Springdale's expense. The employee has the option to purchase additional life insurance at the employee's expense.

#### **C) Dental and Vision Insurance**

Dental/Vision Insurance is provided for all full-time employees and the employee's dependents at the employee's expense.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **17. HYBRID/REMOTE WORK (TELECOMMUTING)**

- A. The Town recognizes that hybrid schedules may benefit both employees and departments, but realize that some departments are not suited to a hybrid arrangement.
- B. Department managers may permit hybrid schedules or temporary remote arrangements if adequate coverage is maintained within their department. Department managers reserve the right to approve or deny hybrid or temporary remote work arrangements.
- C. Department managers will evaluate hybrid or temporary remote work requests on a case-by-case basis and will not discriminate based on Title VII of the Civil Rights Act of 1964.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **18. PREGNANT WORKER ACCOMMODATIONS**

As required by the federal Pregnant Workers Fairness Act (PWFA) and Utah Code, the Town will provide reasonable accommodations to employees with limitations related to pregnancy, childbirth or related medical conditions, unless the accommodation will cause undue hardship to the Town's operations.

- A. An employee may request an accommodation due to pregnancy, childbirth or a related medical condition by submitting the request in writing to Human Resources. The accommodation request should include an explanation of the pregnancy-related limitations, the accommodation needed and any alternative accommodation(s) that might be reasonable. Depending on the nature of the accommodation, the individual may be requested to submit a statement from a health care provider substantiating the need for the accommodation.
- B. Upon receipt of a request for accommodation, Human Resources, the employee, and the manager will discuss the request and determine if an accommodation is reasonable and can be provided without significant difficulty or expense, i.e., undue hardship.

While the reasonableness of each accommodation request will be individually assessed, possible accommodations may include allowing the individual to:

- Have flexible hours.
- Receive additional break time to use the bathroom, eat and rest.
- Be excused from strenuous activities and/or activities that involve exposure to compounds deemed unsafe during pregnancy.

An employee may request paid or unpaid leave as a reasonable accommodation under this policy; however, the Town will not require an employee to take time off if another reasonable accommodation can be provided that will allow the employee to continue to work.

The Town prohibits any retaliation, harassment or adverse action due to an individual's request for an accommodation under this policy or for reporting or participating in an investigation of unlawful discrimination under this policy.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION F: EMPLOYMENT CLASSIFICATIONS/COMPENSATION**

#### **19. ADDITIONAL PROVISIONS**

Existing personnel policies shall cover any payroll issue not addressed in this policy. Similarly, this policy supersedes any other policies on employment classifications, status, workweek, workdays, work hours, payroll procedures, overtime, compensatory time or vacation time.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION G: SALARY PLANNING**

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#### **1. MERIT INCREASE**

Based on budget approval, employees are eligible to receive merit increases upon completion of a 3A+ Year-End Wrap with their supervisor. This Wrap is the culmination of the periodic 3A+ Performance Meetings between employee and supervisor throughout the year. The 3A+ Year-End Wrap will quantify the impact and effort of the employee during the year. This score determines the percentage of merit increase possible for the employee.

The Town Manager, upon approval of the Mayor and Town Council, shall adopt merit increase guidelines effective July 1 of each calendar year subject to funding in the approved budget.

Permanent full-time employees are eligible to receive a merit increase.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION G: SALARY PLANNING**

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#### **2. LONGEVITY BONUSES**

The Town Council may grant longevity bonuses for full-time employees according to the schedule below:

After five (5) years of full-time employment: \$1,000;

After ten (10) years of full-time employment: \$2,500;

After fifteen (15) years of full-time employment: \$5,000;

After twenty (20) years of full-time employment: \$10,000;

After twenty-five (25) years of full-time employment: \$15,000.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION G: SALARY PLANNING**

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#### **3. COST OF LIVING ADJUSTMENTS**

All part-time and full-time employees are eligible for Cost-of-Living Adjustments (COLA) subject to availability of funds.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION G: SALARY PLANNING**

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#### **4. PROMOTION**

- A. All employees are encouraged to compete for vacant positions in the Town's organization. At the discretion of the Town Manager, vacant positions may be listed as promotional opportunities for current Town employees, prior to general recruitment.
- B. An employee receiving a promotion will receive a salary increase to the pay step in the new salary range nearest to a ten percent (10%) increase and will continue in the new range per Town policies. If the ten percent (10%) increase results in a salary below the minimum of the new range, the employee will receive the minimum step on the new range.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION G: SALARY PLANNING**

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#### **5. ORDER OF SALARY CALCULATION**

Multiple categories of pay increases awarded simultaneously shall be calculated in the following order:

- A. Market adjustment or promotion
- B. Cost of living adjustment
- C. Merit

## **CHAPTER 3 - MANAGEMENT**

### **SECTION G: SALARY PLANNING**

---

#### **6. REASSIGNMENT**

Except when due to a demotion or a disciplinary action, an employee who is reassigned shall be paid at least the same salary received prior to the assignment.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION H: PAYROLL ADMINISTRATION**

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#### **1. PAY PERIODS**

The Fair Labor Standards Act requires that wages be calculated on a weekly basis for employees not working in “public safety” activities, unless an exception is granted by the Department of Labor.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a “work period” basis. A “work period” may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

Town of Springdale public safety employees will accrue comp time for time worked in excess of 85.5 hours during the 14-day work period.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION H: PAYROLL ADMINISTRATION**

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#### **2. PAY DAYS**

- A. All Town Employees will be paid on a bi-weekly basis, or 26 pay days per calendar year.
- B. The Town of Springdale will not provide loans or payroll advances.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION I: REIMBURSABLE EXPENSES**

---

#### **1. GENERAL POLICY**

With prior approval, the Town of Springdale will reimburse legitimate expenses to the employee. Receipts are required to reimburse the employee. Reimbursement may be in the form of petty cash or a separate check. Records must be kept reflecting the amount of reimbursement each employee has received.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION I: REIMBURSABLE EXPENSES**

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#### **2. TRAINING AND CONFERENCES**

If an employee is required to attend training seminars, conferences, briefings, or gather information, the employee will be compensated. Comp time/overtime will be accrued/paid at the rate of one and one-half (1½) times their regular work day pay if hours worked exceed forty (40) hours in that week (85.5 hours per pay period for police).

## **CHAPTER 3 - MANAGEMENT**

### **SECTION I: REIMBURSABLE EXPENSES**

---

#### **3. TRAVEL POLICY**

- A. All travel for legitimate Town business within Springdale Town limits is to be reimbursed when the travel involves the employee's personal vehicle. A log of all such travel shall be kept. This log shall include the reason for the trip, the time the employee departed, the time the employee returned, and total mileage.
- B. The mileage rate will be consistent with the established rate used for Internal Revenue Service travel deductions.
- C. It is important for employees to utilize Town-owned vehicles to accomplish routine departmental tasks during the workday. Therefore, department managers may require employees to use available Town-owned vehicles during the employee's work shift. In the event it is not required by a manager, employees are still encouraged to use a Town-owned vehicle to carry out tasks whenever possible or practical. There may be situations where using a Town-owned vehicle may not be possible or practical. In those situations, employees, officers, and volunteers acknowledge that neither the Town nor the Town's automobile insurance company are responsible for personal vehicle accident coverage. The vehicle owner must carry minimum state-mandated liability coverage at his/her own expense. The Town does not provide primary vehicle liability or personal injury protection coverage for personal vehicles driven by Town employees, officers, or volunteers.
- D. The vehicle owner must carry comprehensive and collision insurance at their own expense. The Town provides no automobile physical damage coverage for personal vehicles used for Town business. If a personal vehicle is damaged, there is no insurance program with the Town to cover such damage.
- E. All hotel or other overnight accommodations and airplane or other travel accommodations shall be arranged in advance for overnight trips and paid in advance of the trip. Employees shall use their Town credit card to pay for lodging and airfare and submit receipts to the Deputy Treasurer. Except in unusual circumstances, employees shall not request reimbursement for lodging and travel expenses from the Town.
- F. Advance registration fees may be paid by Town check or with Town credit card.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION J: BENEFITS**

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#### **1. WORKER'S COMPENSATION**

- A. All employees are covered by workers' compensation, which provides medical reimbursement and disability benefits for job-related illness or injury. An employee does not accrue benefits while receiving workers' compensation payments. For exact compensation coverage, check the workers' compensation contract on file with the Town Treasurer/HR Director.
- B. Employees may use accrued vacation or sick leave to make up the difference between workers' compensation benefits and their base pay.
- C. Workers Compensation Coordinator: The Town Treasurer/HR Director is our Workers Compensation Coordinator (WCC). See Section M.4. below for accident reporting procedures and return to work policy.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION J: BENEFITS**

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#### **2. SOCIAL SECURITY/FICA**

All employees whether full-time, part-time, or temporary are covered by the benefits of Old Age, Survivors, and Disability Insurance as provided for by law. Contributions of the employee and the Town of Springdale will be made in accordance with the provision of the law.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION J: BENEFITS**

---

#### **3. STATE AND FEDERAL UNEMPLOYMENT**

All employees whether regular, part-time, or temporary are covered by the benefits of State Unemployment.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION J: BENEFITS**

---

#### **4. CONTINUING EDUCATION**

Employees are encouraged to obtain continuing education through attendance at job related seminars. Requests for attendance must be approved in advance by the Town Manager.

##### **A. Education Required by the Town of Springdale**

If the Town of Springdale requires an employee to attend any educational or training course, conference, seminar, or certification course, necessary time off with pay and reimbursement will be granted the employee for all associated costs including tuition or registration fees, authorized travel, meals, and lodging.

##### **B. Education Encouraged by the Town of Springdale**

Employees are encouraged to further their education and training in areas that will enhance their job performance. Upon advance approval by the Town Manager and inclusion of anticipated expenses in the Town's approved annual budget, and upon successful completion of relevant training courses, employees shall be reimbursed for tuition fees, materials, and other necessary and approved expenses not to exceed \$2000.00 per calendar year upon presentation of proper receipts. Proof of successful completion will include one (1) of the following:

- 1) A certificate indicating successful course completion, if applicable.
- 2) A grade point average of 3.0 or higher on a 4.0 (A, B, C, D) scale.
- 3) A pass grade on a pass/fail grading system.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION J: BENEFITS**

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#### **5. RETIREMENT SYSTEM**

Additional details are available from the Town HR Department.

- A. The Town participates in the Utah Retirement Systems non-contributory program. Eligibility for the program is based on Utah State Law, Title 49.
- B. The cost of this program is paid in accordance with State Law.
- C. In accordance with 49-13-203, elected officials are considered part-time and ineligible for retirement.
- D. The following positions may be exempted from participating in Tier 2 Utah Retirement Systems:
  - Appointed Officials:
    - i. Town Clerk
    - ii. Town Treasurer
- E. The following positions are considered to be ineligible for Tier 2 Utah Retirement Systems participation:
  - a. Mayor and Town Council
  - b. Planning Commission Members

## **CHAPTER 3 - MANAGEMENT**

### **SECTION J: BENEFITS**

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#### **6. WELLNESS PROGRAMS**

Upon Town Council approval and within established budget guidelines, the Wellness Committee may present incentive programs to the employees to encourage involvement in wellness activities. These programs are voluntary, and may include monthly challenges as well as annual incentive challenges.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION K: FAMILY AND MEDICAL LEAVE ACT (FMLA)**

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#### **1. GENERAL POLICY**

The Family and Medical Leave Act of 1993 requires many employers, including “public agencies” with a minimum number of employees to provide up to a total of twelve (12) work weeks of unpaid leave during any twelve (12) month period for “eligible” employees at the time of the birth or adoption of a child or at the time of a serious health condition affecting the employee or a family member. The Town of Springdale is subject to FMLA because it is a municipal entity.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **1. ABSENT WITHOUT LEAVE**

- A. Any unauthorized absence of an employee from duty shall be grounds for disciplinary action by the Town Manager, up to and including termination.
- B. Any employee who is absent for three (3) or more consecutive workdays without authorized leave shall be deemed to have voluntarily resigned his or her position and employment without notice. The Town Manager may grant leave with or without pay if extenuating circumstances are found to have existed.

