

Council Meeting of November 13, 2019

Consent Agenda Item No. 6j

NO Public Hearing

REQUEST FOR COUNCIL ACTION

SUBJECT: Ordinance 19-36, an Ordinance Amending and Renumbering 2009 West Jordan Municipal Code Title 1, Chapter 11 (Ethics for all City Officers and Employees) and Article 11A (Ethics for Elected Officials); and repealing Chapter 12 (Employee Discharge Appeal Board); regarding the change to the Council-Mayor Form of Municipal Government.

SUMMARY: Adoption of this Ordinance would update and renumber certain chapter(s) and article(s) of the **Administration Title, including Ethics provisions**, to comply with the change to the council-mayor form of municipal government.

FISCAL/ASSET

IMPACT: There is no cost or financial impact to the City (revenue neutral).

STAFF

RECOMMENDATION: Staff recommends approval of this Ordinance, as discussed in the October 23, 2019 Council Work Session.

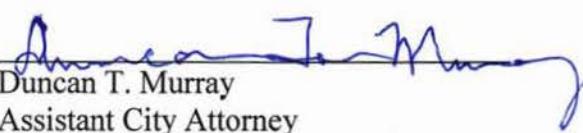
MOTION

RECOMMENDED: "I move to approve Ordinance 19-36, an Ordinance Amending and Renumbering 2009 West Jordan Municipal Code Title 1, Chapter 11 (Ethics for all City Officers and Employees) and Article 11A (Ethics for Elected Officials) regarding the change to the Council-Mayor Form of Municipal Government."

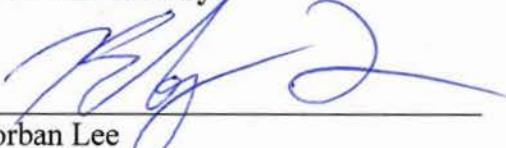
[OR approved as part of a Consent Motion.]

[Roll Call Vote required.]

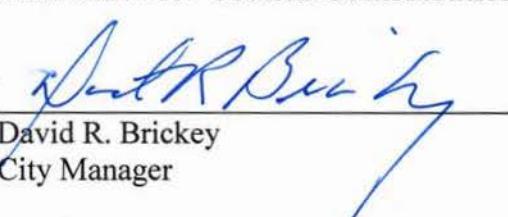
Prepared and Presented by:


Duncan T. Murray
Assistant City Attorney

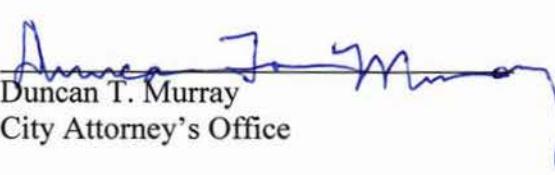
Recommended by:


Korban Lee
Assistant City Manager

Authorized for Council Consideration:


David R. Brickey
City Manager

Reviewed for Legal Sufficiency:


Duncan T. Murray
City Attorney's Office

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

ORDINANCE NO. 19-36

[CHANGE OF FORM OF GOVERNMENT (Title 1, Chapters 11 & 12)]

AN ORDINANCE AMENDING TITLE 1, "ADMINISTRATION."

WHEREAS, the City of West Jordan adopted a City Code in 2009, for the purpose of carrying into effect and discharging all powers and duties conferred by law upon the City and its officers, employees and inhabitants, and to provide for the safety, preserve the health, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the City and its inhabitants, and to protect property in the City; and

WHEREAS, the West Jordan City Council finds and determines that the purpose of the 2009 City Code, and the public health and welfare, will best be reached by the adoption of the following amendments to Title 1, Chapters 11 and 12 of the 2009 City Code.

NOW THEREFORE, IT IS ORDAINED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH:

Section 1. Title 1, Chapter 11, Sections 3 through 14 and 16, shall be repealed; Sections 2, 15, 17, 18, 19, 20, 21, and 22 shall be renumbered in Title 1, Chapter 11, Sections 1 through 10 and shall hereafter read as follows:

Chapter 11

ETHICS FOR ALL CITY OFFICERS AND EMPLOYEES

1-11-1: PURPOSE:

1-11-2: ETHICS ACTS:

1-11-3: DEFINITIONS:

1-11-4: DISCLOSURE CLAUSE IN CONTRACTS:

1-11-5: ADVISORY POWER OF CITY ATTORNEY:

1-11-6: SANCTIONS:

1-11-7: EMPLOYEE APPEALS:

1-11-8: VOIDABLE CONTRACTS:

1-11-9: VIOLATION; PENALTY:

1-11-10: KNOWINGLY FILING FALSE COMPLAINT:

1-11-1: PURPOSE:

The purpose of this chapter is to prevent improper influence, avoid the appearance of impropriety, and prohibit public officers from receiving unjust financial gain from public service. It also seeks to increase public confidence by assuring that official actions are taken objectively and properly. It is the objective of this chapter to promote these goals by establishing ethical standards of conduct for all officers and employees of the city, including appointed and elected officers. (2001 Code § 2-4-701; amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-2: ETHICS ACTS:

All the provisions of the Municipal Officers' and Employees' Ethics Act (codified at Utah Code Annotated sections 10-3-1301 et seq., as amended) and the Utah Public Officers' and Employees' Ethics Act (codified at Utah Code Annotated sections 67-16-1 et seq., as amended) are incorporated herein by reference. (Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-3: DEFINITIONS:

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined according to the definitions in Utah Code Annotated Sections 10-3-1303 and 67-16-3, as amended, which are incorporated herein by reference.

(2001 Code § 2-4-702; §1-11-2 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-4: DISCLOSURE CLAUSE IN CONTRACTS:

The following clause shall be conspicuously set forth in every contract or bid, proposal, or other offer involving the city, which the city determines will likely exceed twenty five thousand dollars (\$25,000.00) in value:

*REPRESENTATION REGARDING ETHICAL STANDARDS
FOR CITY OFFICERS AND EMPLOYEES AND FORMER
CITY OFFICERS AND EMPLOYEES*

The bidder, offeror, or contractor represents that it has not: 1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; 2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the city conflict of interest ordinance; or 3) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the city conflict of interest ordinance, title 1, chapter 11, including article A, of the West Jordan city code. (2001 Code § 2-4-715; §1-11-15 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-5: ADVISORY POWER OF CITY ATTORNEY:

- A. Request for Advisory Opinion: Any public officer may request of the city attorney an advisory opinion concerning the application to him or her of the provisions of this chapter. The city attorney shall accept and process these advisory opinion requests in accordance with the procedures set forth in this section.
- B. Advisory Opinion upon City Attorney's Own Initiative: The city attorney on his or her own authority may render advisory opinions whenever he or she deems it in the public interest.
- C. Time for Decision; Public Review: As soon as practicable, but not later than thirty (30) days after he or she receives a request for an advisory opinion, the city attorney shall render a written opinion to the person who requested it and shall provide a copy of the opinion to the mayor, city council and city administrator. All advisory opinions shall be available for public review, but such public disclosure may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.
- D. Justifiable Reliance: Any advisory opinion rendered by the city attorney, until amended or revoked by the city attorney, shall be a defense in any action brought under this chapter and shall be binding on the city in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith reliance upon it, unless material facts were omitted or misstated by the person requesting the opinion. (2001 Code § 2-4-717; §1-11-17 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-6: SANCTIONS:

- A. Persons Not Public Servants or Volunteer Public Servants: Subject to any contract provisions to the contrary, the city may impose any one of the following sanctions and any other allowed by law on any person or entity, including those who are not a public officer for violations of the provisions in this chapter. These sanctions include: 1) written warnings or reprimands; 2) termination of contracts, at the city's option; or 3) debarment or suspension from future contracting with the city.
- B. Right of City to Debar or Suspend: Debarment or suspension of doing business in the future with the city may be imposed by the city for violations of the provisions of this chapter; provided, that such action may not be taken without the concurrence of the city attorney.
- C. Due Process: All procedures under this section shall be in accordance with minimum due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing before the city administrator or his or her designee, prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor for the city.
- D. Recovery of Value Transferred or Received In Breach of Ethical Standards:

1. General Provisions: The value of anything transferred or received in violation of the provisions of this chapter by a public officer or other person or entity may be recovered from both the public officer and the other person or entity, through judicial action.

2. Recovery of Payoffs by City: Upon a showing that any person or entity made a payoff, including a subcontractor who made a payoff to a prime contractor or a higher tier subcontractor in connection with the award of subcontract or order, the amount of the payoff will be recoverable by the city from the recipient. In addition, that amount may also be recovered from the subcontractor making such payoff. Recovery from one offending party shall not preclude recovery from another offending party.

3. Legal Remedies, Interest and Attorney Fees: The city shall be entitled to seek any other legal remedy and shall be entitled to recover prejudgment and postjudgment interest on all sums due it at the rate of eighteen percent (18%) interest and collect all costs and reasonable attorney fees incurred, both before and after suit or judgment. (2001 Code § 2-4-718; §1-11-18 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-7: EMPLOYEE APPEALS:

Notwithstanding any other provision of this chapter, a public employee who is found to have violated any of the provisions of this chapter, and has had employment discipline imposed, may have such discipline reviewed in accordance with and as provided by law applicable to said employee, including those for career service and civil service systems, if any. (2001 Code § 2-4-719; §1-11-19 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-8: VOIDABLE CONTRACTS:

Any contract or transaction which was the subject of governmental action by the city and which involved the violation of a provision of this chapter is voidable, at the option of the city. (2001 Code § 2-4-720; §1-11-20 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-9: VIOLATION; PENALTY:

In addition to any penalty provided herein or allowed in law, including in Utah Code Annotated sections 10-3-1310 and 67-16-12, as amended, any person who knowingly and intentionally violates the provisions of this chapter is guilty of a class B misdemeanor and may be dismissed from employment or removed from office, as provided by law. (2001 Code § 2-4-721; §1-11-21 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-10: KNOWINGLY FILING FALSE COMPLAINT:

Any person who files a complaint against a public officer pursuant to this chapter, knowing that such complaint is frivolous, malicious, false, or is otherwise without merit, shall be guilty of a class B misdemeanor. (2001 Code § 2-4-722; §1-11-22 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

Section 2. Title 1, Chapter 7, Article E, Sections 1 through 17 of the 2009 City Code shall be renumbered to Title 1, Chapter 11, Article A, Sections 1 through 18 and shall hereafter read as follows:

ARTICLE A. ETHICS FOR ELECTED OFFICIALS

- 1-11A-1: PURPOSE:**
- 1-11A-2: DEFINITIONS:**
- 1-11A-3: TYPES OF CONDUCT RELATED ETHICAL DUTIES (AND VIOLATIONS):**
- 1-11A-4: ETHICS ACTS (INCLUDING STATE STATUTES):**
- 1-11A-5: REMEDIES FOR VIOLATIONS (OF ETHICS ACTS AND ETHICAL DUTIES):**
- 1-11A-6: CITY ATTORNEY ADVISORY OPINIONS:**
- 1-11A-7: CITY OF WEST JORDAN ETHICS COMMISSION:**
- 1-11A-8: FILING OF ETHICS COMPLAINTS WITH COMMISSION:**
- 1-11A-9: PRIVACY:**
- 1-11A-10: INITIAL REVIEW OF COMPLAINT:**
- 1-11A-11: CONSIDERATION OF COMPLAINT AFTER ACCEPTANCE:**
- 1-11A-12: CONTEMPT POWERS:**
- 1-11A-13: REQUEST BY ELECTED OFFICIAL FOR LEGAL REPRESENTATION:**
- 1-11A-14: DETERMINATION BY COMMISSION:**
- 1-11A-15: ACTION BY CITY COUNCIL:**
- 1-11A-16: KNOWINGLY FILING A FALSE COMPLAINT:**
- 1-11A-17: ANNUAL COMMISSION REPORT:**
- 1-11A-18: REVIEW OF PROPOSED INCREASES IN ELECTED OFFICIAL COMPENSATION:**

1-11A-1: PURPOSE:

The purpose of this article is to encourage a higher level of duty and responsibility by elected officials to the public, to prevent improper influence, and to prohibit elected officials from receiving unjust gain, including unjust financial gain, from public service. This article also establishes a City of West Jordan ethics commission, and seeks to increase public confidence by assuring that governmental actions are taken ethically and with civility. Elected officials shall comply with the provisions of this article and with the provisions of chapter 11 of this title. (Ord. 16-38, 9-7-2016; §1-7E-1, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-2: DEFINITIONS:

For the purposes of this article, the following terms shall mean:

CITY: The City of West Jordan, unless otherwise indicated.

COMMISSION: The City of West Jordan ethics commission formed pursuant to section 1-11A-7 of this article and sections 10-3-1311 and 63A-15-103, Utah Code Annotated; otherwise, it means the political subdivisions ethics review commission, as per section 63A-15-201 et seq., Utah Code Annotated.

ELECTED OFFICIALS

OR ELECTED

OFFICERS:

Includes only the mayor and the members of the city council of the City of West Jordan, unless otherwise indicated, and does not include the justice court judge(s).

ETHICS ACTS:

Includes sections 10-3-1301 et seq., and 67-16-1 et seq., Utah Code Annotated, all similar state statutes, and the applicable portions of this code (including "ethics for all city officers and employees" in sections 1-11-1 to 1-11-10 of this chapter inclusive; and "types of conduct related ethical duties" in sections 1-11A-3 and 1-11A-4 of this article).

VIOLATION:

A violation of the ethics acts by an elected official or a violation of another duty or duties that an elected official has pursuant to city ordinances and rules and state statutes.

The definitions in Utah Code Annotated sections 10-3-1303 and 67-16-3, as amended, are also incorporated herein by reference. (Ord. 16-38, 9-7-2016; §1-7E-2, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-3: TYPES OF CONDUCT RELATED ETHICAL DUTIES (AND VIOLATIONS):

The conduct related duties of the elected officials, and violations thereof, include, but are not limited to, the following duties and violations:

- A. Request for Inappropriate Relief From Enforcement Action: The elected officials shall never use or attempt to use their positions to request or obtain inappropriate relief from enforcement action taken by police or law enforcement personnel or other government personnel, whether local, state, or federal; doing so constitutes a violation.
- B. Unauthorized Exercise of Authority (Including Judicial or Administrative Authority): The elected officials shall comply with local, state, and federal law. They shall never assume or exercise authority (or attempt to exercise authority) beyond that which is allowed by city ordinances and rules and state statutes, including, but not limited to, inappropriately interfering with the judicial process, prosecutorial discretion, employee disciplinary matters, and other matters involving personnel and administration; doing so constitutes a violation. See relevant council rules; and section 1-6-7 of this title.
- C. Attendance at Regular City Council Meetings: There are approximately twenty four (24) regular council meetings (excluding any "strategic planning meeting") listed on the "notice of annual meeting schedule" for each calendar year. If an elected official misses three (3) or more consecutive regular council meetings in a calendar year, then this constitutes a violation and said elected official:
 1. May receive a fine in the amount of seven hundred fifty dollars (\$750.00) per consecutive missed regular council meeting in excess of two (2) consecutive missed meetings; unless:
 - a. The council, in an open meeting, removes some or all of this fine (with said elected official abstaining, to avoid a conflict of interest).

