

**Mayor**  
**Robert D. Houston**  
**City Manager**  
**Joseph M. Decker**  
**Treasurer**  
**Katherine Ohlwiler**



**City Council**  
**Arlon Chamberlain**  
**Celeste Meyeres**  
**Jeff Yates**  
**Michael East**  
**Byard Kershaw**

**KANAB CITY COUNCIL**

August 27, 2019, 2019

26 NORTH 100 EAST, KANAB, UTAH

**NOTICE** is hereby given that the Kanab City Council will hold its regular council meeting on the 27th day of August 2019, in the City Council chambers at the Kanab City Office, 26 N 100 E, Kanab, Utah. The Council Meeting will convene at 6:30 p.m. and the agenda will be as follows:

6:30 P.M. Work Meeting

Business Meeting

1. Call to Order and Roll Call
2. Approval of Agenda
3. Approval of minutes of previous meeting
4. Approval of Accounts payable vouchers
  
5. Public Comment Period – Members of the public are invited to address the Council. Participants are asked to keep their comments to 3 minutes and follow rules of civility outlined in Kanab Ordinance 3-601
  
6. Discuss – Vote on Resolution 8-1-19 R “A Resolution Concerning the authorization of OED to conduct the Commercial Property Assessed Clean Energy District (C-PACE DISTRICT), within Kanab City, Utah.”
  
7. Discuss – Vote on Resolution 8-2-19 R “ A Resolution amending Kanab City Personnel Policy.”
  
8. Closed Session:
  - Discuss the purchase, exchange, or lease of real property
  - Discuss the character, professional competence, or physical or mental health of an individual.
  - Discuss pending or reasonably imminent litigation.

Times listed for each item on the agenda may be accelerated as time permits. If you are planning to attend this public meeting and due to a disability need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting, and we will try to provide whatever assistance may be required. Please contact Katherine Ohlwiler at the Kanab City offices.

– A Western Classic –

**Kanab City Council Meeting**  
**July 23, 2019**  
**City Council Chambers**  
**26 North 100 East**  
**6:30 PM**

**In Attendance:** Mayor Robert Houston, Council Members Celeste Meyeres, Jeff Yates and Byard Kershaw, Attorney Jeff Stott, Recorder Joe Decker and Treasurer Katherine Ohlwiler.

Michael East and Arlon Chamberlain excused. Mayor Houston called the meeting to order and roll call was taken. The pledge was led by Celeste Meyeres and Jeff Stott offered the prayer.

**Approval of Agenda:** Mayor Houston explained the last item on the agenda was listed in closed session and will be discussed in open session. A motion was made by Jeff Yates and 2<sup>nd</sup> by Byard Kershaw to approve the agenda for July 23, 2019 with the amendment that the vote on the Interlocal Cooperation Agreement for the Establishment and Operation of the Kane County Major Crimes and Drug Task Force be moved to open meeting agenda. Motion passed.

**Approval of Minutes:** A motion was made by Byard Kershaw and 2<sup>nd</sup> by Jeff Yates to approve the meeting minutes of July 9, 2019. Motion passed.

**Approval of Accounts Payable Vouchers and Check Register:** A motion was made by Celeste Meyeres and 2<sup>nd</sup> by Jeff Yates to approve the accounts payable vouchers and check register dated July 23, 2019 in the amount of \$166,570.43. Motion passed.

**Public Comment Period:**

Jo Ann Rando Moon explained she is a twenty-year resident of Kanab and is concerned about the sale of water to Southern Red Sands. Twenty years ago, when she worked at Best Friends and one of their wells went dry there and had to truck water in from Fredonia every day for at least a week. If that could happen then, it could happen with any wells there at this point. There was discussion about the golf course using almost as much water as SRS will need however, the City decided not to continue the contract with the golf course six years ago for water and that is why the golf course is closed because they had no access to water anymore. The City didn't want to use water for the golf course; however, they're going to send water up to the SRS project. It actually makes more sense to have a golf course in town. Ms. Moon doesn't think it is wise to take a chance of running out of water.

Laura Klina explained to the Council as elected representatives they represent not just who voted for them but all of Kanab City. There are many different people that make up Kanab and not all of the same type of person is opposed to the SRS frack sand mine. Not all of those against the contract are against SRS and the industry of frack sand mining, but they do have concerns about the impact of their water and the City's water.

The Keep Kanab Unspoiled citizen group was named to reflect the importance of the virgin beauty of our surroundings. They came together to better educate themselves and others on the risks that frack sand mining imposes on our community. Many have joined their group after doing independent research and coming to the same conclusion – this is a risky business proposition for their health, welfare and safety. It is also economically risky and environmentally reckless. Mrs. Klina expressed she is proud to be a part of that group and was present on behalf of those who were unable to attend to repeat this in their statements to the Council: Outraged Kanab residents are not going away. They care deeply and will work to protect their town and their people. The lawyers present at the City Council and County Planning and Zoning meetings were not there to “threaten” anyone. They offered their expertise in municipal and environmental law to meet with, educate, and warn the Council of critical concerns with this type of business and damage to Kanab’s water source. They too are trying to protect the City of Kanab. She asked if the City Attorney overlooked a clause that made SRS free from any liability. What if the Council had signed that? What about their word that they would make a decision based on the recommendations of the UGS report? They said their report was insufficient to make such a decision. If this was their recommendation, she asked why doesn’t the Council keep their word and follow it? As noted, the City Attorney was not in the discussion for the contract, but how many Council members were present for the numerous changes made in the contract over the months? Did they actually see the final copy? And she also asked, why didn’t you make the final contract public? What else is in there that leaves the City vulnerable to lawsuits from SRS? Who will take responsibility if we run out of water? Where is the Council at with reviewing the contract? Many have asked the Council to rescind the contract. The sooner that is done, the less likely the City of Kanab could face serious damages by SRS. Mrs. Klina finished by saying this is not a stable business transaction for the City, and the risks to our water and respiratory health far outweigh the benefits.

Mayor Houston explained the SRS contract was published with the agenda for that meeting on the Utah Public Notice Website.

Mary Beth Kuntz wanted to reference the Rules of Civility in Kanab Ordinance 3-601 that statement is on every agenda and number 7 of that ordinance states, “Those making comments shall not make personal references or attacks on the reputation of the public.” Ms. Kuntz read a paragraph: “During the July 9, 2019 City Council meeting one City Council Member publicly chastised the Kanab City Attorney. The Mayor slammed the gavel down several times. A past State Representative was escorted out by the Kanab Police as was a Kanab citizen. And the same councilmember claimed that the signs are stupid.” She explained she has a stupid sign in front of her home in Cedar Heights. She is somewhat disenchanted and dismayed by the previously mentioned behaviors of the City Council member. She asked where the rules of civility are for the City Council members as they are the trusted servants. Mr. Hurlow and Mr. Inkerbrant hydrogeologists from the UGS stated, “I would not use this information to make decisions.” The Kanab City Council ignored that statement and decided to go ahead with the contract. She feels that science and subsequent experts were ignored. Now she is even more confused because between the City Council meeting and the

County Planning and Zoning meeting that was held as the number of silos increased and if one well will be drilled or two. SRS is a startup company without past documented results, where is the business plan? Between the information provided at both meetings she feels that SRS has not been forthright. She wondered why the contract hasn't been made public but heard what the Mayor said and will go to the Utah.gov website to see it. She is among the Utah's minority and feels excluded by the dominant culture. She encouraged the Council to be truthful and direct with all Kanab citizens. She requests that decisions be made in the light of day. She feels like there is too much secrecy and vagueness in the town which feeds legitimate concerns with transparency as has been mentioned before. The Kanab City government needs full sunshine. She requests that the Council rescind the SRS contract and reminded the Council that they are trusted servants, elected and appointed officials with responsibility to represent all of them. She finished by saying she knows their service is time consuming and thanked the Council for that.

Emily Martin explained she also feels rather ignored as the Council's constituents. They elected and trusted them to listen to them and when looking at the last edition of the newspaper a large percentage of their constituents feel ignored. She asked that they review the SRS contract and seriously look at every part of it. She expressed the Council pulled the wool over their eyes. The number of wells changed and so did the number of silos. The Council needs to be open with the public. And they need to think about the well-being of the resources as water is a very finite resource. She lived in an area with limited water that was sold, and everyone got greedy needing more. This contract leaves the City vulnerable, really hopes the contract is rescinded.

Lattimer Smith explained he shares the same concerns that everyone has mentioned, where his mind goes is the bigger picture. The bigger picture is a rapidly changing global climate that is fueled by our reliance on fossil fuels. And he sees the frack sands as something that continues business as usual and it is an undeniable fact if you read the executive summary of the climate report that came out last year to see that if we continue down the path of promoting fossil fuel development that we're really doomed. We have a responsibility not just on a national level but in our local government as well. His question to the Council, considering what we're facing on a global scale, why is the town of Kanab getting behind something that just continues business as usual with something that helps fossil fuel development. Why aren't we looking forward instead of staying in what is soon to be the past.

Jim Walls explained he is a loyal proud citizen of Kanab but also concerned. Remarks were designed to ask the Council to reconsider the contract entered in with SRS. He asked the Council to rescind the contract on the basis that it needs to be carefully reviewed and more facts be made available to both the Council and to the citizens of Kanab. Most comments in the past meetings explored the consequences of using a huge portion of Kanab City's water extending out to fifty years but his concern, as he didn't know the contract was available to read online, is addressed to the other end of the question as there seems to be no part defining the annual minimum payment to the City through the contract. And yet, he understands that another clause in the contract

indemnifies the SRS Corporation. He read a sentence defining indemnify, “to indemnify someone is to assert the losses caused by that party or to compensate that party if something you do or fail to do causes them to experience loss, damages or to be the object of a lawsuit from a third party.” It seems like Kanab is selling SRS a five-gallon bucket of water for a penny and they’re getting exemption of any kind of damage in return. He thinks this is a necessary point that should be reviewed and corrected. Mr. Walls feels like vilifying the rogue group of concerned citizens for stupidly engaging in the constitutional purgative of free speech by exhibiting signs on public property as the law allows is not a particularly acceptable behavior from any public official. He thinks the original ground rules were to analyze this contract or opportunity with reports and analysis. Without calling for another redundant review of another bureaucratic go-around he thinks that they need some actual factual studies that can be analyzed and weighed on the balance. Mr. Walls thanked the Council for the time to speak.

Sandy Katz commented about the timeframe of 18 months has been thrown around about how long SRS has been talking with the City. She looked at her water bill and noticed that it has gone from a volume of 10,000 gallons per month to 7,000 per month last July. Last year there was an increase in the water bill. She wondered if it’s been 24 months ago that SRS was having conversations with the City and that is why the volume allotment increased. As far as the signs go, it is short sited that the tourists will see the signs and that is the only way they will hear about this.

Bart Battista commented about the indemnity clause, during the previous Council session Mr. Stott said he was concerned about the clause and asked the water rights lawyer if it was an issue and he said it wasn’t. So now we are going to send a re-worked indemnity clause to the same person to see if it is alright and he hopes the City does take into account the concerns.

Mayor Houston explained he tried to say this in the last meeting but maybe didn’t do a well enough job. Kanab City can withdraw the contract with SRS right now, but that is not going to stop the project from continuing. The Water Conservancy District has provided them with enough water that they need. He has gone over all of the reports and it shows there is enough water. This will go to the State Water Engineer for approval not to be decided by Kanab City. Kanab City has the possibility of losing \$300,000 per year if they pump at the maximum amount. We could withdraw but the project will still continue, and we would lose that much money a year.

**Discuss – Vote on Zone Change from RA to C2 on Lot 1 and 2 of Johnson Hills Minor Subdivision Parcel K-14-6-Annex. Applicant Victor and Paul Patel:** Mike Reynolds explained this zone change is actually located in the C3 zone. The C3 allows the same thing they wanted to do in the C2 zone, but the C3 is more appropriate. This was part of the Johnson Ranch and was subdivided into three sections. The Patel’s bought two properties on the south side of the highway and they are planning on putting two hotels and some cabins. Not like the cabins across the street. This qualifies for the zone change and follows along with the plan. Further east on Chinle Drive, they are working on entrances along the highway and also looking at moving 900 East to provide

better access and more separation. Traffic studies are happening there. There will be additional businesses in the area. Mr. Reynolds is in discussions with a developer to put in a RV park near Amerigas. They discussed requiring a traffic impact study for that area as well to show at what level the road may need improved. Celeste Meyeres explained the discussion was pretty cut and dry, at such a time Chinle would be improved who would bear that cost? It was explained the developer would bear that cost. Local citizens would not be responsible for implementing the needed infrastructure in that area. Maintenance would be the City's responsibility; improvements would be by the developer. Mayor Houston explained the City needs to have an idea on how much the road would need improved and how that would be paid for by the people causing the impact. Developers are only required to improve to the end of their property and each person would be responsible for their property. Jeff Stott explained that the condition the Planning Commission recommended was that they must do and fulfil the requirements of any traffic study before getting a building permit.

A motion was made by Jeff Yates and 2<sup>nd</sup> by Celeste Meyeres to approve the zone change from RA to C3 on Lot 1 and 2 of Johnson Hills Minor Subdivision Parcel K-14-6-Annex with the conditions recommended by Planning Commission. Motion passed.

**Discuss – Vote on Ordinance 7-1-19 O “An Ordinance amending Kanab City Land Use Ordinance concerning Chapter 13 Recreational Vehicle Park with Extended Stay Option”:** Mike Reynolds explained this is to allow an extended stay RV park as most are 30 days or less. They wanted to make sure the RV parks don't turn into low income housing. Celeste Meyeres made recommendations for changes. She talked to Carl Zander the developer about the ordinance and in section 13-4 #6 he didn't think clay would be compatible with hard surfaced roadways. Mr. Decker explained international fire code and it does have to be hard surfaced. This section can't be changed. #3 in that section it mentions open spaces and then requires developed recreational area and doesn't leave wiggle room for open space, habitat for wildlife. Can this area just be open space and not developed, Mrs. Meyeres also suggested leaving that up to the developer. Section 13-3, B. “The remaining land not contained in individual trailer spaces, roads or parking, shall be set aside as park, playground, or service areas for the common use and enjoyment of occupants of the development and of visitors thereto.” Another change she requested was to delete section 13-2 letter B. Too difficult to define what adequate shopping facilities are. And add #1 in with B. The third change was also in section 13-2 letter F #3 letter i, changing the *and* to *or* in “..buildings, walls, hedges and other landscaping...”.

A motion was made by Jeff Yates and 2<sup>nd</sup> by Byard Kershaw to approve ordinance 7-1-19 O “An Ordinance amending Kanab City Land Use Ordinance concerning Chapter 13 Recreational Vehicle Park with Extended Stay Option with the amendments that were discussed and recorded. Motion passed by roll call vote.

**Discuss – Vote on Ordinance 7-2-19 O “An Ordinance amending Kanab City Land Use Ordinance concerning Chapter 19 Kanab Creek Ranchos KCR-720 Zone”:** Mike Reynolds explained they are looking at the design standards for a two family

dwelling chapter. There are sewers on Escalante Drive that people are wanting to build duplexes and connect to. The new homes that have been put in in the same area have also connected to the sewer system. Due to the shortage of housing and people wanting to build duplexes, the Planning Commission thought they could do that in the KCR zone, but they need to be connected to sewer. In section 19-5 all of letter J was deleted. Jeff Yates asked about in section 19-7 #4 it talks about the minimum lot size for a two-family dwelling is 10,000 with (13,000) also. The Planning Commission also asked the Council to consider chapter 14 of the General Ordinances as it talks about being unlawful for people to not be on the sewer if they are within 300 feet. As they haven't noticed it for this meeting, they can't talk about it here yet. Jeff Stott explained they are supposed to think about that ordinance as well or address it in the future.

A motion was made by Jeff Yates and 2<sup>nd</sup> by Byard Kershaw to approve ordinance 7-2-19 O "An ordinance amending Kanab City Land Use Ordinance concerning Chapter 19 Kanab Creek Ranchos KCR-720 Zone with keeping the minimum lot size 10,000 square feet to be consistent with the other single family lot zones and striking letter J in its entirety. Motion passed by roll call vote.

**Discuss – Vote on Ordinance 7-3-19 O “An Ordinance amending Kanab City Land Use Ordinance concerning Chapter 22 Outdoor Lighting”:** Jeff Stott explained Janae from the City was asked to create a flier to give out to new developers about the lighting and found some confusing points in that flier based on the ordinance. They went through and cleaned those up and found some more to clarify. The idea was just to make changes to clean it up not any substantive changes.

A motion was made by Celeste Meyeres and 2<sup>nd</sup> by Byard Kershaw to approve the ordinance 7-3-19 O “An Ordinance amending Kanab city Land Use Ordinance concerning Chapter 22 Outdoor Lighting”. Motion passed by roll call vote.

**Discuss – Vote on Interlocal Cooperation Agreement for the Establishment and Operation of the Kane County Major Crimes and Drug Task Force:** Joe Decker explained the last agreement was passed in 1990 between Kanab City and Kane County. And this is the creation of what used to be the Drug Task Force that morphed into the Major Crimes between KC and KCSO. The agreement has been back and forth between the County and City attorneys as well as Police Chief Tom Cram and the Sheriff. The only change Mr. Decker explained is that it talks about one payment annually and right now it is payed quarterly every three months. If the whole organization is dissolved everything will be distributed between everyone.