## CHAPTER 3 - MANAGEMENT

### SECTION L: LEAVES OF ABSENCE

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#### 2. HOLIDAYS

A. Holidays which apply to full-time employees are:

- 1) New Year's Day: January 1<sup>st</sup>
- 2) Martin Luther King, Jr. Day: 3<sup>rd</sup> Monday in January
- 3) Presidents' Day: 3<sup>rd</sup> Monday in February
- 4) Memorial Day: Last Monday in May
- 5) Juneteenth: June 19<sup>th</sup> or Monday preceding June 19<sup>th</sup> if it falls on Tuesday – Friday. If it falls on Saturday or Sunday, holiday is observed on following Monday.
- 6) Independence Day: July 4<sup>th</sup>
- 7) Pioneer Day: July 24<sup>th</sup>
- 8) Labor Day: 1<sup>st</sup> Monday in September
- 9) Columbus Day: 2<sup>nd</sup> Monday in October
- 10) Veteran's Day: November 11<sup>th</sup>
- 11) Thanksgiving Day: 4<sup>th</sup> Thursday in November
- 12) Friday after Thanksgiving: 4<sup>th</sup> Friday in November
- 13) Christmas Eve: December 24<sup>th</sup>
- 14) Christmas Day: December 25<sup>th</sup>

Any day designated by the Governor as a State Holiday or designated by the Town Council will be observed

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **2. HOLIDAYS - continued**

- B. If any of the above holidays fall on Saturday, then the preceding Friday shall be recognized as the holiday. If any of the above holidays fall on Sunday, then the following Monday shall be recognized as the holiday.
- C. Part time, seasonal, or temporary employees are not eligible for holiday accrual. Holiday time shall be available for use by an employee during the employee's probation period.
- D. If an employee works a holiday due to regular scheduling of a position that requires 7 day per week coverage, the employee will be allowed to take the holiday off at a later day. No more than 112 hours of holiday time shall be accrued by an employee over the course of twelve (12) months, however. Holiday pay will not be added to regular pay (double time).
- E. As referenced in Section F, employees may not use holiday time prior to the date of the holiday, but may use the accrued time during the subsequent twelve (12) months. Employees may not accrue more than 112 hours of holiday time. Any accrual in excess of 112 hours will be forfeited by the employee.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **3. MATERNITY LEAVE**

- A. FMLA leave may be available to employees if they have worked for the Town for at least a year, and worked at least 1,250 hours during the previous year. An employee may request up to twelve (12) weeks to bond with a new child. This request must be made in writing and delivered to the HR Director. Accrued leave will be used while on FMLA and, when exhausted, employee will be placed on leave-without-pay status. Health insurance will continue uninterrupted during FMLA leave. Employees are entitled to be reinstated to the same or equivalent position, with a few exceptions.
- B.
- C. Failure of the employee to return to work at the expiration of maternity leave shall be considered a voluntary resignation of their position and employment without notice.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **4. MILITARY LEAVE**

All full-time employees shall be granted leave with compensation for the difference in salary for active duty, for service in the National Guard or in the Armed Forces reserves for the purpose of fulfilling annual field training. Paid military leave shall not exceed ten (10) working days in any one (1) calendar year (Utah State Code 39-3-1 et seq.). Any compensation, including travel and expense allowance, received by the employee must be turned back to the Town of Springdale.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **5. JURY LEAVE**

Any employee may be granted leave with full pay when performing jury duty or when required to serve as a witness for litigation in any municipal, county, state, or federal court, or before an administrative tribunal. Any compensation, including travel and expense allowance, received by the employee must be turned back to the Town of Springdale. Paid leave will not be granted when the employee is serving as his or her own witness in any legal proceeding to which he or she is a party.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **6. BEREAVEMENT LEAVE**

Full-time employees will be granted up to three (3) days of bereavement leave with pay after the death of the following:

- Employee's spouse or domestic partner
- Child or step-child
- Daughter-in-law or son-in-law
- Parent or step-parent
- Grandchild
- Mother-in-law or father-in-law/Child's grandparent
- Sister-in-law or brother-in-law
- Grandparent or spouse-or-domestic-partner's grandparent
- Brother or sister

Bereavement leave shall also apply in the event of a stillbirth or miscarriage.

Bereavement leave shall not be charged against accrued annual vacation or sick leave.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **7. ADMINISTRATIVE LEAVE WITH PAY**

- A. A full-time or probationary employee may be granted administrative leave with pay pending the outcome of an investigation undertaken to determine if disciplinary action against the employee is warranted.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **8. LEAVE WITHOUT PAY**

- A. The Town Manager, with the consent of the Mayor and Town Council, may grant an employee leave without pay for a specified period of time, not to exceed one (1) year. At the expiration of the leave without pay, the employee shall return to the same position, where feasible, or to a similar position. Failure of the employee to return to work at the expiration of leave without pay shall be considered a voluntary resignation of their position and employment without notice.
- B. A leave without pay shall not constitute a break in service. However, during a leave without pay period in excess of thirty (30) calendar days, an employee's annual vacation leave, sick leave, and time toward their performance evaluation, if applicable, shall not accrue.
- C. Leave without pay shall be granted:
  - 1) For education purposes when the employee's course of study will be of direct benefit to the Town of Springdale, employee's absence will not be a hardship for the department, and the employee agrees to return to work at the end of the leave period.
  - 2) To attend funerals not covered by the funeral leave policy.
  - 3)
- D. Employees are expected to apply for leave without pay in advance and in writing, providing as much detail about the absence as possible so that the Town Manager may decide whether the leave without pay is warranted.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION L: LEAVES OF ABSENCE**

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#### **9. DOCUMENTATION OF LEAVE**

Some of the above absences must be supported by a copy of the official paperwork causing the absence. Such paperwork must be submitted to the Town Manager as soon as possible. In some cases where official paperwork is not available the Town Manager may request that the employee supply additional information in writing to support the absence.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION M: GENERAL SAFETY**

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#### **1. GENERAL POLICY**

The following general safety rules will apply in all Town workplaces. Each work unit may prepare separate safety rules applicable to the specific nature of work in their area but not conflict with these rules.

- A. Proper licensing and extreme caution are required by all employees operating any type of power equipment.
- B. Employees will use safety equipment appropriate to the job, such as safety glasses, gloves, toe guards, back supports, and hard hats, if required or appropriate to the work performed.
- C. Employees will avoid wearing loose clothing and jewelry while working on or near equipment and machines. Long hair will be properly secured.
- D. All accidents, regardless of severity, personal or vehicular, shall be reported immediately to the supervisor and HR Director.
- E. Defective equipment will be reported immediately to the supervisor or Town Manager.
- F. Employees will not operate equipment or use tools for which licensing and training has not been received.
- G. In all work situations, safeguards required by State and Federal Safety Orders will be provided.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION M: GENERAL SAFETY**

---

#### **1. GENERAL POLICY - continued**

H. Due to the potential risk of serious injury or death, employees are prohibited from entertaining, or caring for, guests or family members in or around inherently dangerous work areas. These areas include, but are not limited to:

- 1) Road repair;
- 2) Construction areas;
- 3) Vehicle maintenance areas;
- 4) Swimming pools;
- 5) Animal control;
- 6) Utility plants; and
- 7) Sewers.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION M: GENERAL SAFETY**

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#### **2. PROPER USE OF TOWN OF SPRINGDALE EQUIPMENT AND TOOLS**

- A. Except as specifically authorized in this policy, the use of Town equipment or tools for private purposes is strictly prohibited. However, reasonable use of Town tools and equipment to protect property and preserve life is authorized.
- B. Employees shall be required to attend training provided by the Town of Springdale; including an explanation of job hazards, safety procedures and training on all equipment, tools, etc., necessary for the accomplishment of the employee's job description. Employees may attend additional training as approved by the employee's supervisor.
- D. Operators and passengers in a business-use vehicle equipped with seat belts must wear them when the vehicle is in operation, and all employees operating vehicles shall observe all local traffic laws.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION M: GENERAL SAFETY**

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#### **3. SAFETY COMMITTEE**

The Town has established a safety committee to recommend improvements to workplace safety programs and to identify corrective measures needed to eliminate or control recognized safety and health hazards.

The safety committee consists of the following Town personnel: Mayor, Town Manager, Chief of Police, Town Treasurer/HR Director, Public Works Superintendent, Parks and Rec Director, Director of Community Development, and any other employee designated by the Mayor and Town Manager.

The safety committee will meet monthly and will be chaired by the Mayor.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION M: GENERAL SAFETY**

---

#### **4. ACCIDENT/INJURY REPORTING; RETURN TO WORK**

- A. Policy: The Town of Springdale is committed to provide a safe work environment for our employees. But if an employee becomes injured on the job, we will do everything we can to help the employee heal and return to work as quickly as possible. When employees are able to work and be a contributing team member, the injured employee heals faster, we are more productive and the morale of our entire organization is lifted.
- B. Workers Compensation Coordinator: The Town Treasurer/HR Director is our Workers Compensation Coordinator (WCC). The WCC will help injured employees and their supervisors achieve the goal of helping injured employees get healthy and back to being a contributing team member.
- C. Medical Providers: If a life-threatening injury occurs, 911 should be called to access normal emergency care. Employees with routine, non-life-threatening injuries should be taken by their supervisor to:
  - 1) IHC WorkMed, 385 N. 3050 East, St. George, UT 84790
  - 2) If the provider is not available, call the WCC to arrange medical care.
  - 3) Employees must seek care from the provider designated by the WCC. Failure to do so may affect their workers compensation claim.



## **CHAPTER 3 - MANAGEMENT**

### **SECTION M: GENERAL SAFETY**

---

#### **4. ACCIDENT/INJURY REPORTING; RETURN TO WORK - continued**

- D. Injury Reporting: All injuries, no matter how minor, must be reported immediately to the employee's supervisor. Supervisors report these injuries to the WCC, who begins a workers compensation claim and helps to arrange medical care, and the Town Manager. All injuries must be reported the day they occur. Failure to report injuries could jeopardize coverage of the injury.
- E. Post Injury Procedures: After receiving medical treatment, the following steps must be taken:
  - 1 Employee and his/her supervisor deliver all paper work from the medical provider to the WCC.
  - 2) The WCC reports the injury to the Town's workers compensation insurance carrier.
  - 3) The WCC provides a copy of the medical report to the injured employee.
  - 4) WCC and the injured employee's supervisor review any restrictions given by the medical provider with the injured employee's job description and determine if the employee's normal job meets the restrictions. If not, a Restricted/Light/Transitional Duty job will be assigned to accommodate the restrictions. The new position may be in another department and require the employee to perform duties not contained within the employee's current job description.
  - 5) Injured employees must comply with the restrictions they are given. Failure to do so could slow their recovery or cause further injury.
  - 6) The WCC communicates with insurance adjusters to manage the worker's compensation claim.