D. Contact Information Provided to The City Recorder and Council Office Director: The elected officials:

1. Shall each provide a current residential street address, at least one current (functioning) phone number, and at least one current (functioning) e-mail address to the city recorder and council office director; and
2. Shall each, if there is a change, provide new information to the city recorder and council office director within fourteen (14) calendar days of the change; and
3. Shall each make reasonable efforts to be available and to respond to other city officials, officers, and employees, and to complete other duties and assignments.

Failure to provide this information constitutes a violation.

E. Personal Expenditures of City Funds: With regards to all personal expenditures of City funds, the elected officials shall comply with city reimbursement and financial policies, as stated in the employee handbook and/or other applicable rules and guidelines. Failure to do so constitutes a violation.

F. Crimes of Dishonesty, Moral Turpitude, Disorderly Conduct, and Similar Thereto: If an elected official is charged in a court of law with a crime(s) of dishonesty, moral turpitude (including sex related crimes), disorderly conduct, domestic violence, other violence, DUI (driving under the influence), DUI-metabolite, leaving the scene of an accident, failure to cooperate with law enforcement personnel, or a similar crime(s), then:

1. The city council, in order to avoid interference with the judicial process, shall not make a public statement, or take any action regarding the criminal charge(s), unless said charged elected official is found guilty in a court of law (which constitutes a violation); and
2. An elected official, or an appropriate individual(s), may request one or more of the remedies in subsections 1-11A-5B, C, and D of this article, if a charged elected official is found guilty in a court of law.

G. Crime of "Official Neglect and Misconduct": According to section 10-3-826, Utah Code Annotated, if an elected official willfully fails to perform a duty required by city ordinances and rules or state statutes, or is willfully involved in misfeasance or malfeasance in office, then this constitutes a violation and said elected official may be prosecuted for a misdemeanor and may be removed from office. If such allegations exist, an elected official, or an appropriate individual(s), may request one or more of the remedies in subsections 1-11A-5A, B, C, and D of this article. (Ord. 16-38, 9-7-2016; amd. Ord. 18-34, 10-24-2018; §1-7E-3, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-4: ETHICS ACTS (INCLUDING STATE STATUTES):

A. Compliance with Ethics Acts: The elected officials of the City of West Jordan are required to comply with the ethics acts, which are incorporated herein by reference.

B. Avoid Using Position for Personal Advantage; and Public Disclosure: Included in the "state statute portions of the ethics acts" (among others, sections 10-3-1301 et seq., and 67-16-1 et seq., Utah Code Annotated) is the obligation of elected officials to:

1. Not disclose or improperly use private, controlled, or protected information acquired by them by reason of their position or in the course of their duties; and
2. Not use (or attempt to use) their position for the economic benefit of self or others; or secure (or attempt to secure) special privileges or exemptions for self or others; which are not allowed by city ordinances and rules and state statutes; and
3. Not knowingly receive, accept, take, seek, or solicit, before or after the term of office, directly or indirectly, for the elected official or for another, a gift of value or economic benefit tantamount to a gift, as defined by state statute (and sections 1-11-1 to 1-11-22 of this title inclusive):
 - a. That would tend improperly to influence a reasonable person in the elected official's position to depart from the faithful and impartial discharge of the person's public duty; or
 - b. That the elected official knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the elected official for official action taken; and
4. Make public disclosures and filings, including where an elected official receives compensation for assisting any person or business entity in any transaction involving the city; or where an elected official has a business ownership interest, personal interest, investment, or other financial benefit which creates a conflict between the elected official's personal interests and the elected official's public duties. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-4, Ord. 19____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-5: REMEDIES FOR VIOLATIONS (OF ETHICS ACTS AND ETHICAL DUTIES):

If there is an allegation that an elected official has committed a violation(s), then, in addition to any other remedies allowed by law, the following remedies are available:

- A. Criminal allegations may be submitted to the appropriate agency, such as the city attorney, district attorney, Utah attorney general (including the special investigations and public corruption unit), or United States attorney, or corresponding police department or law enforcement agency, for investigation and possible prosecution; and/or
- B. Noncriminal allegations may be submitted for review to the City of West Jordan ethics commission ("commission"), as per section 10-3-1311, Utah Code Annotated, and section 1-11A-7 of this article; otherwise, the allegations may be submitted to the political subdivisions ethics review commission, as per section 11-49-101 et seq., Utah Code Annotated; and/or

- C. A censure resolution may be recommended by the commission for consideration by the council; with a copy of the resolution to be made available at least seven (7) calendar days in advance to the accused elected official (so that the accused elected official may have due process and respond to the allegations); and/or
- D. A sworn, written accusation to initiate "removal by judicial proceedings" may be presented to the district court by an elected official or an appropriate individual(s), as set forth in section 77-6-1 et seq., Utah Code Annotated, if there are allegations of "high crimes and misdemeanors or malfeasance in office"; with the accusation to state, in ordinary and concise language, the criminal and/or noncriminal grounds for removal (so that the accused elected official may have due process and respond to the allegations); and with the accusation to be timely brought, as per section 78B-2-310, Utah Code Annotated; and/or
- E. The council reserves the option to pursue other remedies, including, but not limited to, censure (without a recommendation from the commission), allowed by city ordinances and rules and state statutes. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-5, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-6: CITY ATTORNEY ADVISORY OPINIONS:

- A. Request and Process for an Opinion: Elected officials of the City of West Jordan may request of the city attorney an advisory opinion concerning the application of the ethics acts. The city attorney shall accept and process these advisory opinion requests. As soon as practicable, the city attorney shall render a written opinion to all of the members of the city council.
- B. Availability of an Opinion: Advisory opinions may be available for public review, subject to state statutes, and may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.
- C. Defense to Rely Upon an Opinion: An advisory opinion rendered by the city attorney, until amended or revoked by the city attorney, shall be a defense in any action brought by the city against the elected official and shall be binding on the city in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith upon it, unless material facts were omitted or misstated by the person requesting the opinion. (Ord. 16-38, 9-7-2016; §1-7E-6, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-7: CITY OF WEST JORDAN ETHICS COMMISSION:

- A. General Qualifications of Members: The city hereby establishes a City of West Jordan ethics commission ("commission") pursuant to section 10-3-1311, Utah Code Annotated. The commission shall consist of five (5) regular members and one alternate member, each of whom, unless otherwise indicated:
 1. May or may not be a resident of the City; and
 2. Is not currently an official, officer, or employee of the City; and

3. Is eighteen (18) years of age or older; and
4. Has high ethical and moral character.

B. Special Qualifications of Individual Members, Including the Chair: Each individual member shall have additional qualifications, as follows:

1. One of the regular members, who shall serve as the chair, shall have previously served as (but shall not currently be serving as) an appellate judge, district court judge, justice court judge, or administrative law judge in Utah, or shall be an attorney with at least eight (8) years of experience in municipal law; and
2. One of the regular members shall be currently serving as, or shall have previously served as, a prosecuting attorney or criminal defense attorney in Utah; and
3. One of the regular members shall be currently serving as, or shall have previously served as, a detective, a private investigator, or another type of professional investigator; and
4. One of the regular members shall have previously served as (but shall not currently be serving as) a municipal mayor or council member in Utah; and
5. One of the regular members shall be a current resident of the city, who has been a resident for at least one year; and
6. The alternate member may be a substitute for any of the regular members, and shall be a current resident of the city, who has been a resident for at least one year.

C. Appointment Process and Length of Terms: After first receiving a recommendation from the city administrator, the mayor shall, with the advice and consent of the city council, and as set forth herein, appoint the members of the commission. Except as set forth herein, each member shall be appointed for a three (3) calendar year term or for the unexpired portion of such a term, with no term limits.

D. Staggering and Expiration of Terms: The terms of members 1, 2 and 3 shall expire on December 31, 2019, and on December 31 of every third year thereafter. The terms of members 4, 5 and 6 shall expire on December 31, 2020, and on December 31 of every third year thereafter.

E. Removal (and "Pending" Complaints): After first receiving a recommendation from the city administrator, members may be removed by the mayor, for just cause, if there is no pending complaint. A complaint (see section 1-11A-8 of this article) is "pending" until it is returned for noncompliance, dismissed, referred to the city council, or other final action is taken by the commission or review committee (see section 1-11A-10 of this article) regarding it. A complaint is not "pending" if it is "temporarily suspended", as per subsection 1-11A-10F of this article.

F. Chair Pro Tem: The commission may elect, among themselves, a chair pro tem, to serve in the absence of the chair.

G. Quorum and Required Consensus: A quorum to conduct business shall consist of at least three (3) regular members, or two (2) regular members and the alternate member; and as many as five (5) regular members, or four (4) regular members and the alternate member. The alternate member may participate in the same manner as any other member. A majority consensus of the quorum present shall be required to take any action. All six (6) members may be present at training sessions.

H. Staff Director: The staff director shall be the fire chief, unless the city administrator, at any time, unilaterally (without independent approval), designates a different city employee to fulfill this responsibility. The name, position, and contact information of the staff director shall be accessible on the city administrator's page of the city's website. Furthermore, the staff director shall:

1. Be eighteen (18) years of age or older; and
2. Have high ethical and moral character; and
3. Not be in a position which requires close or frequent interaction with the mayor or a member(s) of the city council (to avoid any potential conflict of interest); and
4. Be free from any other conflicts of interest.

I. Staff and Other Support; Compensation: The staff director, subject to the direction of the city administrator, shall work with the chair to provide the commission with a meeting location, administrative staff, equipment, training, and other support. This support shall include notice of and information for meetings, as well as at least one training session every two (2) years. Each member of the commission shall receive compensation consistent with the compensation schedule approved with the annual budget.

J. Rules of Procedure: The commission may adopt policies and procedures for its own organization, the transaction of business, and for conducting its meetings, which are consistent with this article. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; Ord. 17-37, 7-12-2017; §1-7E-7, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-8: FILING OF ETHICS COMPLAINTS WITH COMMISSION:

A. Conditions Required to File Complaint: An ethics complaint ("complaint") may only be filed with the commission under the following conditions:

1. The complaint must be against an elected official who is currently serving in his/her elected position and allege a violation(s); and
2. The complaint must be filed with the staff director on behalf of the commission; and
3. The complaint must be made by:
 - a. Two (2) or more members of the city council; or

b. Three (3) or more registered voters who reside within the boundaries of the City of West Jordan and/or who pay a fee or tax to the city; and

4. The complaint must be based upon direct evidence, sworn statements, and/or the legal doctrine of "chances", by one or more people with actual knowledge of the facts and circumstances supporting the alleged violation(s); and

5. The complaint may not be filed during a "municipal election season", which is defined as June 1 through and including November 8 in any year with a municipal election in which the accused elected official is a candidate, unless the accused elected official is unopposed in the municipal election or did not prevail in the primary election; and

6. The complaint must be in writing and contain:

a. The name and position of the elected official alleged to be in violation ("named elected official"); and

b. The name, address, and telephone number of each individual who is filing the complaint ("complainant"); and

c. A description of each alleged violation, including a reference to the section(s) of the ethics acts (or the other duties) alleged to have been violated; and

d. With reasonable specificity, evidence supporting each allegation, which shall be provided by copies of official records, documentary evidence, or affidavits that include the required information; and

e. A list of witnesses that a complainant wishes to have called or interviewed, including for each witness:

(1) The name, address, and, if available, one or more telephone numbers of the witness; and

(2) A brief summary of the testimony anticipated to be provided by the witness; and

(3) A specific description of any documents or evidence a complainant desires the witness to produce; and

f. A statement that each complainant:

(1) Has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint; and

(2) Believes that the complaint is submitted in good faith and not for any improper purpose such as harassing the named elected official, causing unwarranted harm to the named elected official's reputation, or causing unnecessary expenditure of public funds; and

(3) Believes the allegations contained in the complaint to be true and accurate; and

(4) Understands and will comply with the privacy requirements of this article, including section 1-11A-9 of this article; and

(5) Understands that the complaint may be dismissed if the allegations in the complaint, if assumed to be true, do not state a violation, as per subsection 1-11A-10G3 of this article; and

g. The signature of each complainant; and

7. A registered voter may not be a complainant in more than one complaint in a given calendar year, except as per subsection 1-11A-10C of this article; and

8. A complaint may not include any alleged violation(s) which occurred before September 7, 2016.

B. Procedure after Receipt of Complaint: Upon receipt of a complaint, the staff director shall immediately refer the complaint to the review committee, by contacting the chair and the city attorney and scheduling a review committee meeting. The staff director shall not notify or inform any other person of the filing of the complaint.

C. Attorney Fees and Costs: A complainant under this article is not entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-8, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-9: PRIVACY:

A. General Duty of Nondisclosure: Unless otherwise provided in this article, once a complaint has been filed with the staff director, a person (including, but not limited to, each of the complainants, the named elected official, each of the members of the commission and review committee, and each city official, officer, and employee) may not disclose, either directly or indirectly:

1. The existence of the complaint; or

2. Any answer or other response to the complaint; or

3. Any information concerning the alleged violation(s) that is/are the subject of the complaint;

Exception: In response to a specific request, question, or concern by the public, a member of the council may disclose that he/she has filed, is in the process of filing, or will be filing a complaint (but shall not disclose any specific facts or details regarding the complaint).

B. Permissible Actions: Nothing in this article may be construed to hinder or prevent:

1. The named elected official from being afforded all due process rights and from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the commission; or
2. The city attorney or another person from disclosing the facts or allegations about a potential criminal violation(s) to a law enforcement authority; or
3. The city council from holding a closed meeting, pursuant to subsection 52-4-205(1)(a), Utah Code Annotated, to fulfill the requirements of this article; or
4. Any person from disclosing public records.

C. Penalty for Disclosure by Complainant: If a complainant publicly discloses or disseminates, either directly or indirectly, any "private information" (private records or information obtained from private records, or during the complaint process), the commission may summarily dismiss the complaint, with or without prejudice, and may determine that a complainant shall be investigated by a law enforcement agency.