A motion was made by Jeff Yates and 2<sup>nd</sup> by Byard Kershaw to authorize the Mayor to enter into an interlocal cooperation agreement for the establishment and operation of the Kane County Major Crimes and Drug Task Force with the change that the payments will be made quarterly not annually. Motion passed by roll call vote.

The meeting was adjourned by Jeff Yates.

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Mayor

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Recorder



Exhibit B

## **Resolution 8-1-19 R**

A RESOLUTION CONCERNING THE AUTHORIZATION OF OED TO CONDUCT THE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY DISTRICT (C-PACE DISTRICT), WITHIN KANAB CITY, UTAH

### RECITALS

A. Utah Code Ann. § 11-42a (2017) (the “Statute”) establishes the GOVERNOR’S OFFICE OF ENERGY DEVELOPMENT (“OED”), an independent body corporate and politic of the State of Utah, and establishes the “C-PACE District” and further provides for the creation of new energy improvement financing, which OED has named “C-PACE” or Commercial Property Assessed Clean Energy.

B. Pursuant to Section 11-42a-106 of the Utah Code, OED may only “establish and administer” the C-PACE District in each jurisdiction upon a request by the governing body of that jurisdiction to OED to create an energy assessment area and finance an improvement within that energy assessment area.

C. The Kanab City Council (the “Council”), acting as the governing body of Kanab City (the “[MUNICIPALITY]”), wishes to request and authorize OED to administer projects through the C-PACE District in Kanab City.

D. OED and Kanab City have agreed on the terms of the C-PACE Governing Body Participation Agreement in the form attached hereto (the “Participation Agreement”).

NOW, THEREFORE, BE IT RESOLVED, by the Kanab City Council of Kanab City, Utah, as follows:

Section 1. The Council hereby authorizes OED to create within Kanab City energy assessment areas in accordance with Title 11, Chapter 42(a) of the Utah Code to enable the financing by third-party lenders of eligible improvements within designated energy assessment areas.

Section 2. The Council hereby authorizes the Governor’s Office of Energy Development (“OED”) to establish and administer the C-PACE District within Kanab City Body in accordance with the Participation Agreement.

Section 3. The Council hereby: (a) adopts the above recitations as findings of the Council; (b) authorizes the Kanab City Attorney, in consultation with the Kanab City Manager, to make such changes

as may be needed to the Participation Agreement in order to correct any nonmaterial errors or language that do not materially increase the obligations of Kanab City; (c) authorizes Kanab City Manager to execute the Participation Agreement following review and approval by the Kanab City Attorney; and (d) authorizes the Chair, Kanab City Manager, or designee to execute any and all other necessary letters, orders, or documents as may be required to facilitate the successful implementation of the C-PACE District in Kanab City.

PASSED, APPROVED AND ADOPTED on this 27th day of August, 2019.

KANAB CITY COUNCIL

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Jeff Yates

Mayor pro-tem

ATTEST:

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Joseph Decker

Recorder

APPROVED AS TO FORM:

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Jeff Stott

Kanab City Attorney

## C-PACE Governing Body Participation Agreement

**THIS C-PACE GOVERNING BODY PARTICIPATION AGREEMENT** (the “**Agreement**”) is made and entered into as of the 27th day of August, 2019, by and between **Kanab City**, a political subdivision of the State of Utah (the “[**XX**]”), and the **GOVERNOR’S OFFICE OF ENERGY DEVELOPMENT (“OED”)**, an independent body corporate and politic of the State of Utah responsible for the C-PACE District established under Utah Code Ann. § 11-42a (2017) (the “**Act** ”) (each a “**Party**” and collectively the “**Parties**”).

### RECITALS

**WHEREAS**, Section 11-42a-103 of the Utah Code established commercial property assessed clean energy financing in the State of Utah; and,

**WHEREAS**, Section 11-42a-106 of the Utah Code established the “**C-PACE District**,” and OED, through the C-PACE District facilitates financing for eligible building improvements to commercial, mining, manufacturing, public/private club, lodging, industrial, agricultural, and multifamily properties (with five or more rentable units) by using a voluntary energy assessment to provide security for repayment of the financing. OED may delegate its powers under this chapter to a third party to assist in administering and directing the operation of the C-PACE District; and,

**WHEREAS**, Section 11-42a-106 of the Utah Code directs OED to “administer” the C-PACE District,

**WHEREAS** C-PACE District may only operate within the jurisdiction of Kanab City] if the Kanab City Council (the “**Council**”), acting in its capacity as the governing body of Kanab City, has made a written request to OED authorizing the creation of an energy assessment area, as defined in Section 11-42a-102(10) of the Utah Code, and the financing of an improvement within that energy assessment area (the “**Request**”), and,

**WHEREAS**, the Request may take the form of a resolution authorizing OED to administer the C-PACE District within Kanab City and authorizing Kanab City to enter into this Agreement with OED or alternatively, a Kanab City executive or administrator may authorize the designation of an energy assessment area in lieu of an ordinance or resolution; and,

**WHEREAS**, the Council has formally made a Request through the adoption of the resolution set forth in Exhibit A, which is attached hereto and incorporated into this Agreement by this reference;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Act, it is hereby agreed as follows:

**Section 1. Definitions**

(a) “**Application**” means a request by the Owner of a Participating Property for financing through the C-PACE District.

(b) “**Assessment**” means a voluntary energy assessment as defined in Section 11-42a-102 of the Utah Code.

(c) “**Energy Assessment Lien**” means a lien on property within an energy assessment area authorized by the Statute, as defined in Section 11-42a-102 of the Utah Code.

(d) “**Commercial Building**” means any commercial or industrial real property, including residential buildings containing five or more dwelling units for rent, as defined in Section 11-42a-102 of the Utah Code.

(e) “**Eligible Improvements**” means one or more publicly or privately owned energy efficiency upgrade, renewable energy system, battery storage system, and/or electric vehicle charging infrastructure, made to Participating Property, as specified in the Statute.

(f) “**Owner**” means the owner of the Participating Property.

(g) “**Participating Property**” means a Commercial Building that (a) directly benefits from Eligible Improvements, (b) whose owner has voluntarily consented to its inclusion within the energy assessment area, and (c) is located within an energy assessment area.

(h) “**Program Guide**” means the OED-created guide document intended provide information on the C-PACE program.

**Section 2. Obligations of OED.**

(a) Program Requirements.

Pursuant to the Act, OED:

(1) shall develop a Program Guide that governs OED’s administration of the C-PACE District. OED may serve as a facilitator for the purpose of securing third-party financing for Eligible Improvements pursuant to the Statute; and

(2) shall receive and review Applications submitted by Owners of Participating Properties for financing of Eligible Improvements, and approve or disapprove such Applications in accordance with the Statute.

(b) Application Requirements.

If an Owner makes an Application for financing through the C-PACE District for Eligible Improvements under the Statute, OED shall review the Application against the requirements in Statute.

(c) Financing Agreement.

The party providing the financing (the “**Capital Provider**”) may enter into a Financing Agreement with the Owner of Participating Property (the “**Financing Agreement**”). OED or its agent shall confirm that the Financing Agreement clearly states the amount financed, which may not exceed the sum of: 1) the cost of the energy improvements; 2) overhead costs not to exceed 15% of the contract price or estimated contract price of the cost of the energy improvements; 3) an amount for contingencies of not more than 10% of the contract price of the improvements if financed prior to the completion of the energy improvements; 4) capitalized interest; and, 5) an amount sufficient to fund a reserve OED shall confirm:

- 1) that the Capital Provider discloses to the Owner the costs and risks associated with participating in the C-PACE District, including risks related to the failure of the Owner to pay the Assessment provided for in the Financing Agreement;
- 2) that the Capital Provider discloses to the Owner the effective interest rate on the Assessment, including other fees and charges imposed by OED to administer the C-PACE District as well as any fees charged

by the Capital Provider. The Owner must be informed that each Eligible Improvement, regardless of its useful life, may be bundled with other such improvements on the Participating Property for purposes of an Assessment and paid for over the Assessment term.

(d) Establish Assessments and Assessment Units.

With respect to each Assessment placed on a Participating Property, OED shall confirm that Kanab City receives relevant information from the Capital Provider and Owner pertaining to the amount of the Assessment needed to construct the energy improvements. OED, in conjunction with Kanab City, shall approve the specifics of the applicable Assessment including, without limitation, the amount of the Assessment, term, interest rate and repayment dates in accordance with the Act. In no event shall the amount of any Assessment exceed the value of: (a) the Assessment benefit provided to the Participating Property, or (b) the Participating Property, as provided in the Act. Costs incurred for any property not approved to participate in the C-PACE District may not be included in a certified Assessment roll.

(3) OED will review the application against the requirements for the designation of an energy assessment area in Section 11-42a-202 of the Act.

(4) OED shall confirm that the Capital Provider files and records the Energy Assessment Lien and Assignment in the public land records of Kanab City.

(5) OED shall draft the Energy Lien and Assessment, Assignment and Financing Agreement for the review, approval and signature of Kanab City, Property Owner and Third Party Lender.

**Section 3. Obligations of Kanab City.**

(a) Promotion of Program; Assistance to the C-PACE District.

Kanab City shall use good faith efforts to assist OED in marketing efforts and outreach to the local business community to encourage participation in the C-PACE District, such as including C-PACE District information on Kanab City's website, distributing an informational letter from appropriate Kanab City officials to local businesses regarding the program, and conducting one or more business roundtable

events.

(b) Designation of an energy assessment area.

An energy assessment area means an area containing only the commercial or industrial real property of owners who have voluntarily consented to an assessment under the Act for the purpose of financing the costs of improvements that benefit the property within the energy assessment area.

Kanab City may adopt an energy assessment area by ordinance or resolution or, in the alternative, Kanab City's executive or administrator may authorize the designation of an energy assessment area and the levying of an assessment lien.

(c) Energy Assessment Lien and Assignment

Kanab City shall enter into an Energy Assessment and Lien with the Property Owner. The Assessment and Lien shall reflect the amount provided by the Capital Provider to construct the energy improvement.

Contemporaneously with execution of the Energy Assessment and Lien, Kanab City may assign, pursuant to an Assignment of Energy Assessment Lien of even date therewith, all of its right, title and interest in and to the Energy Assessment and Lien to the Capital Provider.

**Section 5. Billing and Collection of Assessments.**

Upon assignment of the Energy Assessment Lien from Kanab City to the Capital Provider, the Owner shall be instructed to make all Assessment payments directly to the Capital Provider pursuant to a Financing Agreement. OED shall confirm that the Financing Agreement states that, the Capital Provider shall be responsible, for all billing, collection, enforcement and administrative duties with respect of each of the Assessment payments and the Energy Assessment Lien.

**Section 6. Term and Termination.**

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the Assessments have been paid in full or deemed no longer outstanding. Kanab City may adopt a resolution de-authorizing

OED from administering the C-PACE District within its jurisdiction. If the Council adopts a de-authorizing resolution, Kanab City shall continue to meet all of its obligations under this Agreement and the Statute, as to all Assessment obligations existing on the effective date of the de-authorizing resolution until any and all outstanding Assessments have been paid in full and remitted to the Capital Provider.

**Section 7. Default.**

Each Party shall give the other Party written notice of any breach of any covenant or term of this Agreement and shall allow the defaulting Party thirty (30) calendar days from the date notice is received to cure any such default or, if it cannot be cured within the thirty (30) days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies provided by law and equity, including, but not limited to, specific performance.

**Section 8. Miscellaneous Provisions.**

(a) Amendment and Termination.

This Agreement may only be amended by a written instrument executed by each of the parties.

(b) Severability.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section shall not affect the remaining clauses, provisions or sections, and this Agreement shall be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

(c) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(d) Notices.



All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to Kanab City:

Kanab City  
c/o Joe Decker, City Manager  
26 N 100 E  
Kanab UT, 84741

With a Copy to:

If to OED:

C-PACE District  
c/o Utah Governor's Office of Energy Development  
P.O. Box 144845  
Salt Lake City, UT 84114  
Attention: Brooke Tucker

With a Copy to:

Brian McCarter, Sustainable Real Estate Solutions, Inc. (SRS)  
100 Technology Drive, Suite 209  
Trumbull, CT 06611  
[bmccarter@paceworx.com](mailto:bmccarter@paceworx.com)

(e) Amendment.

Except as otherwise set forth in this Agreement, any amendment to any provision of this Agreement must be in writing and mutually agreed to by OED and the Kanab City.

(f) Applicable Law and Venue.

This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Utah. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the Third District Court of Kanab City, State of Utah.

(g) Entire Agreement.

This Agreement constitutes the entire understanding between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement. In the event of any conflict between the Program Guide and this Agreement, the terms of this Agreement shall control.

(h) Headings.

The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

(i) Changes in Law or Regulation.

Notwithstanding any other provision in this Agreement , this Agreement is subject to such modifications as may be required by changes in federal or Utah state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part of this Agreement on the effective date of such change, as if fully set forth herein.

(j) Third-Party Beneficiaries.

It is specifically agreed among the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

(k) No Waiver of Rights.

A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

(l) No Waiver of Governmental Immunity.

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify

any governmental immunity that may be available by law to Kanab City or to OED, their officials, employees, contractors, or agents, or any other person acting on behalf of Kanab City or OED.

(m) Independent Entities.

The Parties shall perform all services under this Agreement as independent entities and not as an agent or employee of the other Party. It is mutually agreed and understood that nothing contained in this Agreement is intended, or shall be construed as, in any way establishing the relationship of co-partners or joint ventures between the Parties hereto, or as construing either Party, including its agents and employees, as an agent of the other Party. Each Party shall remain an independent and separate entity. Neither Party shall be supervised by any employee or official of the other Party. Neither Party shall represent that it is an employee or agent of the other Party in any capacity.

**IN WITNESS WHEREOF**, Kanab City and OED have each caused this Agreement to be executed and delivered as of the date indicated above:

**[MUNICIPALITY]**

By: \_\_\_\_\_  
**Joseph Decker, Manager**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jeff Stott, Attorney

**UTAH GOVERNOR'S OFFICE OF ENERGY DEVELOPMENT**

By: \_\_\_\_\_  
Laura Nelson, Executive Director





# USER GUIDE

VERSION 2.0  
April 17, 2019

A program of:

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GOVERNOR'S OFFICE OF  
**ENERGY DEVELOPMENT**  
*Advancing Utah's Energy Future*

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*Disclaimer: The Governor's Office of Energy Development (OED) makes no representations as to whether a particular project will be financed or will generate the estimated energy savings. Throughout this guide, OED makes suggestions based on nationally recognized best practices for administering and completing C-PACE projects. Further terms and conditions detailing OED's responsibilities can be found at the end of this guide.*



# OVERVIEW

## HOW TO USE THIS GUIDE

Welcome to Utah commercial property assessed clean energy (C-PACE). This guide describes how the C-PACE District works and offers recommendations for implementing C-PACE projects. The guide is intended to inform all parties participating in C-PACE—including property owners, commercial real estate developers, energy efficiency and renewable energy contractors, mortgage holders, capital providers, and communities. The first section covers the C-PACE District and operations in detail; you can also refer to the Table of Contents to find the section that is most relevant to you.

**Note that this guide only applies to participants in the C-PACE District that is administered and operated by the Governor’s Office of Energy Development (Utah Code Ann. § 11-42a (2017)). Cities and counties seeking information about self-administering C-PACE may refer to [Utah Code Ann. § 11-42a-106 \(2017\)](#).**

## PROGRAM OVERVIEW

C-PACE helps property owners in Utah access private-sector financing for the installation of building improvements that can reduce energy consumption and can increase the value of their property. The [Governor’s Office of Energy Development \(OED\)](#) was named in the statute to direct and administer C-PACE projects through the C-PACE District, which can benefit the state’s economy through new investment, job opportunities, energy savings, and improved air quality.

More than 30 states have passed legislation enabling C-PACE, among them Utah, which first passed enabling legislation in 2013. The statute authorized local governments to offer commercial and industrial property owners a unique mechanism for financing energy efficiency, renewable energy, and water efficiency improvements to their buildings. [S.B. Bill 273](#), enacted in March 2017, amends the earlier legislation by expanding the scope of eligible projects, establishing a statewide C-PACE District, and more clearly defining the process of developing and financing projects. The complete statute can be found at [Utah Code Ann. § 11-42a \(2017\)](#) (the “C-PACE Act”).

C-PACE financing can be provided by capital providers in an open market that provides property owners with competitive, private financing. The financing is secured through a voluntary energy assessment lien levied against the owner’s property<sup>1</sup> and repaid to the capital provider. The financing term is typically based on the useful life of the improvements and can extend up to 30 years. Because the long-term financing can cover up to 100 percent of a building’s modernization project cost and often requires no money down, C-PACE may enable property

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<sup>1</sup>Utah Code 11-42a-301

owners to make substantial upgrades to their buildings. The project's energy savings may outweigh the C-PACE payments, which creates positive cash flow for the property owner, whose upgraded building may be more valuable after a C-PACE project.

In Utah, and many other states, C-PACE is also available to real estate developers who design and construct buildings that use equipment that is more energy efficient than what is required by building code. The financing may help developers fill gaps in their financing plan.

Note that per the statute, OED can administer projects statewide through the C-PACE District as long as the city or county (governing body) opts in.<sup>2</sup>

## PROGRAM BENEFITS

C-PACE offers multiple benefits to a broad range of stakeholders, including property owners and developers, contractors, capital providers, mortgage holders, and communities.

