

Council Meeting of May 13, 2015

Agenda Item No. *9e*

REQUEST FOR COUNCIL ACTION

SUBJECT: Discussion and possible direction regarding establishing an 'Ethics' policy
[Mayor Rolfe]

ORDINANCE NO. 785

**AN ORDINANCE OF THE DRAPER CITY COUNCIL AMENDING
TITLE 19 OF THE DRAPER CITY MUNICIPAL CODE RELATING TO
ETHICS.**

WHEREAS, the City Council desires to further amend and improve upon the Ethics Code that was adopted by Ordinance No. 744;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. Amendment. Title 19 of the Draper City Municipal Code relating to ethics for elected officials, appointed officials and city employees is hereby amended to read as attached hereto.

Section 2. Severability Clause. If any section, sentence, clause, phrase or word of this title is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portion of this title which shall be deemed and held to be valid as if such part or parts had not been included therein.

Section 3. Effective Date. This Ordinance will become effective August 15.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS _____ DAY OF _____ 2007.

DRAPER CITY

ATTEST:

City Recorder

Mayor

*******SEE BELOW FOR ETHICS CODE*******

**CHAPTER 19-1 - CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES;
RESPONSIBILITY OF PUBLIC OFFICIALS**

Section 19-1-010 Goals.

Section 19-1-020 Definitions.

Section 19-1-030 Fair and Equal Treatment.

Section 19-1-040 Agents of Public Purpose.

Section 19-1-050 Gifts; Use of Office for Personal Benefit Prohibited.

Section 19-1-060 Use of Public Property.

Section 19-1-070 City Allegiance and Proper Conduct.

Section 19-1-080 Avoidance of Impressions of Corruptibility.

Section 19-1-090 Political Activity of City Officer or Employee.

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CHAPTER 19-2 - DISCLOSURE; CONFLICTS OF FINANCIAL INTEREST

Section 19-2-010 Conflict of Interest Disclosure In Legislative Action.

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CHAPTER 19-3 – CITY ATTORNEY RESPONSIBILITIES

Section 19-3-010 Written Advisory Opinion.

Section 19-3-020 Mission and Duties in Relation to the Ethics Ordinance.

CHAPTER 19-4 - ENFORCEMENT; PENALTIES

Section 19-4-010 Enforcement.

Section 19-4-020 Penalties.

TITLE 19 - ETHICS

CHAPTER 19-1 - CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES; RESPONSIBILITY OF PUBLIC OFFICIALS

Section 19-1-010 Goals.

(a) Ethics is more than the avoidance of criminal behavior. It is a commitment for public servants to take individual responsibility in creating a government that has the trust and respect of its citizens. There needs to be a proactive approach in strengthening the emphasis on ethics and in guiding city elected officials and employees in upholding them. To preserve and maintain the integrity of responsible government and its decision-making process, Draper City believes it is necessary that the identity, activities and expenditures of certain persons who engage in efforts to influence elected officials and employees of the city on matters within their official cognizance, either by direct communication or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. The provisions and requirements of this Ethics Code shall apply to every person who attempts to influence governmental action, unless such person is clearly exempt by an express provision hereof.

(b) With Subsection (a) in mind, Draper City hereby adopts the following goals for the city's ethics program:

- (1) to promulgate and implement a comprehensive approach to ethics and integrity in Draper City government;
- (2) to promote public confidence in elected officials, appointed officials and employees by fostering the ethical operation of government;
- (3) to promote and ensure compliance with local, state, and federal ethics law;
- (4) to centralize laws and regulations on the ethical conduct of city elected officials, appointed officials and employees;
- (5) to heighten knowledge and understanding of the laws and ethical principles which are the inherent obligations of city elected officials and employees;
- (6) to establish a system to train city elected officials, appointed officials and employees to encourage compliance with these standards and to also provide for periodic review, and education on ethics;

(7) to enact an ethics officer system that will continue to evolve and update our city's ethics program and to provide guidance and education to all city departments; and

(8) to educate city officials and employees to avoid the appearance of impropriety.

(c) Through this comprehensive Ethics Code and the related goals, the city will strive to elevate the level of ethics in local government, to provide honest and responsible service to the citizens of Draper City, and to maintain the confidence and trust of the public that this government serves.

Section 19-1-020 Definitions.

As used in this title:

(a) "Appointed officer" means any person appointed to any statutory office or position of employment with the City. Appointed officers include, but are not limited to, persons serving on special, regular, or full-time committees, agencies, or boards, whether or not such persons are compensated for their services.

(b) "Assist" means to act, 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.

(c) "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.

(d) "City" means Draper City.

(e) "City body" means any public board, commission, committee, or other public group organized or appointed by the city council to make public policy decisions or to advise persons who make public policy decisions.

(f) "City employee" means a person who is not an elected or appointed officer who is employed on a full or part-time basis by the City.

(g) "City officer" means any appointed or elected officer. The term shall include the mayor, city council, all appointed City officials, and the members of the City's agencies, boards, committees, and commissions.

(h) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the City for or in consideration of personal services, materials, property, or any other thing whatsoever.

(i) "Elected officer" means any person elected or appointed to the office of mayor or city council.

(j) "Governmental action" means any action on the part of the City, including any decision, determination, finding, ruling or order; any grant, payment, award, license, contract, subcontract, transaction, decision, sanction or approval, or the denial thereof, or the failure to act in respect thereto; and any legislative, administrative, or discretionary act of any City official or employee.