D. Penalty for Disclosure by City Official: If any city official, officer, or employee publicly discloses or disseminates, either directly or indirectly, any private information, appropriate disciplinary action may be taken against such individual.

E. General Criminal Penalty: It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate, either directly or indirectly, any private information.

F. Private Records: As per section 63G-2-302, Utah Code Annotated ("GRAMA"), all records received or generated by the commission, the review committee, or the council, pursuant to this article, are private and not subject to disclosure or release, except for:

1. The commission's summary findings and recommendation for the council (see subsection 1-11A-14C of this article); or
2. The minutes and recordings of the open meeting portion of the city council meeting in which the council received and acted upon the recommendation from the commission (see section 1-11A-15 of this article); or
3. The annual commission report (see section 1-11A-17 of this article); or
4. Any document that is classified as public in accordance with title 11, chapter 49, Utah Code Annotated.

G. Closed Meetings: All commission, review committee, and city council meetings, held pursuant to this article, are closed meetings, except:

1. As specifically set forth in this article; and

2. For training sessions, which are open to the public, but the public may only listen; the public may not participate. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-9, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-10: INITIAL REVIEW OF COMPLAINT:

- A. Review Committee (Members, Quorum, and Consensus): The review committee shall consist of: 1) the staff director; 2) the chair (or chair pro tem); and 3) the city attorney (or a deputy city attorney designated by the city attorney). The chair (or chair pro tem) shall conduct review committee meetings. A quorum to conduct business shall consist of at least two (2) of the three (3) members. A consensus of at least two (2) members shall be required to take any action.
- B. Time for Review Committee to Act: Within fourteen (14) calendar days after receipt of a complaint, the review committee shall:
 - 1. Determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a city attorney ethics advisory opinion; and
 - 2. Examine the complaint to determine if it is in compliance with the filing requirements of this article (in particular, section 1-11A-8 of this article).
- C. Noncompliance (Return Complaint): If the review committee determines that the complaint does not comply with the filing requirements of this article, the review committee shall:
 - 1. Return the complaint to the "first complainant" (first one named on the complaint), with a statement detailing the reason(s) for noncompliance; and the complainants may file one more complaint, within sixty (60) days of the return, with the review committee to determine if the new complaint independently meets the filing requirements of this article; and
 - 2. Notify the mayor, city administrator, and the members of the commission and city council that a complaint filed against an unidentified named elected official has been returned for noncompliance with this article; and the fact that a complaint was filed and returned shall be kept confidential until the commission (or review committee) submits its annual summary report to the mayor, city administrator, and city council.
- D. Compliance (Accept Complaint and Forward to Commission): If the review committee determines that the complaint complies with the filing requirements of this article, the review committee shall:
 - 1. Accept the complaint; and
 - 2. Promptly forward the complaint to the named elected official, together with directions for providing an answer to the commission; and
 - 3. If appropriate, request assistance from the office of the city attorney; and

4. Notify the complainants, the named elected official, the members of the commission, and the employees in the office of the city attorney of the privacy requirements of this article, including section 1-11A-9 of this article; and
5. Schedule a meeting for the commission.

E. Right to Present an Answer: The named elected official shall have the right to present an answer to the complaint. The answer may contain statements, arguments, and evidence. The answer must be filed within fourteen (14) calendar days from when the complaint was forwarded to and received by the named elected official.

F. Criminal Investigation; Temporary Suspension of Review (Procedural Basis): At its discretion, and at any time, the commission (or review committee) may:

1. Determine whether the named elected official shall be investigated by a law enforcement agency; and/or
2. Suspend its review of the complaint pending the resolution of a criminal investigation or charges if the named elected official is under criminal investigation or charges for facts and allegations substantially similar to those presented in the complaint; and/or
3. Suspend its review of the complaint pending the resolution of any exigent or emergency circumstances, as determined by the commission (or review committee).

G. Dismiss Complaint (Procedural Basis): The commission (or review committee) shall dismiss a complaint if, at any time:

1. The named elected official irrevocably resigns in writing, with the city recorder attesting to the named elected official's signature; or
2. The named elected official is removed from office by a district court judge, as per subsection 1-11A-14D of this article; or
3. The allegations in the complaint, if assumed to be true, do not state a violation. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-10, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-11: CONSIDERATION OF COMPLAINT AFTER ACCEPTANCE:

A. Types of Commission Actions: After acceptance of a complaint, the commission has the discretion to:

1. Conduct a confidential, independent administrative investigation of the complaint; or
2. Refer the matter to an independent noncriminal investigator for fact finding and investigation and consider the confidential report of the investigator; or
3. Conduct a hearing in accordance with subsection B of this section; or

4. Any combination of the above.

B. Commission Hearing: If the commission uses a hearing to review the complaint, the commission shall:

1. Provide a notice to the first complainant and the named elected official at least seven (7) calendar days prior to the hearing; and
2. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments; and
3. Close the hearing to the public; and
4. Allow the complainants and the named elected official to retain legal representation, at their discretion; and
5. Provide administrative subpoenas pursuant to its subpoena powers, as provided in section 16-2E-7C of this code.

C. Prior Actions and Advisory Opinions: The commission shall:

1. Determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a city attorney ethics advisory opinion; and
2. Take into consideration efforts by the named elected official to seek legal direction regarding the subject matter of the complaint and any good faith efforts by the named elected official in response to legal advice received.

D. Record of Commission Meeting or Hearing: The commission shall ensure that a record of any commission meeting or hearing is made, which shall include:

1. Audio recordings, if any; and
2. Official summaries or minutes taken during the meeting or hearing; and
3. Copies of all documents or other items admitted into evidence or considered by the commission; and
4. Copies of a document or written order or ruling issued by the commission; and
5. Any other information the commission deems relevant to the findings and recommendation. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-11, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-12: CONTEMPT POWERS:

A. Basis for Contempt: The commission may hold a person in contempt if the person:

1. Refuses to answer a question, without legal justification, after being directed by the commission to answer; or

2. Fails to comply with a subpoena issued by the commission.

B. District Court to Enforce: Upon finding a person in contempt, the commission shall report the person to the 3rd district court and request a warrant of attachment or order to show cause, as provided in section 78B-6-313, Utah Code Annotated. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-12, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-13: REQUEST BY ELECTED OFFICIAL FOR LEGAL REPRESENTATION:

- A. Basis for Request: If the complaint arises from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority, then the named elected official may request that the city provide a legal defense; otherwise, the city shall not provide a legal defense.
- B. Duty of the City Attorney: The city attorney may arrange for such legal defense, where appropriate.
- C. Applicable Law: This section shall be interpreted to be consistent with the Governmental Immunity Act of Utah and all other applicable law. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-13, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-14: DETERMINATION BY COMMISSION:

- A. Determine Alleged Violation(s): After review of the complaint, the commission shall determine whether there is clear and convincing evidence supporting a violation of the ethics acts (or of another duty) by the named elected official. If there are multiple alleged violations, the commission shall separately determine whether clear and convincing evidence supports each violation.
- B. Dismiss Complaint on the Merits: If the commission determines that none of the allegations in the complaint were proved, the commission shall:
 1. Issue an order that the complaint is dismissed because no allegations in the complaint were found to have been proven; and
 2. Provide notice of the determination of an unidentified named elected official at a regular public meeting of the city council; and
 3. Provide written notice of the determination to the named elected official and the first complainant.
- C. Refer to City Council: If the commission determines that one or more of the allegations in the complaint were proved, the commission shall:
 1. Prepare written summary findings and a recommendation for the city council:
 - a. Listing the name of the named elected official and the name of each complainant; and

- b. For each allegation that was proven:
 - (1) Provide the reference to the ethics acts (or other duty); and
 - (2) Summarize the evidence supporting a violation by clear and convincing evidence; and
 - (3) Make factual findings; and
- c. Recommend appropriate action and remedies to the city council, including, but not limited to, censure, reprimand, additional ethics training, or removal from office (as per subsection D of this section); and

2. Notify the named elected official and the first complainant of the written summary findings and recommendation to the city council; and
3. Orally report the summary findings and recommendation to the city council in a regular meeting of the city council.

D. Removal from Office (by a Judge): Removal from office may be initiated by "removal by judicial proceedings", as per subsection 1-11A-5D of this article. The commission's recommendation may depend on the severity of the violation(s), the named elected official's intent, any history or pattern of abuse by the named elected official, and any economic or other benefit received by the named elected official. As per section 10-3-826, Utah Code Annotated, if a named elected official is removed from office, then said named elected official is not eligible to run for any municipal office again. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-14, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-15: ACTION BY CITY COUNCIL:

- A. Upon receipt of any finding and recommendation by the commission, the city council shall review the recommendation and take action at its discretion.
- B. The elected official referred for a violation may not participate in the council's deliberation or cast a vote as the council decides whether to take action and which action to take. (Ord. 16-38, 9-7-2016; §1-7E-15, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-16: KNOWINGLY FILING A FALSE COMPLAINT:

Any person who files a complaint against an elected official pursuant to this article, knowing that such complaint is frivolous, malicious, false, or otherwise without merit, shall be guilty of a class B misdemeanor. (Ord. 16-38, 9-7-2016; §1-7E-16, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-17: ANNUAL COMMISSION REPORT:

- A. Content: The commission shall prepare, as soon as possible after the end of each calendar year, an annual summary report that contains:

1. A general description of the commission's activities during the past year; and
2. The number of complaints filed with the commission; and
3. The number of complaints accepted and considered; and
4. The number of complaints dismissed; and
5. An executive summary of each complaint where the commission found a violation(s); and
6. The number of complaints temporarily suspended (subsection 1-11A-10F of this article) or still pending (subsection 1-11A-7E of this article) at the end of the calendar year.

B. Procedure: The annual report of the commission:

1. Shall be filed with the mayor, city administrator, and city council; and
2. Shall be a public record; and
3. May be filed by the review committee if no complaints were accepted and considered by the commission. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-17, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-18: REVIEW OF PROPOSED INCREASES IN ELECTED OFFICIAL COMPENSATION:

Before an increase in compensation for elected officials may be approved by the city council, the commission shall review the proposed increase and shall make a recommendation. After receiving the commission's recommendation, the council may approve the increase in compensation by holding a public hearing and amending the compensation schedule which is approved with the annual budget. (Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

Section 3. Title 1, Chapter 12, Sections 1 and 2 of the 2009 City Code shall be repealed and titled "Reserved."

Section 4. Additions or amendments to the 2009 City Code when passed in such form as to indicate the intention of the City Council to make the same a part of the 2009 City Code shall be deemed to be incorporated in the 2009 City Code, so that reference to the 2009 City Code hereafter includes the additions and amendments.

Section 5. This Ordinance shall become effective at 12 noon on January 6, 2020.

02d
19-34

Passed and adopted by the City Council of the City of West Jordan, Utah this _____ day of _____, _____.

CITY OF WEST JORDAN

By: _____
JIM RIDING
Mayor

ATTEST:

JAMIE BROOKS, CMC
Interim City Clerk

Voting by the City Council **“YES”** **“NO”**

Council Member Alan Anderson	_____	_____
Council Member Dirk Burton	_____	_____
Council Member Zach Jacob	_____	_____
Council Member Chad R. Lamb	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Kayleen Whitelock	_____	_____
Mayor Jim Riding	_____	_____

CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

I, Jamie Brooks, certify that I am the City Clerk/Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was published in the Legal Section, of the Salt Lake Tribune, on the _____ day of _____, ____, pursuant to Utah Code Annotated, 10-3-711.

JAMIE BROOKS, CMC
Interim City Clerk/Recorder

[SEAL]

Legislative

Chapter 11

CONFLICT OF INTEREST ETHICS FOR ALL CITY OFFICERS AND EMPLOYEES

1-11-1: PURPOSE:

1-11-2: ETHICS ACTS:

1-11-3: DEFINITIONS:

**1-11-4: CONFLICT DISCLOSURE AND DISQUALIFICATION FOR PERSONAL
INTEREST:**

1-11-5: PROHIBITED ACTS DESIGNATED:

1-11-6: DISCLOSURE OF INTEREST IN BUSINESS ENTITY:

1-11-7: OUTSIDE EMPLOYMENT:

1-11-8: TRANSACTIONS INVOLVING THE CITY:

1-11-9: ACCEPTING OR MAKING GIFTS:

1-11-10: PUBLIC CONTRACTS; PROCUREMENT:

1-11-11: EMPLOYMENT OF PRESENT AND FORMER PUBLIC SERVANTS:

1-11-12: NEGOTIATING EMPLOYMENT:

1-11-13: COERCION OF BUSINESS OR CONTRIBUTIONS:

1-11-14: ACQUIRING INTEREST IN BUSINESS ENTITY:

1-11-15: INDUCEMENT TO VIOLATE PROHIBITED:

1-11-16: DISCLOSURE CLAUSE IN CONTRACTS:

1-11-17: WAIVERS; DETERMINATION OF NONAPPLICABILITY:

1-11-18: ADVISORY POWER OF CITY ATTORNEY:

1-11-19: SANCTIONS:

1-11-20: EMPLOYEE APPEALS:

1-11-21: VOIDABLE CONTRACTS:

1-11-22: VIOLATION; PENALTY:

1-11-23: KNOWINGLY FILING FALSE COMPLAINT:

1-11-1: PURPOSE:

The purpose of this chapter is to prevent improper influence, avoid the appearance of impropriety, and prohibit public officials officers from receiving unjust financial gain from public service. It also seeks to increase public confidence by assuring that official actions are taken objectively and properly. It is the objective of this chapter to promote these goals by establishing ethical standards of conduct for all officers and employees of the city, including volunteers appointed and elected officers. (2001 Code § 2-4-701; amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-2: ETHICS ACTS:

All the provisions of the Municipal Officers' and Employees' Ethics Act (codified at Utah Code Annotated sections 10-3-1301 et seq., as amended) and the Utah Public Officers' and Employees' Ethics Act (codified at Utah Code Annotated sections 67-16-1 et seq., as amended) are incorporated herein by reference. (Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-23: DEFINITIONS:

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows: according to the definitions in Utah Code Annotated Sections 10-3-1303 and 67-16-3, as amended, which are incorporated herein by reference.

ASSIST: To act, offer, or agree to act in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice or assistance to such person or business entity and done with the intent to so assist such person or business entity.

BLIND TRUST: An independently managed trust in which the public servant beneficiary or volunteer public servant beneficiary has no management rights and in which the public servant beneficiary or volunteer public service servant beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

BUSINESS ENTITY: A sole proprietorship, partnership, association, joint venture, corporation, limited liability company, firm, trust, foundation or other organization or entity used in carrying on a business.