## CHAPTER 3 - MANAGEMENT

### SECTION M: GENERAL SAFETY

---

#### 4. ACCIDENT/INJURY REPORTING; RETURN TO WORK - continued

- F. Restricted/Light/Transitional Duty: The Town of Springdale will accommodate restricted duty jobs for workers injured on the job. The WCC will work with the employee's supervisor and the Town Manager to design a work strategy that meets the injured employee's restrictions and accomplishes the Town's goals.
- G. Follow up: Injured employee's supervisor and the WCC will regularly follow up with the employee and medical providers to make sure the employee is getting the care required, attending their medical appointments, complying with their restrictions and that any restricted duty assignments are helping the employee move closer to their regular job duties.
- H. Return to Work: Employees must return to work after the approval of the medical provider. A statement from the medical provider stating the employee is able to resume full and normal duties will be provided to the WCC prior to returning to regular duties.

An employee who is unable to return to work in the same job classification due to the nature of the injury may be permanently assigned a new position. The new position may be in another department and may be unrelated to the employee's previous duties. If necessary, the employee will be retrained to function in the new job classification.

If the employee is unwilling to be assigned to another position, the employee may be terminated and paid any accrued benefits and salary in accordance with town policies.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION N: UTAH OSHA REQUIREMENTS**

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#### **1. GENERAL POLICY**

It is the policy of the Town of Springdale to maintain an environment that is free from any recognizable hazard that is likely to cause death or serious injury to any employee through open communication with all employees.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION N: UTAH OSHA REQUIREMENTS**

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#### **2. POSTING UOSHA NOTICES**

The Town of Springdale will post all required UOSH and OSHA notices in conspicuous places (such as employee bulletin boards or where similar notices are usually posted). Employees may obtain additional information from the Town HR Director or Town Manager when they have questions about any of the standards that are provided under UOSH or OSHA.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION N: UTAH OSHA REQUIREMENTS**

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#### **3. INSPECTION PROCEDURES**

All employees should follow the procedures listed below in the event inspectors from UOSH or OSHA present themselves on the job site.

- A. If an inspector arrives on the job site, an employee should understand that they are not authorized to offer any information requested by the inspector.
- B. The employee will inform the inspector that the employee will contact the Town Manager who will accompany the inspector during any inspection.
- C. The Town Manager should make sure that all employees know who they are required to contact, including all alternates, in the event an UOSH inspector shows up on the job site.
- D. If the UOSH inspector does not reveal the appropriate credentials at the outset of the inspection, the Town Manager should ask the inspector to reveal his or her credentials and should examine them before allowing an inspection of the job site.
- E. The Town Manager should not refuse an inspection of the job site where the inspector does not have a warrant to inspect.
- F. If the credentials are appropriate, and before beginning the inspection, the Town Manager should ask the inspector the reason the inspection is being conducted. If it is routine, no further requests are required. If the inspection was due to an employee complaint, the Town Manager should request a copy of the complaint. This will help the Town of Springdale correct any safety problems.
- G. The Town Manager should accompany the inspector during the entire inspection of the job site.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION N: UTAH OSHA REQUIREMENTS**

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#### **3. INSPECTION PROCEDURES - continued**

- H. The Town Manager should take notes throughout the entire inspection. The Town Manager should note every comment and observation made by those participating in the inspection. The Town Manager accompanying the inspector should not volunteer any unsolicited information.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION N: UTAH OSHA REQUIREMENTS**

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#### **4. ACCIDENT REPORTING PROCEDURES**

- A. Accidents/injuries will be reported as per Section M.4. above.
- B. The Town Manager will investigate any job-related injury in accordance with OSHA guidelines and endeavor to comply with all OSHA reporting requirements.

## **CHAPTER 3 - MANAGEMENT**

### **SECTION O: DISASTER PLANNING**

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From time to time, the Town of Springdale may implement new policies or modify existing policies addressing uniform disaster response planning, suspicious person or assailant threats, telephone bomb threats, mail letter and package bomb threats, and suspicious article threats. All employees are expected to understand and follow these written policies.



## **POLICY STATEMENT AND ACKNOWLEDGMENT**

1. I have received my copy of the Personnel Policies and Procedures Manual, which outlines the policies, practices and benefits of employment with the Town of Springdale. I accept responsibility for informing myself about these policies by reading them and, if necessary, by asking that they be explained to me.
2. Since the information in this Personnel Policies and Procedures Manual is necessarily subject to change, it is understood that the information that I have received may be changed or replaced by other policies and procedures that the Town of Springdale may adopt in the future. I understand and acknowledge that no one has promised me that the Town of Springdale will not change these policies, and understand that the Town of Springdale has reserved the right to change these policies in the future.
3. For Probationary Employees and department managers, I understand and agree that my employment with the Town of Springdale is at-will, meaning that either the Town of Springdale or myself may terminate the employment relationship at any time for any reason. I understand that neither the Town of Springdale nor myself has any obligation to base a termination decision on anything other than intent not to continue the employment relationship. No one has promised me that my employment will only be terminated for cause, or only for any particular reason, or will only be terminated through some particular process or procedure above, beyond, or in addition to such due process as may be required by Federal or State constitutional and statutory requirements.
4. I understand and agree that no one at the Town of Springdale has authority to offer me employment on terms different from what is stated in this manual, and I understand and agree that no one at the Town of Springdale is authorized to promise in the future that the terms of my employment will be different from what is stated in this manual.

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**Signature of Employee**

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**Printed Name of Employee**

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**Date**

# EXHIBIT 10

## Part 13

### Municipal Officers' and Employees' Ethics Act

#### 10-3-1301 Short title.

This part is known as the "Municipal Officers' and Employees' Ethics Act."

Amended by Chapter 147, 1989 General Session

#### 10-3-1302 Purpose.

The purposes of this part are to establish standards of conduct for municipal officers and employees and to require these persons to disclose actual or potential conflicts of interest between their public duties and their personal interests.

Amended by Chapter 438, 2024 General Session

#### 10-3-1303 Definitions.

As used in this part:

- (1)
  - (a) "Appointed officer" means an individual appointed to:
    - (i) a statutory office or position; or
    - (ii) a position of employment with a city or with a community reinvestment agency under Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act.
  - (b) "Appointed officer" includes an individual serving on a special, regular, or full-time committee, agency, or board, regardless of whether the individual is compensated for the individual's services.
  - (c) "Appointed officer" does not include an elected officer.
- (2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.
- (3) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- (4) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to a person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.
- (5) "Elected officer" means:
  - (a) an individual elected or appointed to fill a vacancy in the office of mayor, commissioner, or council member; or
  - (b) an individual who is considered to be elected to the office of mayor, commissioner, or council member by a municipal legislative body in accordance with Section 20A-1-206.
- (6) "Improper disclosure" means the disclosure of private, controlled, or protected information to a person who does not have both the right and the need to receive the information.
- (7) "Municipal employee" means an individual who is employed on a full or part-time basis by a municipality or by a community reinvestment agency under Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act.

- (8) "Officer" means an appointed officer or an elected officer.
- (9) "Private, controlled, or protected information" means information classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act, or another applicable provision of law.
- (10) "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

Amended by Chapter 443, 2024 General Session

#### **10-3-1303.5 Statutory construction.**

The definition of appointed officer in Section 10-3-1303 does not have the effect of making an appointed individual or employee an officer of the municipality.

Enacted by Chapter 443, 2024 General Session

#### **10-3-1304 Use of office for personal benefit prohibited.**

- (1) As used in this section, "economic benefit tantamount to a gift" includes:
  - (a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; or
  - (b) compensation received for a private service rendered at a rate substantially exceeding the fair market value of the service.
- (2) **Except as provided in Subsection (4), it is an offense for an officer or municipal employee to:**
  - (a) disclose or improperly use private, controlled, or protected information acquired by reason of the officer's or municipal employee's official position or in the course of official duties in order to further substantially the officer's or municipal employee's personal economic interest or to secure special privileges or exemptions for the officer or municipal employee or for others;
  - (b) use or attempt to use the officer's or municipal employee's official position to:
    - (i) further substantially the officer's or municipal employee's personal economic interest; or
    - (ii) secure special privileges for the officer or municipal employee or for others; or
  - (c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer or municipal employee or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:
    - (i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or
    - (ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.
- (3) Subsection (2)(c) does not apply to:
  - (a) an occasional nonpecuniary gift having a value of less than \$50;
  - (b) an award publicly presented in recognition of public services;
  - (c) any bona fide loan made in the ordinary course of business; or
  - (d) a political campaign contribution.
- (4) This section does not apply to an officer or municipal employee who engages in conduct that constitutes a violation of this section to the extent that the officer or municipal employee is chargeable, for the same conduct, under Section 76-8-105.

Amended by Chapter 443, 2024 General Session

**10-3-1305 Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.**

- (1) As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.
- (2) Except as provided in Subsection (9), it is an offense for an officer who is a member of a municipal body to receive or agree to receive compensation for assisting a person or business entity in a transaction involving the municipality of which the officer is elected or appointed unless the officer:
  - (a) files with the mayor a sworn statement disclosing the information described in Subsection (8);
  - (b) discloses the information described in Subsection (8) in an open meeting to the members of the municipal body of which the officer is a member immediately before the discussion; and
  - (c) for an officer who is an elected officer, files the sworn statement described in Subsection (2)(a) with the city recorder or town clerk.
- (3) It is an offense for an appointed officer who is not a member of a municipal body or a municipal employee to receive or agree to receive compensation for assisting a person or business entity in a transaction involving the municipality by which the appointed officer or municipal employee is employed unless the appointed officer or employee:
  - (a) files with the mayor a sworn statement disclosing the information described in Subsection (8); and
  - (b) discloses the information described in Subsection (8) to:
    - (i) the appointed officer's or municipal employee's immediate supervisor; and
    - (ii) any other municipal officer or employee who may rely on the appointed officer's or municipal employee's representations in evaluating or approving the transaction.
- (4)
  - (a) An officer or municipal employee shall file the sworn statement described in Subsection (2)(a) or (3)(a), as applicable, on or before the earlier of:
    - (i) 10 days before the date on which the officer or municipal employee and the person or business entity being assisted enter into an agreement; or
    - (ii) 10 days before the date on which the officer or municipal employee receives compensation.
- (5) In accordance with Subsection (2)(c), an elected officer shall file the sworn statement with the city recorder or town clerk on or before the earlier of the deadlines described in Subsections (4)(a)(i) and (ii).
- (6) A municipal recorder or town clerk who receives a sworn statement described in Subsection (2)(a) shall:
  - (a) post a copy of the sworn statement on the municipality's website; and
  - (b) ensure that the sworn statement remains posted on the municipality's website until the elected officer leaves office.
- (7) The sworn statements described in this section are public information and shall be available for examination by the public.
- (8) The sworn statement and public disclosure described in Subsections (2) and (3) shall contain:
  - (a) the name and address of the officer or municipal employee;
  - (b) the name and address of the person or business entity being or to be assisted or in which the officer or municipal employee has a substantial interest; and
  - (c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

- (9) This section does not apply to an officer who is a member of a municipal body and who engages in conduct that constitutes a violation of this section to the extent that the officer is chargeable, for the same conduct, under Section 76-8-105.