(k) "Improper disclosure" means disclosure of private, controlled, or protected information to any person who does not have the right to receive the information.

(l) "Interest" means direct or indirect pecuniary or material benefit accruing to a City officer or employee as a result of an official act or action by or with the City, except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons or property similarly situated. For the purposes of this title, a City officer or employee shall be deemed to have an interest in the affairs of:

(1) any person related to such person by blood or marriage in a degree closer than the fourth degree of consanguinity or affinity, determined by the civil law method, and a divorce or separation between spouses shall not be deemed to terminate any such relationship;

(2) any person or business entity with whom a contractual relationship exists with the City officer or employee;

(3) any business entity in which the City officer or employee is an officer, director, or member having a financial interest in, or by which the City officer or employee is employed;

(4) any business entity in which the stock, or legal or beneficial ownership, in excess of five percent of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the City officer or employee.

(m) "Official act" or "official action" means any legislative, administrative, appointive, or discretionary act of any City officer.

(n) "Political purpose" means an act done with intent or in such a way as to influence or tend to influence, directly or indirectly, the election of a candidate or the disposition of any issue on the ballot at a City election.

(o) "Private, controlled, or protected information" means information classified as private, controlled, or protected under Utah Code Annotated Title 62, Chapter 2, Government Records Access and Management Act or other applicable provision of law.

(p) "Quasi-judicial matter" means the hearing and ruling upon various permits, licenses and land use applications excepting zoning amendments, the appeal of any discipline imposed on any City employee, the appeal of any grievance filed by a City employee, or a proceeding to revoke any license, permit, or approval granted by any City body or employee and which is pending, or is reasonably expected to come, before any City body.

Section 19-1-030 Fair and Equal Treatment.

(a) Canvassing members of the city council, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to City service shall disqualify the candidate for appointment, except with reference to positions filled by appointment by the city council or the mayor with the consultation of the city council.

(b) 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.

(c) No City officer or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

Section 19-1-040 Agents of Public Purpose.

City officers and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold and impartially carry out federal, state and City laws. They are bound to observe, in their official acts, the highest standards of performance and to discharge faithfully the duties of their office, regardless of personal considerations. Recognizing that the public interests must be their primary concern, their conduct in both their official and private affairs should be above reproach.

Section 19-1-050 Gifts; Use of Office for Personal Benefit Prohibited.

(a) No City officer or employee shall knowingly accept any gift which creates a conflict of financial interest and is given by any person, firm, or corporation which to that person's knowledge is interested, directly or indirectly, in any manner whatsoever in business dealings with the City. No City officer or employee shall accept any economic benefit tantamount to a gift regardless of amount, retainer or compensation that is contingent upon a specific action by the city council, a City commission, board or committee, or a City agency.

(b) As used in this section, gift includes:

(1) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(2) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(c) It is an offense for a City officer or employee to:

(1) disclose or improperly use private, controlled, or protected information acquired by reason of the person's official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for that person or others;

- (2) use or attempt to use that person's official position to:
 - (i) further substantially the officer's or employee's personal economic interest; or
 - (ii) secure special privileges for that officer or employee or others; or
- (3) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for himself or another a bribe, gift of substantial value, or a substantial economic benefit tantamount to a gift that:
 - (i) would tend to improperly 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 the official action taken.
- (d) Subsection (c)(3) shall not apply to:
 - (1) an occasional non-pecuniary gift having a value of less than \$25;
 - (2) an award publicly presented in recognition of services;
 - (3) any bona fide loan made in the ordinary course of business;
 - (4) a political campaign contribution; or
 - (5) any gift which would have been offered or given to a person if that person were not a City officer or employee.

Section 19-1-060 Use of Public Property.

(a) No City officer or employee shall request or permit the use of City-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such properties are available to the public generally or are provided per City policy for the use of such official or employee in the conduct of official City business.

(b) No City councilperson shall be permitted to bid on or purchase property offered for sale by the City.

Section 19-1-070 City Allegiance and Proper Conduct.

(a) No City officer or employee shall engage in private employment, or render services for a private interest, when such employment or service is incompatible with proper discharge of official duties or would tend to impair that officer's or employee's independence or judgment or action in the performance of those duties, unless otherwise permitted by law.

(b) No City officer or employee shall appear on behalf of any private person, other than himself, his spouse or minor children, before any City body. However, a member of the city council may appear before City bodies on behalf of a constituent in the course of official duties as a representative of the electorate or in the performance of public or civic obligations.

(c) Any outside employment for employees shall comply with Section 5070 of the Draper Personnel Manual.

Section 19-1-080 Avoidance of Impressions of Corruptibility.

City officers and employees, whether appointed or elected, full time or part time, paid or unpaid, should conduct their official and private affairs so as not to give a reasonable basis for the impression that any such officer or employee can be improperly influenced in the performance of public duties. Such officers or employees should so conduct themselves as to maintain public confidence in their performance of the public trust in the government they represent. All City officials and employees should avoid even the appearance of conflict between their public duties and private interests.

Section 19-1-090 Political Activity of City Officer or Employee.

(a) For purposes of this section, "hours of employment" means occurring at a time when a City officer or employee is acting within the course and scope of employment, but excludes a lunch break afforded to the officer or employee.