### Property Owners

C-PACE may help property owners reduce their operating costs, improve the value and market competitiveness of their asset, meet energy performance goals, and increase the cash flow from their building. C-PACE does this in several ways:

#### **Up to 100% Financing**

Many owners lack the capital they need to pay for beneficial improvements. C-PACE can solve this problem by providing up to 100 percent,<sup>3</sup> long-term (up to 30 years)<sup>4</sup> financing for eligible improvements. Actual or estimated overhead costs can be included in the financing.<sup>5</sup>

#### **Long-term Financing**

While commercial real estate lenders typically provide five to 10-year financing, the longer-term (up to 30 years), fully amortized nature of C-PACE financing can allow building owners to pursue more capital-intensive, comprehensive upgrades. The maximum term is typically set at the weighted average useful life of the improvements. The energy cost savings that result from the improvements may cover all or a portion of the C-PACE payments.

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<sup>2</sup> Utah Code 11-42a-106

<sup>3</sup> Utah Code 11-42a-102

<sup>4</sup> Utah Code 11-42a-205

<sup>5</sup> Utah Code 11-42a-102

<b>No Personal Guarantee</b>	C-PACE is property-based financing secured by an assessment (lien) on the property. As a result, C-PACE capital providers typically do not require the property owner to provide a personal guarantee.
<b>Transfers Upon Sale</b>	Property owners who sell their property before the assessment is repaid have the option to transfer the repayment obligation to the next owner. <sup>6</sup>
<b>Cost Recovery</b>	C-PACE may help solve the split incentive or misalignment of incentives that arises between owners and tenants. Owners may be less likely to undertake comprehensive improvements when their tenants receive the financial benefits, such as lower utility bills. Under some leases, the C-PACE structure may enable an owner to pass the benefit assessment on to the tenants, potentially solving the split incentive. Property owners are encouraged to consult with their attorney or accountant on this matter.

## Developers

Developers or owners planning new construction projects can use C-PACE financing to fill gaps in their financing plan, provided they design their building to exceed the current international energy conservation code (2015 IECC, ASHRAE 90.1-2013) by at least 5 percent. See the new construction section for further details.

## Contractors

C-PACE enables a property owner to access up to 100 percent financing<sup>7</sup> for existing buildings to cover the costs related to the financed eligible improvements. Finance terms (up to 30 years)<sup>8</sup> are typically based on the weighted average useful life of the improvements, thereby making eligible energy efficiency, water conservation, renewable energy projects and seismic upgrades affordable. This means contractors may be able to close more projects and expand their business.

## Capital Providers

C-PACE projects administered through the C-PACE District are secured by a benefit assessment (known as an “energy assessment lien” in Utah). Like all public benefit assessments, the energy assessment lien sits in a senior position to other encumbrances on the property, and has the same priority as, but is separate and distinct from, a lien for general property taxes.<sup>9</sup> As a result,

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<sup>6</sup> Utah Code 11-42a-301

<sup>7</sup> Utah Code 11-42a-102

<sup>8</sup> Utah Code 11-42a-205

<sup>9</sup> Utah Code 11-42a-301

capital providers who work with OED through its C-PACE District may receive secure financing opportunities.

### **Mortgage Holders**

OED strongly encourages the development of projects that generate energy cost savings that exceed the repayment obligation of the project. While this is not mandatory, such projects can result in increased net operating income, increased debt coverage ratio, increased value, and a greater return on investment.

In the event of a default, the assessment does not accelerate, only the amount in arrears is due.<sup>10</sup>

In Utah, energy assessments can only be placed with the consent of the person or institution holding a lien on the property.<sup>11</sup> [View a list of financial institutions that have granted consent to C-PACE projects nationwide.](#)

### **Communities**

C-P ACE projects may benefits cities and counties in multiple ways. Thanks to C-PACE, the state may enjoy new investment, and our citizens may enjoy more job opportunities, greater energy savings, and improved air quality—all financed with private capital, and not taxpayer dollars.

## **KEY PARTIES TO A C-PACE TRANSACTION**

There are multiple parties to a C-PACE transaction; each plays a distinct role in the process. They include:

<b>Property Owner</b>	The legal owner of the participating property upon which the eligible improvements will be installed.
<b>Program Administrator</b>	OED is the program administrator of the C-PACE District. The program administrator may retain a third party to assist in administering and directing the operation of the C-PACE district. <sup>12</sup>
<b>Capital Provider</b>	Capital providers, i.e., third-party lenders, include trust companies, savings banks, savings and loan associations, banks, credit unions, and any other entities that provide financing to property owners for eligible improvements under C-PACE.

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<sup>10</sup> Utah Code 11-42a-303

<sup>11</sup> Utah Code 11-42a-202

<sup>12</sup> Utah Code 11-42a-106

Capital providers are responsible for underwriting each C-PACE financing transaction to determine whether to invest in the project. If they choose to invest, the capital provider will enter into a financing agreement with the property owner. The program administrator will maintain a list of capital providers that have completed C-PACE program training.

**Contractor**

The licensed contractor that performs the work required for the design and installation/construction of the eligible improvements. The program administrator will maintain a list of contractors that have completed C-PACE program training.

**Mortgage Holder**

The holder of any existing mortgage on the property under consideration for C-PACE. Written consent must be obtained from each person or institution holding a lien, e.g., mortgage, on the property prior to C-PACE finance closing.<sup>13</sup>

**Governing Body**

A local entity that may voluntarily adopt a resolution to participate in the C-PACE District, authorizing OED to administer C-PACE projects in their jurisdiction.

## KEY STEPS TO A C-PACE TRANSACTION

### 1. Application/Eligibility Determination

An interested property owner or a representative of the property owner may submit an application to the program administrator. Prior to submitting an application, the applicant should ensure that the property is located in a [jurisdiction that has opted in](#) to the C-PACE District.

The program administrator will review the material and determine whether the property owner and project are eligible for C-PACE financing.

### 2. Project Scoping

It is strongly recommended that an energy audit/renewable energy feasibility study, consistent with the best practices outlined in the Technical Standards section of this User Guide, be prepared for each project.

### 3. Mortgage Holder Consent

Written consent must be obtained from each person or institution holding a lien, e.g.,

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<sup>13</sup> Utah Code 11-42a-202

mortgage/deed of trust, on the property. Such consent must be submitted to the program administrator to facilitate the levy of the energy assessment lien with the governing body clerk and recorder, and the assignment of such lien to the capital provider.

#### 4. Underwriting/Approval

Within the parameters of the C-PACE District guidelines, capital providers establish the financing terms and conditions, financial underwriting standards, and make their own determination about whether to invest in a specific project. Once the underwriting process is complete, the capital provider may issue a conditional approval or financing commitment letter outlining the terms of the financing, including any conditions of closing. **Note that a one-time program administration fee, equal to 3 percent of the project finance amount, not to exceed \$90,000 per project, is applied to each financed project. The program administrator will provide an invoice for the fee to the capital provider.**

#### 5. Closing

Once all statutory requirements have been met, the capital provider will prepare documents for closing the transaction. The property owner and the capital provider will enter into a financing agreement that contains the financing terms and conditions that will govern the transaction.

#### 6. Levying an Assessment and Assignment

Once the program administrator has received the executed documents from the capital provider and has confirmed that all closing conditions have been met, it will delegate to the capital provider its ability to facilitate the levying of the energy assessment in the land records of the governing body, as well as the assignment of the assessment lien to the capital provider.

#### 7. Construction/Disbursement

The capital provider is responsible for managing disbursements of C-PACE financing during construction per the terms of the financing agreement. The property owner should refer to that agreement to determine the capital provider's requirements for periodic inspections, progress payments, and change orders.

#### 8. Construction Closeout

The property owner should review the financing agreement to determine the process the capital provider will require to close out the construction phase of the project and move it to the permanent financing stage. This process may include an amendment to the energy assessment to account for any adjustments to the principal amount of the energy assessment associated with capitalization of construction interest or any other cost adjustments incurred during construction of the project. If so, the capital provider will prepare an amendment and restatement of assessment payment schedule for

execution and recording with the county recorder.

## **9. Servicing/Repayment**

Upon assignment of the energy assessment lien to the capital provider, the property owner will make the C-PACE assessment payments directly to the capital provider pursuant to the financing agreement. The capital provider shall be responsible, subject to and in accordance with the terms of the financing agreement, for all billing, collection, enforcement, and administrative duties in respect of the loan, the assessment payments, and the lien.

## **10. Release and Discharge of the Energy Assessment**

Upon the full payment of the energy assessment lien, the capital provider shall file a release and discharge of the energy assessment lien on the property with the county recorder's office.

## **WHO TO CONTACT**

### **For administrative questions, contact:**

Shawna Cuan  
Program Administrator  
Managing Director of Energy Efficiency and Renewable Energy  
Utah Governor's Office of Energy Development  
(385) 235-4580  
scuan@utah.gov

### **For project development questions, contact:**

Theddi W. Chappell, CRE, MAI FRICS, AAPI and LEED AP  
Program Director  
(435) 901-1394  
TChappell@PACEworx.com

### **To initiate project pre-qualification and submit project applications, contact:**

Heather Lee  
Program Manager  
(203) 220-6952  
HLee@PACEworx.com

# PROGRAM ADMINISTRATION

## PROGRAM ADMINISTRATION

The Governor’s Office of Energy Development (OED) is the program administrator of the C-PACE District. As program administrator, OED is subject to all requirements and limitations of a state agency. As a program of OED, all direct and oversight responsibilities of the program belong to OED.

## PROGRAM REQUIREMENTS

This section outlines the guidelines that govern all participants in OED’s C-PACE District. All participants agree to adhere to the terms and conditions of the C-PACE District requirements.

- Service Area** State of Utah, subject to local governing body participation in the C-PACE District
- Eligible Property** Qualified commercial or industrial real property
- Eligible Applicant** An owner of eligible commercial or industrial real property
- Security** The financing is evidenced by a financing agreement and is secured by an energy assessment and energy assessment lien that is recorded in the county land records against the qualified real property. The energy assessment lien has priority over all other liens recorded against the property, and has the same priority as, but is separate and distinct from, property taxes.
- Credit Standards** The property owner must be current and in good standing on all debt owed to Utah; current on all real property taxes, special assessments, and water sewer charges on the property; have no recorded notice of default, foreclosure, or delinquency on any trust deed or other lien on the property that has not been cured, and have no outstanding involuntary liens, including a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property.<sup>14</sup>
- Eligible Improvements** Eligible improvements include upgrades that are permanently affixed to commercial or industrial real property. Energy efficiency improvements must be designed to reduce energy or water consumption, and can include improvements to building envelope, insulation, heating, ventilation and air conditioning systems, lighting, energy recovery

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<sup>14</sup> Utah Code 11-42a-202



systems, water conservation and rain catchment systems, and hot water systems. Parking automation, vertical transport devices, seismic upgrades, and renewable energy systems (e.g., solar photovoltaic systems, solar thermal, wind, geothermal, micro hydro, biofuel systems) are also eligible.<sup>15</sup>

- Eligible Costs** Eligible costs include the actual or estimated costs to be incurred in connection with an energy assessment, including appraisals, legal, filing and facilitation fees, underwriting fees, placement and recording fees, escrow fees, and other incidental costs.
- Maximum Term** The maximum finance term is typically based on the weighted average useful life of eligible improvements, not to exceed 30 years.
- Payment and Servicing** The property owner remits the C-PACE assessment payments to the capital provider according to the terms of the financing agreement.
- Evidence of Ownership** A current title report is required prior to closing to show evidence of ownership and all encumbrances recorded against the property.
- Mortgage Holder Consent** Where there is an existing mortgage or deed of trust recorded against the property, the mortgage holder must be given written notification that the property owner intends to enter into a C-PACE financing agreement, which cannot proceed without the written consent of the mortgage holder.

## PARTICIPATION IN REBATE/INCENTIVE PROGRAMS

Although not required, OED strongly encourages property owners to pursue all available federal investment tax credits, utility rebates, and incentive programs in conjunction with C-PACE financing. Rebates and incentive programs may provide participants with cash payments or tax credits for implementing eligible energy and water improvements, thereby reducing overall project costs and the total amount the owner will need to finance.

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<sup>15</sup> Renewable energy systems are limited to 2 megawatts for existing customers in the public electrical utility service area.

## PROGRAM PARTICIPATION FEES

Under Utah's statute<sup>16</sup>, OED's administration of the C-PACE District is designed to be self-sustaining. The project fees charged to participants are intended to cover the startup and operating costs associated with designing and administering the program. This fee is contingent on legislative approval, in accordance with Title 63J, Chapter 1 of the Utah State Code.

A one-time program administration fee, equal to 3 percent of the project finance amount, not to exceed \$90,000 per project, is applied to each financed project. This fee is typically included in the total financed amount and is due only if a project is successfully financed.

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<sup>16</sup> Utah Code 11-42a-106

# ELIGIBILITY (PROPERTY AND PROJECT)

## ELIGIBLE PROPERTIES

Properties eligible for C-PACE financing must meet two requirements. They must:

- Be located in a governing body that has opted in to the C-PACE District
- Have one of the following uses:
  - Commercial
  - Mining
  - Agricultural
  - Industrial
  - Manufacturing
  - Trade
  - Professional
  - Private or public club
  - Lodge
  - Business
  - A similar purpose
  - Dwelling purposes; and contains more than four rental units.<sup>17</sup>

New construction is also eligible. See requirements on the next page.

## ELIGIBLE IMPROVEMENTS

Improvements that are eligible for C-PACE financing must be permanently affixed to the commercial or industrial property. Examples include, but are not limited to:

- Automated building controls (such as BMS and EMS)
- Automated parking systems or parking that reduces land use
- Battery storage
- Boilers, chillers, and furnaces
- Building envelope (such as insulation, glazing, windows)
- Combined heat and power (CHP) systems
- EV chargers
- Geothermal systems
- High-efficiency lighting
- Hot water systems
- HVAC upgrades
- Hydroelectric systems
- Roof replacement that improves energy efficiency (such as reflective/cool roof, enhanced insulation)

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<sup>17</sup> Utah State Code 11-42a-102

- Seismic resiliency upgrades
- Small wind systems
- Solar PV (roof upgrade/replacement for rooftop systems is also eligible)
- Solar thermal
- Variable speed drives on motors, pumps, and fans
- Vertical transport devices (such as energy efficient elevators and escalators)
- Water efficient fixtures (such as low-flow faucets and toilets)

In addition, the cost of improvements that are directly related to the installation of eligible improvements may be eligible, e.g., roof upgrades to support a roof-mounted solar PV installation.

This list is not all-inclusive and may change over time. For a complete list of improvements, see Utah Code 11-42a-102.

## NEW CONSTRUCTION

In addition to existing building retrofits, C-PACE can be applied to new construction projects in Utah. The C-PACE financing structure can unlock capital to enable a property owner or developer to achieve higher building performance (on a utilities consumption basis)—improvements that are often “value engineered” out of a project—and may also help the developer fill gaps in their financing plan. Moreover, C-PACE new construction financing may reduce the developer’s equity contribution or the need for mezzanine financing, thereby reducing the project’s weighted average cost of capital.

Unlike retrofits to existing properties where the savings from qualifying energy improvements can be demonstrated by referencing pre-improvement baseline utilities, e.g., electricity and fuels, consumption data, new construction has no baseline against which to measure improvements.<sup>18</sup> Thus, the C-PACE program has designed a separate, performance-based process for new construction projects.

To qualify, applicants are required to provide total project construction costs by trade component, so the C-PACE District program administrator can evaluate the total eligible construction cost (TECC). The TECC includes all hard and soft costs associated with construction and excludes the cost to purchase the land itself, as well as any components that are not permanently attached<sup>19</sup> to the building.

Given the lack of a pre-improvement energy baseline against which to measure energy savings and the difficulty of isolating and assigning portions of the new construction costs to particular energy savings, the traditional methodology of comparing existing building utility consumption to expected savings following an improvement is not applicable. Therefore, an alternative method for new construction projects will apply for determining the maximum amount of C-PACE financing. Financing is based on the level of energy performance beyond code requirements the building is designed to achieve.

When applying for C-PACE financing for a new construction project applicants must demonstrate, using whole-building simulation modeling, e.g., eQUEST, EnergyPlus, OpenStudio, that the As Designed Modeled Energy Performance will exceed (outperform) the current international energy conservation code for commercial buildings in Utah (IECC 2015/ASHRAE 90.1-2013) which is effective through June 30, 2019.<sup>20</sup> Applicant submissions should include modeling data, i.e., summary, input and output files, and as designed permit-level drawing set, sufficient to support the comparison of whole-building energy use intensity (EUI) for both code compliance and as designed scenarios.

C-PACE financing eligibility will depend on whether the As Designed Modeled Energy Performance (annual EUI) exceeds code compliance (IECC 2015/ASHRAE 90.1-2013) baseline EUI by at least 5 percent. The intent of this approach is to encourage new construction projects that consume less energy and water. Projects that perform on an annual EUI basis by at least 5 percent above the current energy code are eligible to receive C-PACE financing up to 20 percent of the TECC. The maximum C-PACE finance amount will not exceed 20 percent of the TECC.

If the design includes a renewable energy system such as solar PV, the solar PV system’s impact on building energy performance is excluded from the aforementioned energy savings analysis. Such systems will be evaluated separately with 100% of the eligible renewable energy system cost added to the C-PACE

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<sup>18</sup> This is also the case where an abandoned building is being rehabilitated or a building is being fundamentally repurposed. Consequently, such rehabilitation or repurposing can be treated the same as new construction for the purposes of C-PACE.

<sup>19</sup> Items such as shading devices, furniture, fire extinguishers, parking lot paving, etc.