Amended by Chapter 443, 2024 General Session

**10-3-1306 Interest in business entity regulated by municipality -- Disclosure statement required.**

- (1) An officer under this part, or a municipal employee, who is an officer, director, agent, or employee or the owner of a substantial interest in a business entity that is subject to the regulation of the municipality in which the officer or municipal employee is elected, appointed, or employed, shall disclose the position held and the nature and value of the officer's or employee's interest:
- (a) upon first becoming appointed, elected, or employed by the municipality; and
  - (b) when the officer's or municipal employee's position in the business entity changes significantly or when the value of the officer's or municipal employee's interest in the entity significantly increases above the officer's or municipal employee's most recent disclosure.
- (2) An officer or municipal employee shall make the disclosure described in Subsection (1) in a sworn statement filed with:
- (a) the mayor; and
  - (b) for an officer who is an elected officer, the city recorder or town clerk.
- (3) The mayor shall:
- (a) report the substance of the sworn statement described in Subsection (2) to the members of the governing body; or
  - (b) provide a copy of the sworn statement to the members of the governing body no later than 30 days after the date on which the mayor receives the statement.
- (4) The municipal recorder or town clerk who receives the sworn statement described in Subsection (2) shall:
- (a) post a copy of the sworn statement on the municipality's website; and
  - (b) ensure that the sworn statement remains posted on the municipality's website until the elected officer leaves office.
- (5)
- (a) This section does not apply to an instance where the value of the interest does not exceed \$5,000.
  - (b) A life insurance policy or an annuity may not be considered in determining the value of the interest.

Amended by Chapter 443, 2024 General Session

**10-3-1307 Interest in business entity doing business with municipality -- Disclosure.**

- (1) An officer under this part, or municipal employee, who is an officer, director, agent, employee, or owner of a substantial interest in a business entity that does or anticipates doing business with the municipality in which the officer or municipal employee is appointed, elected, or employed, shall:
- (a) publicly disclose the conflict of interest to the members of the body of which the officer is a member or by which the municipal employee is employed, immediately before any discussion by the municipal body concerning matters relating to the business entity, the nature of the officer's or municipal employee's interest in the business entity; and

- (b) for an officer who is an elected officer, file a sworn statement describing the conflict of interest with the city recorder or town clerk.
- (2) The public disclosure described in Subsection (1)(a) shall be entered in the minutes of the meeting.
- (3) A city recorder or town clerk who receives the sworn statement described in Subsection (1)(b) shall:
  - (a) post a copy of the sworn statement on the municipality's website; and
  - (b) ensure that the sworn statement remains posted on the municipality's website until the elected officer leaves office.
- (4) Disclosure by a municipal employee under this section is satisfied if the municipal employee makes the disclosure in the manner described in Section 10-3-1305 or Section 10-3-1306.

Amended by Chapter 443, 2024 General Session

**10-3-1308 Investment creating conflict of interest with duties -- Disclosure.**

An officer or municipal employee who has a personal interest or investment that creates a conflict between the officer's or municipal employee's personal interests and the officer's or municipal employee's public duties shall disclose the conflict in the manner described in Section 10-3-1306.

Amended by Chapter 443, 2024 General Session

**10-3-1309 Inducing officer or employee to violate part prohibited.**

It is a class A misdemeanor for any person to induce or seek to induce an officer or a municipal employee to violate any of the provisions of this part.

Amended by Chapter 443, 2024 General Session

**10-3-1310 Penalties for violation -- Dismissal from employment or removal from office.**

In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates this part, with the exception of Sections 10-3-1306, 10-3-1307, 10-3-1308, and 10-3-1309, shall be dismissed from employment or removed from office and is guilty of:

- (1) a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
- (2) a felony of the third degree if:
  - (a) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
  - (b) the elected or appointed officer or municipal employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
- (3) a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or
- (4) a class B misdemeanor if the value of the compensation or assistance was \$100 or less.

Amended by Chapter 147, 1989 General Session

**10-3-1311 Municipal ethics commission -- Complaints charging violations.**

- (1) A municipality may establish by ordinance an ethics commission to review a complaint against an officer or a municipal employee subject to this part for a violation of a provision of this part.
- (2)
  - (a) A person filing a complaint for a violation of this part shall file the complaint:
    - (i) with the municipal ethics commission, if a municipality has established a municipal ethics commission in accordance with Subsection (1); or
    - (ii) with the Political Subdivisions Ethics Review Commission in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission, if the municipality has not established a municipal ethics commission.
  - (b) A municipality that receives a complaint described in Subsection (2)(a) may:
    - (i) accept the complaint if the municipality has established a municipal ethics commission in accordance with Subsection (1); or
    - (ii) forward the complaint to the Political Subdivisions Ethics Review Commission established in Section 63A-15-201:
      - (A) regardless of whether the municipality has established a municipal ethics commission; or
      - (B) if the municipality has not established a municipal ethics commission.
- (3) If the alleged ethics complaint is against a person who is a member of the municipal ethics commission, the complaint shall be filed with or forwarded to the Political Subdivisions Ethics Review Commission.

Amended by Chapter 443, 2024 General Session

**10-3-1312 Violation of disclosure requirements -- Penalties -- Rescission of prohibited transaction.**

If a transaction is entered into in connection with a violation of Section 10-3-1305, 10-3-1306, 10-3-1307, or 10-3-1308, the municipality:

- (1) shall dismiss or remove the officer or municipal employee who knowingly and intentionally violates this part from employment or office; and
- (2) may rescind or void a contract or subcontract entered into pursuant to that transaction without returning any part of the consideration received by the municipality.

Amended by Chapter 443, 2024 General Session

**10-3-1313 Annual conflict of interest disclosure -- City recorder or town clerk -- Posting of written disclosure statement -- Penalties.**

- (1) In addition to any other disclosure obligation described in this part, an elected officer shall, no sooner than January 1 and no later than January 31 of each year during which the elected officer holds the office of mayor, commissioner, or council member:
  - (a) prepare a written conflict of interest disclosure statement that contains a response to each item of information described in Subsection 20A-11-1604(6); and
  - (b) submit the written disclosure statement to the city recorder or town clerk.
- (2)
  - (a) No later than 10 business days after the day on which the elected officer submits the written disclosure statement described in Subsection (1) to the city recorder or town clerk, the city recorder or town clerk shall:
    - (i) post an electronic copy of the written disclosure statement on the municipality's website; and
    - (ii) provide the lieutenant governor with a link to the electronic posting described in Subsection (2)(a)(i).



- (b) The city recorder or town clerk shall ensure that the elected officer's written disclosure statement remains posted on the municipality's website until the elected officer leaves office.
- (3) A city recorder or town clerk shall take the action described in Subsection (4) if:
  - (a) an elected officer fails to timely submit the written disclosure statement described in Subsection (1); or
  - (b) a submitted written disclosure statement does not comply with the requirements of Subsection 20A-11-1604(6).
- (4) If a circumstance described in Subsection (3) occurs, the city recorder or town clerk shall, within five days after the day on which the city recorder or town clerk determines that a violation occurred, notify the elected officer of the violation and direct the elected officer to submit an amended written disclosure statement correcting the problem.
- (5)
  - (a) It is unlawful for an elected officer to fail to submit or amend a written disclosure statement within seven days after the day on which the elected officer receives the notice described in Subsection (4).
  - (b) An elected officer who violates Subsection (5)(a) is guilty of a class B misdemeanor.
  - (c) The city recorder or town clerk shall report a violation of Subsection (5)(a) to the attorney general.
  - (d) In addition to the criminal penalty described in Subsection (5)(b), the city recorder or town clerk shall impose a civil fine of \$100 against an elected officer who violates Subsection (5)(a).
- (6) The city recorder or town clerk shall deposit a fine collected under this section into the municipality's general fund as a dedicated credit to pay for the costs of administering this section.

Enacted by Chapter 443, 2024 General Session

# EXHIBIT 11

**Effective 5/8/2018**

## **Chapter 15**

### **Political Subdivisions Ethics Review Commission**

#### **Part 1**

#### **General Provisions**

#### **63A-15-101 Title.**

This chapter is known as "Political Subdivisions Ethics Review Commission."

Renumbered and Amended by Chapter 461, 2018 General Session

#### **63A-15-102 Definitions.**

- (1) "Commission" means the Political Subdivisions Ethics Review Commission established in Section 63A-15-201.
- (2) "Complainant" means a person who files a complaint in accordance with Section 63A-15-501.
- (3) "Ethics violation" means a violation of:
  - (a) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
  - (b) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
  - (c) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (4) "Local political subdivision ethics commission" means an ethics commission established by a political subdivision within the political subdivision or with another political subdivision by interlocal agreement in accordance with Section 63A-15-103.
- (5) "Political subdivision" means a county, municipality, school district, community reinvestment agency, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, a local building authority, or any other governmental subdivision or public corporation.
- (6)
  - (a) "Political subdivision employee" means a person who is:
    - (i)
      - (A) in a municipality, employed as a city manager or non-elected chief executive on a full or part-time basis; or
      - (B) employed as the non-elected chief executive by a political subdivision other than a municipality on a full or part-time basis; and
    - (ii) subject to:
      - (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
      - (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
      - (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
  - (b) "Political subdivision employee" does not include:
    - (i) a person who is a political subdivision officer;
    - (ii) an employee of a state entity; or
    - (iii) a legislative employee as defined in Section 67-16-3.
- (7) "Political subdivision governing body" means:
  - (a) for a county, the county legislative body as defined in Section 68-3-12.5;
  - (b) for a municipality, the council of the city or town;
  - (c) for a school district, the local board of education described in Section 53G-4-201;
  - (d) for a community reinvestment agency, the agency board described in Section 17C-1-203;

- (e) for a special district, the board of trustees described in Section 17B-1-301;
  - (f) for a special service district:
    - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
    - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301;
  - (g) for an entity created by an interlocal agreement, the governing body of an interlocal entity, as defined in Section 11-13-103;
  - (h) for a local building authority, the governing body, as defined in Section 17D-2-102, that creates the local building authority; or
  - (i) for any other governmental subdivision or public corporation, the board or other body authorized to make executive and management decisions for the subdivision or public corporation.
- (8)
- (a) "Political subdivision officer" means a person elected in a political subdivision who is subject to:
    - (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
    - (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
    - (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
  - (b) "Political subdivision officer" does not include:
    - (i) a person elected or appointed to a state entity;
    - (ii) the governor;
    - (iii) the lieutenant governor;
    - (iv) a member or member-elect of either house of the Legislature; or
    - (v) a member of Utah's congressional delegation.
- (9) "Respondent" means a person who files a response in accordance with Section 63A-15-604.

Amended by Chapter 16, 2023 General Session

**63A-15-103 Local ethics commission permitted -- Filing requirements.**

- (1) A political subdivision, other than a municipality described in Section 10-3-1311, a county described in Section 17-16a-11, or a school district may establish a local political subdivision ethics commission within the political subdivision to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (2) A political subdivision other than a school district may enter into an interlocal agreement with another political subdivision, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to establish a local political subdivision ethics commission to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (3)
  - (a) A person filing a complaint for an ethics violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, shall file the complaint with:
    - (i) a local political subdivision ethics commission, if the political subdivision has established a local political subdivision ethics commission under Subsection (1) or (2); or
    - (ii) the commission if the political subdivision has not established a local political subdivision ethics commission or is a school district.
  - (b) A political subdivision that receives a complaint described in Subsection (3)(a) may:

- (i) accept the complaint if the political subdivision has established a local political subdivision ethics commission in accordance with Subsection (1) or (2); or
- (ii) forward the complaint to the commission:
  - (A) regardless of whether the political subdivision has established a local political subdivision ethics commission;
  - (B) if the political subdivision has not established a local political subdivision ethics commission; or
  - (C) if the complaint is regarding a member of a local school board as defined in Section 53E-1-102.