(b) Except as otherwise provided by law:

(1) The partisan political activity, political opinion, or political affiliation of an applicant for a position with the City may not provide a basis for denying employment to the applicant.

(2) A City 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.

(3) A City employee may not engage in political campaigning or solicit political contributions during hours of employment.

(4) A City officer or employee may not use City equipment while engaged in campaigning or other political activity.

(5) A City officer or employee may not directly or indirectly coerce, command, or advise another City 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.

(6) A City officer or employee may not attempt to make another officer or employee's personnel status dependent on the officer's or employee's support or lack of support of a political party, affiliation, opinion, committee, organization, agency, or person engaged in political activity.

(c) A City employee who has filed a declaration of candidacy may:

(1) be given a leave of absence for the period between the primary election and the general election; and

(2) use any vacation or other leave available to engage in campaign activities.

(d) 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.

(e) Nothing in this chapter shall be construed to:

(1) prohibit a City officer or employee's voluntary contribution to a party or candidate of the officer or employee's choice; or

(2) permit City officer or employee partisan political activity that is prohibited under federal law.

(f) No City 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 City property.

(g) No City officer or employee shall promise any appointment to any position with the City as a reward for any political activity.

(h) A City employee who is elected as a City officer shall terminate the City employment prior to being sworn into the elected office.

Section 19-1-100 Future Employment.

City elected officials are prohibited from accepting employment with the City for a period of two years following the termination of their term of office.

Section 19-1-110 Employment of Relatives Prohibited.

(a) As used in this section, "relative" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, life partner, ward, fiancé, grandfather, grandmother, grandson, granddaughter, step-parent, or step-child.

(b) No relative of a City officer or a relative's spouse shall be employed by the city.

(c) No relative of an elected City officer or the relative's spouse employed prior to the effective date of this chapter shall be affected hereby.

CHAPTER 19-2 - DISCLOSURE; CONFLICTS OF INTEREST

Section 19-2-010 Conflict of Interest Disclosure In Legislative Action.

Every City officer who has an interest as defined in 19-1-020 in any proposed legislation before the City body shall disclose on the record of the City body the nature and extent of such interest. Such officer shall leave the room during the discussion concerning the legislation and not participate in the discussion or vote upon the matter.

Section 19-2-020 Preacquisition of Interest; Interest in Contract or Transaction.

(a) No City officer or employee with respect to any contract or transaction, which is or may be subject to an official act of the City shall acquire an interest in such contract or transaction at a time when the City officer or employee believes or has reason to believe that it will directly or indirectly be affected by an official act of the City.

(b) Unless a person has abstained from participating in the City decision to award or enter into a contract, no City officer or employee having the power or duty to perform an official act or action related to a contract or transaction, shall:

- (1) have or thereafter acquire an interest in such contract or transaction;
- (2) have an interest in any business entity representing advising or appearing on behalf of, whether paid or unpaid, any person involved in such contract or transaction;
- (3) have solicited present or future employment with a person or business entity involved in such contract or transaction by voting on the contract or transaction in question; or
- (4) have solicited, accepted or granted a present or future gift, favor, service or thing of value from or to a person involved in such contract or transaction.

(c) This section shall not impede a City officer or employee from applying for and/or receiving a business license, building permit or conditional use permit.

Section 19-2-030 Disclosure of Confidential Information.

No City officer or employee with respect to any contract or transaction which is or may be the subject of an official act of the City shall, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the City, or use such information to advance the financial or other interests of such officer or employee or others.

CHAPTER 19-3 – CITY ATTORNEY RESPONSIBILITIES

Section 19-3-010 Written Advisory Opinion.

(a) Where any City officer or employee has a doubt as to the applicability of any provision of this title to a particular situation, or as to the definition of terms used herein, such person may apply to the city attorney for a written advisory opinion. The City officer or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the title before such advisory opinion is made. Such opinion, until amended or revoked, shall be binding on the City, the city council, and the city attorney in any subsequent actions concerning the City officer or employee who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion.

(b) Any written opinion prepared by the city attorney shall be made public. However, the name of the person requesting the opinion and the names of all persons or business entities mentioned in the opinion shall be deemed confidential information and shall not be disclosed unless the City officer or employee waives such confidentiality or where the city attorney deems the City officer or employee to have failed to act in good faith in requesting the opinion or in conforming with the opinion or to have failed to act in conformance with the opinion.

Section 19-3-020 Mission and Duties in Relation to the Ethics Ordinance.

The mission of the city attorney as it relates to this chapter is to encourage each City officer and employee to act ethically at all times. This mission requires the city attorney to not only encourage compliance with various laws but, more importantly, encourage each officer and employee to adhere to the high standards of ethical behavior as set forth in this title. In pursuing that broad mission, the duties of the city attorney in conjunction with the Human Resources Department include:

- (a) developing policies, programs and strategies to deal with all ethics-related matters;
- (b) developing training and education programs;
- (c) providing training and education to City officers and employees;
- (d) conducting meetings with City officers and employees to discuss or provide advice on ethics issues;
- (e) obtaining copies of all reports filed and disclosures made pursuant to this title;
- (f) maintaining a directory of all reports and disclosures filed pursuant to this title;
- (g) encouraging compliance with the spirit and letter of ethics laws;
- (h) periodically reviewing this title and other applicable laws and regulations and recommending amendments hereto;
- (i) acting as the ethics liaison between the elected officials and employees of the City; and
- (j) fulfilling other duties as requested by the city council.