<sup>20</sup> The Utah state legislature adopted the 2018 IECC for commercial buildings, which goes into effect July 1, 2019.

financing amount previously determined. The maximum C-PACE financing amount eligible for a project will be determined by the program administrator after a review of the As Designed Modeled Energy Performance (EUI) and Code Compliant Modeled Energy Baseline (EUI) data submitted to confirm the exceedance above energy code compliance.

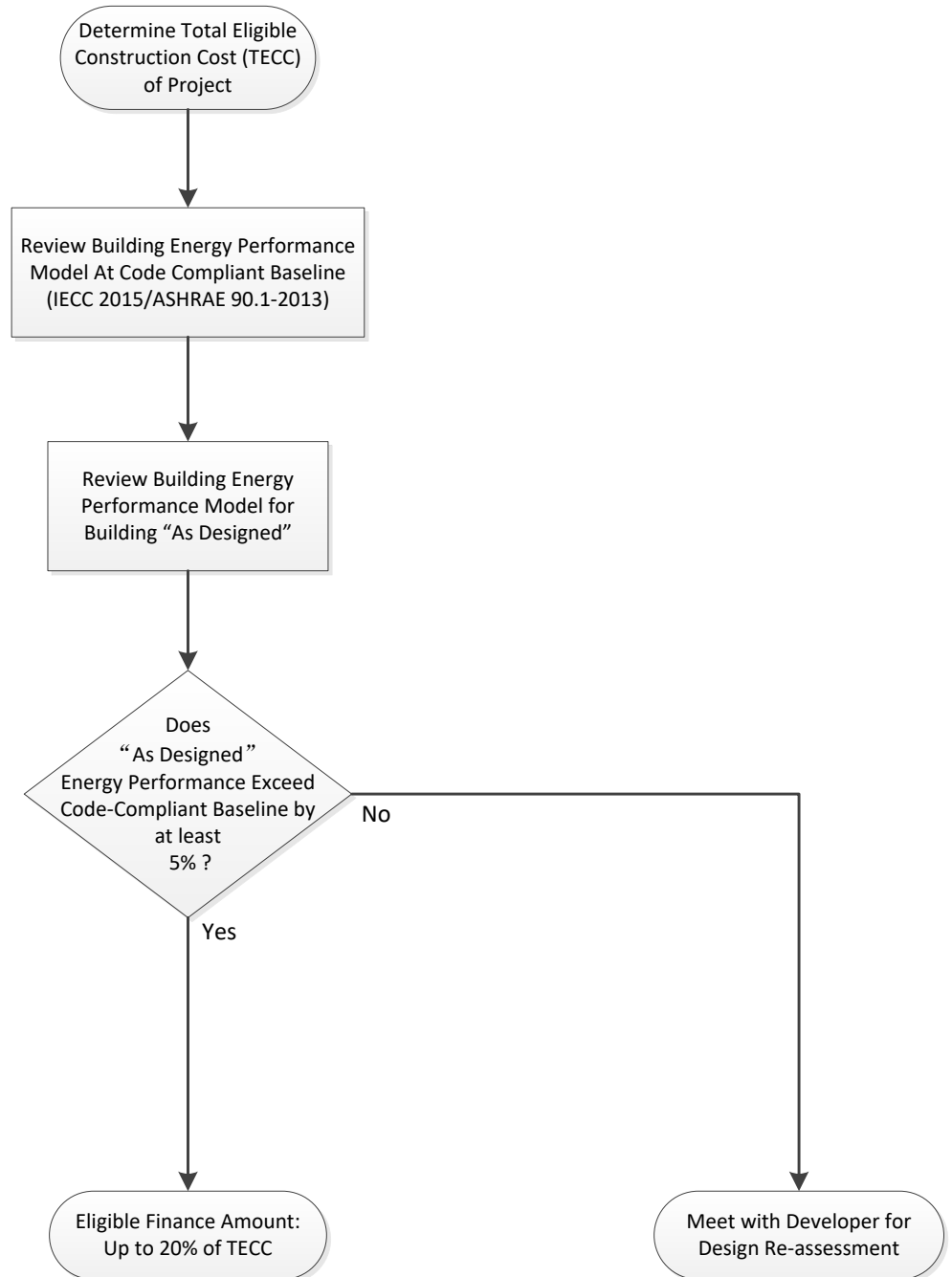
Based on this analysis, the building owner and capital provider will determine the C-PACE financing amount for each project (up to the maximum financing amount determined to be eligible). If needed, the program administrator can advise and provide guidance to the capital provider and building owner.

The following table provides case examples of C-PACE eligible financing amounts.

Example: Assume Total Eligible Construction Cost (TECC) is \$10 million				
	Case 1	Case 2	Case 3	Case 4
% exceeding current energy code	5%	12%	18%	3%
% TECC selected (up to max. of 20%)	10%	20%	20%	N/A
C-PACE Eligible Finance Amount	\$1 million	\$2 million	\$2 million	\$0

The following flowchart illustrates the new construction methodology:

## NEW CONSTRUCTION METHODOLOGY



TECC = Total Eligible Construction Cost

As described above, the Utah state legislature adopted the 2018 IECC for commercial buildings, which goes into effect July 1, 2019. To support developers in their transition to implement the IECC 2018/ASHRAE 90.1-2016, the C-PACE program will adhere to the following new construction project eligibility transition plan:

- New construction projects that submit super structure permits to the respective building department by June 30, 2019 will be reviewed for C-PACE financing eligibility according to the process described above based on exceeding IECC 2015/ASHRAE 90.1-2013 by at least 5 percent.
- New construction projects that submit super structure permits to the respective building department between July 1, 2019 and June 30, 2020 will be reviewed for C-PACE financing eligibility according to the following process:
  - Projects that demonstrate As Designed Modeled Energy Performance (EUI) that meets IECC 2018/ASHRAE 90.1-2016 can qualify for C-PACE financing in an amount up to 15 percent of the TECC.
  - Projects that demonstrate As Designed Modeled Energy Performance (EUI) that exceeds IECC 2018/ASHRAE 90.1-2016 by at least 5 percent can qualify for C-PACE financing in an amount up to 20 percent of the TECC.
- Effective July 1, 2020, new construction projects must demonstrate As Designed Modeled Energy Performance (EUI) that exceeds IECC 2018/ASHRAE 90.1-2016 by at least 5 percent to qualify for C-PACE financing in an amount up to 20 percent of the TECC.



# PROJECT TECHNICAL RECOMMENDATIONS

## AUDIT RECOMMENDATIONS

OED strongly encourages the performance of an energy audit, water audit, or other analysis that assesses the expected energy and/or water cost savings of the improvements over their useful life. An ASHRAE Level II audit or comparable analysis is recommended. Individual capital providers may require a specific audit as part of their underwriting criteria. For renewable energy improvements, OED encourages the performance of a Renewable Energy Feasibility Study (REFS).

Failure to obtain an energy audit, water audit, or other analysis and implement the findings imposes multiple risks to the building owner. First, the building owner may face lower cash flows due to smaller energy savings. This lowered cash flow reduces the building owner's ability to repay the C-PACE assessment. Best practices nationally show that C-PACE projects should maximize energy savings in order to repay the C-PACE assessment and even generate positive cash flow.

Project applicants are responsible for all costs and fees incurred to complete the C-PACE project application, including costs associated with an audit and/or a REFS. While such costs are typically included in the project financing, in cases where the project does not move forward, the applicant will be responsible for any payments due to contractors or other third parties engaged by the owner, where applicable.

It is recommended that the REFS be performed by an experienced renewable energy professional with detailed knowledge of the renewable energy system under consideration, including technical and design issues, resource assessment, relevant policies and incentives, utility tariffs and interconnections issues, other evaluations (where necessary), and project funding mechanisms.

## ENERGY SAVINGS RECOMMENDATIONS

Under the C-PACE Act, there is no statutory requirement that the projects generate positive cash flow based on energy savings. While the statute does not require any demonstration of the savings-to-investment ratio (SIR), OED strongly encourages property owners to bring forward projects with SIRs greater than 1.0 because:

- Capital providers look favorably on projects that show positive cash flow over their lifetime,
- Mortgage holders are more likely to consent to the imposition of an energy assessment for the projects that show positive cash flow, and
- In general, the higher the SIR, the greater the demonstrated environmental benefits, e.g. CO<sub>2</sub> emissions reduction, of the project, which helps to promote the goals of C-PACE.

The SIR is calculated as the ratio of the total projected energy and water utility cost savings over the effective useful life of each improvement, divided by the total cost of those improvements, including all fees and interest charges.

For new construction, the energy savings is calculated as the incremental energy savings gained above the determined minimum requirement (energy consumption at current building energy code) as specified in the new construction (developer) section of this document.

## POST-CONSTRUCTION COMMISSIONING RECOMMENDATIONS

OED strongly encourages that a post-construction commissioning report be provided by the contractor upon project completion. The post-construction commissioning report can be performed by either a third party or the party performing the original installation of funded improvements. The report is recommended to contain, at a minimum:

- A statement that systems have been completed in accordance with the contract documents, and that the systems are performing as expected,
- Identification and discussion of any substitutions, compromises, or variances between the final design intent, contract documents, and as-built conditions,
- A description of the components and systems that exceed the owner's project requirements and those which do not meet the requirements and why, and
- A summary of all issues resolved and unresolved and any recommendations for resolution.

## BUILDING OWNER PARTICIPATION AND PROCESS

C-PACE is an innovative financing approach that provides owners of eligible properties with financing for the installation of eligible improvements. By providing up to 100 percent, long-term financing for qualified upgrades, the program may help building owners lower their operating costs and improve the value of their asset.

### BENEFITS

Many building owners can lack capital to pay for eligible improvements, which means many beneficial projects never get off the ground. C-PACE may enable building owners' access to affordable, long-term capital at competitive rates. C-PACE financing:

- Requires no upfront, out-of-pocket costs,
- Provides long-term financing (up to 30 years),
- Typically requires no personal guarantees,
- Typically lowers energy costs,
- May generate positive cash flow, and
- Can transfer to the next owner if the building is sold.

### ELIGIBILITY

Commercial or industrial real property, located within a governing body that has entered into a C-PACE District Participation Agreement with OED, may be eligible under the program, whether such buildings are existing, under construction or to be constructed, if used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:

- Commercial
- Mining
- Agricultural
- Industrial
- Manufacturing
- Trade
- Professional
- Private or public club
- Lodge
- Business
- A similar purpose
- Dwelling purposes; and contains more than four rental units.

[View a map](#) of cities and counties that have opted in to the C-PACE District.

## PROCESS

To get started, property owners can work with a contractor or project developer of their choosing to discuss the eligible improvements that would be beneficial. Building owners who do not have a contractor in mind can [view a list of contractors](#) on the program website who have completed C-PACE training.

Next, the contractor and property owner work together to determine the optimal project that meets the property and owner needs.

Upon confirmation of the final project scenario, the program administrator will collaborate with the building owner and the contractor on next steps, which include obtaining mortgage holder consent and selecting a capital provider.

Once that is done, the capital provider will facilitate the finance closing. The program administrator will then delegate to the capital provider the ability to levy and assign the energy assessment lien to the capital provider. The capital provider, according to the terms of the financing agreement, will then commence funds disbursement and construction begins.

## NEW CONSTRUCTION DEVELOPER PARTICIPATION AND PROCESS

New construction projects present another opportunity for C-PACE financing. The C-PACE new construction financing structure can unlock capital to enable a property owner or developer to achieve higher building performance—improvements that are often value-engineered out of a project. Moreover, C-PACE new construction financing may reduce the developer’s equity contribution or the need for mezzanine financing, thereby reducing the project’s weighted average cost of capital.

### BENEFITS

Property owners and developers can use C-PACE new construction financing to fill gaps in their financing plan. Developers may qualify for up to 20 percent of the total eligible construction cost provided the new building is designed to exceed the 2015 international energy conservation code (IECC) by at least 5 percent.

### ELIGIBILITY

Owners planning new eligible building construction projects can take advantage of C-PACE financing. Such new construction projects must be designed to exceed the current energy code by at least 5 percent.

### PROCESS

Applicants are encouraged to itemize total project construction costs by trade component to evaluate the total eligible construction cost (TECC). TECC includes all direct and indirect costs of materials, labor, and soft costs related to the design, installation, and construction of the new structure. Soft costs may include, for example, architecture and engineering fees, energy modeling costs, surveys, and financing costs. Examples of excluded costs include land acquisition costs, off-site improvements, site permitting, environmental testing and remediation, and equipment not permanently installed on the property.

The applications that confirm that the building will be designed to exceed the current energy code for commercial buildings in Utah, IECC 2015, ASHRAE 90.1-2013, by at least 5 percent, will be eligible for up to 20 percent of the TECC. See the new construction section above for further details.

# CONTRACTOR PARTICIPATION AND PROCESS

## BENEFITS

Many building owners lack the capital they need to pay for beneficial improvements, which means many of the projects that contractors propose never get off the ground. C-PACE financing can benefit contractors by helping them close more deals, including multi-measure projects that, without C-PACE, the owner may not be able to fund.

## ELIGIBILITY

Contractors who complete C-PACE training provided by OED can have their firm listed on the program website.

Note that by providing a list of contractors that have attended C-PACE training on its website, OED is not recommending or endorsing any specific contractor or warranting the reliability of any such installer.

Moreover, property owners can select the contractor of their choice. OED strongly advises property owners to use contractors who hold all applicable state and local licenses.

## PROCESS

Contractors are encouraged to engage property owners to:

- Discuss the benefits of a C-PACE project,
- Perform preliminary project scoping,
- Prepare proposals and review them with the building owner,
- Develop and optimize project scenarios, and
- Install eligible improvements.

[View a list](#) of contractors that have completed C-PACE training.

## CAPITAL PROVIDER PARTICIPATION AND PROCESS

C-PACE is an innovative, voluntary financing program that can enable property owners to modernize eligible buildings by installing eligible improvements. Funding is provided by third-party capital providers (CP).

### BENEFITS

C-PACE is a secure investment secured by an energy assessment lien, which like all public benefit assessments, sits in a senior position to other encumbrances on the property, and has the same priority as a property tax lien. As a result, capital providers who work with the C-PACE program may receive attractive project financing opportunities.

### ELIGIBILITY

OED seeks to use C-PACE to stimulate the market through an open-market project financing model. For this reason, OED's C-PACE District is open to all capital providers. CPs who complete C-PACE training provided by OED can have their firm listed on the program website.

Note that by providing a listing of CPs that have attended C-PACE training on its website, OED is not recommending or endorsing any specific CP. Moreover, property owners can select the CP of their choice to fund their project.

### PROCESS

Capital providers interested in financing eligible projects in the C-PACE District are encouraged to download, complete, and return the [Capital Provider Application](#), found on the C-PACE District website, to OED.

## MORTGAGE HOLDER PARTICIPATION AND PROCESS

C-PACE is an innovative, voluntary financing program that can enable borrowers to modernize their building by installing eligible improvements funded with affordable, long-term financing.

### BENEFITS

Well-designed C-PACE projects may generate cost savings that may, over the finance term, equal or exceed the total finance cost. Owners of such buildings may experience improved net operating income, increased value, and a positive return on their investment.

In such scenarios the building owner's increased cash flow may result in the mortgage holder's loan being more secure, and the property may be more attractive to current and potential tenants and buyers. In addition, the assessment does not accelerate. In the event of a default, only the amount of the assessment in arrears is due.

### PARTICIPATION

C-PACE can provide up to 100 percent financing to owners of new and existing buildings, located in governing bodies participating in OED's C-PACE District, who are looking to modernize and improve the value of their eligible building. The financing, which is based on the estimated useful life of the improvements—up to 30 years—is secured by a special assessment lien, known in Utah as an energy assessment lien that is levied against the property.

The energy assessment lien is senior to all commercial mortgages and deeds of trust and is equal (*pari passu*) in priority to a property tax lien and senior to other special assessments or mortgages on the property. Because of this, any C-PACE project requires property owners to obtain the written consent of all holders of mortgages or deeds of trust on the property prior to securing C-PACE financing.

### PROCESS

A property owner who wishes to pursue C-PACE financing may seek a meeting with the mortgage holder. At the meeting, the owner will describe the program's requirements and answer the mortgage holder's questions. Assuming all parties agree that a particular project is worth pursuing, the project will proceed to development and underwriting. As part of the underwriting process, the owner will provide a summary of the project's key assumptions, e.g., financial metrics and projected cash flows to facilitate the mortgage holder's due diligence.



## GOVERNING BODY PARTICIPATION AND PROCESS

C-PACE is a voluntary financing program that can enable property owners to modernize their building by installing eligible improvements funded with affordable, long-term financing.

### BENEFITS

C-PACE may benefit the state's economy by stimulating new investment, creating job opportunities, enabling energy savings, and improving air quality.

Nationwide, more than 30 states have PACE-enabling legislation, and several others are considering it.

### PARTICIPATION

To work with OED on C-PACE projects, interested governing bodies must opt in to the C-PACE District via the C-PACE District Participation Agreement.

### PROCESS

Governing bodies who wish to authorize OED to administer projects through the C-PACE District must complete and submit the [C-PACE District Participation Agreement](#).

## GENERAL TERMS AND PROVISIONS

### TAXES

Property owners are solely responsible for any local, state, or federal tax consequences of their participation in the OED-administered C-PACE District.

### CHANGES IN THE PROGRAM TERMS; SEVERABILITY

OED reserves the right to change this User Guide and the terms and provisions set forth within at any time without notice. The financing agreement executed between the property owner and the capital provider establishes the property owner's rights. This guide is only a reference document.