CITY REGULATED BUSINESS ENTITY: Any business entity for which the city of West Jordan issues a license, pursuant to any city ordinance, or which the city regulates.

COMPENSATION: Anything of economic value, however designated, which is paid, loaned, granted, given, donated or transferred to any person or business entity by anyone other than the city for or in consideration of personal services, materials, property or any other consideration whatsoever, and the term includes any forbearance.

CORRUPTLY: Done with wrongful intent and for the purpose of obtaining or receiving any personal, financial, or professional benefit resulting from some act or omission by a public servant or volunteer public servant, which is inconsistent with the proper performance of his or her public duties.

ECONOMIC BENEFIT TANTAMOUNT TO A GIFT: Includes:

- A. A loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and
- B. Compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

ELECTED OFFICER: Any person holding the office of mayor or city council member.

EXECUTIVE EMPLOYEE: Any person classified as an at-will executive employee by the city.

FINANCIAL INTEREST:

- A. A substantial interest;
- B. Holding a position in a business entity, such as an officer, director, trustee, partner, employee, or the like; or
- C. Holding any position of management in a business entity.

GIFT: Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, an economic benefit tantamount to a gift, or other item having monetary value, unless consideration of equal or greater value is received. The term does not include a parking pass or free parking: a) for a parking lot, if the parking lot is owned by the city; or b) for a parking lot which is not owned by the city, when used for official city business. The term includes gifts of services, training, transportation, lodging and meals, whether or not provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term "gift" is subject to the following:

- A. Gifts To Relatives Or Others That Are Attributable To Elected Officer Or Executive Employee:** A gift to a relative of an elected officer or executive employee, or a gift to any other individual based on that individual's relationship with the elected officer or executive employee, shall be considered a gift to the elected officer or executive employee, if: 1) given with the knowledge and acquiescence of the elected officer or executive employee; and 2) the elected officer or executive employee knows, or with the exercise of reasonable care should know, that it was given because of the official position of the elected officer or executive employee.
- B. Food Or Refreshment Provided To Dependents:** If food or refreshment is provided at the same time and place to both a public servant or volunteer public servant and the spouse or dependent thereof, only the food or refreshment provided to the public servant or volunteer public servant shall be treated as a gift for purposes of this chapter.

GOVERNMENTAL ACTION: Any action on the part of the city, including, but not limited to:

- A. Any decision, determination, finding, ruling or order;**
- B. Any grant, payment, award, license, contract, subcontract, transaction, decision, sanction or approval, or the denial thereof, or the failure to act in respect thereto; and**
- C. Any legislative, administrative, or discretionary act of any public servant or volunteer public servant.**

GRANT OF HOSPITALITY OR GESTURE OF FRIENDSHIP: Includes granting of lodging, food and travel expenses, and the granting of gifts and remembrances such as birthday, holiday and anniversary presents, given on the basis of personal friendship.

OUTSIDE EMPLOYMENT: Any employment, activity or enterprise for compensation, including self-employment, performed by a public servant apart from his or her official assigned duties and required duty times for the city.

PUBLIC SERVANT: Any elected officer, any executive employee, or any other person in a position of employment with the city, whether or not such person is compensated for his or her services, but does not include any volunteer public servant.

REGULATED: Being subjected to the city regulatory licensing, permitting or approval procedures.

RELATIVE: Father, mother, husband, wife, son, daughter, sister, brother, mother-in-law, father-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, grandparent, grandchild, half brother, half sister, first cousin, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister.

SELL: Signing a bid, proposal or contract; negotiating a contract; contacting any public servant or volunteer public servant for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale even though the actual contract therefor is subsequently negotiated by another person.

SUBSTANTIAL INTEREST: The ownership, either legally or equitably, by a public servant, volunteer public servant, a public servant's or volunteer public servant's spouse, or a public servant's or volunteer public servant's minor child of at least ten percent (10%) of the outstanding shares of a corporation or a ten percent (10%) interest in any other business entity.

TRANSACTION: Any deal, contract, agreement, arrangement, undertaking, or other matter, including, without limitation, any permit approval, lease, franchise, sale or purchase.

VOLUNTEER PUBLIC SERVANT: Any person serving on a special, regular or full time committee, commission, authority, agency or board of the city, who is not paid a salary or an hourly wage by the city for his or her services thereon, but includes those who may be paid a flat fee per meeting attended. (2001 Code § 2-4-702; §1-11-2 amd. Ord. 19-____-2019, Effective at 12 noon on January 6, 2020)

1-11-3: CONFLICT DISCLOSURE AND DISQUALIFICATION FOR PERSONAL INTEREST:

A. **Disqualifying Personal Interest:** Whenever the performance of a public servant's or volunteer public servant's official duty shall require any governmental action on any matter involving the public servant's or volunteer public servant's financial, professional or personal interests, and it is reasonably foreseeable that the decision will have an individualized material effect on such interest, distinguishable from its effect on the public generally, the public servant or volunteer public servant shall disclose such matter in writing as follows: 1) in the case of the mayor, to the city council; 2) in the case of the council members, to the mayor and the city council; and 3) in all other cases, to the city manager and to the members of the body, if any, of which the public servant or volunteer public servant is a member. The disclosure shall be made in the manner prescribed in section 1-11-5 of this chapter and shall identify the nature and extent of such interests.

B. **Recusal:** The public servant or volunteer public servant shall disqualify and recuse himself or herself from participating in any deliberation on any matter requiring disclosure, as well as from voting on such matter. (2001 Code § 2-4-703; §1-11-3 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-4: PROHIBITED ACTS DESIGNATED:

A public servant or volunteer public servant may not:

A. Unless otherwise allowed by law, disclose confidential information acquired by reason of the public servant's or volunteer public servant's official position or in the course of official duties or use such information in order to: 1) substantially further the public servant's or volunteer public servant's personal, financial or professional interest, or the personal, financial or professional interest of others; or 2) secure special privileges or exemptions for the public servant or volunteer public servant or others; or

B. Corruptly use or attempt to use the public servant's or volunteer public servant's official position to: 1) further the public servant's or volunteer public servant's personal, financial or professional interest, or the personal, financial, or professional interest of others; or 2) secure special privileges, treatment, or exemptions for the public servant or volunteer public servant or others. (2001 Code § 2-4-704; §1-11-4 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-5: DISCLOSURE OF INTEREST IN BUSINESS ENTITY:

A. Disclosure To City: Every public servant or volunteer public servant who is also an officer, director, agent, employer or employee of any business entity or the owner of a substantial interest in any business entity subject to city regulation, shall disclose, as hereafter provided, any such position or employment and the nature and value of such position or employment.

B. Time Of Disclosure: Public servants and volunteer public servants shall make such disclosures within thirty (30) days after being appointed or elected or otherwise commencing their employment or public service and again during January of each calendar year, if such public servant's or volunteer public servant's position: 1) in the business entity has changed or if the value of such public servant's or volunteer public servant's interest in the entity has materially increased since the last disclosure; or 2) was filled prior to the effective date hereof.

C. Form And Place Of Filing Disclosure: Disclosures shall be made in a sworn written statement in a form prescribed by the city and shall be filed with the city clerk/recorder; however, in the case of disclosure by the mayor or a city council member, it shall also be filed with the city council. Unless otherwise provided by the law, the disclosure statements are public records and shall be made available for inspection by members of the city council and the public, upon request.

D. Value Of Interest: Unless otherwise required by law, where the value of an interest is required to be disclosed pursuant to this section, it shall be sufficient to report whether the value is less than fifteen thousand dollars (\$15,000.00) or greater than fifteen thousand dollars (\$15,000.00). Notwithstanding the above, this section does not apply to instances where the value of the interest does not exceed two thousand dollars (\$2,000.00). Life insurance policies and annuities are not included in this disclosure requirement and shall not be considered in determining the value of any such interest. (2001 Code § 2-4-705; §1-11-5 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-6: OUTSIDE EMPLOYMENT:

A. Incompatible Employment: No public servant or volunteer public servant shall engage in any outside employment, which is inconsistent, incompatible with, in conflict with, or inimical to his or her duties as a public servant or volunteer public servant of the city, or with the duties, functions, or responsibilities of the city. Such prohibited outside employment includes, but is not limited to, employment:

1. Involving the use for private gain or advantage of his or her city working time, city facilities, equipment or supplies, except as permitted under section 1-11-16 of this chapter;
2. Involving the receipt or acceptance by the public servant or volunteer public servant of any compensation from anyone, other than the city, for the performance of an act which the public servant or volunteer public servant would be required or expected to perform in the regular course of his or her city employment or as part of his or her duties as a public servant or volunteer public servant;
3. Involving the performance of an act which may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement of the public servant. If the performance of the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by another public servant of the city, such outside employment may only be engaged in after procedures have been adopted by the department to which the public servant is assigned to ensure that all work done by the public servant is subject to direct review by the public servant's immediate supervisor; or
4. Involving such time demands as would render such public servant's performance of public duties demonstrably less efficient.

B. Applicability: Subsections A3 and A4 of this section shall not apply to volunteer public servants. No part of this section shall apply to part time employees and seasonal employees of the city. Members of the city council are not part time employees, but are public servants for purposes of this section.

C. Disclosure:

1. Before engaging in any outside employment that is permissible under this chapter: a) elected officers shall disclose such outside employment, as provided in section 1-11-5 of this chapter; 2) council members and staff of the city council shall disclose such outside employment to the city manager, mayor and the city council; 3) heads of departments of the city shall disclose such outside employment to the city manager; and 4) all other public servants shall disclose such outside employment to their department head.

2. Outside employment shall not be denied or prohibited, unless it is in violation of the provisions of subsection A of this section. No public servant shall have the power to deny an elected officer his or her right to outside employment, which is not prohibited under subsection A of this section.

D. Department Rules And Regulations: Department heads shall adopt rules and regulations for their department regarding outside employment, including the denial thereof, that clarifies the application of this chapter to the unique operations of that department, if such rules or regulations are consistent with the intent of this chapter and no less stringent.

E. Advisory Opinion: If a public servant's outside employment is denied under subsection D of this section, the public servant may seek an advisory opinion from the city attorney regarding the matter. The city attorney shall issue such an opinion regarding the request, but the city attorney shall not have the power to overrule the discretionary decision of the person who denied the consent.

F. Certain Travel, Lodging And Food Expenses And Cash Honoraria Considered Outside Employment, Not Gifts: Any payment for travel, food, lodging or entertainment expenses, or reimbursement therefor, or any other compensation or cash honorarium, made to a public servant in connection with a public event, appearance or ceremony unrelated to official city business or not furnished by the sponsor of such public event, appearance or ceremony, shall be considered outside employment under this section, and not a gift under section 1-11-8 of this chapter. This subsection shall apply to volunteer public servants, but only to the extent of requiring them to disclose such outside employment to the department head to which each is assigned.

G. Reports To City Manager: Within fifteen (15) working days following each February 1, May 1, August 1 and November 1, each department which has issued a denial of outside employment to a public servant shall file with the city manager copies of all such denials given during the previous yearly quarter. (2001 Code § 2-4-706; §1-11-6 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-7: TRANSACTIONS INVOLVING THE CITY:

A. Disclosure Required:

1. No public servant or volunteer public servant shall receive or agree to receive compensation from anyone other than the city for assisting any person or business entity in any transaction involving the city, unless he or she shall file a sworn written statement giving the information required by this section and disclose in an open meeting to the members of the body, if any, of which he or she is a member. Said disclosure shall be made in writing prior to the discussion on the matter and include the following information: a) the name and address of the public servant or volunteer public servant involved; b) the name and address

of the person or business entity being or to be so assisted, or in which the public servant or volunteer public servant has a substantial interest; and c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

2. This section shall not be construed to allow actions which are otherwise prohibited by city ordinances or state law.

B. Time And Location Of Disclosure Filing: The statement required to be filed by this section shall be filed within ten (10) days before the date of any agreement between the public servant or volunteer public servant and the person or business entity to be assisted or the public servant's or volunteer public servant's receipt of compensation, whichever time is earlier: 1) with the city clerk/recorder; 2) with the affected body of which the public servant or volunteer public servant is a member; 3) in the case of disclosure by the mayor, with the city manager and the city council; 4) in the case of disclosure by a city council member, with the mayor, the city council and the city manager; and 5) in the case of the city manager, with the mayor and the city council.

C. Disclosure Is Public Record: The disclosure statement shall be deemed public information and shall be available for examination by the public. (2001 Code § 2-4-707; §1-11-7 amd. Ord. 19-____, ____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-8: ACCEPTING OR MAKING GIFTS:

A. In General: No public servant or volunteer public servant shall knowingly receive, accept, take, seek or solicit, directly or indirectly, for himself or herself or another, a gift that the public servant or volunteer public servant knows, or with the exercise of reasonable care should know: 1) would influence the recipient to depart from the faithful and impartial discharge of his or her public duties; or 2) is primarily for the purpose of rewarding the public servant or volunteer public servant for official action taken or not taken.

B. No Solicitation Of Gifts For Personal Matters: Except for gifts described as exceptions in subsection C of this section, no public servant shall seek or solicit, or receive, directly or indirectly, any gift for the purpose of addressing or dealing with personal matters or other matters not involving official city business.

C. Prohibition Exceptions: Except as otherwise provided in this subsection, this section does not prohibit accepting:

1. Campaign Contributions: A political campaign contribution covered or regulated by section 1-7A-7 of this title, or its successor provisions.

2. Gifts From Relatives: A bona fide gift from a relative, provided it is not given in exchange for, as consideration for or as a reward for, the recipient taking or refraining from taking any official city action, past, present or future.

3. De Minimus Nonpecuniary Gifts: An occasional nonpecuniary gift having a value of less than fifty dollars (\$50.00), or any other amount provided in the corresponding provision of the municipal officers' and employees' ethics act, Utah Code Annotated title 10, chapter 3, part 13, or any successor provisions.

4. Determinations Of Nonapplicability: Any gift for which a determination of nonapplicability is made pursuant to section 1-11-16 of this chapter.

D. **Gifts In Another Name Prohibited:** No person shall make, for the direct benefit of an elected officer or executive employee a gift: 1) in the name of another person; 2) with another person's funds in his or her own name; or 3) made on behalf of another person. No elected officer or executive employee shall knowingly receive, accept, take, seek or solicit, directly or indirectly, any such gift for his or her benefit or the benefit of a relative or a business entity in which he or she holds a substantial interest. (2001 Code § 2-4-708; § 1-11-8 amd. Ord. 19-, -2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-9: PUBLIC CONTRACTS; PROCUREMENT:

A. Conflict Of Interest:

1. **Generally:** No public servant or volunteer public servant shall participate, directly or indirectly, in making, recommending, preparing or performing a discretionary function with respect to any contract involving the city, including, without limitation, a procurement contract, when the public servant or volunteer public servant has actual knowledge that: a) his or her relative has a financial interest pertaining to such contract; b) his or her relative has a financial interest in a business entity, which entity has a financial interest pertaining to such contract; or c) his or her relative is negotiating or has an arrangement concerning future employment by any person or entity involved in or benefiting from such contract.