Amended by Chapter 378, 2023 General Session

## **Part 2**

### **Political Subdivisions Ethics Review Commission**

#### **63A-15-201 Commission established -- Membership.**

- (1) There is established a **Political Subdivisions Ethics Review Commission**.
- (2) The commission is composed of seven individuals, each of whom is registered to vote in this state and appointed by the governor with the advice and consent of the Senate, as follows:
  - (a) one member who has served, but no longer serves, as a judge of a court of record in this state;
  - (b) one member who has served as a mayor or municipal council member no more recently than four years before the date of appointment;
  - (c) one member who has served as a member of a local board of education no more recently than four years before the date of appointment;
  - (d) two members who are lay persons; and
  - (e) two members, each of whom is one of the following:
    - (i) a municipal mayor no more recently than four years before the date of appointment;
    - (ii) a municipal council member no more recently than four years before the date of appointment;
    - (iii) a county mayor no more recently than four years before the date of appointment;
    - (iv) a county commissioner no more recently than four years before the date of appointment;
    - (v) a special service district administrative control board member no more recently than four years before the date of appointment;
    - (vi) a special district board of trustees member no more recently than four years before the date of appointment; or
    - (vii) a judge who has served, but no longer serves, as a judge of a court of record in this state.
- (3)
  - (a) A member of the commission may not, during the member's term of office on the commission, act or serve as:
    - (i) a political subdivision officer;
    - (ii) a political subdivision employee;
    - (iii) an agency head as defined in Section 67-16-3;
    - (iv) a lobbyist as defined in Section 36-11-102; or
    - (v) a principal as defined in Section 36-11-102.

- (b) In addition to the seven members described in Subsection (2), the governor shall, with the advice and consent of the Senate, appoint one individual as an alternate member of the commission who:
  - (i) may be a lay person;
  - (ii) shall be registered to vote in the state; and
  - (iii) complies with the requirements described in Subsection (3)(a).
- (c) The alternate member described in Subsection (3)(b):
  - (i) shall serve as a member of the commission in the place of one of the seven members described in Subsection (2) if that member is temporarily unable or unavailable to participate in a commission function or is disqualified under Section 63A-15-303; and
  - (ii) may not cast a vote on the commission unless the alternate member is serving in the capacity described in Subsection (3)(c)(i).
- (4)
  - (a)
    - (i) Except as provided in Subsection (4)(a)(ii), each member of the commission shall serve a four-year term.
    - (ii) When appointing the initial members upon formation of the commission, a member described in Subsections (2)(b) through (d) shall be appointed to a two-year term so that approximately half of the commission is appointed every two years.
  - (b)
    - (i) When a vacancy occurs in the commission's membership for any reason, a replacement member shall be appointed for the unexpired term of the vacating member using the procedures and requirements described in Subsection (2) or (3)(b), as applicable.
    - (ii) For the purposes of this section, an appointment for an unexpired term of a vacating member is not considered a full term.
  - (c) A member may not be appointed to serve for more than two full terms, whether those terms are two or four years.
  - (d) A member of the commission may resign from the commission by giving one month's written notice of the resignation to the governor.
  - (e) The governor shall remove a member from the commission if the member:
    - (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;
    - (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral turpitude; or
    - (iii) fails to meet the qualifications of office as provided in this section.
  - (f)
    - (i) If a commission member is accused of wrongdoing in a complaint, or if a commission member has a conflict of interest in relation to a matter before the commission:
      - (A) the alternate member described in Subsection (3)(b) shall serve in the member's place for the purposes of reviewing the complaint; or
      - (B) if the alternate member has already taken the place of another commission member or is otherwise not available, the commission shall appoint another individual to temporarily serve in the member's place for the purposes of reviewing the complaint.
    - (ii) An individual appointed by the commission under Subsection (4)(f)(i)(B):
      - (A) is not required to be confirmed by the Senate;
      - (B) may be a lay person;
      - (C) shall be registered to vote in the state; and
      - (D) shall comply with Subsection (3)(a).
- (5)

- (a) Except as provided in Subsection (5)(b)(i), a member of the commission may not receive compensation or benefits for the member's service.
- (b)
  - (i) A member may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
  - (ii) A member may decline to receive per diem and expenses for the member's service.
- (6) The commission members shall, by a majority vote, elect a commission chair from among the commission members.

Amended by Chapter 529, 2024 General Session

**63A-15-202 Meetings -- Staff -- Legal counsel -- Additional appropriations.**

- (1) The commission shall meet for the purpose of reviewing an ethics complaint when:
  - (a) except otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or
  - (b) a majority of members agree to meet.
- (2) A majority of the commission is a quorum.
- (3)
  - (a) The commission shall prepare, on an annual basis, a summary data report that contains:
    - (i) a general description of the activities of the commission during the past year;
    - (ii) the number of ethics complaints filed with the commission;
    - (iii) the number of ethics complaints dismissed in accordance with Section 63A-15-602;
    - (iv) the number of ethics complaints reviewed by the commission in accordance with Section 63A-15-701;
    - (v) an executive summary of each complaint review in accordance with Section 63A-15-701; and
    - (vi) an accounting of the commission's budget and expenditures.
  - (b) The commission shall submit the summary data report to the governor on an annual basis.
  - (c) The summary data report shall be a public record.
- (4)
  - (a) The commission shall employ staff at a level that is reasonable to assist the commission in performing its duties as established in this chapter.
  - (b) Staff for the commission may not perform services for a political subdivision.
  - (c) A person employed as staff for the commission may be the same person employed as staff for the Independent Legislative Ethics Commission, if the staff ensures that proper protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of interest.
- (5) A meeting held by the commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, unless otherwise provided.
- (6) The commission:
  - (a) is an independent entity established within the department for budgetary and general administrative purposes only;
  - (b) is not under the direction or control of the department, the executive director, or any other officer or employee of the department;
  - (c) shall employ a director to provide administrative support to the commission and to assist the commission in fulfilling the commission's duties;
  - (d) may employ additional staff, to work under the direction of the director;

- (e) shall contract with private legal counsel to provide legal services to the commission, as needed; and
- (f) may, in consultation with the Office of the Legislative Fiscal Analyst, request supplemental appropriations to pay the costs of legal fees and other staffing needs that exceed the commission's budget due to the number or complexity of the ethics complaints filed with or considered by the commission in a fiscal year.

Renumbered and Amended by Chapter 461, 2018 General Session

### **Part 3**

#### **General Powers and Procedures**

#### **63A-15-301 Authority to review complaint -- Grounds for complaint -- Limitations on filings.**

- (1) Subject to the requirements of this chapter and Section 10-3-1311 or 17-16a-11, the commission is authorized to review an ethics complaint against a political subdivision officer or employee if the complaint alleges:
  - (a) if the applicable political subdivision is a municipality, an ethics violation of Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act by:
    - (i) a city manager or non-elected chief executive; or
    - (ii) an elected officer, as defined in Section 10-3-1303;
  - (b) if the applicable political subdivision is a county, an ethics violation of Title 17, Chapter 16a, County Officers and Employees Disclosure Act by:
    - (i) an appointed officer, as defined in Section 17-16a-3;
    - (ii) an elected officer, as defined in Section 17-16a-3; or
    - (iii) an employee subject to Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
  - (c) for a political subdivision officer or employee other than a municipal officer or employee described in Subsection (1)(a) or a county officer or employee described in Subsection (1)(b), an ethics violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (2) A complaint described in Subsection (1) shall be filed in accordance with the time limit provisions, if any, of the applicable part or chapter.
- (3)
  - (a) A complaint may not contain an allegation if that allegation and the general facts and circumstances supporting that allegation have been previously reviewed by a municipal ethics commission established under Section 10-3-1311, a county ethics commission established under Section 17-16a-11, or a local political subdivision ethics commission established under Section 63A-15-103, as applicable, or the commission unless:
    - (i) the allegation was previously reviewed and dismissed by the commission under Section 63A-15-602 or 63A-15-701;
    - (ii) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission; and
    - (iii) the allegation and the general facts and circumstances supporting that allegation have only been reviewed by the commission in accordance with Section 63A-15-701 on one previous occasion.
  - (b) The commission may not review a complaint that is currently before:
    - (i) a municipal ethics commission established under Section 10-3-1311;



- (ii) a county ethics commission established under Section 17-16a-11; or
- (iii) a local political subdivision ethics commission established under Section 63A-15-103.
- (c) If an allegation in the complaint does not comply with the requirements of Subsection (3)(a) or (b), the allegation shall be summarily dismissed with prejudice by:
  - (i) the chair when reviewing the complaint under Section 63A-15-601; or
  - (ii) the commission, when reviewing the complaint under Section 63A-15-602 or 63A-15-701.
- (4) A complaint against a political subdivision officer or employee may not allege a violation by the political subdivision officer or employee for an act by an individual under the authority of the political subdivision officer or employee, unless the complaint evidences that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the act;
  - (b)
    - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
    - (ii) failed to take appropriate action to prevent the act;
  - (c)
    - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
    - (ii) failed to take appropriate action to stop the act; or
  - (d)
    - (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
    - (ii) failed to take appropriate action in response to the act.
- (5) A complaint against a political subdivision officer or employee may not allege a violation by the political subdivision officer or employee for an individual under the authority of the political subdivision officer or employee failing to act, unless the complaint evidences that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the failure to act;
  - (b)
    - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
    - (ii) failed to take appropriate action to prevent the failure to act;
  - (c)
    - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
    - (ii) failed to take appropriate action to prevent the failure to act; or
  - (d)
    - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
    - (ii) failed to take appropriate action in response to the failure to act.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-302 General powers -- Jurisdiction.**

- (1) The commission has jurisdiction only over an individual who is a political subdivision officer or employee.
- (2) The commission shall dismiss an ethics complaint if:
  - (a) the respondent resigns or is terminated from the political subdivision; or

- (b) except as provided in Subsection (3):
  - (i) the respondent is charged with a criminal violation of:
    - (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
    - (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
    - (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
  - (ii) the facts and allegations presented in the ethics complaint assert the same or similar facts and allegations as those asserted in the criminal charges.
- (3) If an ethics complaint asserts an ethics violation in addition to a criminal violation described in Subsection (2)(b), the commission shall:
  - (a) dismiss an allegation described in Subsection (2)(b)(ii); and
  - (b) proceed with any remaining allegation in the complaint.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-303 Motion to disqualify commission member for conflict of interest.**

- (1) A complainant may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the individual files the motion within 20 days after the later of:
  - (a) the day on which the individual files the ethics complaint; or
  - (b) the day on which the individual knew or should have known of the grounds upon which the motion is based.
- (2) A respondent may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the respondent files the motion within 20 days after the later of:
  - (a) the day on which the respondent receives delivery of the complaint; or
  - (b) the day on which the respondent knew or should have known of the grounds upon which the motion is based.
- (3) A motion filed under this section shall include:
  - (a) a statement that the members to whom the motion relates have a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the members;
  - (b) a detailed description of the grounds supporting the statement described in Subsection (3)(a); and
  - (c) a statement that the motion is filed in good faith, supported by an affidavit or declaration under penalty of Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, stating that the motion and all accompanying statements and documents are true and correct to the best of the complainant's or respondent's knowledge.
- (4) A party may not file more than one motion to disqualify, unless the second or subsequent motion:
  - (a) is based on grounds of which the party was not aware, and could not have been aware, at the time of the earlier motion; and
  - (b) is accompanied by a statement, included in the affidavit or declaration described in Subsection (3)(c), explaining how and when the party first became aware of the grounds described in Subsection (4)(a).
- (5) The commission shall dismiss a motion filed under this section, with prejudice, if the motion:
  - (a) is not timely filed; or
  - (b) does not comply with the requirements of this section.
- (6) A member of the commission may:

- (a) on the member's own motion, disqualify the member from participating in proceedings relating to a complaint if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member; or
  - (b) ask the commission to disqualify another member of the commission if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member.
- (7)
- (a) When a party files a motion under this section, or a when commission member makes a request under Subsection (6)(b), the commission member for whom disqualification is sought may make the initial determination regarding whether the commission member has a conflict of interest.
  - (b) If a commission member described in Subsection (7)(a) determines that the commission member has a conflict of interest, the commission member shall disqualify the commission member from participating in the matter.
  - (c) If a commission member described in Subsection (7)(a) determines that the commission member does not have a conflict of interest, or declines to make the determination, the remainder of the commission shall, by majority vote, determine whether the commission member has a conflict of interest.
  - (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on the issue of a conflict of interest.
- (8) In making a determination under Subsection (7)(c), the commission may:
- (a) gather additional evidence;
  - (b) hear testimony; or
  - (c) request that the commission member who is the subject of the motion or request file an affidavit or declaration responding to questions posed by the commission.