### DISCLOSURE OF PROPERTY OWNER INFORMATION

OED reserves the right to collect, use, and reuse data or information gathered from the C-PACE program for any purpose including but not limited to use in print, on the internet, and all other forms of media. Owner also hereby releases OED and its agents and employees from all claims, demands, and liabilities whatsoever in connection with the above.

OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 (GRAMA) Accordingly, certain records within possession or control, including without limitation, these standard terms and conditions, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided by the property owner to OED that the owner believes should be protected from public disclosure, must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.

# APPENDIX

## KEY DEFINITIONS

<b>Energy Assessment Lien</b>	The lien that is recorded against the property and establishes the voluntary benefit assessment and secures repayment of the C-PACE financing.
<b>Capital Provider</b>	The entity that will finance the eligible improvements.
<b>C-PACE Project</b>	Eligible improvements made to qualified commercial or industrial real property, whether financed entirely by C-PACE or through incentives or other sources in combination with C-PACE financing.
<b>Building Improvements</b>	Energy and/or water efficiency, parking automation, electric vehicle charging, seismic upgrades, vertical transport devices, or renewable energy improvements made to qualified commercial or industrial real property. <a href="#">View a list on the C-PACE district website.</a>
<b>Qualified Real Property</b>	Commercial, mining, agricultural, industrial, manufacturing, trade, professional, public/private club, lodge, business, similar purpose properties, and multifamily properties with five or more dwelling units located in the C-PACE District that can benefit from eligible improvements.
<b>Program Administrator</b>	OED is the program administrator of the C-PACE District.
<b>Property Owner</b>	The legal owner(s) of the qualified commercial or industrial real property (including nonprofit owners).
<b>Contractor</b>	The contractor that performs the work required for the installation/construction of the eligible improvements.

## APPLICATION FORMS

SEE [RESOURCES SECTION](#) OF THE C-PACE DISTRICT WEBSITE.

C-PACE STATE CODE [[THE "C-PACE ACT"](#)]

C-PACE LEGISLATION [[S.B. 273 ENERGY DEVELOPMENT AMENDMENTS](#)]

# TERMS AND CONDITIONS

The State of Utah, Governor's Office of Energy Development (OED), will administer a statewide commercial property assessed clean energy (C-PACE) District. OED will offer certain administrative services to allow commercial property owners to use C-PACE financing for eligible building improvements. The following standard terms and conditions apply to OED's C-PACE District.

## 1. CONFIDENTIALITY

OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 (GRAMA). Accordingly, certain records within possession or control, including without limitation, these standard terms and conditions, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided by a C-PACE stakeholder to OED that the C-PACE stakeholder believes should be protected from public disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.

## 2. NO ENDORSEMENT

Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the State of Utah. The views and opinions of authors expressed herein do not necessarily state or reflect those of the State of Utah and shall not be used for advertising or product endorsement purposes.

## 3. DISCLAIMER OF LIABILITY

OED is a governmental entity defined by the Utah Governmental Immunity Act, Utah Code §63G-7-101, et seq. and does not waive any defenses contained therein. With respect to documents and information available under OED's C-PACE District, neither the State of Utah nor any of its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. OED will not be responsible for any damages suffered by a C-PACE stakeholder.

## 4. NO WARRANTIES AND REPRESENTATIONS

OED makes no representations, covenants, or warranties under this agreement, other than the duties of program administrator, as outlined in Utah Code 11-42a-106. OED does not guarantee that a project will be financed, or a building owner will realize the estimated energy savings. This program is voluntary and no guarantee of work or government contract or funding is made by OED to building owners or capital providers. OED is not responsible for any construction defects

or negligence by contractors executing the C-PACE project.

## 5. ASSUMPTION OF RISK

All C-PACE stakeholders, knowing the risks described above, and in consideration of being permitted to participate in the C-PACE District, the C-PACE stakeholder agrees to, and on behalf of its successors or assigns, to assume all the risks and responsibilities surrounding its participation in the C-PACE District. To the maximum extent permitted by law, C-PACE stakeholders release, indemnify, and covenant not to sue OED from and against any present or future claim, loss or liability for injury/damages to person or property which a C-PACE stakeholder may suffer, or for which owner may be liable to any other person, during the C-PACE stakeholder's participation in the C-PACE District.

## 6. CONSENT TO COLLECT AND USE DATA

C-PACE stakeholders hereby consent to OED's collection, use, and reuse of data or information gathered from the C-PACE District for any purpose including but not limited to use in print, on the internet, and in all other forms of media. C-PACE stakeholders also hereby release OED and its agents and employees from all claims, demands, and liabilities whatsoever in connection with the above.

## 7. No Agency

Nothing contained in these standard terms and conditions shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. C-PACE stakeholders have no authority to act as agent for, or on behalf of, OED, or to represent OED, or bind OED in any manner.

## 8. AMENDMENTS

These standard terms and conditions may only be amended by the written agreement of OED, which amendment will be attached to these standard terms and conditions. Automatic renewals will not apply to these standard terms and conditions.

## 9. CONFLICT OF INTEREST

C-PACE stakeholders represent that none of its officers or employees are officers or employees of OED or of the State of Utah, unless disclosure has been made to OED.

**KANAB CITY RESOLUTION 8-2-19 R**

**A RESOLUTION AMENDING KANAB CITY PERSONNEL POLICY**

WHEREAS, the City of Kanab is desirous of amending the Personnel Policy to address personnel use of city equipment and employee exemption status.

WHEREAS, said policy amending the Personnel Policy has been submitted to and reviewed by the City Council of Kanab Utah, and found to be reasonable and acceptable.

NOW THEREFORE,

BE IT HEREBY RESOLVED that the attached Personnel Policy and Procedures shall be in effect until further resolution. All resolutions, ordinances, and policies in conflict herewith, either in whole or in part, are hereby repealed.

This Resolution shall be effective immediately upon passage.

Passed by the City Council of the City of Kanab this 27<sup>th</sup> day of August, 2019

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Jeff Yates, Kanab City Mayor Pro-Tem

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Attest: Joseph Decker, Recorder

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## **GENERAL POLICY**

This Employment Manual is provided for general guidance only. The policies and procedures expressed in this Employment Manual, as well as those in any other personnel material, or other types of material which may be issued from time to time, do not create a binding contract or any other obligation or liability on the City. The City reserves the right to change its policies and procedures at any time, formally or informally, with or without notice, for any reason. The City also reserves the right to take any employment action it deems appropriate. The prohibitions set forth in the Employment Manual do not create an express or implied contract with any person.

No verbal representations or statements made by supervisors or co-workers can bind the City to any course of action.

### **I. HIRING AND EMPLOYMENT PRACTICES**

#### **A. Anti-Nepotism**

It is the City's policy to comply with Title 52, Chapter 3, Utah Code Annotated, and any amendments or successor statutes, concerning the prohibitions regarding the employment of relatives. Therefore, the City prohibits any person holding any position, to appoint, vote for the appointment of, directly supervise, be in the line of supervision of, or be directly supervised by their 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, grandparent, or grandchild. No employee shall accept or retain such employment. Volunteers providing services to the City are excluded from this provision.

#### **B. Equal Employment Opportunity Statement**

The City is an equal opportunity employer. It is the policy of the City from recruitment through employment and promotion, to provide equal opportunity at all times without regard to race, color, religion, sex, national origin, age, pregnancy, or disability.

#### **C. Residency**

##### **1. Preference to Residents**

Preference in employment may be given to City taxpayers and their dependents.

##### **2. Residency May Be Required**

The City Council, through ordinance or resolution, may require City residency of the following officers and employees within a reasonable period of time from the date of appointment:

- a) City Manager
- b) Public Works Director
- c) Police Chief and Officers
- d) Fire Chief and Officers

- e) Other emergency related personnel

#### **D. Veterans Preference**

In accordance with Title 71, Chapter 10, Utah Code Annotated and any amendments or successor statutes, eligible veterans and their spouses shall be given preference in interviewing and hiring for a position.

#### **E. Driver's License Requirements for New Hires**

Any employee who is hired in a position which requires operation of City vehicles or equipment must possess a valid Utah driver's license and must be insurable (under the City's insurance policy then in force without any additional premiums or costs being incurred by the City to insure that employee). Prospective employees must provide the City with their date of birth, Social Security number and driver's license number in order for the City to ascertain the validity of their driver's license and their insurability. The status of the driver's license and insurability status of a prospective employee must be determined before that employee begins working for the City.

#### **F. Maintenance of Valid Driver's License**

##### **1. Current Employees**

All City employees who operate City owned or controlled vehicles or equipment will be subject to an annual drivers license status check. If, for any reason during employment, an employee is unable to maintain the appropriate valid Utah driver's license required by the employee's position or for any other reason becomes uninsurable (under the City's insurance policy then in force without any additional premiums or costs being incurred by the City to insure that employee), that employee must inform his or her supervisor immediately. The supervisor will then inform the Department Head and the Personnel Department.

The Personnel Department, the Department Head, and the City Attorney will then review the situation, considering such things as the nature of the job and the expected duration of time the employee will be without a driver's license, and decide the appropriate action to be taken.

##### **2. Penalties for Failure to Maintain Drivers License or for Failure to Notify**

Failure to maintain a valid Utah driver's license or a commercial driver's license in a position that requires such, or failure to notify a supervisor of uninsurability or a change in status of an employee's driver's license when such license is a job requirement, may subject the employee to disciplinary action up to and including termination.

## **II. EMPLOYMENT STATUS**

### **A. Appointed Officials**

The City Manager, City Recorder, City Treasurer, City Attorney, Police Chief, Justice Court Judge, Public Works Director, Fire Chief, and City Engineer (when applicable) shall be appointed by the Mayor with the approval of the City Council. Appointed officials are employed "at will" and terminable with or without cause or prior notice, for any reason or no reason at all, unless otherwise stated in writing at the time of appointment.

### **B. Probationary Employees**

All new full-time employees who are hired with intention of becoming regular full-time employees, are required to serve at least six months in probationary status. If the employee's performance is unsatisfactory, the employee shall be notified in writing of his/her failure to complete the probationary period and will be terminated.

During probation, except probation due to promotion, the employee may be terminated at-will at any time, with or without cause or prior notice, for any reason or no reason at all.

An unpaid leave of absence shall not be considered part of any probationary period.

#### **1. Promotion**

Any promotion to a position with significant differences in job responsibility shall be subject to a probationary period of six months. During the probationary period the employee's abilities and performance will be evaluated by the supervisor. If, in the sole discretion of the City, the City determines that the employee's performance is unsatisfactory, the City shall notify the employee in writing of his/her failure to complete the probationary period and the employee will be reinstated, if available, to their previous position, or if available another position for which they are qualified. However, if the cause for rejection during the promotional probationary period was sufficient grounds for dismissal from both positions, the employee may be dismissed in accordance with the City's formal disciplinary procedures.

#### **2. Reinstatement**

The probationary period for a former employee being reinstated shall be for a period of:

- a) 3 months if being reinstated in the same department and to the same position previously held; or
- b) 6 months if the reinstatement is to a different department or to a different position within the same department to which the employee was previously assigned.

### **C. Regular Full-time Employees**

Regular full-time employees are those who are scheduled to work 32 hours or more per week for the City on a continuing basis and who have successfully completed their probationary period.

#### **D. Temporary Employees**

Temporary or seasonal employees are hired to work for a limited period of time. They are always in a probationary status, and may be terminated at will, with or without cause or prior notice.

#### **E. Part-time Employees**

Part-time employees are those who were hired to work 32 hours or less each week. Their employment may be continuing, but they are always in a probationary status, and may be terminated at will, with or without cause or prior notice.

### **III. COMPENSATION**

#### **A. Time Sheets**

All employees, full time as well as part time, shall maintain a monthly time sheet. At the end of each month department heads will review for accuracy the time sheets of their department employees, making sure each employee has signed his or her particular time sheet. Time sheets for all full time, salaried employees shall be delivered to the payroll clerk no later than 3 working days after the end of the pay period.

#### **B. Overtime and Compensatory Time**

All employees shall comply with the provisions of the Fair Labor Standards Act (FLSA) as amended and the Department of Labor regulations issued there under pertaining to compensation for overtime work.

Exemptions: In accordance with the provisions of the Fair Labor Standards Act, certain positions are "exempt" from the payment of additional money for overtime worked (see subparagraph 2 of this part).

Work periods: For the purpose of complying with the requirements of the FLSA, the work week shall consist of seven days beginning 12:00 a.m. Sunday and ending at 11:59 p.m. Saturday.

All overtime hours shall be accounted for by the employee on the time sheet during which the hours were worked.

Joint employment: A City employee shall not serve as a volunteer for the same job in which he/she is employed by the City.

##### **1. Law Enforcement**

At the beginning of each 28 day work period, the police chief, or his designee, shall set the time to be worked for each officer, not less than 160 or more than 171 hours per 28 day work period. Any time worked over the 171 hours in the 28 day work period will be considered overtime.

Overtime work shall occur only in emergency situations. Monetary compensation will not be paid for overtime worked unless an officer accrues more than the maximum 80 hours of compensatory time or under certain special circumstances such as a grant received for payment

of overtime. Officers will be granted compensatory time off at a rate of one and one-half hours off for every hour of overtime worked.

The practice of overtime work shall be kept at an absolute minimum. All accumulated overtime shall be authorized and certified by the Police Chief.

## **2. Officials and Department Heads**

The following employees of the City are exempt and paid a fixed salary and are not entitled to additional compensation for hours worked in excess of forty (40) hours per week.

- a) City Manager
- b) City Treasurer
- c) Chief of Police
- d) Police Sergeant
- e) City Attorney
- f) Justice Court Judge
- g) Fire Chief
- h) Deputy Fire Chief
- i) Library Director
- j) Airport Manager
- k) Public Works Director

## **3. Others**

- a) All employees of the City other than those enumerated in subparagraphs 1 or 2 are subject to the provision of this subparagraph 3.
- b) Employees of the City are authorized to work forty (40) hours per week. Except as noted below, employees are not authorized to work more than forty (40) hours in any one week without the advance written consent of their department head and the City Manager. If an emergency threatening life or property arises and an employee is unable to obtain prior written consent, the employee may work more than forty (40) hours in a week. However, the employee's department head and the City Manager must be notified in writing within 72 hours and consent for such excess hours must be obtained. If it is determined that an employee worked excess hours without advance consent and not under emergency conditions, the employee may be disciplined up to and including termination.
- c) An employee shall be granted compensatory time off at the rate of one and one-half (1-1/2) hours for each hour worked in excess of forty (40) hours in a normal work week. If an employee is scheduled to work less than his/her normal work week (40 hours), [such as those weeks when an employee takes compensatory time off, takes vacation time, sick leave or a holiday falls during that period] any time worked between the shortened work schedule and the normal work week (40 hours) will be



considered straight time. Any employee desiring to take compensatory time off shall submit a written request to his or her department head or the City Manager stating the number of hours to be taken and the dates when the hours will be taken. The request shall be submitted no later than forty-eight (48) hours prior to the first day in which the hours will be taken off. The hours may be taken off when requested, unless the department head or the City Manager notifies the employee within twenty-four (24) hours of receipt of the request that the request will unduly disrupt the operations of the City.

- d) No employee may accumulate more than 80 hours of unused compensatory time. Hours of compensatory time earned in excess of 80 hours accumulated shall be paid at the regular rate earned by the employee at the time the employee receives such payment. Upon termination of employment, an employee with accrued unused compensatory time shall be paid at a rate of compensation equal to (a) the average regular rate received by such employee during the last three (3) years of the employee's employment, or (b) the final regular rate received by such employee, whichever is higher.
- e) For purposes of this subparagraph 3, hours worked by an employee shall not include work performed as a volunteer fireman for the City

### **C. Separation Pay**

When employees terminate, they shall be required to return all tools, equipment and other City property and to clear all City financial obligations prior to receiving their final paycheck. Any obligations not cleared will be deducted from their final paycheck. Final pay checks shall include compensation for all unused annual leave and qualified compensable overtime. Sick leave is not compensated.

### **D. Pay Days**

Pay periods are the 1st through the 15th and the 16th through the last day of the month. Employees shall be paid on the 5th and the 20th of each month. When pay day falls on the weekend or a holiday, pay day will be the work day preceding the weekend or holiday.

### **E. Work Days**

The normal work day for Kanab City employees will be 8:00 a.m. to 5:00p.m., Monday through Friday. At certain times it will be necessary for employees to work times other than those considered a normal work day.

### **F. Rest and Meal Periods**

Each workday, most full-time employees are provided with up to two rest periods. In some cases, department directors may not allow for two rest periods, due to the nature of the work. In such cases, employees may be allowed to have beverages and even certain snacks at their desk(s) throughout the work period. Supervisors will advise employees of the regular rest period length and schedule. To the

extent possible, rest periods will be provided in the middle of work periods. Since this time is counted and paid as time worked, employees must not be absent from their stations beyond the allotted rest period time. Rest periods normally will last no longer than fifteen minutes.

All regular full-time employees are provided with one meal period of 60 minutes in length each workday. Supervisors will schedule meal periods to accommodate operating requirements. Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

#### **G. Pay Advancement**

The City will not make pay advances to employees.

#### **H. Anniversary Date Defined**

An employee's "Anniversary Date" shall be that date, upon completion of the required probationary period and after a successful evaluation, when the employee is hired or appointed as a Kanab City employee. An employee's evaluation period shall be determined from the date of employment; if the employee is hired prior to or on the 15th day of the month, the evaluation date shall be determined from the 1st day of said month; if the date of hire is the 16th or after, the evaluation date for computing merit increases shall be determined from the 1st day of the following month. A promotion to a new job shall establish a new evaluation date for the employee, in accordance with the foregoing rules.