2. **Financial Interest In Blind Trust:** A public servant or volunteer public servant or any relative thereof, who holds a financial interest in a blind trust, shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest; provided, that written disclosure of the existence of the blind trust has been made consistent with section 1-11-5 of this chapter, to the: a) city council and city manager, in the case of the mayor; b) mayor and city manager, in the case of city council members or department heads; or c) city manager and the applicable department head, in the case of any other public servant or volunteer public servant.

3. **Discovery Of Actual Or Potential Conflict; Disqualification And Waiver:** Upon discovery of an actual or potential conflict of interest, a public servant or volunteer public servant shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction or matter involved. The public servant or volunteer public servant may, at the same time, apply to the city attorney for an advisory opinion regarding what further participation, if any, he or she may have in the transaction or matter.

B. Gifts And Payoffs Related To Procurement:

1. **Gifts; Offers Of Employment:** It shall be illegal for any person to offer, give or agree to give to any present or former public servant or present or former volunteer public servant or for any said public servant or volunteer public servant to solicit, demand, accept, or agree to accept from another person, a gift or offer of employment in connection with: a) any decision, approval, disapproval, recommendation, preparation of any part of a procurement requirement; b) any purchase request; c) any action to influence the content of any specification or procurement standard; d) rendering advice regarding doing business with the city; e) investigating, auditing, or attempting to influence any ruling, determination, claim or controversy pertaining to any city procurement requirement, contract or subcontract; or f) any solicitation or proposal for doing business with the city.

2. **Payoffs:** It shall be illegal for any payment, gift or offer of employment to be made by or on behalf of a subcontractor, under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. This prohibition applies whether a payment, gift or offer is made before or after the award of a city contract or order.

C. Public Servant Or Volunteer Public Servant Disclosure Requirements:

1. Disclosure Of Benefit Received From Contract: Any public servant or volunteer public servant who has received or obtains any benefit from any city contract with a business entity in which the public servant or volunteer public servant has a financial interest, shall report such benefit to the: a) city council and the city manager, in the case of the mayor; b) mayor and city manager, in the case of city council members or department heads; or c) city manager and applicable department head, in the case of any other public servant or volunteer public servant.
2. Time Of Disclosure: All required disclosures under this section shall be made within thirty (30) days after the public servant or volunteer public servant has actual or constructive knowledge of a benefit received or to be received.
3. Blind Trust Exceptions: This subsection shall not apply to a contract with a business entity in which the public servant's or volunteer public servant's interest in the business entity has been placed in a disclosed blind trust.
4. Failure To Disclose Benefit Received: Any public servant or volunteer public servant who knows or should have known of such benefit, and fails to report such benefit, as provided in subsection B of this section or this subsection C, is in breach of the ethical standards of this chapter.
5. Disclosure Shall Not Exonerate Legal Violation: Disclosure pursuant to this subsection shall not exonerate any public servant or volunteer public servant from any violation of this chapter or state law.

D. Prohibition Against Contingent Fees: It shall be illegal for a person to be retained or for any person or entity to hire or retain a person to solicit or secure a city contract upon an agreement or understanding that a commission, percentage, brokerage or contingent fee will be paid if a city contract is awarded, except: 1) for the hiring or retention of bona fide city employees; 2) bona fide commercial agencies retained by the city or its RDA, for the purpose of securing business or economic development in the city; or 3) the hiring or engaging of businesses or lawyers to collect debts or obligations owed to the city. (2001 Code § 2-4-709; § 1-11-9 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-10: EMPLOYMENT OF PRESENT AND FORMER PUBLIC SERVANTS:

A. Contemporaneous Employment Prohibited: Except as provided in section 1-11-16 of this chapter, no public servant or volunteer public servant shall participate directly or indirectly on behalf of the city in the procurement or contracting process, involving a city contract, while such public servant or volunteer public servant is the agent or employee of any other party to such contract or for any other person who has a financial interest in such contract.

B. Restriction On Former Public Servants Regarding Former Duties:

1. Permanent Disqualification Of Former Public Servant Personally Involved In Particular Matter: No former public servant shall knowingly act as a principal or as an agent for anyone other than the city, in connection with any of the following matters in which the city is a party or has a direct interest, if said public servant participated personally and substantially by rendering a decision, granting an approval or disapproval, or making a material recommendation, rendering advice, investigating or otherwise materially impacting said matter in any investigation, while acting as a public servant: a) a judicial or administrative proceeding; b) contract application; c) request for a ruling or other determination; d) contract negotiations; e) a claim adjustment; or f) a charge or controversy allegation.

2. One Year Representation Restriction Regarding Matters In Which Former Public Servant Officially Responsible: With respect to matters which were within a former public servant's official responsibility, but in which such servant did not participate personally or substantially, the restrictions set forth in subsection A of this section shall apply, but only for a period of one year after cessation of the former public servant's official responsibility.

C. Disqualification Of Business Entity Which Public Servant Or Volunteer Public Servant Has Financial Interest: No business entity in which a public servant or volunteer public servant has a financial interest shall knowingly act as a principal or as an agent for anyone other than the city in connection with any of the following matters in which the city is a party or has a direct interest, if said servant participates personally and substantially through rendering a decision, granting an approval or disapproval, making a material recommendation, rendering advice, investigating or otherwise materially impacting said matter in any: 1) a judicial or administrative proceeding; 2) application; 3) request for a ruling or other determination; 4) a contract; 5) a claim adjustment; or 6) a charge or controversy allegation.

D. Selling To City After Termination Of Employment Prohibited: No former public servant, unless the former public servant's last annual salary did not exceed thirty thousand dollars (\$30,000.00), shall engage in selling or attempting to sell supplies, services, or construction to the city for one year following the date of his or her employment separation date. The foregoing prohibition shall not apply to sales or attempted sales made pursuant to a contract awarded through an open and public bidding process. This subsection is not intended to preclude a former public servant from accepting employment with private industry solely because the former public servant's new employer is a contractor with the city, nor shall a former public servant be precluded from serving as a consultant to the city. (2001 Code § 2-4-710; §1-11-10 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-11: NEGOTIATING EMPLOYMENT:

A public servant or volunteer public servant shall not perform his or her official city duties, if that action involves a person or business entity which has a financial interest in such city action, while the public servant or volunteer public servant is negotiating prospective employment with such person or business entity. (2001 Code § 2-4-711; §1-11-11 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-12: COERCION OF BUSINESS OR CONTRIBUTIONS:

No public servant or volunteer public servant shall in any manner intimidate or coerce another public servant or volunteer public servant who is subordinate to him or her, to do business with him or her or to make any financial contribution to any cause, charity or undertaking. (2001 Code § 2-4-712; §1-11-12 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-13: ACQUIRING INTEREST IN BUSINESS ENTITY:

No public servant or volunteer public servant shall acquire an interest in a business entity at a time when such public servant or volunteer public servant believes or has reason to believe, based on information not available to the general public, that such business entity will be substantially and directly affected by any contract, transaction, zoning decision or other official city action. (2001 Code § 2-4-713; §1-11-13 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-14: INDUCEMENT TO VIOLATE PROHIBITED:

No person shall induce or seek to induce any public servant or volunteer public servant to violate any of the provisions of this chapter. (2001 Code § 2-4-714; §1-11-14 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-15 4: DISCLOSURE CLAUSE IN CONTRACTS:

The following clause shall be conspicuously set forth in every contract or bid, proposal, or other offer involving the city, which the city determines will likely exceed twenty five thousand dollars (\$25,000.00) in value:

**REPRESENTATION REGARDING ETHICAL STANDARDS
FOR CITY OFFICERS AND EMPLOYEES AND FORMER
CITY OFFICERS AND EMPLOYEES**

The bidder, offeror, or contractor represents that it has not: 1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; 2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the city conflict of interest ordinance; or 3) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the city conflict of interest ordinance, title 1, chapter 11, including article A, of the West Jordan city code. (2001 Code § 2-4-715; §1-11-15 amd. Ord. 19-____-2019, Effective at 12 noon on January 6, 2020)

1-11-16: WAIVERS; DETERMINATION OF NONAPPLICABILITY:

A. Nongift Matters: Except with respect to the restrictions on gifts in section 1-11-8 of this chapter, the city council, in the case of the mayor, individual council members, the city manager and the city attorney; and the city manager, in the case of any other public servants or volunteer public servants, may grant a waiver from the provisions of this chapter upon making a written determination that: 1) the public servant or volunteer public servant will be able to perform his or her official functions, without actual bias or favoritism; 2) the granting of a waiver will not be detrimental to the interests of the city; and 3) the granting of a waiver would not violate other applicable city or state law.

B. Gifts:

1. A determination of nonapplicability of the restrictions on gifts in section 1-11-8 of this chapter may be given by the city council, in the case of the mayor, individual council members, the city manager or the city attorney; and the city attorney, in the case of any other public servant or volunteer public servant.

2. A determination of nonapplicability shall be in writing and shall be given only upon a written determination that: a) the gift was not and will not be given with the intent to influence official action; b) there exists no substantial likelihood that the gift will influence official action; and c) a determination of nonapplicability will not be detrimental to the interests of the city.

C. Public Records: Any such determination of nonapplicability under this section shall include a description of the gift, its estimated value and the reasons justifying its being received and shall be filed as a public document with the city clerk/recorder. (2001 Code § 2-4-716; §1-11-16 amd. Ord. 19-____-2019, Repeal Effective at 12 noon on January 6, 2020)

1-11-17 5: ADVISORY POWER OF CITY ATTORNEY:

- A. Request For Advisory Opinion:** Any public servant or volunteer public servant officer may request of the city attorney an advisory opinion concerning the application to him or her of the provisions of this chapter. The city attorney shall accept and process these advisory opinion requests in accordance with the procedures set forth in this section.
- B. Advisory Opinion Upon City Attorney's Own Initiative:** The city attorney on his or her own authority may render advisory opinions whenever he or she deems it in the public interest.

- C. Time For for Decision; Public Review: As soon as practicable, but not later than thirty (30) days after he or she receives a request for an advisory opinion, the city attorney shall render a written opinion to the person who requested it and shall provide a copy of the opinion to the mayor, city council and city ~~manager~~ administrator. All advisory opinions shall be available for public review, but such public disclosure may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.
- D. Justifiable Reliance: Any advisory opinion rendered by the city attorney, until amended or revoked by the city attorney, shall be a defense in any action brought under this chapter and shall be binding on the city in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith reliance upon it, unless material facts were omitted or misstated by the person requesting the opinion. (2001 Code § 2-4-717; §1-11-17 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-18 6: SANCTIONS:

- A. Persons Not Public Servants Or or Volunteer Public Servants: ~~The Subject to any contract provisions to the contrary, the city may impose any one of the following sanctions and any other allowed by law on any person or entity, including those who are not a public servant or a volunteer public servant officer~~ for violations of the provisions in this chapter. These sanctions include: 1) written warnings or reprimands; 2) termination of contracts, at the city's option; or 3) debarment or suspension from future contracting with the city.
- B. Right Of of City To to Debar Or or Suspend: Debarment or suspension of doing business in the future with the city may be imposed by the city for violations of the provisions of this chapter; provided, that such action may not be taken without the concurrence of the city attorney.
- C. Due Process: All procedures under this section shall be in accordance with minimum due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing before the city ~~manager~~ administrator or his or her designee, prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor for the city.
- D. Recovery Of of Value Transferred Or or Received In Breach Of of Ethical Standards:
 1. General Provisions: The value of anything transferred or received in violation of the provisions of this chapter by a public ~~servant, volunteer public servant officer~~ or other person or entity may be recovered from both the public ~~servant or volunteer public servant officer~~ and the other person or entity, through judicial action.
 2. Recovery Of of Payoffs By by City: Upon a showing that any person or entity made a payoff, including a subcontractor who made a payoff to a prime contractor or a higher tier subcontractor in connection with the award of subcontract or order, the amount of the payoff will be recoverable by the city from the recipient. In addition, that amount may also be recovered from the subcontractor making such payoff. Recovery from one offending party shall not preclude recovery from another offending party.
 3. Legal Remedies, Interest And and Attorney Fees: The city shall be entitled to seek any other legal remedy and shall be entitled to recover prejudgment and postjudgment interest on all sums due it at the rate of eighteen percent (18%) interest and collect all costs and reasonable attorney fees incurred, both before and after suit or judgment. (2001 Code § 2-4-718; §1-11-18 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-19 7: EMPLOYEE APPEALS:

Notwithstanding any other provision of this chapter, a public ~~servant~~ employee who is found to have violated any of the provisions of this chapter, and has had employment discipline imposed, may have such discipline reviewed in accordance with and as provided by law applicable to said employee, including those for career service and civil service systems, if any. (2001 Code § 2-4-719; §1-11-19 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-20 8: VOIDABLE CONTRACTS:

Any contract or transaction which was the subject of governmental action by the city and which involved the violation of a provision of this chapter is voidable, at the option of the city. (2001 Code § 2-4-720; §1-11-20 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-21 9: VIOLATION; PENALTY:

In addition to any penalty provided herein or allowed in law, ~~including in Utah Code Annotated sections 10-3-1310 and 67-16-12, as amended~~, any person who knowingly and intentionally violates the provisions of this chapter is guilty of a class B misdemeanor, and may be dismissed from employment or removed from office, as provided by law. (2001 Code § 2-4-721; §1-11-21 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11-22 10: KNOWINGLY FILING FALSE COMPLAINT:

Any person who files a complaint against a public ~~servant or volunteer~~ ~~public servant~~ ~~officer~~ pursuant to this chapter, knowing that such complaint is frivolous, malicious, false, or is otherwise without merit, shall be guilty of a class B misdemeanor. (2001 Code § 2-4-722; §1-11-22 amd. Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

ARTICLE E A. ETHICS FOR ELECTED OFFICIALS

1-7E11A-1: PURPOSE:

1-7E11A-2: DEFINITIONS:

1-7E11A-3: TYPES OF CONDUCT RELATED ETHICAL DUTIES (AND VIOLATIONS):

1-7E11A-4: ETHICS ACTS (INCLUDING STATE STATUTES):

1-7E11A-5: REMEDIES FOR VIOLATIONS (OF ETHICS ACTS AND ETHICAL DUTIES):

1-7E11A-6: CITY ATTORNEY ADVISORY OPINIONS:

1-7E11A-7: CITY OF WEST JORDAN ETHICS COMMISSION:

1-7E11A-8: FILING OF ETHICS COMPLAINTS WITH COMMISSION:

1-7E11A-9: PRIVACY:

1-7E11A-10: INITIAL REVIEW OF COMPLAINT:

1-7E11A-11: CONSIDERATION OF COMPLAINT AFTER ACCEPTANCE:

1-7E11A-12: CONTEMPT POWERS:

1-7E11A-13: REQUEST BY ELECTED OFFICIAL FOR LEGAL REPRESENTATION:

1-7E11A-14: DETERMINATION BY COMMISSION:

1-7E11A-15: ACTION BY CITY COUNCIL:

1-7E11A-16: KNOWINGLY FILING A FALSE COMPLAINT:

1-7E11A-17: ANNUAL COMMISSION REPORT:

1-11A-18: REVIEW OF PROPOSED INCREASES IN ELECTED OFFICIAL COMPENSATION:

1-7E11A-1: PURPOSE:

The purpose of this article is to encourage a higher level of duty and responsibility by elected officials to the public, to prevent improper influence, and to prohibit elected officials from receiving unjust gain, including unjust financial gain, from public service. This article also establishes a eCity of West Jordan ethics commission, and seeks to increase public confidence by assuring that governmental actions are taken ethically and with civility. Elected officials shall comply with the provisions of this article and with the provisions of chapter 11 of this title. (Ord. 16-38, 9-7-2016; §1-7E-1, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-2: DEFINITIONS:

For the purposes of this article, the following terms shall mean:

CITY: The eCity of West Jordan, unless otherwise indicated.