CHAPTER 19-4 - ENFORCEMENT; PENALTIES

19-4-010 Enforcement.

(a) Any person who believes that a violation of any portion of this title has occurred may file a sworn written complaint with the city attorney.

(b) The city attorney shall have the initial responsibility for the enforcement of this title. The city attorney shall have the power to investigate any complaint, to initiate any suit, and to prosecute any criminal or civil action on behalf of the City where such action is appropriate.

(c) The city attorney shall give the person complained of an opportunity to be heard. A written report of findings and a recommendation of the city attorney shall be filed with the city manager. If the city manager finds, after a hearing, that a City employee has violated this title, the City manager may suspend or take such other appropriate action with respect to employee. If the alleged violation involves a City official, the city attorney shall refer the matter to the city council for hearing and the possible imposition of sanctions or removal from office, as provided by law.

(d) The city council or city manager may direct the city attorney to investigate or prosecute any apparent violation of this title or it may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations by one or more persons of this title.

(e) The city attorney shall have the power, where a violation of the provisions of this title is threatened or has occurred, to bring an action or proceeding at law or in equity for a judgment enjoining a violation of the provisions of this title or requiring a relinquishment of any prohibited interest or the voiding of any contract or transaction, taking into account the interests of the parties and any third persons who may be injured thereby.

Section 19-4-020 Penalties.

(a) In addition to any other penalties or remedies provided by law, any City official or employee who knowingly and intentionally violates the provisions of this title is guilty of a class B misdemeanor and may be dismissed from employment or removed from office, as provided by law.

(b) Any contract or transaction which was the subject of governmental action by the City and which involved the violation of a provision of this title is voidable, at the option of the City.

(c) Any person who intentionally makes a false report alleging a violation of any provision of this Title or who provides false information shall be guilty of a class B misdemeanor.

General Policy Statement:

The City recognizes the right of employees to participate in private activities outside their employment, which are unrelated to City business. However, employees are hired and continue their employment with the understanding that the City is their primary employer and that other employment or business involvement which conflicts with City business interests may subject an employee to corrective action. Any outside employment activities shall comply with Section 5070. If an activity is contemplated which could result in a real or perceived conflict of interest, the employee must make full disclosure of the activity to their Department Head for prior review and approval.

All employees shall adhere to the provisions and disclosure requirements of the Utah Municipal Officers' and Employees' Ethics Act as set forth in Utah Code Ann. §§ 10-3-1301, et. seq., as adopted by reference by the City, including the signing of a Disclosure Statement.

Policy:

1. **General Principles.** The following Code of Ethics sets forth general principles, which guide and protect employees and the City. Since it is impractical to address all possible ethical issues, specific questions about the propriety of employee conduct and/or business relationships should be brought to the Department Head's and if concerns arise after a review by the employee's Department Head the City Attorney and City Manager shall also review.

2. **Employee Integrity.** Employees of Draper City have, as their first duty, to conduct themselves in a manner deserving of public trust and confidence, both on and off the job. The City's reputation for excellence and fairness in business activities is built upon each individual's ethical conduct. We expect all employees to conduct themselves with utmost integrity and at the highest of ethical standards at all times.

3. **Employee Conflicts of Interest.** To maintain independence of judgment, employees must avoid potential conflicts or appearance of compromise that might arise because of economic or personal self-interest.

4. **Participation in Community Activities.** Employees are encouraged to participate in charitable, religious, educational, and community nonprofit activities. The City supports participation in such activities so long as employee job performance is not affected. However, unless approved by the employee's Department Head and the City Manager, City supplies and equipment shall not be used to solicit financial support or provide other assistance to community organizations.

5. **Non-Business Relationships.** Personal relationships are improper if others can reasonably construe them as influencing or obligating the employee in current or future business dealings or as attempts to improperly influence others.

6. **Reporting Violations.** Employees are required to report to their Department Head, the City Attorney, the Human Resources Director or the City Manager all violations or suspected violations of this Code of Ethics. All reports will be handled professionally and as confidentially as possible.

7. **Disciplinary Action.** Employees who breach disregard the Conflict of Interest / Code of Ethics policy will be subject to corrective action, up to and including termination.

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***Guide to Ethical Conduct
of City Officers and
Employees***