#### **I. Travel**

Reimbursement for travel expenses will be based on the current IRS formula for mileage and per diem.

### **IV. INSURANCE AND BENEFITS**

#### **A. Worker's Compensation**

Kanab City operates under the provisions of the State of Utah Worker's Compensation Act.

Any injury occurring on the job must be reported to the supervisor immediately and forms prescribed by the State Industrial Commission must be completed and submitted to the City Manager within seven (7) days of the injury.

#### **B. Medical Insurance**

The City may pay the premium for health, hospitalization, surgical, dental, life and disability insurance for regular full-time employees and those employees' dependents. The specific plan may be changed from time to time, and benefits under the plan may change or be eliminated.

### **C. Long Term Disability**

Subject to the terms and conditions established and controlled by the plan provider and/or other Disability Plan Provider(s), the City may offer long-term disability insurance coverage for regular full-time employees and volunteer firefighters for the purpose of providing income protection against the loss of an employee's ability to work and earn income for periods of time exceeding certain long term periods and conditions.

Under the long term disability insurance plan, there may be a waiting period before benefits begin.

The City may pay for the premium cost(s) associated with the respective long term disability insurance plans and policy provisions for regular full-time employees and volunteer firefighters. More information about respective coverage or plan participation may be obtained through the City Office.

### **D. Social Security**

All qualified employees of the City contribute to the Social Security program, as administered by the Federal Government. This is a system of retirement benefits based on equal employee contributions to public insurance reserves.

### **E. Employee Retirement System**

All qualified employees of the City working 32 hours or more per week not listed below shall participate in the Utah State Retirement System.

The following employees may elect to exempt themselves from participation in the Utah State Retirement System through a "Request for Exemption": Mayor, City Manager, Chief of Police, and Fire Chief

For the purpose of the Utah Retirement System, all elected officials are officially designated as part-time.

This retirement system provides a number of benefits to the employee. Employees should refer to the Informational Handbook regarding any questions concerning the plan.

### **F. Cafeteria Plan**

In an effort to help eligible employees with the costs of medical expenses and dependent care coverage and premiums, the City may sponsor a Cafeteria Plan, which reserves a certain amount of salary each year and sets it aside for the purpose of medical insurance payments and coverage costs/fees. This reserved amount is then excluded from reporting for the purposes of taxable income.

This Cafeteria Plan is a benefit plan which has been developed under the meaning of a qualified Cafeteria Plan as defined and controlled by the U.S. Internal Revenue Service. Thus, as IRS rules change or are amended, the Cafeteria Plan is also subject to change or amendment to maintain conformity to

law. While sponsored by the City, specific terms, coverage, and administration of a Cafeteria Plan are developed and administered through a Plan Administrator.

Subject to certain qualifying conditions and hours of work, eligible employees, referred to as plan participants in the Cafeteria Plan, include: Full-time employees.

The Cafeteria Plan functions similarly to a personal checking account held for the purposes described above and in the written policy and plan coverage information. Money from the employee's compensation is withheld and deposited through the year. The Cafeteria Plan has three unique benefits for employees:

- The employee decides before the beginning of each year how much their total deposit for the year in the Cafeteria Plan will be.
- The employee uses the money set aside in the Cafeteria Plan only to pay for their eligible dependent care costs and medical/dental fees/costs.
- The money deposited in the employee's account is deducted from their salary before it is taxed, thus providing a benefit of some immediate tax relief.

Once an employee makes an election for benefit coverage, that election is set for one year and may be changed only upon a qualifying event. Qualifying events include, but may not be limited to, marriage, divorce, birth of a child or change in the employment status of the employee.

Plan information and written summaries and plan documents are available from the City. Employees interested in participating in Cafeteria Plan should contact the City Office for written plan information, appropriate enrollment application(s) and forms and other pertinent information.

#### **G. Hepatitis B Vaccinations**

All employees who are currently, or who will in the future be employed in the following listed positions are required to be vaccinated against the Hepatitis B virus in whatever manner is determined by the City to be most appropriate. Those listed positions are: Law Enforcement Officers and Firefighters. If a present or future employee elects not to have the appropriate vaccinations against the Hepatitis B virus, they must sign a "Hepatitis B Vaccination Waiver Form" releasing the City from any liability with regard to their contracting the Hepatitis B virus and any and all costs associated with their contraction of that disease.

#### **H. Benefits Continuation (COBRA)**

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives employees and their qualified beneficiaries the opportunity to continue health insurance coverage under the City's health plan when a "qualifying event" would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee's hours or a leave of absence; an employee's divorce or legal separation; and a dependent child no longer meeting eligibility requirements.

Subject to the terms and conditions of the group policy and applicable legal standards for extensions of insurance coverage under the law, employees, their spouses, dependents, and divorced or separated spouses may continue the group insurance plan benefits for periods of time beyond the last date of work of the employee for the City. The terms, limitations, conditions and length of extensions of coverage are specific in each individual case. Employees, dependents, spouses and ex-spouses are encouraged to make inquiry of the City through the Records Office to obtain further information.

Under COBRA, the employee or beneficiary pays the full cost of coverage at the City's group rates plus an administration fee.

The City provides each eligible employee with notice describing rights granted under COBRA when the employee becomes eligible for coverage under the City's health insurance plan. The notice contains important information about the employee's rights and obligations.

## V. LEAVE AND HOLIDAYS

### A. Holidays

#### 1. List of Holidays

The following days have been designated by the City to be paid holidays for all regular full-time employees:

January 1st	New Years Day
January (3rd Monday)	M. Luther King Day
February (3rd Monday)	Presidents Day
May (last Monday)	Memorial Day
July 4th	Independence Day
July 24th	Pioneer Day
Sept. (1st Monday)	Labor Day
Oct. (2nd Monday)	Columbus Day
Nov. 11th	Veterans Day
Nov. (4th Thursday)	Thanksgiving Day
Nov. (4th Friday)	In lieu of Arbor Day
Dec. 25th	Christmas Day

#### 2. Observed Days

When a holiday falls on a Saturday it shall be observed on the preceding work day. When it falls on a Sunday, it shall be observed on the following work day.

#### 3. Exchange Days

Employees who for one reason or another are required to work on one of these holidays will be given compensatory time off at the rate of one hour off for every hour worked, however, law enforcement officers scheduled to work holidays will be paid their normal salary plus one days rate of pay, unless the holiday is overtime.

**B. Annual Leave**

**1. Amounts**

Unless defined in an employment contract, each regular full-time employee will be entitled to annual leave based upon the following schedule:

Service Time	Days Per Year
0 thru 5 years	12 days
6 thru 10 years	15 days
11 thru retirement	18 days

**2. Use Encouraged**

Annual leave is intended to benefit the employee, and employees are encouraged to take annual leave in the year in which it is earned.

**3. Scheduling**

Vacations will be scheduled with the Department Head so as to meet the operating requirements of the City and, insofar as possible, the preference of employees. Seniority, within the various departments, shall apply in case of conflict of requested leave schedules.

**4. Eligible Employment**

Eligible employment for annual leave may be with more than one department and must be continuous. Annual leave shall not accrue during any period when an employee is on a leave-without-pay status; however, employees on a leave-with-pay status will continue to accrue annual leave. Annual leave shall start to accrue at the beginning of a semi-monthly pay period and shall not be credited for less than a semi-monthly pay period.

**5. Measuring Leave Taken**

Holidays shall not constitute a day of annual leave. When an authorized holiday falls within the time period of an employee's annual leave(s) the employee will be entitled to one additional day beyond the specified annual leave period.

**6. Accumulation**

- a) An employee will begin to accumulate annual leave immediately upon employment. Upon completion of the employees first month of work, said employee will have accumulated one day of annual leave.
- b) Any annual leave in excess of thirty (30) working days will be forfeited by the employee on January 30 of each year.
- c) No employee will be granted annual leave for a period in excess of two weeks at any one time except by prior arrangement with department head and City Manager.
- d) Employees requesting annual leave from two to five days must do so at least one week in advance. Employees requesting annual leave for a period longer than five working days must do so at least two weeks in advance.
- e) Each department head shall be required to maintain records of annual leave used by each employee.

**7. Termination**

Upon termination of employment with the City an employee's accrued annual leave will be paid in a lump sum payment on the pay day following the last day worked, provided the amount of leave has been approved by the department head and the City Manager.

**8. Use Prior to Accrual Prohibited**

No annual leave with pay will be granted prior to having been earned.

**C. Sick Leave**

**1. Use of Sick Leave**

Sick leave is to be used for illness or appointments with medical personnel for consultation of medical problems only for employees or employees' dependents. Each employee absent under those provisions will arrange for a telephone report to his supervisor or management within the first two working hours of the first day of absence. Any employee absent under this provision for longer than five working days shall, upon request of his supervisor, arrange for a note from a doctor stating the nature of the illness and expected time of absence. If an employee's supervisor finds excessive sick leave is being taken, a doctor's note or other evidence of illness may be required for absences of less than five days. Abuse of sick leave privileges is considered grounds for discipline, including dismissal.

**2. Accrual and Accumulation**

Each full time employee shall accrue sick leave with pay at a rate of one (1) working day for each month worked, or twelve (12) working days a year. Sick leave may be accumulated indefinitely. Sick leave shall start to accrue at the beginning of a semi-monthly pay period and shall not be credited for less than a semi-monthly pay period. Sick leave shall not accrue during any period when an employee is in a leave-without-pay status; however, employees on sick leave with pay shall continue to accrue both annual and sick leave. An eligible employee may begin to utilize accrued sick leave after having completed at least one full month of satisfactory employment. Accrued and unused sick leave is not compensated when an employee leaves city employment, other than through official retirement. Accrued and unused sick leave is not compensated or transferable when an employee leaves City employment before retirement.

**3. Eligible Employees**

Regular full-time employees shall accrue sick leave.

**4. Accrued Sick Leave Reimbursement Policy**

When an employee retires, the employee shall be compensated for his/her accrued and unused sick leave. To qualify for reimbursement of unused sick leave an employee must meet full retirement qualifications. Full retirement qualifications mean those requirements set forth by the Utah State Retirement Board for a retiring employee to received full retirement benefits. Reimbursement shall be calculated on the salary of the employee at the date of retirement. The employee's hourly wage shall be calculated by dividing his/her salary by 2080.

At retirement, a qualifying employee must choose one of the following options:

***a) Cash Payment***

Employee will receive a cash payment of 25% of the value of all accrued unused sick leave at date of retirement.

***b) Health Insurance Premium***

Kanab City will pay 50% of the employees two party health insurance coverage premium using the employee's accrued unused sick leave. The other 50% must be paid by the employee. The employee may remain on the city health insurance coverage until his/her accrued unused sick leave is consumed or until the employee reaches Medicare qualification, whichever occurs first.

If the employee dies before his/her accrued unused sick leave is consumed or before his/her spouse reaches Medicare age, the City will continue to pay 50% of the employee's spouse's city health insurance coverage premium until the employee's accrued unused sick leave is consumed or until the spouse reaches Medicare age. The other 50% must be paid by the spouse.

A retired employee choosing either option shall not continue to accrue annual or sick leave after retirement.

**D. Leave and Family and Medical Leave Act (FMLA) Policy**

Leave of absence without pay or benefits up to 30 days may be granted by the Mayor. Leave of absence shall not be regarded as a right by an employee. Requests for a leave of absence shall be made in writing and addressed to the Mayor. After the Mayor has made a decision concerning the request for leave of absence, he/she shall respond to the employee in writing stating the reasons for said decision. Benefits will not accrue while on leave of absence.

The City provides family and medical leave of absence, without pay, to eligible employees for their own serious health conditions; or who wish to take time off from work duties to fulfill family obligations relating directly to childbirth, adoption, or placement for a foster child; or to care for a child, spouse or their own parent with a serious health condition. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Eligible employees are those who have worked for the City for at least one year and worked 1,250 hours within the previous 12 month period. Eligible employees should make requests for FMLA leave to their supervisors at least 30 days in advance of foreseeable events. When 30 days notice is not possible, the employee must provide notice as soon as practicable and must comply with the City's normal call-in procedures.



Employees requesting FMLA leave related to their own serious health condition or the serious health condition of a spouse, child, or their own parent must submit sufficient information for the City to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of leave. Employees must also inform the City if the requested leave is for a reason for which FMLA leave was taken or previously certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Eligible employees may request up to a maximum of twelve weeks of family leave within a 12 month period. Any combination of FMLA leave may not exceed this maximum limit. The City uses the rolling period to calculate this 12 week period. The rolling period method starts counting the FMLA period on the date the employee first uses FMLA leave. Eligible employees will be required to first use any accrued paid leave time before taking unpaid leave. This accrued paid leave time will be included as part of the maximum twelve weeks leave. Married employee couples may be restricted to a combined total of twelve weeks leave within any 12 month period for childbirth, adoption, or placement of a foster child; or to care for a parent with a serious health condition.

To the extent the law requires, eligible employees with a spouse, son, daughter or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

During the single 12-month period for servicemember care leave, an eligible employee is entitled to a combined total of 26 workweeks of servicemember care leave and leave for any other FMLA-qualifying reason, provided that the eligible employee may not take more than 12 workweeks for any other FMLA-qualifying reason during this period. For example, in the single 12-month period an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of servicemember care leave, but could not take 16 weeks of leave to care for a newborn child and 10 weeks of servicemember care leave.

Subject to the terms, conditions and limitations of the applicable plan, health insurance benefits will be provided by the City for the length of time on leave, up to the maximum of twelve weeks. The

employee must continue to pay any portion of the premium that the employee would typically pay if not on leave.

Benefit accruals, such as annual, personal leave, or holiday benefits, will be suspended during the leave and will resume upon return to active employment.

So that an employee's return to work can be properly scheduled, an employee on FMLA leave must provide the City with at least two weeks' advance notice of the date the employee intends to return to work. When FMLA leave ends, the employee will be reinstated to the same position, if it is available, or to an equivalent position for which the employee is qualified.

If an employee fails to report to work promptly at the end of the approved leave period, the City will assume that the employee has resigned.

#### **E. Funeral Leave**

Leave may be granted to employees to attend the funeral of an immediate family member. Such leave shall not be charged against accrued annual or sick leave. The amount of time granted will be three (3) work days. If the department head feel the circumstances warrant additional leave time, said leave may be granted with the approval of the City Manager. The City Manager shall, in all cases, determine whether the leave is with or without pay.

"Immediate Family" shall mean: Wife, husband, children, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, brothers, or sisters of the employee.

#### **F. Unauthorized Leave**

Any absence from duty for one (1) hour a day or more that is not covered by an authorized grant-of-leave shall be recorded as leave without pay and may be the basis for disciplinary action and for a deduction of pay.

#### **G. Military Leave**

The City does not discriminate against any person who is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service, as defined by federal statute. The City will not deny initial employment, re-employment, retention in employment, promotion, or any benefit of employment by the City on the basis of that membership, performance of service, application for service, or obligation. It is the City's policy to comply with all applicable statutes, including Employment And Re-employment Rights Of Members Of The Unified Services Act, 38 U.S.C. § 4301 et seq., and Utah Code Ann. §§ 71-10-1 et seq.

#### **H. Court Leave**

An employee who, in obedience to a subpoena or direction by proper authority, appears as a juror or witness for the Federal Government, the State of Utah, or a political subdivision thereof, shall be

entitled to the difference between his/her regular compensation and the compensation or fees received (in excess of traveling expenses) as a witness or juror.

Time absent by reason of subpoena in private litigation or by some party other than the Federal Government, State Governments or political Subdivision thereof, to testify not in official capacity, but as an individual, shall be taken as annual leave or leave without pay.

#### **I. Time Off To Vote**

The City encourages employees to fulfill their civic responsibilities by participating in elections. Generally, employees are able to find time to vote either before or after their regular work schedule. If employees are unable to vote in an election during their non working hours, the City will grant up to one hour of paid time off for employees to vote.

### **VI. CLASSIFICATION/RECLASSIFICATION**

#### **A. Classification**

All City positions are comparatively evaluated on a set of common factors and assigned a grade encompassing a specific salary range on a salary plan. Unless otherwise specified in an employment contract, all employees eligible for benefits will receive compensation according to the classification of the position for which they are hired. Employees will be hired at step (A) of the salary plan and will progress through the salary range conditional upon performance warranting such advancement.

### **VII. CHANGES IN EMPLOYMENT**

#### **A. Reduction in Force**

At such time when circumstances (such as lack of funds or lack of work) dictate that there needs to be a reduction in force, the City Council shall lay-off the necessary number of employees according to the affected class(es) considering among other things, and without limitation: length of service and performance and in consultation with the department head(s).

#### **B. Transfers**

A transfer is defined as a move from one department to another, and should not be confused with the managerial function of moving personnel from one position to another within the same department by promotion, demotion or reassignment. Transfers must be cleared with department heads. A transferring employee must qualify for the job to which transfer is made. A transferred employee shall retain all accumulated sick leave and annual leave from the former position.

#### **C. Reassignments**

Employees who are reassigned shall be paid at the same salary that they received prior to reassignment, unless the reassignment is made in connection with a disciplinary pay reduction.

#### **D. Resignation**

Employees who resign and desire to leave the City in good standing should give at least two weeks notice in writing.

#### **E. Promotion**

Any employee receiving a promotion shall start on the initial step of the salary range of the class to which he/she is promoted, and be eligible for merit increases as elsewhere provided, unless the present salary level is equal to or exceeds the probationary step of the class to which the employee is promoted. If this occurs, the promoted employee shall receive at least a three (3) percent increase.