Amended by Chapter 136, 2019 General Session

## **Part 4**

### **Hearing on Ethics Complaint**

#### **63A-15-401 Hearing on ethics complaint -- General procedures.**

- (1) In conducting a hearing on a complaint in accordance with Part 7, Commission Review of Ethics Violation, the commission shall comply with the following process in the order specified:
- (a) introduction and instructions for procedure and process, at the discretion of the chair;
  - (b) complainant's opening argument, to be presented by a complainant or complainant's counsel;
  - (c) complainant's presentation of evidence and witnesses in support of allegations in the complaint;
  - (d) consideration of motions to dismiss the complaint or motions for a finding of no cause, as applicable;
  - (e) respondent's opening argument, to be presented by the respondent or respondent's counsel;
  - (f) respondent's presentation of evidence and witnesses refuting allegations in the complaint;
  - (g) presentation of rebuttal evidence and witnesses by the complainant, at the discretion of the chair;

- (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
  - (i) complainant's closing argument, to be presented by a complainant or complainant's counsel;
  - (j) respondent's closing argument, to be presented by the respondent or respondent's counsel;
  - (k) deliberations by the commission; and
  - (l) adoption of the commission's findings.
- (2) The commission may, in extraordinary circumstances, vary the order contained in Subsection (1) by majority vote and by providing notice to the parties.
- (3) The chair may schedule the examination of a witness or evidence subpoenaed at the request of the chair or the commission under Section 63A-15-403 at the chair's discretion.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-402 Chair as presiding officer.**

- (1) Except as expressly provided otherwise in this chapter, the chair of the commission is vested with the power to direct the commission during meetings authorized by this chapter.
- (2) Unless expressly prohibited from doing so under this chapter, the commission may overrule a decision of the chair by using the following procedure:
- (a) If a member objects to a decision of the chair, that member may appeal the decision by stating:
    - (i) "I appeal the decision of the chair."; and
    - (ii) the basis for the objection.
  - (b) A motion described in Subsection (2)(a) is nondebatable.
  - (c) The chair shall direct a roll call vote to determine if the commission supports the decision of the chair.
  - (d) A majority vote of the commission is necessary to overrule the decision of the chair.
- (3) The chair may set time limitations on any part of a meeting or hearing authorized by this chapter.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-403 Subpoena powers.**

- (1) Except for a preliminary review described in Section 63A-15-602, for a proceeding authorized by this chapter, the commission may issue a subpoena to:
- (a) require the attendance of a witness;
  - (b) direct the production of evidence; or
  - (c) require both the attendance of a witness and the production of evidence.
- (2) The commission shall issue a subpoena:
- (a) in accordance with Section 63A-15-405;
  - (b) at the direction of the commission chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint under Part 7, Commission Review of Ethics Violation; or
  - (c) upon a vote of a majority of the commission members.
- (3) If the commission issues a subpoena authorized under this section, the commission shall give a reasonable period of time for the person or entity to whom the subpoena is directed to petition a district court to quash or modify the subpoena before the time specified in the subpoena for compliance.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-404 Contempt of the commission.**

- (1)
- (a) The following actions constitute contempt of the commission in relation to actions and proceedings under this chapter:
    - (i) disobedience to a direction of the commission chair;
    - (ii) failure, without legal justification, to answer a question during a hearing when directed to do so by:
      - (A) the commission chair, unless the direction is overridden by the commission in accordance with Section 63A-15-402; or
      - (B) a majority of the commission;
    - (iii) failure to comply with a subpoena or other order issued under authority of this chapter;
    - (iv) violation of privacy provisions established by Section 63A-15-502;
    - (v) violation of the communication provisions established by Section 63A-15-407;
    - (vi) violation of a request to comply with a provision of this chapter by a chair or a majority of the members of the commission; or
    - (vii) any other ground that is specified in statute or recognized by common law.
  - (b) Because the purpose of the Fifth Amendment privilege not to incriminate oneself is to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's testimony relates.
- (2)
- (a) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:
    - (i) the commission chair, subject to the provisions of Section 63A-15-402; or
    - (ii) members of the commission, by means of a majority vote.
  - (b) In initiating and pursuing an action against an individual for contempt of the commission, the plaintiff shall comply with the procedures and requirements of Section 63A-15-405.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-405 Order to compel -- Enforcement.**

- (1)
- (a) When the subject of a subpoena issued in accordance with Section 63A-15-403 disobeys or fails to comply with the subpoena, or if a person appears before the commission pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, the commission may:
    - (i) file a motion for an order to compel obedience to the subpoena with the district court within the jurisdiction of the applicable political subdivision;
    - (ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the commission; or
    - (iii) pursue other remedies against persons in contempt of the commission.
  - (b)
    - (i) Upon receipt of a motion under this section, the court shall expedite the hearing and decision on the motion.
    - (ii) A court may:

- (A) order the person named in the subpoena to comply with the subpoena; and
  - (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the commission.
- (2)
- (a) If a commission subpoena requires the production of accounts, books, papers, documents, or other tangible things, the person or entity to whom the subpoena is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.
  - (b) The commission may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (1).
  - (c) If the court finds that a commission subpoena requiring the production of accounts, books, papers, documents, or other tangible things is unreasonable or oppressive, the court may quash or modify the subpoena.
- (3) Nothing in this section prevents the commission from seeking an extraordinary writ to remedy contempt of the commission.
- (4) Any party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-406 Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.**

- (1)
- (a) The chair shall ensure that each witness listed in the complaint and response is subpoenaed for appearance at the hearing unless:
    - (i) the witness is unable to be properly identified or located; or
    - (ii) service is otherwise determined to be impracticable.
  - (b) The chair shall determine the scheduling and order of witnesses and presentation of evidence.
  - (c) The commission may, by majority vote:
    - (i) overrule the chair's decision not to subpoena a witness under Subsection (1)(a);
    - (ii) modify the chair's determination on the scheduling and order of witnesses under Subsection (1)(b);
    - (iii) decline to hear or call a witness that has been requested by the complainant or respondent;
    - (iv) decline to review or consider evidence submitted in relation to an ethics complaint; or
    - (v) request and subpoena witnesses or evidence according to the procedures of Section 63A-15-403.
- (2)
- (a) Each witness shall testify under oath.
  - (b) The chair or the chair's designee shall administer the oath to each witness.
- (3) After the oath has been administered to the witness, the chair shall direct testimony as follows:
- (a) allow the party that has called the witness, or that party's counsel, to question the witness;
  - (b) allow the opposing party, or that party's counsel, to cross-examine the witness;
  - (c) allow additional questioning by a party or a party's counsel as appropriate;
  - (d) give commission members the opportunity to question the witness; and
  - (e) as appropriate, allow further examination of the witness by the commission, or the parties or their counsel.
- (4)
- (a) If the witness, a party, or a party's counsel objects to a question, the chair shall:

- (i) direct the witness to answer; or
    - (ii) rule that the witness is not required to answer the question.
  - (b) If the witness declines to answer a question after the chair or a majority of the commission determines that the witness is required to answer the question, the witness may be held in contempt as provided in Section 63A-15-404.
- (5)
- (a) The chair or a majority of the members of the commission may direct a witness to furnish any relevant evidence for consideration if the witness has brought the material voluntarily or has been required to bring it by subpoena.
  - (b) If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in Section 63A-15-404.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-407 Communications of commission members.**

- (1) As used in this section, "third party" means a person who is not a member of the commission or staff to the commission.
- (2) While a complaint is under review by the commission, a member of the commission may not initiate or consider any communications concerning the complaint with a third party unless:
  - (a) the communication is expressly permitted under the procedures established by this chapter; or
  - (b) the communication is made by the third party, in writing, simultaneously to:
    - (i) all members of the commission; and
    - (ii) a staff member of the commission.
- (3) While the commission is reviewing a complaint under this chapter, a commission member may communicate outside of a meeting, hearing, or deliberation with another member of, or staff to, the commission, only if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-408 Attorney fees and costs.**

- (1) A person filing a complaint under this chapter:
  - (a) may, but is not required to, retain legal representation during the complaint review process; and
  - (b) is responsible for payment of complainant's attorney fees and costs incurred.
- (2)
  - (a) A respondent against whom a complaint is filed under this chapter:
    - (i) may, but is not required to, retain legal representation during the complaint review process;
    - (ii) except as provided in Subsection (2)(a)(iii), is responsible for payment of the respondent's attorney fees and costs incurred; and
    - (iii) may be entitled to the provision of legal defense by the political subdivision in accordance with Section 63G-7-902.
  - (b) For purposes of Subsection (2)(a)(iii), a complaint filed against a respondent in accordance with this chapter shall constitute an action against a governmental employee in accordance with Section 63G-7-902.
- (3)

- (a) An attorney participating in a hearing before the commission shall comply with:
  - (i) the Rules of Professional Conduct established by the Utah Supreme Court;
  - (ii) the procedures and requirements of this chapter; and
  - (iii) the directions of the chair and commission.
- (b) A violation of Subsection (3)(a) may constitute:
  - (i) contempt of the commission under Section 63A-15-404; or
  - (ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah State Bar.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Part 5**

### **Complaint of Ethics Violation**

#### **63A-15-501 Ethics complaints -- Who may file -- Form.**

- (1)
  - (a) Notwithstanding any other provision, the following may file a complaint, subject to the requirements of Subsections (1)(b) and (c) and Section 63A-15-301, against a political subdivision officer or employee:
    - (i) two or more registered voters who reside within the boundaries of a political subdivision;
    - (ii) two or more registered voters who pay a fee or tax to a political subdivision; or
    - (iii) one or more registered voters who reside within the boundaries of a political subdivision and one or more registered voters who pay a fee or tax to the political subdivision.
  - (b) A person described in Subsection (1)(a) may not file a complaint unless at least one person described in Subsection (1)(a)(i), (ii), or (iii) has actual knowledge of the facts and circumstances supporting the alleged ethics violation.
  - (c) A complainant may file a complaint only against an individual who, on the date that the complaint is filed, is serving as a political subdivision officer or is a political subdivision employee.
- (2)
  - (a) The commission shall post, on the state's website, a conspicuous and clearly identified link to the name and address of an individual authorized to accept a complaint on behalf of the commission.
  - (b) A complainant shall file a complaint with the individual described in Subsection (2)(a).
  - (c) An individual may not file a complaint during the 60 calendar days immediately preceding:
    - (i) a regular primary election, if the accused political subdivision officer is a candidate in the primary election; or
    - (ii) a regular general election in which an accused political subdivision officer is a candidate, unless the accused political subdivision officer is unopposed in the election.
- (3) A complainant shall ensure that each complaint filed under this section is in writing and contains the following information:
  - (a) the name and position of the political subdivision officer or employee alleged to be in violation;
  - (b) the name, address, and telephone number of each individual who is filing the complaint;
  - (c) a description of each alleged ethics violation, as applicable of:
    - (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
    - (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or