*A Compilation of Laws and
Policies*

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I. DECLARATION OF POLICY

- A. Our government is a representative republic. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust, which they share with those whom they elect, appoint, hire or otherwise enlist to help them serve the public. The public entrusts its power and resources to its servants to use only in the public interest. Public trust requires public servants to fulfill their public duties faithfully and honestly, and to subordinate any personal interest which conflicts with the public interest. Public trust also requires that government be conducted in an open manner, when appropriate, so that the official actions of public servants may be subject to public scrutiny and so that members of the public have access to information upon which decisions and policies affecting them are made; but public trust also requires that government be conducted in a manner that respects the rights of its constituents to privacy and confidentiality. Public trust also requires that acts that are contrary to the public interest be defined and prohibited; that there be an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged and suitably rewarded; and that unethical behavior be discouraged and suitably disciplined through a process that is fundamentally fair.
- B. It is the responsibility of each public servant to act in a manner that contributes to cultivating public trust in the integrity of government. Public trust in the integrity of government is cultivated when individual public servants act with integrity and when the public is aware that its servants act with integrity. Therefore, dedicated public servants not only act with integrity, but also choose to avoid even lawful activity when the appearance of impropriety would lessen the public's confidence in the integrity of its servants and its system. As a result, sometimes public servants sacrifice opportunities that would be open to them if they were not public servants.
- C. Most public servants strive to live by these standards most of the time, but because occasionally some do not, laws and policies have been adopted to help guide ethical conduct. In compiling summaries of these laws and policies in this handbook, Orem recognizes that:
- 1. Public servants are also members of society and share the same general personal and economic interests in the decisions and policies of government as all members of the community do; and**
 - 2. Public servants retain their rights to publicly express their views on matters of general public interest, and to express their opinions on the effect of public actions on their personal or economic interests or rights; and**
 - 3. It is sound public policy for standards of ethical conduct for public servants to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are personal, material and avoidable; and**
 - 4. Public servants are entitled to engage in employment, professional or business activities, other than official duties, in order to support themselves and their families and to maintain a continuity of professional or business activity, and are entitled to maintain investments; and**
 - 5. In this community it is possible and reasonable to require public servants to engage in employment, professional or business activities and to maintain investments that do not impede or undermine the integrity of their service to the community.**

D. Although the laws and policies referred to herein are helpful in identifying minimum standards below which a public servant's conduct cannot fall without the risk of penalty, it is understood that a healthy, ethical environment for the provision of public service cannot be achieved or maintained by mere adherence to minimum standards. It is also understood that no external activity can replace the internal commitment that motivates those who act ethically. The principal policy which forms the foundation of the laws and policies compiled herein is to encourage internal commitment by establishing and maintaining a work environment which supports integrity with pride and enthusiasm. A work environment that supports integrity includes public servants who:

1. **Recognize with gratitude that the primary reason they hold a public position is to serve the public; and**
2. **Recognize with pride that they hold their public position because the public trusts them; and**
3. **Recognize with sadness that the public's trust in government and in them is diminished when any public servant acts unethically; and**
4. **Recognize with hope that their public service is an opportunity to help restore public trust in their government; and**
5. **Are fair and impartial, but also courteous and enthusiastic in serving the public and each other in the performance of their duties; and**
6. **Are adequately educated in principles of ethics; and**
7. **Are motivated to pursue ethical ideals that always exceed minimum standards and often achieve the highest standards; and**
8. **Exemplify ethical conduct; and**
9. **Encourage ethical practices that protect, advance and promote the public interest; and**
10. **In speaking about the conduct of those in public service, or in responding to others who speak about it, express approval of positive ethical principles and behavior, and refrain from unjustly disparaging or demeaning those who advocate ethical principles or practice ethical behavior; and**
11. **Recognize that the most effective way to eradicate unethical practices is to consistently act ethically themselves, and to consistently react appropriately with respect to the ethical decisions of those with whom they work; and**
12. **Exercise sound and independent judgment to act ethically in situations where others around them may be inclined to act unethically; and**
13. **When they observe serious unethical practices, promptly disclose them to appropriate authorities, and encourage others to do the same; and**
14. **Make and implement decisions and policies through proper channels of the governmental organization; and**

- 15. Insure that those for whose performance they are responsible are aware of minimum standards of ethics below which their conduct cannot fall without the risk of disciplinary consequences; and**
 - 16. When circumstances warrant, appropriately discipline those who are proven to have engaged in unethical behavior.**
- E. This guide contains summaries of laws and policies pertaining to ethics. While the laws apply equally to elected officials and employees, for the most part the policies apply, from a legal standpoint, to City employees only. However, the City Council hereby declares its intent that council members adhere to the same standards of conduct that are expected of employees. Everyone is worthy of our respect and recognition.

II. FEDERAL LAW

A. United States Code: The Hatch Act, §§ 5 U.S.C. 1501-1508. “The Hatch Act . . . applies to the political activity of certain state and local government employees. Covered employees under the act are persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants.”¹

1. **Covered employees may:**

- run for public office in nonpartisan elections.
- campaign for and hold office in political clubs and organizations.
- actively campaign for candidates for public office in partisan and nonpartisan elections.
- contribute money to political organizations and attend political fund-raising functions.²

2. **Covered employees may not:**

- be candidates for public office in a partisan election.
- use official authority or influence to interfere with or affect the results of an election or nomination.
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate.³

In Orem, the Hatch Act has a fairly well-defined and narrow application. Nonetheless, those working with Orem programs funded, in whole or part, by federal money, are clearly contemplated within the language of the Act. For example, CDBG (Community Development Block Grants), COPS (Community Oriented Policing Services), and LEGB (Law Enforcement Block Grants) employees are restricted in their political activities because of their association with federal funded programs.

B. Advisory Opinions. The U.S. Office of Special Counsel periodically answers questions concerning the Hatch Act, much as the State Attorney General would opine on matters of state law. The advisory opinion issued June 5, 1996 clarifies the application of the Hatch Act to local governments. “The Hatch Act . . . restricts the political activity of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. . . Principle employment is that employment to which an individual devotes the most time, and from which he derives the most income.”⁴

¹State and Local Hatch Act <http://www.osc.gov/hatch_b.htm>.