#### **F. Abandonment of Position**

One unauthorized absence may constitute cause for separation. An employee who fails to call their supervisor to report their absence for one (1) working day, and to request that the absence be recorded as authorized, may be deemed to have voluntarily abandoned his/her position and may be deemed to have resigned

### **VIII. EMPLOYEE PARTICIPATION IN PROFESSIONAL ORGANIZATIONS**

It shall be the policy of the City of Kanab to encourage participation by City employees in those professional and technical organizations which will further their knowledge and professional contacts for the benefit of the City as well as the employee.

It is the purpose of this directive to outline the procedure by which employees can join professional and technical organizations with the City participating in the cost associated with those memberships. In most instances, both the City and the employee will benefit from an employee belonging to professional or technical organizations.

At the budget preparation stage, each department head will list as part of his budget request; those professional and technical organizations which he feels should be paid for by the City.

The City Manager will review the requests and include those he feels should be funded for consideration as part of the budget.

No fee for a professional or technical organization will be paid by the City unless authorized in advance by the City Manager.

### **IX. CAREER DEVELOPMENT**

Employees are encouraged to take advantage of education and training benefits to improve their job skills and to qualify for transfers and promotions. These benefits are limited to training and education which is relevant to the employee's current position or "reasonable" transfer and promotion opportunities. "Reasonable" is defined

as attaining the minimum qualifications for promotion or transfer with no more than two years of additional education or training. These benefits may be available to all employees subject to the availability of budgeted funds.

Requests for education and training may be initiated by either the employee or the department head. Reference to training received should be made on the Performance Evaluation forms. Final decisions on requests for education and training will be made by the City Manager.

## **X. EMPLOYEE ACTIVITIES**

### **A. Outside Employment**

No employee may engage in additional employment which in any manner interferes with the proper and effective performance of official duties or which results in a conflict of interest. It is necessary that an employee give priority to employment with Kanab City. The City will not grant sick leave in any cases of injury to an employee while that employee is engaged in outside employment.

### **B. Ethics**

City employees shall comply with the Municipal Officers' and Employees' Ethics Act, Title 10, Chapter 3, Section 1301 et seq, Utah Code Annotated, and any amendments or successor statutes, to avoid actual or potential conflicts of interest between their public duties and their private interests.

### **C. Use of City Electronic Mail, Voice mail and Computer Systems**

Personal use of telephones for long-distance and toll calls is not permitted. Personal use of City telephones for local calls is authorized. However, employees should use discretion when making personal calls on City telephones so that it does not significantly interfere with the performance of the employee's official duties. If any personal use of a City telephone results in charges to the City, the employee will be required to reimburse the City for the additional cost. When an employee receives compensation for the use of a personal cell phone, they are expected to use the cell phone for work related phone calls when convenient and available.

The use of Kanab City-paid postage for personal correspondence is not permitted.

All employees, when using email to communicate, shall use an official Kanab City email address. Personal Use of their official Kanab City email address is prohibited. If an employee accidentally uses a personal email account for official business or their official email account for personal use, the employee should take reasonable action to remedy the situation. If the employee takes reasonable action upon discovery of the accidental use it shall not be considered a violation of this policy.

Employees shall not use e-mail, voice mail or computer systems for any inappropriate use, including but not limited to the following:

- 1) Solicitation of employees for fund raisers not approved by the City;

- 2) To further personal business interests;
- 3) Offensive, harassing, vulgar, obscene, or threatening communications, including disparagement of others;
- 4) Verbal abuse, slander or defamation;
- 5) Creating, distributing, viewing or soliciting sexually oriented messages, materials or images;
- 6) Electronic dissemination or printing of copyrighted materials, including articles and software in violation of copyright laws.

E-mail, texts, and voice mail communication and the contents of City owned computers are the sole property of the City and may be subject to monitoring at any time without notice. When using the e-mail, text or voice mail systems, and other equipment including City computers, the employee knowingly and voluntarily consents to being monitored and acknowledges the employer's right to conduct such monitoring. The security of e-mail and voice mail communications is not guaranteed. Abuse of e-mail, voice mail and computer systems could subject the employee to disciplinary action, up to and including termination.

#### **D. Use of Equipment and Vehicles**

Equipment and vehicles essential in accomplishing job duties are expensive and may be difficult to replace. When using property, employees are expected to exercise care, perform required maintenance, and follow all operating instructions, safety standards, and guidelines.

The personal use of non-vehicular equipment is authorized as set forth in Section X(E). Large motorized equipment such as a bucket truck, skid steer, front-end loader or lawn maintenance equipment is not authorized for personal use unless specifically authorized under Section X(E)(H). All other City vehicles are for official City business and are not authorized for personal use except as authorized as set forth in this policy. Only Public Safety and Public Works employees (Police Chief, Police Officers, Fire Chief, Fire Chief Deputy, Road Crew Director, Public Works) may take City vehicles to their home except as authorized by this policy. Only City employees and Fire Department Volunteers are allowed to operate a City Vehicle except as otherwise authorized by this policy.

While on official travel employees are authorized to take family members with them and a family member with a driver's license and appropriate experience may drive the vehicle. The vehicle may also be used for incidental purposes during the travel such as traveling to restaurants or other retail establishments or traveling to evening entertainment for leisure activities so long as the travel is minimal, and reasonably within the same area as the official city business, and has so little value that accounting for it would be unreasonable or administratively impracticable. For purposes of this policy traveling less than twenty five miles for personal use shall be considered to fall under the threshold of little value. Personal use of a city vehicle while traveling on official business that is in excess of twenty five miles is authorized so long as the employee reimburses the city for the miles traveled that are solely

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for personal use. The reimbursement rate to the City shall be the same as the City's mileage reimbursement.

If a non-Public Safety employee is using a vehicle for official travel and will be leaving or returning home during hours of darkness or under other conditions where there may be a safety concern, they may receive approval from their supervisor to take the vehicle to their home to mitigate the safety hazard. All employees who are traveling for work should consider weather, road conditions and the type of vehicle that will be used prior to traveling to ensure reasonably safe travel under the circumstances.

In order to enhance the safety of our community by decreasing response times, public safety and public works employees may take an assigned City Vehicle home and use the vehicle to commute to and from work assignments. No other employee may use a city vehicle for purposes of travel to and from work (commuting).

Please notify the supervisor if any equipment, machines, tools, or vehicles appear to be damaged, defective, or in need of repair. Prompt reporting of damages, defects, and the need for repairs could prevent deterioration of equipment and possible injury to employees or others. The supervisor can answer any questions about an employee's responsibility for maintenance and care of equipment or vehicles used on the job.

The improper, careless, negligent, destructive, or unsafe use or operation of equipment or vehicles can result in disciplinary action, up to and including termination of employment.

Cell phone use, including but not limited to phone calls and texting, while operating a vehicle to perform city-related duties is strictly prohibited except for phone calls if the vehicle is equipped with technology that integrates the cell phone into the vehicle and allows the phone to be used hands free.

## **E. Authorized Personal Use of Public Property**

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This policy provides public servants guidance as to authorized personal use of public property, as defined in Utah Code section 76-8-101(5), to help them avoid unintentional violations of Utah Code sections 76-8-402 and 404, Offenses Against the Administration of Government. Violation of Utah Code section 76-8-402 is a felony.

This Section and other Sections of this handbook constitute Kanab City's written policy regarding authorized personal use for purposes of Utah Code section 76-8-402(1)(b)(iii). A public servant is not guilty of a violation of Utah Code section 76-8-402 for authorized personal use of public property as set forth in this section and other relevant sections of this handbook.

Under Utah Code, "Public servant" means a public officer, an appointed official, employee, consultant, or independent contractor of Kanab City, or a person hired or paid by Kanab City to perform a government

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function. "Public property" means real or personal property that is owned, held, or managed by Kanab City. For purposes of this policy, "public servants" will be referred to as "employees".

Employees are responsible to protect and conserve City owned or leased property and use official time in an honest effort to perform official duties. This policy does not grant to employees or create an inherent right to use government resources, and one should not be inferred. The privilege and authorization to use public property for personal purposes may be limited or revoked at any time by a direct supervisor or relevant Department Head or Elected Official.

Employees do not have a right to nor should they have an expectation of privacy while using government resources at any time including when they are accessing the internet, using email, instant messaging, or telephones. Employees who wish for their personal activities to be private should not conduct such activities using public property.

The following personal use of public property is hereby authorized. If another section of the Handbook discusses a more specific authorization or restriction of personal use, that section shall apply to the extent that it is specifically more or less restrictive.

- A. Incidental Personal Use or De Minimus Personal Use: The occasional or infrequent personal use of any city property that results in little or no cost to the City and which, considering its value and the frequency with which it is used, is so small as to make accounting for it unreasonable or impractical is authorized. In determining whether the use is de minimus, the frequency and the value shall always be considered. Additionally, incidental personal use shall also include the incidental use as set forth in Utah Code section 76-8-402.
- B. Publicly Available Use: The use of any City Property that is available for general public use is authorized, so long as the employee uses the property in accordance with the policy that allows general public use.
- C. Fringe Benefits: Any City Property is authorized for personal use when the property is provided or required to be provided to the employee as a benefit or convenience, such as breakrooms and their associated supplies and equipment, on site fitness rooms and equipment, and/or nursing room facilities. The use of City Property for occasional parties or picnics that fall within IRS guidelines for non-taxable fringe benefits is also authorized.
- D. Inadvertent or Accidental Personal Use: Employees who may inadvertently and unintentionally use Public Property, Public Funds or Public Moneys in a manner not consistent with the authorizations in this Policy shall upon discovery:
  - a. Immediately report the use to their department head, and/or immediate supervisor; and
  - b. Shall, within 14 days, repay any costs that may have been incurred; and/or
  - c. Take all necessary steps to insure that the City is not injured by the use.
- E. Personal Use for Pay: The personal use of city property such as office supplies and copiers or printers where there is a direct attributable and easily determined cost to the city is authorized for use so long as the employee pays for the use as set forth within a written policy approved by the supervisor. For example, a supervisor may approve the personal use of an office printer if an employee pays five cents per copy. If a supervisor does not authorize personal use under this section, personal use may still be allowed under the authorization of Incidental Personal Use.



- F. Personal Use of Vehicles during official travel as set forth in Section X(D).
- G. Personal Use of Equipment for training or skill development: The personal use of city property that has been issued to a city employee is authorized regardless of the amount of personal use when the personal use results in the development of a skill that is related to the employee's official duties. For example, a Police Officer has been issued a camera for the purposes of documenting evidence and general investigation. The Police Officer is authorized and encouraged to use the camera for personal use in order to develop his or her skills in photography.
- H. Individually Approved Personal Use: A relevant supervisor is authorized to approve other types of personal use so long as it is not specifically prohibited by this policy. Such personal use shall be authorized in writing and the value to the City shall substantially outweigh the personal benefit received by the employee. Prior to authorizing any additional personal use under this subsection the Supervisors shall consult with the City Attorney and the Human Resource Director to determine if the personal use is a taxable benefit under IRS regulations, to mitigate liability for the use, and to ensure that there is a benefit to the City.

Notwithstanding the above authorizations for personal use, personal use does not include any use that significantly interferes with the mission or operations of the City; significantly interferes with the performance of the employee's or any other employee's official duties; or significantly compromises the integrity of public property.

The personal use of Public Funds or Public Moneys is prohibited and no authorization for personal use of Public Funds or Public Moneys is hereby granted.

Violations of this policy may result in discipline up to and including termination.

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## **XI. EMPLOYEE CONDUCT AND WORK RULES**

### **A. Cause for Discipline**

Each of the following shall constitute cause for discipline, up to and including termination. The offenses listed are not intended to be comprehensive, and the enumeration of these commonly-accepted violations shall not be deemed to prevent the discipline of an employee for other violations not enumerated. Actions in the line of public safety duty or in time of emergency shall be considered in light of the circumstances.

- 1) Personal or gross negligence on or off duty which prevents or substantially hampers job performance.
- 2) Negligently using, abusing, or damaging City property.
- 3) Any violation of City or departmental policies or procedures.
- 4) Violations of commonly accepted employment standards.
- 5) Sexual harassment.
- 6) Illegal discrimination.

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- 7) Disregard for safety rules.
- 8) Insubordination by refusing superior's order, verbal abuse of a superior, or unwillingness to submit to proper authority.
- 9) Failure to follow specified job instructions.
- 10) Unwillingness to work harmoniously with other employees.
- 11) Unauthorized solicitation on City property.
- 12) Distributing unauthorized printed matter on City premises.
- 13) Tardiness.
- 14) Creating or contributing to unsanitary conditions.
- 15) Unauthorized operation of tools, machinery, equipment.
- 16) Gambling on City property.
- 17) Failure to timely report an injury or accident.
- 18) Unauthorized sleeping on the job during work hours or leaving the site early without permission.
- 19) Abuse of sick leave.
- 20) Fighting or attempting to provoke a fight on City premises.
- 21) Deliberately restricting output.
- 22) Failure to maintain production and performance standards.
- 23) Theft.
- 24) Possession and/or use of alcoholic beverages or controlled substances while on duty.
- 25) Possession and/or use of alcoholic beverages or controlled substances while operating City equipment.
- 26) Reporting for work under the influence of alcoholic beverages or controlled substances.
- 27) Assault on supervisor or other employee.
- 28) Threatening or intimidating other employees or supervisors.
- 29) Falsifying City records.
- 30) Intentionally misusing, abusing, or damaging City property or property of another employee.
- 31) Unauthorized removal, falsification, or alteration of City records or intentional release of confidential information.
- 32) Failure to report for work without notice.
- 33) Repeated violation of rules and procedures.
- 34) Use of profanity or offensive language directed at an individual.
- 35) Dishonesty, deceit, or fraud.
- 36) Excessive complaining or poor attitude.
- 37) Spreading of rumors and gossip.
- 38) Commission of criminal conduct.
- 39) Any conduct which reflects negatively on the character of the employee or the City.
- 40) Brandishing or exhibiting any dangerous weapon in an angry or threatening manner, or destroying property or throwing objects in a manner perceived to be threatening. This prohibition does not include law enforcement officers acting in their official capacity.
- 41) Inappropriate use of City computers including e-mail, the internet and chat rooms.
- 42) Inappropriate use of City cell phones including excessive personal use, text messaging and the internet.

## **B. Attendance and Punctuality**

To maintain a safe and productive work environment, the City expects employees to be reliable and to be punctual in reporting for scheduled work. Absenteeism and tardiness place a burden on other employees and on the City. In the rare instances when employees cannot avoid being late to work or are unable to work as scheduled, they should notify their supervisor as soon as possible in advance of the anticipated tardiness or absence.

Employees are required to report all absences. Department directors and their designees have the right to inquire of an employee as to any reason(s) for repeated or excessive absenteeism or tardiness. Poor attendance and excessive tardiness are disruptive. Either may lead to disciplinary action, up to and including termination of employment

## **C. Personal Appearance**

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and can affect the business and professional image the City presents to patrons and visitors.

During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, employees will not be compensated for the time away from work, and shall not be eligible to use or apply other paid time off.

Consult your supervisor or department head if you have questions as to what constitutes appropriate attire.

## **XII. PROHIBITION AGAINST SEXUAL HARASSMENT**

All employees of the City have the legal right to work in an environment free from sexual harassment. In addition, all individuals making application for employment with the City have the right to expect an environment free from sexual harassment.

Sexual harassment is an unlawful activity which violates City policy and is prohibited as a form of sex discrimination. Both sexual harassment and inappropriate sexual conduct, whether legally sexual harassment or not, are unacceptable behavior. Any employee who engages in any form of sexual harassment shall be subject to disciplinary action.

Sexual harassment, according to the federal Equal Employment Opportunity Commission (EEOC), consists of unwelcome sexual advances, requests for sexual favors or other verbal or physical acts of a sexual nature or sex based nature where:

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

- 2) An employment decision is based on an individual's acceptance or rejection of such conduct.
- 3) Such conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

It is also unlawful to retaliate or take reprisal in any way against anyone who has filed a complaint about sexual harassment or sexual discrimination.

The City and its supervisors, employees and agents are under a duty to investigate or eradicate any form of sexual harassment or sex discrimination or complaints about such conduct. In addition to prohibiting sexual harassment by its employees, the City prohibits sexual harassment towards its employees by its citizens, contractors and/or vendors.

The City's management is committed to vigorously enforcing this prohibition of Sexual Harassment at all levels of the organization. This prohibition against Sexual Harassment is in effect at all times and in all places.

#### **A. Statement of Prohibited Conduct**

The following conduct is representative of the types of acts which violate Kanab City's Sexual Harassment Policy. This list is not intended to be exhaustive:

- 1) Physical Assaults of a sexual nature, such as:
  - a. Rape, Sexual battery, molestation or attempts to commit these assaults.
  - b. Intentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing brushing against another employee's body, or poking another employee's body.
- 2) Unwanted sexual advances, propositions or other sexual comments, such as:
  - a. Sexually-oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience;
  - b. Preferential treatment or promises or preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward;
  - c. Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.
- 3) Sexual or discriminatory displays or publication anywhere in Kanab City's work place by Kanab City employees, such as:
  - a. Displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the Kanab City work environment or possessing any such material to read, display or view at work. A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work in and around the City and/or who is posed for the

- obvious purpose of displaying or drawing attention to private portions of his or her body.
- b. Reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic.
  - c. Displaying signs or other materials purporting to segregate an employee by sex in any area of the work place (other than restrooms and similar semi-private lockers/changing rooms).
- 4) Retaliation for sexual harassment complaints, such as:
- a. Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination or retaliation; and
  - b. Intentionally pressuring, falsely denying, lying about otherwise covering up or attempting to cover up conduct such as that described in any item above.