- (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
- (d) include for each alleged ethics violation:
  - (i) a reference to the section of the code alleged to have been violated;
  - (ii) the name of the complainant who has actual knowledge of the facts and circumstances supporting each allegation; and
  - (iii) with reasonable specificity, the facts and circumstances supporting each allegation, which shall be provided by:
    - (A) copies of official records or documentary evidence; or
    - (B) one or more affidavits that include the information required in Subsection (4);
- (e) a list of the witnesses that a complainant wishes to have called, including for each witness:
  - (i) the name, address, and, if available, one or more telephone numbers of the witness;
  - (ii) a brief summary of the testimony to be provided by the witness; and
  - (iii) a specific description of any documents or evidence a complainant desires the witness to produce;
- (f) a statement that each complainant:
  - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
  - (ii) believes that the complaint is submitted in good faith and not for any improper purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the respondent's reputation, or causing unnecessary expenditure of public funds; and
  - (iii) believes the allegations contained in the complaint to be true and accurate; and
- (g) the signature of each complainant.
- (4) An affidavit described in Subsection (3)(d)(iii)(B) shall include:
  - (a) the name, address, and telephone number of the signer;
  - (b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
  - (c) the facts and circumstances testified by the signer;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
  - (e) the signature of the signer.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-502 Privacy of ethics complaint -- Contempt -- Enforcement of finding of contempt -- Dismissal.**

- (1)
  - (a) Except as otherwise provided in this chapter, a person, including a complainant, the respondent, a commission member, or staff to the commission, may not disclose the existence of a complaint, a response, nor any information concerning any alleged ethics violation that is the subject of a complaint.
  - (b) The restrictions in Subsection (1)(a) do not apply to:
    - (i) the respondent's voluntary disclosure of a finding by the commission that no allegations in a complaint were proved after that finding is issued by the commission under the procedures and requirements of Section 63A-15-602;
    - (ii) this disclosure of facts or allegations about potential criminal violations to a law enforcement authority;

- (iii) a disclosure by a respondent that is made solely for the purpose of, and only to the extent necessary for, retaining counsel, conducting an interview, seeking evidence, or taking other action to prepare to defend against a complaint;
  - (iv) a communication between a commission member and the commission's attorney or a member of the commission's staff; or
  - (v) a disclosure to a person that is determined necessary, by a majority vote of the commission, to conduct the duties of the commission.
- (2) When a person makes a disclosure under Subsection (1)(b)(iii) or (v), the person making the disclosure shall inform the person to whom the disclosure is made of the nondisclosure requirements described in this section.
  - (3) After the commission issues an order under Subsection 63A-15-704(2), the commission may disclose the portion of the complaint, a response, and other information relating to an alleged ethics violation that the commission determines is proved.
  - (4) A person who violates the provisions of Subsection (1)(a) is in contempt of the commission and proceedings may be initiated to enforce the finding of contempt using the procedures provided in Sections 63A-15-404 and 63A-15-405.
  - (5) If, before the commission issues an order in relation to an ethics complaint under Section 63A-15-704, the existence of the ethics complaint is publicly disclosed by a person other than the respondent, an agent of the respondent, or a person who learns of the complaint under Subsection (1)(b)(iii) or (v), the commission shall summarily dismiss the complaint without prejudice.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Part 6**

### **Review of Complaint**

#### **63A-15-601 Review of ethics complaint for compliance with form requirements -- Independent requirements for complaint -- Notice.**

- (1) Within 10 business days after receipt of a complaint, the staff of the commission, in consultation with the chair of the commission, shall examine the complaint to determine if it is in compliance with Sections 63A-15-301 and 63A-15-501.
- (2)
  - (a) If the chair determines that the complaint does not comply with Sections 63A-15-301 and 63A-15-501, the chair shall:
    - (i) return the complaint to the first complainant named on the complaint with:
      - (A) a statement detailing the reason for the non-compliance; and
      - (B) a copy of the applicable provisions in this chapter; and
    - (ii) notify the applicable political subdivision governing body that:
      - (A) a complaint was filed against an unidentified political subdivision officer or employee but was returned for non-compliance with this chapter; and
      - (B) the fact that a complaint was filed and returned shall be kept confidential until the commission submits its annual summary data report as required by Section 63A-15-202.
  - (b) If a complaint is returned for non-compliance with the requirements of this chapter, a complainant may file another complaint if the new complaint independently meets the

requirements of Sections 63A-15-301 and 63A-15-501, including any requirements for timely filing.

- (3) If the chair determines that the complaint complies with the requirements of this section, the chair shall:
- (a) accept the complaint;
  - (b) notify each member of the commission that the complaint has been filed and accepted;
  - (c) notify the applicable political subdivision that:
    - (i) a complaint has been filed against an unidentified political subdivision officer or employee;
    - (ii) the identity of the political subdivision officer or employee and the allegations raised in the complaint are confidential pending the commission's preliminary review of the complaint; and
    - (iii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via:
      - (A) notice of the commission's review of a complaint in accordance with Section 63A-15-701; or
      - (B) submission of the commission's annual summary data report as required in Section 63A-15-202; and
  - (d) promptly forward the complaint to the political subdivision officer or employee who is the subject of the ethics complaint via personal delivery or a delivery method that provides verification of receipt, together with a copy of this chapter and notice of the officer's or employee's deadline for filing a response to the complaint if the complaint is not dismissed under Section 63A-15-602.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-602 Preliminary review of complaint -- Standard of proof -- Notice.**

- (1)
- (a) By no later than 10 calendar days after the day on which a complaint is accepted under Section 63A-15-601, the commission chair shall:
    - (i) schedule a commission meeting on a date no later than 60 calendar days after the date on which the commission accepts the complaint;
    - (ii) place the complaint on the agenda for consideration at the meeting;
    - (iii) provide a copy of the complaint to the members; and
    - (iv) provide notice of the date, time, and location of the meeting:
      - (A) to the respondent;
      - (B) the first complainant named in the complaint;
      - (C) each commission member; and
      - (D) in accordance with Section 52-4-202.
  - (b) The meeting described in Subsection (1)(a)(ii) is closed to the public in accordance with Section 52-4-204.
- (2)
- (a) At the meeting described in Subsection (1)(a)(i):
    - (i) the commission members shall review each allegation in the complaint;
    - (ii) the commission may not receive testimony, hear a motion from a party, or admit evidence; and
    - (iii) the chair shall conduct deliberations.
  - (b) The commission may, if necessary:
    - (i) request a formal response or affidavit from a respondent; and

- (ii) review the response or affidavit at the meeting.
  - (c) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote.
- (3)
  - (a) During deliberations, each commission member shall, for each allegation, determine:
    - (i) whether the facts alleged, if true, would be an ethics violation;
    - (ii) whether the complaint includes an affidavit from a person with firsthand knowledge of alleged facts described in Subsection (3)(a)(i); and
    - (iii) whether the complaint is frivolous or solely for a political purpose.
  - (b) A commission member shall vote to forward an allegation in a complaint for a final commission review in accordance with Part 7, Commission Review of Ethics Violation, if the commission member determines:
    - (i) an allegation, if true, would be an ethics violation;
    - (ii) the complaint contains an affidavit with firsthand knowledge of the allegation under Subsection (3)(a)(ii); and
    - (iii) the allegation is not frivolous or solely for a political purpose.
- (4)
  - (a) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.
  - (b) The commission may not review an allegation for a final determination under Part 7, Commission Review of Ethics Violation, unless six of the seven members of the commission vote to review the allegation.
- (5)
  - (a) An allegation that is not forwarded for a final determination is dismissed.
  - (b) Before the commission issues an order in accordance with this section, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
  - (c) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation should not be forwarded for a final determination.
- (6)
  - (a) If each allegation stated in a complaint is dismissed in accordance with this section, the commission shall:
    - (i) issue and enter into the record an order that the complaint is dismissed because no allegations, in accordance with this section, were forwarded for a final determination;
    - (ii) classify all recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this part as private records under Section 63G-2-302;
    - (iii) provide notice of the determination, in a manner determined by the chair, to:
      - (A) the respondent;
      - (B) the first complainant named on the complaint; and
      - (C) subject to Subsection (6)(b), the appropriate political subdivision; and
    - (iv) provide notice to each person or entity named in Subsections (6)(a)(iii)(A) through (C) that, under provisions of Section 63A-15-502 and other provisions of this chapter, a person who discloses the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt.
  - (b) The notification to the appropriate political subdivision shall notify the political subdivision that:
    - (i) a complaint against an unidentified political subdivision officer or employee has been dismissed; and

- (ii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via submission of the commission's annual summary data report as required in Section 63A-15-202.
- (7) If one or more of the allegations stated in a complaint are not dismissed in accordance with this section, the commission shall:
  - (a) issue and enter into the record:
    - (i) an order for each allegation that is dismissed, if any, because the allegation was not forwarded for a final determination; and
    - (ii) an order for further review under Part 7, Commission Review of Ethics Violation, of each allegation that is not dismissed;
  - (b) classify all recordings, orders, findings, and other records or documents directly relating to a meeting authorized by this section as private records under Section 63G-2-302;
  - (c) if an allegation was dismissed, provide notice of the determination for each allegation dismissed in a manner determined by the chair, to:
    - (i) the respondent;
    - (ii) the first complainant named on the complaint; and
    - (iii) subject to Subsection (8), the appropriate political subdivision; and
  - (d) provide notice to each person or entity named in Subsections (7)(c)(i) through (iii) that:
    - (i) under provisions of Section 63A-15-502 and other provisions of this chapter, a person who discloses the findings of the commission under this section in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt; and
    - (ii) the commission shall review the remaining allegations in the complaint at a meeting described in Section 63A-15-603 and in accordance with Part 7, Commission Review of Ethics Violation.
- (8) The notification to the appropriate political subdivision shall notify the political subdivision that:
  - (a) an unspecified allegation in a complaint against an unidentified political subdivision officer or employee has been dismissed; and
  - (b) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint in accordance with the provisions of this chapter.
- (9) For a complaint described in Subsection (7), the commission members shall ensure that, within five business days after the day of the meeting described in Subsection (1)(a)(ii), the complaint is redacted to remove references to an allegation that is dismissed under this section.
- (10) The chair shall ensure that a record of the meeting held under this section is kept in accordance with Section 63A-15-702.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-603 Meeting of the commission to review a complaint -- Procedures.**

By no later than 10 calendar days after the day on which a complaint is accepted under Section 63A-15-602 for further review, the commission chair shall:

- (1) schedule a commission meeting on a date no later than 60 calendar days after the date on which the commission votes to forward a complaint for final determination in accordance with Section 63A-15-602;
- (2) place the complaint on the agenda for consideration at the meeting described in Subsection (1);
- (3) provide notice of the date, time, and location of the meeting:
  - (a) to:
    - (i) the members of the commission;
    - (ii) the first complainant named in the complaint; and

- (iii) the respondent; and
- (b) in accordance with Section 52-4-202; and
- (4) provide a copy of the complaint or redacted complaint, as required in Section 63A-15-602, to each member of the commission.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-604 Response to ethics complaint -- Filing -- Form.**

- (1) The political subdivision officer or employee who is the subject of the complaint may file a response to the complaint no later than 30 days after the day on which the officer or employee receives delivery of an order issued by the commission under Subsection 63A-15-602(7).
- (2) The respondent shall file the response with the commission and ensure that the response is in writing and contains the following information:
  - (a) the name, address, and telephone number of the respondent;
  - (b) for each alleged ethics violation in the complaint:
    - (i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense to be provided by one or more affidavits, each of which shall comply with Subsection (4);
    - (ii) the facts and circumstances refuting the allegation, which shall be provided by:
      - (A) copies of official records or documentary evidence; or
      - (B) one or more affidavits, each of which shall comply with Subsection (4);
  - (c) a list of the witnesses that the respondent wishes to have called, including for each witness:
    - (i) the name, address, and, if available, telephone number of the witness;
    - (ii) a brief summary of the testimony to be provided by the witness; and
    - (iii) a specific description of any documents or evidence the respondent desires the witness to produce;
  - (d) a statement that the respondent:
    - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
    - (ii) believes the contents of the response to be true and accurate; and
  - (e) the signature of the respondent.
- (3) Promptly after receiving the response, the commission shall provide copies of the response to:
  - (a) each member of the commission; and
  - (b) the first named complainant on the complaint.
- (4) An affidavit described in Subsection (2)(b)(i) or (2)(b)(ii)(B) shall include the following information:
  - (a) the name, address, and telephone number of the signer;
  - (b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
  - (c) the facts and circumstances testified to by the signer;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
  - (e) the signature of the signer.