²*See id.*

³*See id.*

⁴*See id. for a complete listing of the Advisory Opinions, available in .PDF format.*

III. STATE LAW

A. Utah Code §§ 10-3-1301 to 10-3-1312: The Municipal Officers' and Employees' Ethics Act.

1. Purpose and Application. **The purpose of the act is 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.”⁵**
2. Coverage.

Utah's Municipal Officers' and Employee's Act **generally prohibits**:

- Using one's office or employee position to secure a special privilege for oneself or others, or to further substantially one's personal economic interest (§1304)⁶, and
- Using one's office or employee position to receive benefit from assisting in a transaction with the municipality, without disclosing personal conflict (§1305).

Utah's Municipal Officers' and Employee's Act **specifically prohibits** (§1304):

- Disclosure or improper use of private, controlled, or protected information, obtained by one's office, or other use of one's office, to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;
- Knowingly receiving, accepting, taking, seeking, or soliciting, directly or indirectly, for himself or 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.

Utah's Municipal Officers' and Employee's Act **excludes** as gifts (§1304):

- An occasional nonpecuniary gift having a value of less than \$50;
- An award publicly presented in recognition of public services;
- Any bona fide loan made in the ordinary course of business; or
- A political campaign contribution.

Utah's Municipal Officers' and Employee's Act **requires**:

- Municipal employees and officers to disclose a conflict of interest they may have due to their duties as officers, etc., of a business regulated by the city (§1306),

⁵Utah Code 10-3-1302 (1999).

⁶Examples of benefits and gifts are (1) when a loan is received at a substantially lower interest rate than similar and prevalent loans, and (2) when “compensation [is] received for private services rendered at a rate substantially exceeding the fair market value of the services.” *Id.* 10-3-1304(1)(b).

- Municipal employees and officers to disclose a conflict of interest they may have due to their duties as officers, etc., of a business that anticipate doing business with the municipality (§ 1307), and
 - Municipal employees and officers to disclose a conflict of interest they may have due to personal investments or interests (§ 1308).
3. Penalties and Complaint Procedure. **§§ 1310-1312 outline the penalties and reporting procedures associated with violations of §§ 1304-1308. These include a scale of violations which could result in as much as a second degree felony and removal from office or employment.**
- B. Utah Code §§52-3-1 to 52-3-4: Anti-Nepotism.⁷
1. Coverage and Application. **These provisions define [relative] as a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.**
 2. Prohibitions and Exceptions. **The primary focus of the state anti-nepotism law is to prohibit relatives from being “directly supervised” by relatives. There are exceptions for small towns and rural areas (§ 53-2-4), or such instances where the relative will be employed for a short amount of time, or is the only one available for the position.**
 3. Penalties. **“Each day any such person, father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousins, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law, is retained in office by any of said officials shall be regarded as a separate offense [misdemeanor]” (§ 52-3-2).**
- C. Utah Code §§ 52-4-1, 52-4-10: Open and Public Meetings. Nothing should prevent meetings from being “open and public,” unless provided for by §§ 52-4-4, and 52-4-5.⁸ Such exceptions contemplate:
- Discussion of the character, professional competence, or physical or mental health of an individual;
 - Strategy sessions to discuss collective bargaining;
 - Strategy sessions to discuss pending or reasonably imminent litigation; or
 - Strategy sessions to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms;

⁷Contrast this with Orem’s Anti-Nepotism policy, which is much more comprehensive in defining “relative” and prohibiting more than just “direct supervision.”

⁸See *id.* 52-4-3. “A closed meeting may be held upon the affirmative vote of two-thirds of the members of the public body present at an open meeting for which notice is given No closed meeting is allowed except as to matters exempted under section 52-4-5; provided, no ordinance, resolution, rule, regulation, contract, or appointment shall be approved at a closed meeting. The reason or reasons for holding a closed meeting and the vote, either for or against the proposition to hold such a meeting, cast by each member by name shall be entered on the minutes of the meeting.” *Id.* 52-4-4.

- Discussion regarding deployment of security personnel, devices, or systems; and
 - Investigative proceedings regarding allegations of criminal misconduct.⁹
- D. Utah Code §§ 10-6-121, 10-6-122, 10-6-123; §§ 63-56-(all): Uniform Fiscal Procedures Act and Utah Procurement Code.
1. **Application. Title 63 Chapter 55, applies only to state and local procurement units, from which § 63-56-5(14) clearly excludes municipalities. HOWEVER, §10-6-122 requires that “[a]ll purchases or encumbrances thereof by a city shall be made or incurred according to the purchasing procedures established by each city by ordinance or resolution and only on an order or approval of the person duly authorized to act as a purchasing agent for the city.”**
 2. **Purpose. The purpose of these provisions is to ensure that there are uniform methods for procurement, and to ensure that there are sufficient funds to cover encumbrances (§§ 10-6-121, 10-6-123).**
- E. Utah Code §§ 67-16-(all): Utah Public Officers’ and Employees’ Ethics Act. This act applies to State employees and officers, and served as the basis for Utah Code §§ 10-3-1300s, The Municipal Officers’ and Employees’ Ethics Act. It is mentioned here only by way of background information.
- F. Utah Code §§ 76-8-(all): Utah Criminal Code. These provisions criminalize a myriad of offenses stemming from unethical governmental actions. Because of the fact-sensitive nature of the potential offense, the discussion below relies heavily on the precise language of the Code.
1. **Threats and Bribery. “A person is guilty of a class A misdemeanor if he threatens any harm¹⁰ to a public servant, party official, or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion A person is guilty of bribery or offering a bribe if that person promises, offers, or agrees to give or gives, directly or indirectly, any benefit to another with the purpose or intent to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion of a public servant, party official, or voter.”¹¹**
 2. **Prohibited Reimbursement. “A peace officer may not have any interest in any collection agency or act as a compensated collection agent for any creditor or collection agency.”¹²**
 3. **Official Misconduct. “A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office. A public servant is guilty of a class A misdemeanor if, knowing that**

⁹*Id.* § 52-4-5.