COMMISSION: The eCity of West Jordan ethics commission formed pursuant to section 1-7E-7 1-11A-7 of this article and sections 10-3-1311 and 63A-15-103, Utah Code Annotated; otherwise, it means the political subdivisions ethics review commission, as per section 11-49-101 63A-15-201 et seq., Utah Code Annotated.

ELECTED OFFICIALS

OR ELECTED OFFICERS,

CITY COUNCIL,

OR COUNCIL:

Includes only the mayor and either the members of the city council of the eCity of West Jordan, unless otherwise indicated, and does not include the justice court judge(s).

ETHICS ACTS: Includes sections 10-3-1301 et seq., and 67-16-1 et seq., Utah Code Annotated, all similar state statutes, and the applicable portions of this code (including "conflicts of interest" "ethics for all city officers and employees" in sections 1-11-1 to 1-11-22 1-11-10 of this title chapter inclusive; and "types of conduct related ethical duties" in sections 1-7E-3 1-11A-3 and 1-7E-4 1-11A-4 of this article).

VIOLATION: A violation of the ethics acts by an elected official or a violation of another duty or duties that an elected official has pursuant to city ordinances and rules and state statutes.

The definitions in Utah Code Annotated sections 10-3-1303 and 67-16-3, as amended, are also incorporated herein by reference. (Ord. 16-38, 9-7-2016; §1-7E-2, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-3: TYPES OF CONDUCT RELATED ETHICAL DUTIES (AND VIOLATIONS):

The conduct related duties of the elected officials, and violations thereof, include, but are not limited to, the following duties and violations:

- A. Request For for Inappropriate Relief From Enforcement Action: The elected officials should shall never use or attempt to use their positions to request or obtain inappropriate relief from enforcement action taken by police or law enforcement personnel or other government personnel, whether local, Sstate, or Ffederal; doing so constitutes a violation.

B. Unauthorized Exercise Of of Authority (Including Judicial Or or Administrative Authority): The elected officials shall comply with local, ~~S~~state, and ~~F~~ederal law. They shall never assume or exercise authority (or attempt to exercise authority) beyond that which is allowed by ~~C~~ity ordinances and rules and ~~S~~state ~~S~~tatutes, including, but not limited to, inappropriately interfering with the judicial process, prosecutorial discretion, employee disciplinary matters, and other matters involving personnel and administration; doing so constitutes a violation. See rule D of the relevant ~~C~~ouncil rules, policies, and procedures; and section 1-6-8 ~~1-6-7~~ of this title.

C. Attendance At ~~at~~ Regular City Council Meetings: There are approximately twenty four (24) regular ~~C~~ouncil meetings (excluding any "strategic planning meeting") listed on the "notice of annual meeting schedule" for each calendar year. If an elected official misses three (3) or more consecutive regular ~~C~~ouncil meetings in a calendar year, then this constitutes a violation and said elected official:

1. May receive a fine in the amount of seven hundred fifty dollars (\$750.00) per consecutive missed regular ~~C~~ouncil meeting in excess of two (2) consecutive missed meetings; unless:
 - a. The ~~C~~ouncil, in an open meeting, removes some or all of this fine (with said elected official abstaining, to avoid a conflict of interest).

D. Contact Information Provided ~~To~~ to The City Clerk Recorder and Council Office Director: The elected officials:

1. Shall each provide a current residential street address, at least one current (functioning) phone number, and at least one current (functioning) e-mail address to the ~~C~~ity Clerk recorder and council office director; and
2. Shall each, if there is a change, provide new information to the ~~C~~ity Clerk recorder and council office director within fourteen (14) calendar days of the change; and
3. Shall each make reasonable efforts to be available and to respond to other ~~C~~ity officials, officers, and employees, and to complete other duties and assignments.

Failure to provide this information constitutes a violation.

E. Personal Expenditures Of of City Funds: With regards to all personal expenditures of City funds, the elected officials shall comply with ~~C~~ity reimbursement and financial policies, as stated in the employee handbook and/or other applicable rules and guidelines. Failure to do so constitutes a violation.

F. Crimes Of of Dishonesty, Moral Turpitude, Disorderly Conduct, And and Similar Thereto: If an elected official is charged in a court of law with a crime(s) of dishonesty, moral turpitude (including sex related crimes), disorderly conduct, domestic violence, other violence, DUI (driving under the influence), DUI-metabolite, leaving the scene of an accident, failure to cooperate with law enforcement personnel, or a similar crime(s), then:

1. The ~~C~~ity ~~C~~ouncil, in order to avoid interference with the judicial process, shall not make a public statement, or take any action regarding the criminal charge(s), unless said charged elected official is found guilty in a court of law (which constitutes a violation); and
2. An elected official, or an appropriate individual(s), may request one or more of the remedies in subsections ~~1-7E-5~~ 1-11A-5B, C, and D of this article, if a charged elected official is found guilty in a court of law.

G. **Crime Of of "Official Neglect And and Misconduct":** According to section 10-3-826, Utah Code Annotated, if an elected official wilfully wilfully fails to perform a duty required by ecity ordinances and rules or Sstate Sstatutes, or is wilfully wilfully involved in misfeasance or malfeasance in office, then this constitutes a violation and said elected official may be prosecuted for a misdemeanor and may be removed from office. If such allegations exist, an elected official, or an appropriate individual(s), may request one or more of the remedies in subsections 1-7E-5 1-11A-5A, B, C, and D of this article. (Ord. 16-38, 9-7-2016; amd. Ord. 18-34, 10-24-2018; §1-7E-3, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-4: ETHICS ACTS (INCLUDING STATE STATUTES):

A. **Compliance With with Ethics Acts:** The elected officials of the eCity of West Jordan are required to comply with the ethics acts, which are incorporated herein by reference.

B. **Avoid Using Position For for Personal Advantage; And and Public Disclosure:** Included in the "state statute portions of the ethics acts" (among others, sections 10-3-1301 et seq., and 67-16-1 et seq., Utah Code Annotated) is the obligation of elected officials to:

1. Not disclose or improperly use private, controlled, or protected information acquired by them by reason of their position or in the course of their duties; and
2. Not use (or attempt to use) their position for the economic benefit of self or others; or secure (or attempt to secure) special privileges or exemptions for self or others; which are not allowed by city ordinances and rules and state statutes; and
3. Not knowingly receive, accept, take, seek, or solicit, before or after the term of office, directly or indirectly, for the elected official or for another, a gift of value or economic benefit tantamount to a gift, as defined by state statute (and sections 1-11-1 to 1-11-22 of this title inclusive):
 - a. That would tend improperly to influence a reasonable person in the elected official's position to depart from the faithful and impartial discharge of the person's public duty; or
 - b. That the elected official knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the elected official for official action taken; and
4. Make public disclosures and filings, including where an elected official receives compensation for assisting any person or business entity in any transaction involving the city; or where an elected official has a business ownership interest, personal interest, or investment, or other financial benefit which creates a conflict between the elected official's personal interests and the elected official's public duties. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-4, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-5: REMEDIES FOR VIOLATIONS (OF ETHICS ACTS AND ETHICAL DUTIES):

If there is an allegation that an elected official has committed a violation(s), then, in addition to any other remedies allowed by law, the following remedies are available:

A. Criminal allegations may be submitted to the appropriate agency, such as the city attorney, district attorney, Utah attorney general (including the special investigations and public corruption unit), or United States attorney, or corresponding police department or law enforcement agency, for investigation and possible prosecution; and/or

- B. Noncriminal allegations may be submitted for review to the eCity of West Jordan ethics commission ("commission"), as per section 10-3-1311, Utah Code Annotated, and section 1-7E-7 ~~1-11A-7~~ of this article; otherwise, the allegations may be submitted to the political subdivisions ethics review commission, as per section 11-49-101 et seq., Utah Code Annotated; and/or
- C. A censure resolution may be recommended by the commission for consideration by the council; with a copy of the resolution to be made available at least seven (7) calendar days in advance to the accused elected official (so that the accused elected official may have due process and respond to the allegations); and/or
- D. A sworn, written accusation to initiate "removal by judicial proceedings" may be presented to the district court by an elected official or an appropriate individual(s), as set forth in section 77-6-1 et seq., Utah Code Annotated, if there are allegations of "high crimes and misdemeanors or malfeasance in office"; with the accusation to state, in ordinary and concise language, the criminal and/or noncriminal grounds for removal (so that the accused elected official may have due process and respond to the allegations); and with the accusation to be timely brought, as per section 78B-2-310, Utah Code Annotated; and/or
- E. The council reserves the option to pursue other remedies, including, but not limited to, censure (without a recommendation from the commission), allowed by city ordinances and rules and state statutes. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; ~~§1-7E-5~~, Ord. 19- , -2019, Effective at 12 noon on January 6, 2020)

1-7E11A-6: CITY ATTORNEY ADVISORY OPINIONS:

- A. Request And and Process For An for an Opinion: Elected officials of the eCity of West Jordan may request of the city attorney an advisory opinion concerning the application of the ethics acts. The city attorney shall accept and process these advisory opinion requests. As soon as practicable, but not later than thirty (30) days after the city attorney receives a request for an advisory opinion, the city attorney shall render a written opinion to all of the members of the city council.
- B. Availability Of An of an Opinion: Advisory opinions may be available for public review, subject to state statutes, and may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.
- C. Defense To To Rely Upon An an Opinion: An advisory opinion rendered by the city attorney, until amended or revoked by the city attorney, shall be a defense in any action brought by the city against the elected official and shall be binding on the city in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith upon it, unless material facts were omitted or misstated by the person requesting the opinion. (Ord. 16-38, 9-7-2016; ~~§1-7E-6~~, Ord. 19- , -2019, Effective at 12 noon on January 6, 2020)

1-7E11A-7: CITY OF WEST JORDAN ETHICS COMMISSION:

- A. General Qualifications Of of Members: The City hereby establishes a City of West Jordan Ethics Commission ("commission") pursuant to section 10-3-1311, Utah Code Annotated. The commission shall consist of five (5) regular members and one alternate member, each of whom, unless otherwise indicated:
 1. May or may not be a resident of the City; and
 2. Is not currently an official, officer, or employee of the City; and
 3. Is eighteen (18) years of age or older; and

4. Has high ethical and moral character.

B. Special Qualifications Of Individual Members, Including The Chair: Each individual member shall have additional qualifications, as follows:

1. One of the regular members, who shall serve as the Chair, shall have previously served as (but shall not currently be serving as) an Appellate Judge, District Court Judge, Justice Court Judge, or Administrative Law Judge in the State of Utah, or shall be an attorney with at least eight (8) years of experience in municipal law; and
2. One of the regular members shall be currently serving as, or shall have previously served as, a prosecuting attorney or criminal defense attorney in the State of Utah; and
3. One of the regular members shall be currently serving as, or shall have previously served as, a detective, a private investigator, or another type of professional investigator; and
4. One of the regular members shall have previously served as (but shall not currently be serving as) a municipal Mayor or Council member in the State of Utah; and
5. One of the regular members shall be a current resident of the City, who has been a resident for at least one year; and
6. The alternate member may be a substitute for any of the regular members, and shall be a current resident of the City, who has been a resident for at least one year.

C. Appointment Process And Length Of Terms: The City Manager After first receiving a recommendation from the city administrator, the mayor shall, with the advice and consent of the City Council, and as set forth herein, appoint the members of the commission. Except as set forth herein, each member shall be appointed for a two (2) three (3) calendar year term or for the unexpired portion of such a term, with no term limits.

D. Staggering And Expiration Of Terms: The terms of members 1, 2 and 3 shall expire on December 31, 2019, and on December 31 of every odd numbered third year thereafter. The terms of members 4, 5 and 6 shall expire on December 31, 2018 2020, and on December 31 of every even numbered third year thereafter.

E. Removal (And "Pending" Complaints): After first receiving a recommendation from the city administrator, members may be removed by the City Manager, with the advice and consent of the City Council mayor, for just cause, if there is no pending complaint. A complaint (see section 1-7E-8 1-11A-8 of this article) is "pending" until it is returned for noncompliance, dismissed, referred to the City Council, or other final action is taken by the commission or Review Committee (see section 1-7E-10 1-11A-10 of this article) regarding it. A complaint is not "pending" if it is "temporarily suspended", as per subsection 1-7E-10 1-11A-10F of this article.

F. Chair Pro Tem: The commission may elect, among themselves, a Chair Pro Tem, to serve in the absence of the Chair.

G. Quorum And Required Consensus: A quorum to conduct business shall consist of at least three (3) regular members, or two (2) regular members and the alternate member; and as many as five (5) regular members, or four (4) regular members and the alternate member. The alternate member may participate in the same manner as any other member. A majority consensus of the quorum present shall be required to take any action. All six (6) members may be present at training sessions.