Renumbered and Amended by Chapter 461, 2018 General Session

## **Part 7**

### **Commission Review of Ethics Violation**

#### **63A-15-701 Commission review of ethics violation.**

- (1) The scope of a review by the commission is limited to an alleged ethics violation stated in a complaint that has not been previously dismissed under Section 63A-15-602.
- (2)
  - (a) Before holding the meeting for review of the complaint, the commission chair may schedule a separate meeting of the commission for the purposes of:
    - (i) hearing motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures;
    - (ii) holding a vote of the commission, with or without the attendance of the parties, on procedural or commission business matters relating to a complaint; or
    - (iii) reviewing a complaint, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the commission, because the complaint pleads facts or circumstances against a political subdivision officer or employee that have already been reviewed by, as provided in Section 63A-15-301, the commission, a municipal ethics commission established in accordance with Section 10-3-1311, a county ethics commission established in accordance with Section 17-16a-11, or a local political subdivision ethics commission established in accordance with Section 63A-15-103.
  - (b) Notwithstanding Section 63A-15-603, the commission may, by a majority vote, change the date of the meeting for review of the complaint in order to accommodate:
    - (i) a meeting authorized under Subsection (2)(a); or
    - (ii) necessary scheduling requirements.
- (3)
  - (a) The commission shall comply with the Utah Rules of Evidence except where the commission determines, by majority vote, that a rule is not compatible with the requirements of this chapter.
  - (b) The chair shall make rulings on admissibility of evidence consistent with the provisions of Section 63A-15-402.
- (4)
  - (a) A meeting or hearing authorized in this part is open to the public except as provided in Section 52-4-204.
  - (b) The following individuals may be present during the presentation of testimony and evidence to the commission:
    - (i) the complainant;
    - (ii) the complainant's counsel, if applicable;
    - (iii) the respondent;
    - (iv) the respondent's counsel, if applicable;
    - (v) members of the commission;
    - (vi) staff to the commission;
    - (vii) a witness, while testifying before the commission; and
    - (viii) necessary security personnel.
  - (c) The commission may, in accordance with Section 52-4-204, close a meeting to:
    - (i) seek or obtain legal advice on legal, evidentiary, or procedural matters; or
    - (ii) conduct deliberations to reach a decision on the complaint.

- (5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, to accommodate administrative needs, or to accommodate the attendance of commission members, witnesses, or a party, the commission shall:
  - (a) adjourn and continue the meeting to a future date and time after notice to the parties; and
  - (b) establish that future date and time by majority vote.
- (6) A record, as defined in Section 63G-2-103, created by the commission under this part, reviewed by the commission under this part, or received by the commission under this part, is a public record, as defined in Section 63G-2-103.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-702 Record -- Recording of meetings.**

- (1)
  - (a) Except as provided in Subsection (1)(b), an individual may not use a camera or other recording device in a meeting authorized by this part.
  - (b)
    - (i) The commission shall keep an audio or video recording of all portions of each meeting authorized by this part.
    - (ii) The commission may, by a majority vote of the commission, permit a camera or other recording device in the meeting in which the commission releases the commission's recommendation under this part.
- (2) In addition to the recording required in Subsection (1), the chair shall ensure that a record of the meeting or hearing is made, which shall include:
  - (a) official minutes taken during the meeting or hearing, if any;
  - (b) copies of all documents or other items admitted into evidence by the commission;
  - (c) copies of a document or written order or ruling issued by the chair or the commission; and
  - (d) any other information that a majority of the commission or the chair directs.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-703 Commission deliberations -- Standard of proof.**

- (1) After each party has presented a closing argument, the commission shall, at the direction of the chair, begin its deliberations:
  - (a) immediately after conclusion of the closing arguments; or
  - (b) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.
- (2)
  - (a) The chair of the commission shall conduct the deliberations.
  - (b) Upon a motion made by a commission member, the commission may:
    - (i) exclude commission staff from all or a portion of the deliberations by a majority vote of the commission; or
    - (ii) close the meeting in accordance with Section 52-4-204.
- (3)
  - (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating:
    - (i) whether the allegation is:
      - (A) proven by clear and convincing evidence; or
      - (B) not proven; and



- (ii) for each allegation proven, whether the commission would recommend to the appropriate political subdivision governing body to take one or more of the following actions:
  - (A) censure;
  - (B) in the case of a political subdivision employee, termination;
  - (C) in the case of a political subdivision officer, removal from office; or
  - (D) any other action or reprimand that the commission determines is appropriate.
- (b)
  - (i) A verbal roll call vote shall be taken on each allegation, and each recommended action described in Subsection (3)(a)(ii) on each allegation.
  - (ii) Each member's vote shall be recorded.
- (4)
  - (a) An allegation is not considered to be proven unless six of the seven members of the commission vote that the allegation is proven.
  - (b) The seven members of the commission described in Subsection (4)(a) refers to the members that actually participate in deciding whether an allegation is proven, including an alternate member described in Subsection 63A-15-201(4)(f)(i)(A) or a temporary member described in Subsection 63A-15-201(4)(f)(i)(B).
  - (c) An allegation that is not considered to be proven is dismissed.
  - (d)
    - (i) Before the commission issues its recommendation in accordance with Section 63A-15-704, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
    - (ii) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation was not proved.
- (5) The commission may not find that an allegation is proven if the allegation is based on an act by an individual under the authority of the political subdivision officer or employee, unless the commission finds, by clear and convincing evidence, that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the act;
  - (b)
    - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
    - (ii) failed to take appropriate action to prevent the act;
  - (c)
    - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
    - (ii) failed to take appropriate action to stop the act; or
  - (d)
    - (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
    - (ii) failed to take appropriate action in response to the act.
- (6) The commission may not find that an allegation is proven if the allegation is based on the failure of an individual under the authority of the political subdivision officer or employee to act, unless the commission finds, by clear and convincing evidence, that the political subdivision officer or employee:
  - (a) encouraged, condoned, or ordered the failure to act;
  - (b)
    - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and

- (ii) failed to take appropriate action to prevent the failure to act;
- (c)
  - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
  - (ii) failed to take appropriate action to prevent the failure to act; or
- (d)
  - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
  - (ii) failed to take appropriate action in response to the failure to act.
- (7) At the conclusion of deliberations, the commission shall prepare the commission's recommendations as provided in Sections 63A-15-704 and 63A-15-705.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-704 Recommendations of commission.**

- (1)
  - (a) If the commission determines that no allegations in the complaint were proved, the commission shall:
    - (i) issue and enter into the record an order that the complaint is dismissed because no allegations in the complaint were found to have been proved;
    - (ii) provide notice of the determination at a public meeting; and
    - (iii) provide written notice of the determination to:
      - (A) the respondent;
      - (B) the first complainant named on the complaint; and
      - (C) the appropriate political subdivision.
  - (2) If the commission determines that one or more of the allegations in the complaint were proved, the commission shall:
    - (a) if one or more allegations were not found to have been proven, enter into the record an order dismissing those unproven allegations; and
    - (b) prepare a written recommendation to the applicable political subdivision governing body that:
      - (i) lists the name of each complainant;
      - (ii) lists the name of the respondent;
      - (iii) states the date of the recommendation;
      - (iv) for each allegation that was found to be proven:
        - (A) provides a reference to the statute or criminal provision allegedly violated;
        - (B) states the number and names of commission members voting that the allegation was proved and the number and names of commission members voting that the allegation was not proved;
        - (C) at the option of those members voting that the allegation was proved, includes a statement by one or all of those members stating the reasons for voting that the allegation was proved; and
        - (D) at the option of those members voting that the allegation was not proved, includes a statement by one or all of those members stating the reasons for voting that the allegation was not proved;
      - (v) contains any general statement that is adopted for inclusion in the recommendation by a majority of the members of the commission;
      - (vi) contains a statement referring the allegations found to have been proved to the appropriate political subdivision governing body for review and, if necessary, further action;

- (vii) contains a statement referring to each allegation proven the commission's recommendation under Subsection 63A-15-703(3)(a)(ii);
  - (viii) states the name of each member of the commission; and
  - (ix) is signed by each commission member.
- (3) The commission shall provide notice of the determination:
  - (a) at a public meeting; and
  - (b) in writing to:
    - (i) the respondent;
    - (ii) the first complainant named on the complaint; and
    - (iii) in accordance with Subsection (4), the appropriate political subdivision.
- (4) The commission shall ensure that, within 10 business days of the date of public issuance of the determination in accordance with Subsection (3), the following documents are provided to the political subdivision governing body:
  - (a) a cover letter referring the proven allegations contained in the complaint to the political subdivision governing body for review;
  - (b) a copy of the complaint;
  - (c) a copy of the response; and
  - (d) a copy of the commission's recommendation.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-705 Criminal allegation -- Recommendation to county or district attorney or attorney general.**

- (1) If the commission finds that a political subdivision officer or employee allegedly violated a criminal provision, the commission shall, in addition to sending a recommendation to a political subdivision governing body in accordance with Section 63A-15-704, send a written recommendation for further investigation to one or more of the following:
  - (a) the county or district attorney of the applicable jurisdiction; or
  - (b) the attorney general.
- (2) The written recommendation described in Subsection (1) shall:
  - (a) list the name of each complainant;
  - (b) list the name of the respondent;
  - (c) state the date of the recommendation;
  - (d) for each allegation of a criminal violation, provide a reference to the criminal provision allegedly violated;
  - (e) include a general statement that is adopted by a majority of the members of the commission; and
  - (f) state the name of the political subdivision governing body that the commission sent a recommendation to in accordance with Section 63A-15-704.
- (3) If the commission sends a recommendation in accordance with this section, the commission shall enter into the record:
  - (a) a copy of the recommendation; and
  - (b) the name of each person described in Subsection (1) to whom the commission sent the recommendation.
- (4) A recommendation prepared and delivered in accordance with this section is a public record.

Renumbered and Amended by Chapter 461, 2018 General Session

**63A-15-706 Action by political subdivision governing body.**

A political subdivision governing body that receives a recommendation in accordance with Section 63A-15-704 shall:

- (1) review the recommendation; and
- (2) take further action in accordance with a political subdivision's governing ordinance, bylaws, or other applicable governing rule.

Renumbered and Amended by Chapter 461, 2018 General Session