¹⁰ "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested.

¹¹Utah Code 76-8-103, -104, -105, -106.

¹²*Id.* 76-8-110.

official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he: (1) acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information; (2) speculates or wagers on the basis of such action or information; or (3) knowingly aids another to do any of the foregoing.”¹³

4. Unofficial Misconduct. “A person is guilty of unofficial misconduct if he exercises or attempts to exercise any of the functions of a public office when: (a) he has not taken and filed the required oath of office; (b) he has failed to execute and file the required bond; (c) he has not been elected or appointed to office; (d) he exercises any of the functions of his office after his term has expired and the successor has been elected or appointed and has qualified, or after his office has been legally removed; or (e) he knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents, or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same. Unofficial misconduct is a class B misdemeanor.”¹⁴
 5. Misusing Public Funds. Public officials and employees charged with the care of public moneys commit an offense when they appropriate, deposit or detain money without the authority of law.¹⁵
 6. Falsification in Official Matters. “A person is guilty of [falsification] . . . in any official proceeding: (1) He makes a false . . . statement under oath or affirmation or swears or affirms the truth of a material statement previously made and he does not believe the statement to be true; or (2) He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true.”¹⁶ There are varying degrees of gravity of falsification, many depending on to whom the statement was made and the materiality of the statement, but the crux of the crime rests in telling a believed or patent untruth.
- G. Utah Code § 10-3-208: Campaign Financial Disclosure. These provisions require cities to have an ordinance detailing campaign finance disclosures. Orem City Ordinance § 2-3-4, meets his requirement, and is discussed in detail below.

¹³*Id.* 76-8-201.

¹⁴*Id.* 76-8-202, 203.

¹⁵*See id.* 76-8-402, -404.

¹⁶*See* Utah Code 76-8-502, 503, -504.

IV. LOCAL LAWS AND ORDINANCES

A. Orem Code.

1. **Orem Code § 2-3-4: Campaign Finance Disclosure. In accordance with Utah Code § 10-3-208 Orem has adopted the following provisions governing campaign finance contributions:**
 - The term “contributions” contemplates monetary and non-monetary contributions, such as in-kind gifts.
 - Each candidate must file two, and possibly three campaign finance disclosure statements. The first is filed before the Municipal general election. The second is filed after the Municipal general election. The third is filed if the candidate makes expenditures or receives contributions after the second report is filed.
 - Each contribution over \$50 must be recorded on the campaign financial statement, including the donor’s name, and amount of the contribution. An aggregate total of all contributions of \$50 or less must be disclosed on the campaign financial statement.
 - The campaign financial statement must also disclose each expenditure for a political purpose made during the campaign period, and the name of the recipient and amount of the expenditure.
 - Reporting is to the City Recorder.
 - Any person who fails [in his/her duty to report] is guilty of an infraction and upon conviction thereof shall be punished by a fine of not more than seven hundred fifty dollars (\$750.00). Each and every failure to file the required campaign financial statement shall constitute a separate offense.
2. **Orem Code § 2-6-8: Conflict of interest and use of office for personal benefit prohibited. Each elected official, officer and employee of the City shall comply with the provisions of the Utah Municipal Officers and Employees Disclosure Act. In addition, “whenever the performance of a public servant’s official duty requires governmental action on any matter involving that person’s or a relative of that person’s direct financial or personal interest and it is reasonably foreseeable that the decision will have an individualized material effect on such interest, distinguishable from its effect on the public generally, the public servant shall disclose the conflict and disqualify herself/himself from deliberating, deciding, and voting upon the matter.”¹⁷ Such conflicts should be disclosed to that public servant’s supervisor, or to the public body of which the servant is a member. Disclosure is not required for decisions relating to the performance of one’s duties such as compensation provided by the City, work-related travel opportunities, and similar decisions relating to the approved execution of official duties. Violation of this part is a class B misdemeanor.**
3. **Orem Code § 2-7-10: Procurement Policy and Sanctions. These provisions promote free trade and competition. “It is unlawful . . . [f]or . . . any employee or officer thereof, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to “rotate” bidding practices among competitors For any elected official, officer or**

¹⁷Orem Code 2-6-8 (2000).

employee to directly or indirectly solicit or directly or indirectly accept any [improper gift which is intended to influence purchasing decisions at odds with free competition] For any elected official, officer or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure For any elected official, officer or employee to actively participate in the awarding of a contract from which he will directly benefit, without fully disclosing any interest he has therein For any elected official, officer or employee or other person to appropriate for personal or private use any item of public property”