H. Staff Director: The ~~S~~taff ~~D~~irector shall be the ~~F~~ire ~~C~~hief, unless the ~~C~~ity ~~M~~anager ~~c~~ity ~~a~~dministrator, at any time, unilaterally (without independent approval), designates a different ~~C~~ity employee to fulfill this responsibility. The name, position, and contact information of the ~~S~~taff ~~D~~irector shall be accessible on the ~~C~~ity ~~M~~anager's ~~O~~ffice ~~c~~ity ~~a~~dministrator's page of the ~~C~~ity's website. Furthermore, the ~~S~~taff ~~D~~irector shall:

1. Be eighteen (18) years of age or older; and
2. Have high ethical and moral character; and
3. Not be in a position which requires close or frequent interaction with ~~the mayor or a~~ member(s) of the ~~C~~ity ~~C~~ouncil (to avoid any potential conflict of interest); and
4. Be free from any other conflicts of interest.

I. Staff ~~And~~ and Other Support; Compensation: The ~~S~~taff ~~D~~irector, subject to the direction of the ~~C~~ity ~~M~~anager ~~c~~ity ~~a~~dministrator, shall work with the ~~C~~hair to provide the commission with a meeting location, administrative staff, equipment, training, and other support. This support shall include notice of and information for meetings, as well as at least one training session every two (2) years. Each member of the commission shall receive ~~one hundred~~ dollars (\$100.00), ~~except for the ~~C~~hair who shall receive two hundred~~ dollars (\$200.00), ~~as well as mileage according to ~~C~~ity policy, for each meeting, hearing, or training session in which the member participates~~ ~~compensation consistent with the compensation schedule approved with the annual budget.~~

J. Rules ~~Of~~ of Procedure: The commission may adopt policies and procedures for its own organization, the transaction of business, and for conducting its meetings, which are consistent with this article. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; Ord. 17-37, 7-12-2017; ~~§1-7E-7, Ord. 19-~~—, ~~—~~-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-8: FILING OF ETHICS COMPLAINTS WITH COMMISSION:

A. Conditions Required ~~To~~ to File Complaint: An ethics complaint ("complaint") may only be filed with the commission under the following conditions:

1. The complaint must be against an elected official who is currently serving in his/her elected position and allege a violation(s); and
2. The complaint must be filed with the ~~S~~taff ~~D~~irector on behalf of the commission; and
3. The complaint must be made by:
 - a. Two (2) or more members of the ~~C~~ity ~~C~~ouncil; or
 - b. Three (3) or more registered voters who reside within the boundaries of the City of West Jordan and/or who pay a fee or tax to the ~~C~~ity; and
4. The complaint must be based upon direct evidence, sworn statements, and/or the legal doctrine of "chances", by one or more people with actual knowledge of the facts and circumstances supporting the alleged violation(s); and
5. The complaint may not be filed during a "M~~m~~unicipal election season", which is defined as June 81 through and including November 8 in any year with a M~~m~~unicipal election in which the accused elected official is a candidate, unless the accused elected official is unopposed in the M~~m~~unicipal election or did not prevail in the primary election; and

6. The complaint must be in writing and contain:

a. The name and position of the elected official alleged to be in violation ("named elected official"); and

b. The name, address, and telephone number of each individual who is filing the complaint ("complainant"); and

c. A description of each alleged violation, including a reference to the section(s) of the ethics acts (or the other duties) alleged to have been violated; and

d. With reasonable specificity, evidence supporting each allegation, which shall be provided by copies of official records, documentary evidence, or affidavits that include the required information; and

e. A list of witnesses that a complainant wishes to have called or interviewed, including for each witness:

(1) The name, address, and, if available, one or more telephone numbers of the witness; and

(2) A brief summary of the testimony anticipated to be provided by the witness; and

(3) A specific description of any documents or evidence a complainant desires the witness to produce; and

f. A statement that each complainant:

(1) Has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint; and

(2) Believes that the complaint is submitted in good faith and not for any improper purpose such as harassing the named elected official, causing unwarranted harm to the named elected official's reputation, or causing unnecessary expenditure of public funds; and

(3) Believes the allegations contained in the complaint to be true and accurate; and

(4) Understands and will comply with the privacy requirements of this article, including section 1-7E-9 1-11A-9 of this article; and

(5) Understands that the complaint may be dismissed if the allegations in the complaint, if assumed to be true, do not state a violation, as per subsection 1-7E-10 1-11A-10G3 of this article; and

g. The signature of each complainant; and

7. A registered voter may not be a complainant in more than one complaint in a given calendar year, except as per subsection 1-7E-10 1-11-A-10C of this article; and

8. A complaint may not include any alleged violation(s) which occurred before September 7, 2016.

B. Procedure After after Receipt Of of Complaint: Upon receipt of a complaint, the staff director shall immediately refer the complaint to the review committee, by contacting the chair and the city attorney and scheduling a review committee meeting. The staff director shall not notify or inform any other person of the filing of the complaint.

C. Attorney Fees And and Costs: A complainant under this article is not entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; ~~§1-7E-8, Ord. 19-____, ____-2019~~, Effective at 12 noon on January 6, 2020)

1-7E11A-9: PRIVACY:

A. General Duty Of of Nondisclosure: Unless otherwise provided in this article, once a complaint has been filed with the staff director, a person (including, but not limited to, each of the complainants, the named elected official, each of the members of the commission and review committee, and each city official, officer, and employee) may not disclose, either directly or indirectly:

1. The existence of the complaint; or
2. Any answer or other response to the complaint; or
3. Any information concerning the alleged violation(s) that is/are the subject of the complaint;

Exception: In response to a specific request, question, or concern by the public, a member of the council may disclose that he/she has filed, is in the process of filing, or will be filing a complaint (but shall not disclose any specific facts or details regarding the complaint).

B. Permissible Actions: Nothing in this article may be construed to hinder or prevent:

1. The named elected official from being afforded all due process rights and from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the commission; or
2. The city attorney or another person from disclosing the facts or allegations about a potential criminal violation(s) to a law enforcement authority; or
3. The city council from holding a closed meeting, pursuant to subsection 52-4-205(1)(a), Utah Code Annotated, to fulfill the requirements of this article; or
4. Any person from disclosing public records.

C. Penalty For for Disclosure By by Complainant: If a complainant publicly discloses or disseminates, either directly or indirectly, any "private information" (private records or information obtained from private records, or during the complaint process), the commission may summarily dismiss the complaint, with or without prejudice, and may determine that a complainant should be investigated by a law enforcement agency.

D. Penalty For for Disclosure By by City Official: If any city official, officer, or employee publicly discloses or disseminates, either directly or indirectly, any private information, appropriate disciplinary action may be taken against such individual.

E. General Criminal Penalty: It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate, either directly or indirectly, any private information.

F. Private Records: As per section 63G-2-302, Utah Code Annotated ("GRAMA"), all records received or generated by the commission, the review committee, or the council, pursuant to this article, are private and not subject to disclosure or release, except for:

1. The commission's summary findings and recommendation for the council (see subsection ~~1-7E-14 1-11A-14C~~ of this article); or
2. The minutes and recordings of the open meeting portion of the city council meeting in which the council received and acted upon the recommendation from the commission (see section ~~1-7E-15 1-11A-15~~ of this article); or
3. The annual commission report (see section ~~1-7E-17 1-11A-17~~ of this article); or
4. Any document that is classified as public in accordance with title 11, chapter 49, Utah Code Annotated.

G. Closed Meetings: All commission, review committee, and city council meetings, held pursuant to this article, are closed meetings, except:

1. As specifically set forth in this article; and
2. For training sessions, which are open to the public, but the public may only listen; the public may not participate. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; ~~§1-7E-9, Ord. 19-____-2019, Effective at 12 noon on January 6, 2020~~)

1-7E11A-10: INITIAL REVIEW OF COMPLAINT:

A. Review Committee (Members, Quorum, ~~And and~~ Consensus): The review committee shall consist of: 1) the staff director; 2) the chair (or chair pro tem); and 3) the city attorney (or a deputy city attorney designated by the city attorney). The chair (or chair pro tem) shall conduct review committee meetings. A quorum to conduct business shall consist of at least two (2) of the three (3) members. A consensus of at least two (2) members shall be required to take any action.

B. Time ~~For~~ for Review Committee ~~To~~ to Act: Within fourteen (14) calendar days after receipt of a complaint, the review committee shall:

1. Determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a city attorney ethics advisory opinion; and
2. Examine the complaint to determine if it is in compliance with the filing requirements of this article (in particular, section ~~1-7E-8 1-11A-8~~ of this article).

C. Noncompliance (Return Complaint): If the review committee determines that the complaint does not comply with the filing requirements of this article, the review committee shall:

1. Return the complaint to the "first complainant" (first one named on the complaint), with a statement detailing the reason(s) for noncompliance; and the complainants may file one more complaint, within sixty (60) days of the return, with the review committee to determine if the new complaint independently meets the filing requirements of this article; and
2. Notify the ~~city manager~~ mayor, city administrator, and the members of the commission and city council that a complaint filed against an unidentified named elected official has been returned for noncompliance with this article; and the fact that a complaint was filed and returned shall be kept confidential until the commission (or review committee) submits its annual summary report to the ~~city manager~~ mayor, city administrator, and city council.

D. Compliance (Accept Complaint ~~And and~~ Forward ~~To to~~ to Commission): If the review committee determines that the complaint complies with the filing requirements of this article, the review committee shall:

1. Accept the complaint; and
2. Promptly forward the complaint to the named elected official, together with directions for providing an answer to the commission; and
3. If appropriate, request assistance from the office of the city attorney; and
4. Notify the complainants, the named elected official, the members of the commission, and the employees in the office of the city attorney of the privacy requirements of this article, including section ~~1-7E-9~~ 1-11A-9 of this article; and
5. Schedule a meeting for the commission.

E. Right ~~To to~~ Present ~~An an~~ Answer: The named elected official shall have the right to present an answer to the complaint. The answer may contain statements, arguments, and evidence. The answer must be filed within fourteen (14) calendar days from when the complaint was forwarded to and received by the named elected official.

F. Criminal Investigation; Temporary Suspension ~~Of of~~ Review (Procedural Basis): At its discretion, and at any time, the commission (or review committee) may:

1. Determine whether the named elected official ~~should~~ shall be investigated by a law enforcement agency; and/or
2. Suspend its review of the complaint pending the resolution of a criminal investigation or charges if the named elected official is under criminal investigation or charges for facts and allegations substantially similar to those presented in the complaint; and/or
3. Suspend its review of the complaint pending the resolution of any exigent or emergency circumstances, as determined by the commission (or review committee).

G. Dismiss Complaint (Procedural Basis): The commission (or review committee) shall dismiss a complaint if, at any time:

1. The named elected official irrevocably resigns in writing, with the city clerk recorder attesting to the named elected official's signature; or
2. The named elected official is removed from office by a district court judge, as per subsection ~~1-7E-14~~ 1-11A-14D of this article; or
3. The allegations in the complaint, if assumed to be true, do not state a violation. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; ~~§1-7E-10, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020~~)

1-7E11A-11: CONSIDERATION OF COMPLAINT AFTER ACCEPTANCE:

A. Types ~~Of of~~ Commission Actions: After acceptance of a complaint, the commission has the discretion to:

1. Conduct a confidential, independent administrative investigation of the complaint; or
2. Refer the matter to an independent noncriminal investigator for fact finding and investigation and consider the confidential report of the investigator; or

3. Conduct a hearing in accordance with subsection B of this section; or
4. Any combination of the above.

B. Commission Hearing: If the commission uses a hearing to review the complaint, the commission shall:

1. Provide a notice to the first complainant and the named elected official at least seven (7) calendar days prior to the hearing; and
2. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments; and
3. Close the hearing to the public; and
4. Allow the complainants and the named elected official to retain legal representation, at their discretion; and
5. Provide administrative subpoenas pursuant to its subpoena powers, as provided in section 1-14C-1 et seq., 16-2E-7C of this title code.

C. Prior Actions And and Advisory Opinions: The commission shall:

1. Determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a city attorney ethics advisory opinion; and
2. Take into consideration efforts by the named elected official to seek legal direction regarding the subject matter of the complaint and any good faith efforts by the named elected official in response to legal advice received.

D. Record Of of Commission Meeting Or or Hearing: The commission shall ensure that a record of any commission meeting or hearing is made, which shall include:

1. Audio recordings, if any; and
2. Official summaries or minutes taken during the meeting or hearing; and
3. Copies of all documents or other items admitted into evidence or considered by the commission; and
4. Copies of a document or written order or ruling issued by the commission; and
5. Any other information the commission deems relevant to the findings and recommendation. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-11, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-12: CONTEMPT POWERS:

A. Basis For for Contempt: The commission may hold a person in contempt if the person:

1. Refuses to answer a question, without legal justification, after being directed by the commission to answer; or
2. Fails to comply with a subpoena issued by the commission.

B. ~~District Court To to Enforce: Upon finding a person in contempt, the commission shall report the person to the 3rd district court and request a warrant of attachment or order to show cause, as provided in section 78B-6-313, Utah Code Annotated. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-12, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)~~

1-7E11A-13: REQUEST BY ELECTED OFFICIAL FOR LEGAL REPRESENTATION:

A. Basis For for Request: If the complaint arises from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority, then the named elected official may request that the city provide a legal defense; otherwise, the city shall not provide a legal defense.

B. Duty Of The of the City Attorney: The city attorney may arrange for such legal defense, where appropriate.

C. Applicable Law: This section shall be interpreted to be consistent with the Governmental Immunity Act of Utah and all other applicable law. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-13, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-7E11A-14: DETERMINATION BY COMMISSION:

A. Determine Alleged Violation(s): After review of the complaint, the commission shall determine whether there is clear and convincing evidence supporting a violation of the ethics acts (or of another duty) by the named elected official. If there are multiple alleged violations, the commission shall separately determine whether clear and convincing evidence supports each violation.

B. Dismiss Complaint On The on the Merits: If the commission determines that none of the allegations in the complaint were proved, the commission shall:

1. Issue an order that the complaint is dismissed because no allegations in the complaint were found to have been proven; and
2. Provide notice of the determination of an unidentified named elected official at a regular public meeting of the city council; and
3. Provide written notice of the determination to the named elected official and the first complainant.