## **B. Procedure for Reporting Harassment**

Employees are required to report all incidents of what they believe to be inappropriate sexual conduct or violations of the City's Sexual Harassment Policy. These reports shall be made at the time when the employee first feels they or someone else has been sexually harassed or subjected to inappropriate sexual conduct. The following procedure will guide the investigation of these claims:

Employees must file a sexual harassment complaint either verbally or in writing with one of the following individuals: Mayor, City Council Member, City Manager, and City Attorney.

All such complaints will be investigated. If the investigation indicates that harassment or inappropriate sexual conduct has occurred, appropriate action will be taken. Confidentiality will, to the extent practical, be protected. The City will make every reasonable effort to keep the identity of the reporting person confidential, but confidentiality cannot be guaranteed.

Any employee of the City who is accused of sexual harassment shall not question, coerce, intimidate, or retaliate in any way during the investigation against the employee who has filed a complaint of sexual harassment or against employees that have provided information concerning the complaint.

All employees shall fully cooperate in any investigation of sexual harassment or retaliation. Disciplinary action will be taken against any employee that obstructs or does not fully cooperate with any investigation of sexual harassment or retaliation.

## **XIII. PROHIBITION AGAINST DISCRIMINATION/HARASSMENT**

Federal and state laws prohibit discrimination because of race, color, religion, sex (including gender), pregnancy, national origin, age, or disability in all employment practices, including the terms, conditions, and privileges of employment. The policy of the City is to avoid all such prohibited discrimination or harassment in the

workplace, and that all employees are entitled to work in an environment free from any such prohibited discrimination or harassment. Such discrimination or harassment is a prohibited employment practice, and perpetrators are subject to disciplinary action.

Any employee who believes that he or she has been subjected to discrimination or harassment based on race, color, religion, sex (including gender), pregnancy, national origin, age, or disability, or who is aware of such an occurrence, has the obligation, duty and right to report to the Mayor, City Council Member, City Manager, or the City Attorney. All complaints should be made as soon as the objectionable conduct or language first occurs.

All such complaints will be investigated and, if the investigation indicates that discrimination or harassment has occurred, appropriate action will be taken. Confidentiality will, to the extent practical, be protected. The City will make every reasonable effort to keep the identity of the reporting person confidential, but confidentiality cannot be guaranteed.

An employee who is accused of such discrimination or harassment shall not question, coerce, intimidate or retaliate in any way against the person making the report, against the person who was discriminated against or harassed, or against any person who provided information concerning the complaint. All employees shall cooperate fully in any investigation of discrimination, harassment or retaliation.

#### **XIV. ALCOHOL/DRUG USE POLICY**

##### **A. Policy Statement**

The City believes that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of services rendered by the City are important. The abuse of drugs and alcohol creates a variety of work place problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased work place theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

Therefore, the City hereby adopts this Policy for testing employees and prospective employees as related to drugs and alcohol in the work place.

##### **B. Drug & Alcohol Testing Policy Definitions**

For the purposes of this policy:

- 1) "Alcohol" means alcoholic beverages and any other intoxicating substances.
- 2) "Drugs" used in this policy refer to and include all drugs, paraphernalia, controlled substances, or mood or mind altering inhalants, any of which were not prescribed by a licensed physician/dentist in the United States for the person taking or in possession of the drug or substance, or which have not been used as prescribed or directed.

- 3) "Drug Paraphernalia" means objects used to manufacture, compound, covert, produce, process, prepare, test, analyze, pack, store, contain, conceal, and/or to inject, ingest, inhale, or otherwise introduce a drug into the human body.
- 4) "Employee" means any person in the service of the City whether for compensation or as a volunteer.
- 5) "Prospective employee" means any person who has made application for employment with the City and to whom the City has offered employment, conditioned upon the results of a drug and alcohol test.
- 6) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal statutes.
- 7) "Criminal Drug Statute" means a Federal or State criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
- 8) "MRO" means Medical Review Officer, charged with reviewing and interpreting test results and determining any alternate medical explanations.
- 9) "Drug Policy Coordinator" is the City employee specifically designated to administer the Drug and Alcohol Testing Policy and through whom any procedures, or disciplinary or rehabilitative action regarding this policy, must be reviewed and approved. The Drug Policy Coordinator is the City Administrator or other person designated by the City Administrator.
- 10) "CDL-Commercial Driver s License" is the license required to operate a commercial vehicle.

### **C. Testing Policy**

It is the policy of the City to test employees and prospective employees for the presence of drugs or alcohol, according to the provisions set forth below, as a condition of hire or continued employment. Any employee or prospective employee failing or refusing to take the test will not be eligible for employment, or if employed, may be subject to termination. The City shall consider as negative all confirmed positive drug and alcohol test results with a medically sufficient explanation.

- 1) The City shall require the testing of employees and prospective employees, including management, on a periodic basis, under the following circumstances and purposes:
  - a. Pre-Employment Testing. All prospective employees shall be tested for drug or alcohol usage prior to being placed for employment. All job applicants shall be informed of the policy at the pre-employment interviews. A copy of this policy shall be available for review by all job applicants. All prospective employees shall be required, prior to being hired by the City, to sign the acknowledgment form, agreeing to abide by the terms of this policy. The City will exclude from employment any job applicant or prospective employee who refuses to abide by the terms of this policy. Any prospective employee whose pre-employment drug and alcohol test results in a confirmed positive and who does not have a medically sufficient explanation (as determined in the sole, but reasonable, discretion of the MRO), may reapply for employment with the City after six months from the date of such test. If the City hires a prospective employee, he or she must have first successfully passed the above-referenced pre-employment drug and alcohol test, and thereafter he or

she will be subject to all the procedures and requirements for drug and alcohol testing as set forth in this policy.

In addition, any employee who has taken an extended leave of absence of six months or longer must be retested under this section before returning to work.

- b. Reasonable Suspicion (For Cause) Testing. Certain supervisors shall be trained to look for behaviors which may indicate drug or alcohol usage. These behaviors include, but are not limited to: direct observation of drug or alcohol use, drug paraphernalia, abnormal or erratic behavior such as accidents, stealing, or repeated errors on the job, or unsatisfactory time and attendance patterns, any of which are coupled with a specific contemporaneous event that indicates probable drug or alcohol use. An employee will be required to provide a urine sample, as defined below, when such reasonable suspicion arises and at least one supervisor or manager, and the designated Drug Policy Coordinator, concur that a reasonable suspicion of drug or alcohol use exists. The decision to test for drug or alcohol use by an employee is based on specific contemporaneous, physical, behavioral, and/or performance indicators. Once the authorized supervisors have determined that a reasonable suspicion exists, testing is done immediately.
  - c. Return to Duty Testing. If the City returns to duty an employee after he or she has voluntarily sought rehabilitation for drug or alcohol abuse and has successfully completed rehabilitation, such employee shall be entered into a program of unannounced drug and alcohol testing for a predetermined period of time at the sole discretion of the City.
  - d. Post-Accident Testing. Post-accident testing will be conducted on employees whose performance either contributed to an accident, or cannot be completely discounted as contributing to the accident. Such testing will occur as soon as possible, but not later than twelve hours after an accident has occurred. The immediate supervisor and the department manager of such employee, in association with the Drug Policy Coordinator, shall determine if the performance of that employee either contributed to the accident or cannot be completely discounted as a contributing factor.
  - e. Random Testing. The City reserves the right to implement a random drug and alcohol testing program consistent with applicable federal, state and local law, for purposes of maintaining safety and as a deterrent to drug and alcohol abuse.
- 2) Employee's required to hold a Commercial Driver's License (CDL) and drive commercial vehicles as a condition of employment may be tested as required by federal and/or state law.



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- 3) Any drug or alcohol testing shall occur during or immediately after the regular work period of current employees, and shall be deemed work time for purposes of compensation and benefits for current employees.
- 4) Individuals will be tested on City premises or sent to an outside clinic or testing facility licensed to perform such tests. If an employee is sent to an outside clinic for a "Reasonable Suspicion" test, the employee must be driven to the facility by the supervisor or his/her designee. The employee must then be put on administrative leave until the results of the test are available. The supervisor must make arrangements or help the employee make arrangements to get home without driving him/herself.
- 5) The City shall pay all costs of testing and transportation associated with a test required by the City.
- 6) All sample collection and testing shall be performed under the following conditions:
  - a. The collection of samples shall be performed under reasonable and sanitary conditions.
  - b. Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.
  - c. The collection of samples shall be documented, and the documentation procedures shall include labeling of samples, to reasonably preclude the probability of erroneous identification of test results. An opportunity shall be provided for the employee or prospective employee to provide notification of any information that he or she considers to be relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information.
  - d. Sample collection, storage, and transportation to the place of testing shall be performed in a manner that reasonably precludes the probability of sample misidentification, contamination or adulteration.
  - e. Sample testing shall conform to scientifically accepted analytical methods and procedures.
  - f. Testing shall include verification or confirmation of any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method.

- 7) In the case of urine testing, an employee or prospective employee will submit a split urine sample. A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time he is so notified to request, at his option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and the City. The test results of both samples may be considered at any subsequent disciplinary hearing.
- 8) Drug and alcohol testing will be conducted in compliance with federal, state and local laws, including but not limited to Utah Code Ann. § 34-41-101 et seq., and any amendments or successor statutes.

#### **D. City Action**

Upon receipt of a verified or confirmed positive drug or alcohol test result, which indicates a violation of this policy (and in the case of urine testing after providing the employee or prospective employee notice of the result of the initial test and the option to have the 15ml urine sample tested), or upon the refusal of any employee or prospective employee to provide a sample, the City may use that test result or refusal as the basis for disciplinary or rehabilitative actions, which may include, but not be limited to, the following:

- 1) Termination of employment.
- 2) Refusal to hire a prospective employee.
- 3) Any other disciplinary measures in conformance with the City's practices, policies, or procedures.

#### **E. Confidentiality**

The information received from the drug testing results shall be the property of the City.

Test results information may be released to the person who has been tested upon written request.

#### **F. Work Place Rules**

Employees who possess, dispense, manufacture, or distribute alcohol, drugs or drug paraphernalia on City premises, or on City time may be subject to disciplinary action, including termination.

Employees undergoing prescribed medical treatment with a drug that may alter physical or mental abilities must report that to their supervisor.

Any employee convicted of violating a criminal drug statute must notify the City Administrator within five (5) days of conviction. The City may take appropriate disciplinary or rehabilitative actions as a consequence.

No employee may use or be under the influence of drugs or alcohol on the City's premises, in the City's vehicles, or any time the employee is representing the City on City business, except in cases involving a current, prescription prescribed in the United States, or over-the-counter drug, taken as prescribed or directed.

#### **G. Miscellaneous**

A copy of the City's Drug and Alcohol Testing Policy shall be distributed to and posted for all employees, and all employees shall be required to acknowledge receiving, reading, and acknowledging the policy. Copies shall be made available to prospective employees.

This policy applies to management as well as other employees.

Employees wishing assistance with overcoming drug or alcohol abuse may contact their supervisor or the Drug Policy Coordinator for information about counseling and rehabilitation programs.

#### **H. Acknowledgment of Policy**

The City shall require each employee to read this policy and sign a form, acknowledging that they have received and read a copy of this policy and agree to abide by its terms as a condition of continued employment. The signed acknowledgment shall be kept in each employee's personnel file.

#### **I. Drug and Alcohol Policy Not a Contract**

This Drug and Alcohol Testing Policy is the unilateral action of the City and does not constitute an express or implied contract with any person affected by or subject to the 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 City may alter, terminate or make exceptions to this policy at any time, at the City's sole discretion. This policy does not limit or alter the City's right to terminate any employee at any time for any reason.

### **XV. DISCIPLINARY PROCEDURES**

#### **A. Disciplinary Action**

An employee whose conduct constitutes grounds for disciplinary action shall be subject to the following discipline: reprimand, suspension, demotion (transfer to a position with less remuneration) or termination.

#### **B. Pre-Disciplinary Hearing**

Whenever a regular full-time employee, who is not an appointed or probationary employee, is subject to possible suspension without pay for more than two days, demotion, or termination, a pre-disciplinary hearing shall be held prior to imposing disciplinary action. The employee shall be given written notice of the hearing which includes an explanation of the charges against the employee and notice that discipline up to and including termination is being considered. The pre-disciplinary hearing shall be conducted by the Mayor for the purpose of allowing the employee to respond to the charges and

present information the employee believes is relevant to the decision. A decision as to the disciplinary action to be taken, if any, shall be made by the Mayor, and the employee shall be notified in writing within a reasonable time after the hearing. If disciplinary action is imposed, the Mayor shall provide the employee written notice of the disciplinary action along with a written explanation of employee rights for appeal, if any.

### **C. Appeals of Demotion or Termination**

In the case of suspension without pay for more than two days, demotion or termination, a regular full-time employee, who is not an appointed or probationary employee, has the right to appeal the decision to the City Employee Appeals Board. The appeal must be in writing and filed with the City Recorder within ten days of the suspension without pay for more than two days, demotion or termination. The City Recorder will then refer the matter to the Employee Appeals Board which will take and receive evidence and fully hear and determine the matter. The employee shall be entitled to appear in person and to be represented by counsel (at the employee's expense), to have a public hearing, to confront the witness whose testimony is to be considered, and to examine the evidence. Each decision of the Appeals Board shall be by secret ballot, and shall be certified to the City Recorder within 15 days from the date the matter is referred to it. For good cause the Appeals Board may extend the 15-day period to a maximum of 60 days, if the employee and City consent.

In the event the Employee Appeals Board upholds the suspension without pay for more than two days, demotion or termination, the employee may file an appeal within fourteen (14) days to the governing body, whose decision will be final. The governing body shall not hold new or additional evidentiary hearings.

In the event the Appeals Board does not uphold the suspension without pay for more than two days, demotion or termination, the City Recorder shall certify the decision to the employee affected, and also to the Department Head from whose order the appeal was taken. The employee shall be paid his salary, commencing with the next working day following the certification by the City Recorder of the Appeals Board's decision, provided the employee reports for his/her assigned duties that next working day. The employee shall also receive salary for the period of time during which the employee is discharged or suspended without pay, or any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

A final action or order of the Appeals Board may be reviewed by the Utah Court of Appeals by filing with that Court a petition for review within 30 days after the issuance of the final action or order of the Appeals Board.

### **D. Suspension Pending Investigation and Decision**

At the City's sole discretion, an employee may be suspended (with or without pay) pending an investigation. If after an investigation, the employee is found guiltless, the employee shall be restored to his or her position and/or compensated for any lost pay.

## **XVI. GRIEVANCE PROCEDURE**

### **A. Circumstance of Grievance to be Avoided**

It shall be the policy of Kanab City insofar as possible to prevent the occurrence of grievances and deal promptly with those which occur.

### **B. Duty of Department Head**

Whenever a grievance arises or is directed to the attention of the department head, the department head shall discuss all relevant circumstances with the employee and remove the cause of the grievance to the extent the department head deems advisable and possesses authority.

### **C. Duty of the City Manager**

If the department head fails to settle the grievance in a satisfactory manner, the written grievance and department head's decision shall be referred to the City Manager. If a grievance involves a department head it shall be taken directly to the City Manager. If a grievance involves the City Manager it shall be taken directly to the Mayor. The City Manager or Mayor, as appropriate, shall investigate the circumstances and resolve the grievance to the extent he/she deems advisable and possesses authority.

### **D. Review by City Council**

If the City Manager or Mayor fails to resolve the grievance, the grievance may be taken to the City Council by filing a notice in writing with the City Recorder. The City Council shall schedule a hearing with the parties within fifteen (15) working days after receipt of the grievance. The City Council shall render a written decision to the employee within five (5) working days after the conclusion of the hearing. The City Council shall render its findings and decision to all concerned parties, in writing, which decision shall be final and binding.

## **XVII. Workplace Violence**

### **A. Workplace Violence and Policy Statement**

The City is committed to providing, in so far as it reasonably can do so within available resources, a safe environment for working and conducting business. The City prohibits acts of violence committed by City employees, or against City employees by members of the public while on City property or while the City employee is performing City business at other locations. The objective of this policy is to reduce the potential for violence in and around the workplace, to encourage and foster a work environment that is characterized by respect and healthy conflict resolution, and to mitigate the negative consequences for employees who experience or encounter violence in their work lives.

### **B. Workplace Violence Definitions**

The work violence in this policy shall mean an act or behavior that:

- 1) Is physically assaultive;
- 2) Consists of a communicated or reasonably perceived threat to harm another individual or in any way endanger the safety of an individual;

- 3) Would be interpreted by a reasonable person as having potential for physical harm to the individual;
- 4) A reasonable person would perceive as menacing;
- 5) Involves carrying or displaying weapons, destroying property or throwing objects in a manner reasonably perceived to be threatening; or
- 6) Consists of a communicated or reasonably perceived threat to destroy property.

Violent actions on City property, in City facilities or while on City business will not be tolerated or ignored. Any unlawful violent actions committed by employees or members of the public while on City property or while using City facilities will be prosecuted as appropriate and may result in disciplinary action, up to and including termination. Employees must immediately report to their supervisor all incidents of workplace violence.

## **XVIII. Risk Management and Safety**

### **A. Employee Liability**

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives a notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and the City Manager.