B. Employee Information Handbook-General Policies.

1. Employee Disclosure Policy and Confidentiality, 1.21. **Confidential, position-related information may not be disclosed. Furthermore, these provisions discourage gaining inappropriate benefits from one’s City position, and encourage full disclosure of potential conflicts of interests.**

Disclosure **is** required in the following circumstances (failure to disclose is a potential second degree felony, mandatory removal from office, and rescission of transaction):

- Receiving compensation for assisting any person or entity in a transaction involving the City,
- When the employee or officer is an officer, director, agent, employee, or owner of a business regulated by Orem, or when such business anticipates business with Orem, or if the employee’s interest in the business is substantial (\$2,000 or more),
- When the employee has a personal interest or investment which creates a conflict of interest with his/her public duties.
- When the employee receives compensation for assisting any person involved in a transaction with the City,

Disclosure **is not** required for receiving:

- Occasional non-monetary gift (under \$50 value),
- Award publicly presented,
- Bona fide loan in ordinary course of business,
- Political campaign contributions (note that other disclosure requirements apply here),

2. Hiring Relatives of City Employees, 1.33. **These provisions articulate anti-nepotism practices. The provisions prohibit much more than the state anti-nepotism provisions, which are primarily concerned with relatives directly supervising relatives. Orem’s policy exists “[t]o prevent an environment where favoritism, real or perceived can exist,” and to prevent one relative from directly supervising another. The following are specifically prohibited:**

- Hiring a relative¹⁸ within the same department, if that relative is hired full or part time,

¹⁸“Relative” includes those defined by the state: father, mother, husband, wife, son, daughter, sister,

- A flexible employee relative may be hired within the same department, but only if his/her relative doesn't directly supervise them,
 - Situations, caused by inner-departmental marriages, which ultimately cause disruption of work/work environment, and
 - Supervision of one relative by another.
3. Sexual Harassment, 1.47, 3.32. **“The policy of the City of Orem is that sexual harassment and an environment that allows sexual harassment or any other form of harassment to take place is unacceptable and will neither be tolerated nor condoned. . . . Orem and its agents are under a duty to investigate . . . and eradicate any form of sexual harassment or sex discrimination”** The following are considered to be among acts of sexual harassment, and are prohibited:
- Physical assaults of a sexual nature,
 - Unwanted sexual advances, propositions or other sexual comments,
 - Preferential treatment based on sexual favors,
 - Making that employee's position more difficult because of the employee's sex,
 - Sexual or discriminatory displays or publications anywhere in the City's work places by City employees,
 - Retaliation for sexual harassment complaints,
 - A supervisor or manager dating, kissing, etc., a person who is a subordinate in the same department unless they are married to each other.
 - In addition, employees at all times should treat other employees respectfully and with dignity, in a manner so as not to offend the sensibility of a coworker.
4. Purchasing Policy, 1.60. **This policy succinctly states that purchases should be for the best possible cost and according to established procedures.**
- Purchasing procedures should be reviewed annually, and
 - The Administrative Services Director shall develop and administer formal purchasing procedures, to be approved by the City Manager.
5. Investment of City Funds, 1.61. **This policy safeguards investment of public funds by establishing guidelines on ethics and conflicts of interest (1.63) surrounding such. These include the following:**
- Having the investment managers refrain from personal activity which would conflict with what's in Orem's best interests, and
 - Having the investment managers avoid any material interests in businesses regulated by the City.
6. E-Mail and Internet Usage Policy & Use of City Computers, 1.67, 1.83. **This policy encourages the proper use of E-mail and Internet systems provided by the City, and discourages personal work during normal work hours. The essence of these provisions demands that usage be “work-related.”**

brother, uncle, aunt, nephew, niece, first cousins, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law; BUT also includes grandparent; and as a spouses' grandparent, grandchild, aunt uncle and cousin; and stepchild.

7. **Travel Policy, 1.76. This policy encourages conference/training attendance, but not at the expense of waste, redundancy, or inefficiency. The following are required in connection with traveling:**

- Complete a travel authorization form prior to traveling, with all expenditures pre-approved by the mayor or city manager.
- Share with others what the traveler learned.
- Post-travel accounting for all city funds expended.

The department director ensures that employees within their respective departments comply with the travel policy and procedures, and stay within the approved travel appropriation.

8. **Disciplinary Policies and Procedures, 3.29. Causes for discipline or dismissal include the following:**

- Violation of any tenets, aspects, or expectations of the City's operational statement,
- Fraud,
- Deception in securing appointment,
- Fraudulent alterations of public records,
- Dishonesty,
- Abusive treatment of the public or other employees,
- Inability or refusal to get along with other employees,
- Misuse of public property or employees,
- Outside employment that conflicts with the employee's City employment, and
- Violence or threat of violence by or against an employee or other person.

C. **Employees' Declaration. We the employees of the City of Orem, make the following declaration:**

1. **Our mission is to help our fellow citizens build and preserve a community in which we all want to live.**
2. **Our values are centered in people: both citizens and co-workers. Everyone is worthy of our respect and recognition. We give quality service-excellent by any standard. We listen and respond openly and honestly. We give our very best effort-every time, all the time. We are a corporate family-unified, involved, committed.**
3. **We will make our workplace safe and healthy, fun, invigorating, and challenging, innovative and thoughtful, without fear of failure, and free from any type of harassment.**
4. **Our motto is that we give the people their money's worth-and then some.**