C. Refer To to City Council: If the commission determines that one or more of the allegations in the complaint were proved, the commission shall:

1. Prepare written summary findings and a recommendation for the city council:
 - a. Listing the name of the named elected official and the name of each complainant; and
 - b. For each allegation that was proven:
 - (1) Provide the reference to the ethics acts (or other duty); and
 - (2) Summarize the evidence supporting a violation by clear and convincing evidence; and
 - (3) Make factual findings; and

c. Recommend appropriate action and remedies to the city council, including, but not limited to, censure, reprimand, additional ethics training, or removal from office (as per subsection D of this section); and

2. Notify the named elected official and the first complainant of the written summary findings and recommendation to the city council; and

3. Orally report the summary findings and recommendation to the city council in a regular meeting of the city council.

D. Removal ~~From~~ from Office (By ~~A~~ A by a Judge): Removal from office may be initiated by "removal by judicial proceedings", as per subsection 1-7E-5 ~~1-11A-5D~~ of this article. The commission's recommendation may depend on the severity of the violation(s), the named elected official's intent, any history or pattern of abuse by the named elected official, and any economic or other benefit received by the named elected official. As per section 10-3-826, Utah Code Annotated, if a named elected official is removed from office, then said named elected official is not eligible to run for any municipal office again. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; ~~§1-7E-14, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020~~)

1-7E11A-15: ACTION BY CITY COUNCIL:

A. Upon receipt of any finding and recommendation by the commission, the city council shall review the recommendation and take action at its discretion.

B. The elected official referred for a violation may not participate in the council's deliberation or cast a vote as the council decides whether to take action and which action to take. (Ord. 16-38, 9-7-2016; ~~§1-7E-15, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020~~)

1-7E11A-16: KNOWINGLY FILING A FALSE COMPLAINT:

Any person who files a complaint against an elected official pursuant to this article, knowing that such complaint is frivolous, malicious, false, or otherwise without merit, shall be guilty of a class B misdemeanor. (Ord. 16-38, 9-7-2016; ~~§1-7E-16, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020~~)

1-7E11A-17: ANNUAL COMMISSION REPORT:

A. Content: The commission shall prepare, as soon as possible after the end of each calendar year, an annual summary report that contains:

1. A general description of the commission's activities during the past year; and
2. The number of complaints filed with the commission; and
3. The number of complaints accepted and considered; and
4. The number of complaints dismissed; and
5. An executive summary of each complaint where the commission found a violation(s); and
6. The number of complaints temporarily suspended (subsection 1-7E-10 ~~1-11A-10F~~ of this article) or still pending (subsection 1-7E-7 ~~1-11A-7E~~ of this article) at the end of the calendar year.

B. Procedure: The annual report of the commission:

1. Shall be filed with the ~~city manager~~ ~~mayor, city administrator~~ and city council; and
2. Shall be a public record; and
3. May be filed by the review committee if no complaints were accepted and considered by the commission. (Ord. 16-38, 9-7-2016; amd. Ord. 16-47, 10-26-2016; §1-7E-17, Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)

1-11A-18: REVIEW OF PROPOSED INCREASES IN ELECTED OFFICIAL COMPENSATION:

~~Before an increase in compensation for elected officials may be approved by the city council, the commission shall review the proposed increase and shall make a recommendation. After receiving the commission's recommendation, the council may approve the increase in compensation by holding a public hearing and amending the compensation schedule which is approved with the annual budget. (Ord. 19-____, ____-2019, Effective at 12 noon on January 6, 2020)~~

**Chapter 12
EMPLOYEE DISCHARGE APPEAL BOARD
RESERVED**

1-12-1: APPOINTMENT OF MEMBERS; VACANCIES; TERM OF OFFICE AND RECUSAL:

1-12-2: APPEAL PROCEDURE:

1-12-1: APPOINTMENT OF MEMBERS; VACANCIES; TERM OF OFFICE AND RECUSAL:

- A. ~~Membership: The employee discharge appeal board shall consist of five (5) members. Two (2) members shall be chosen by and from among the employees of the city other than department heads, two (2) members shall be department heads appointed by the city manager, and one member will be a sitting member of the city council designated by the city council.~~
- B. ~~Election Of Employee Members: At least thirty (30) calendar days prior to the first Tuesday of even numbered calendar years, the city manager shall cause all of the full time nonprobationary employees of the city to be notified that anyone interested in serving on the appeal board must submit his/her name to the city clerk-recorder no later than December 15. Thereafter, the city manager shall arrange that the full time nonprobationary employees of the city shall vote by secret ballot, from among those employees who applied, for two (2) full time nonprobationary employees to serve on the appeal board for a two (2) year term. The vote may be by paper ballot or through electronic means. The city clerk-recorder will count the ballots. The two (2) employees receiving the highest number of votes in the election shall serve as the employee members of the appeal board. If any employee member becomes disqualified or unable to serve during his/her term, the next highest vote getter would be appointed to the remaining term.~~

C. Management Members: During the month of January of even numbered years, the city manager shall designate in writing two (2) department heads to serve on the appeal board for a two (2) year term. The city manager may also designate one or more department heads as alternate members of the appeal board, who will serve in the absence, inability or disqualification of a department head member.

D. Compensation: Members of the appeal board shall receive no compensation for their services; however, said members shall receive their regular city salary and benefits during the time they perform duties on the appeal board. If hearings are conducted after regular business hours, or if a hearing carries over into after regular business hours, the members of the appeal board will be awarded comp time on an hour and one-half ($\frac{1}{2}$) for an hour basis.

E. Terms: The terms of the appeal board member shall be for a period of two (2) years instead of the regular three (3) year term provided in subsection 2-1-4C of this code. Otherwise subsection 2-1-4C of this code shall apply to the appeal board except as expressly provided otherwise by this chapter.

F. Eligibility For Reappointment: All appeal board members shall be eligible for reappointment or reelection.

G. Quorum; Voting:

1. The appeal board shall not take any action on any matter, unless a quorum shall be present.
2. Three (3) members of the appeal board in attendance at any meeting shall constitute a quorum; however, at least one department head member must be in attendance in order for a quorum to be present.
3. Three (3) affirmative votes are needed to overturn, modify or affirm a department decision pending before the appeal board.
4. A member of the appeal board who fails to attend and participate in any part of a hearing on a particular matter may not vote on the decision of the board on that matter.

H. Voting Right; Selecting Chairperson; Training:

1. All members of the appeal board are voting members.
2. At a meeting held within thirty (30) business days after being organized, and sooner if required by a pending case, and scheduled by the city manager or a designee, the board shall choose from among their body one member to act as chairperson during that term of the board. The chairperson shall act to assure the orderly conduct of all proceedings and shall not forfeit any right, duty or privilege, as a result of being chosen to act as chairperson.
3. Within thirty (30) business days following the constitution of the board as provided above, and within thirty (30) business days of any appointment of a replacement member during the term of an appeal board, the city attorney shall provide training to the members of the appeal board as to the powers and requirements of this chapter 12. (2001 Code § 2-6-201; amd. Ord. 10-02, 1-27-2010; Ord. 15-27, 9-9-2015; §1-12-1, Ord. 19-, -2019, Repeal effective at 12 noon on January 6, 2020)

1-12-2: APPEAL PROCEDURE:

A. Commencing And Processing An Appeal:

1. An appeal of a discharge, suspension or involuntary transfer within the jurisdiction of the appeal board may be commenced by the affected employee filing written notice of the appeal with the city clerk-recorder within ten (10) calendar days after the employee receives notice of the final disposition of the city's internal disciplinary procedure for disciplinary matters; and within forty eight (48) hours after the employee receives notice of being discharged, or involuntarily transferred in a reduction in force.
2. The employee's written notice of appeal must include:
 - a. The employee's address;
 - b. A detailed challenge to the department head's final decision, including facts and argument why the appeal should be decided in favor of the appealing employee, and citing pertinent law and fact; and
 - c. A copy of the department head's final determination.
3. The failure of an employee to timely submit this required information shall forfeit any appeal rights of the employee.
4. The department head involved in the matter may not respond to the notice of appeal except as otherwise provided in this section.
5. Upon the filing of the written notice of appeal, the city clerk-recorder shall promptly refer a copy of the notice of appeal to the members of the appeal board and to the department head involved in the matter.
6. Upon receipt of the written notice of appeal, the appeal board shall set a hearing date and provide written notification of the hearing date, including time and place of the hearing to the employee, the department head involved in the matter, the city attorney and the city manager.
7. The department head involved in the matter must file with the appeal board a disposition statement setting forth the facts and circumstances supporting the discharge, transfer, or suspension.
 - a. Within ten (10) business days of receiving the notice of appeal (in appeals of disciplinary matters); or
 - b. Within forty eight (48) hours of receiving the notice of appeal, a disposition statement setting forth the facts and circumstances supporting discharge or involuntary transfer as part of a reduction in force.The department head involved in the matter shall mail a copy of the disposition statement to the employee or the employee's designated legal counsel at the address specified in the notice of appeal. No reply to the determination statement by the appellant is permitted.
8. The appeal board, acting through the city clerk-recorder, shall provide notice of the date and time for the appeal hearing in any matter to the department head involved in the matter and to the appellant in writing, which may be by electronic means. The appeal hearing in any matter shall take place no later than one hundred twenty (120) business days and no sooner than ninety (90) business days following service of the disposition statement.

9. The city attorney shall arrange for legal counsel to be provided to the appeal board to assist the appeal board in resolving any prehearing matters and to advise the appeal board during and after any appeal hearing. This legal counsel shall not be regularly employed by the city attorney's office.

B. Jurisdiction And Authority Of Appeal Board:

1. "At will" employees and employees covered by Utah code section 10-3-1105 or its successor do not have the right to an appeal under this chapter.

2. An employee must exhaust the city's internal disciplinary procedure before commencing an appeal to the appeal board (in appeals for disciplinary matters).

3. The appeal board has jurisdiction to hold a hearing and to take and receive evidence in reviewing *de novo* a final department decision:

a. To discharge an employee;

b. To suspend an employee for more than two (2) business days without pay; or

c. To involuntarily transfer an employee from one position to another with less remuneration.

4. For appeals of disciplinary matters, the appeal board shall determine only if there was sufficient cause for the discharge, suspension or involuntary transfer of the employee, and whether the discipline assessed was proportional to the offenses charged, including whether the appellant has been disciplined more harshly than other employees recently charged with the same offenses by the department.

5. In appeals of a discharge or involuntary transfer resulting from a reduction in force, the appeal board shall determine if the procedures set out in the employee handbook, or elsewhere, for selecting the employee for discharge or transfer as part of a reduction in force were properly followed by the department head or city manager. The appeal board expressly has no jurisdiction to reexamine the decision to implement a reduction in force or the size and scope of a reduction in force.

6. The appeal board shall have the power to subpoena witnesses and compel the production of books, papers and any other evidence, as may be pertinent and relevant to any investigation and a fair hearing or decision, in the possession of third parties. Subpoenas must be requested no later than thirty (30) business days following service of the disposition statement.

7. The board may deliberate in a closed session to consider rulings on requests for subpoena, to consider and vote on its decision on the merits following a hearing, and to consider other prehearing motions or rulings.

C. Recusal For Conflict Of Interest: Any member of the appeal board who is simultaneously employed within the same department for which the appealing employee works, or who shall be related to the appealing employee through blood, adoption or marriage, may not participate as a member of the appeal board considering such appeal. The member so disqualified may be replaced by an alternate for that appeal, as provided in subsection 1-12-1B of this chapter for employee members and in subsection 1-12-1C of this chapter for department head members.

D. Procedure For Conducting Appeal Hearings:

1. **Witness List And Documents:** The appellant shall serve on the department head involved in the matter its witness list and may serve a request for production of documents within thirty (30) calendar days following service of the disposition statement. The department head involved in the matter shall provide its witness list and any requested documents to appellant, or otherwise respond, within thirty (30) business days following receipt of the appellant's witness list and any request for production of documents.
2. **Witnesses To Be Available:** The department head involved in the matter shall arrange for any city employees appearing on appellant's witness list to be available to testify at the hearing.
3. **Prehearing Matters:** The appeal board will promptly hear and decide any motions in connection with prehearing matters, and may adjust the hearing schedule as needed to accommodate the issues of a particular case.
4. **Open Hearings:** Appeal hearings will be open to the public unless a closed meeting is requested in writing by the appealing employee and consented to by the department head involved in the matter, or is otherwise permitted by this code.
5. **Record; Right To Transcript:** The appeal board hearings shall be recorded electronically. If a written record or transcript of any proceeding of the appeal board is requested, the party requesting any such record or transcript shall provide for the preparation of such record or transcript, including the payment of all involved costs.
6. **Employee's Rights:** The employee shall be entitled to appear in person and be heard; be represented by legal counsel duly admitted to the bar of the Utah supreme court, at the expense of the employee; have a public hearing; confront the witness whose testimony is to be considered; and examine the evidence to be considered by the appeal board.
7. **Burden Of Proof:** The employee shall have the burden of proving by a preponderance of the evidence that the department head involved in the matter imposed the discharge, suspension or involuntary transfer without justifiable cause or that the discipline assessed was not proportional to the offenses charged, including whether the appellant has been disciplined more harshly than other employees recently charged with the same offenses by the department.
8. **Default:** If either party fails to appear and defend or prosecute the action, the appeal board may:
 - a. Default the action against the nonappearing party; or
 - b. Make its own investigation and determination of the matter in the absence of the defaulting party and enter orders accordingly.
9. **Interim And Summary Orders:** Upon written request of a party or on its own motion, the appeal board may make such orders as it deems equitable and for good cause shown.
10. **Informal Procedure:** The appeal board may conduct the hearing informally without following technical or procedural rules regarding the presentation of evidence or witnesses as follows:

The appeal board may permit:

- a. The appellant to make an opening statement.
- b. The city to make an opening statement.

c. The city to present evidence and witnesses, subject to cross examination by the appellant.

d. The appellant to present evidence and witnesses, subject to cross examination by the city.

e. The city to present further evidence in rebuttal.

f. The appellant, then the city to make closing arguments.

g. The appellant to make rebuttal argument.

h. The appeal board may exclude from the hearing any witnesses who have not yet given testimony in the appeal before the appeal board, provided the department head involved in the matter may attend all hearings notwithstanding he/she may offer testimony. Moreover, the department head may have one assistant who may also attend all hearings notwithstanding he/she may offer testimony.

i. The appeal board is not bound by the rules of evidence followed by the courts and may hear any evidence it determines relevant to the matter.

j. Every witness shall be first sworn to testify truthfully as provided by law. The oaths are administered at the direction of the appeal board.

k. The appeal board may modify these procedures at the hearing as may be equitable and conducive to a determination of the issues. The appeal board may declare time limits on the presentation of evidence and argument, provided that the appeal board communicate such time limits in writing to the parties at least thirty (30) business days prior to the commencement of the appeal hearing.

11. Decision:

a. (1) Each decision of the appeal board shall be by secret ballot, and certified in writing to the city clerk recorder within fifteen (15) business days from the date on which the hearing on the merits of an appeal is concluded. If the city and the employee agree, the appeal board may extend the fifteen (15) business day period to a maximum of sixty (60) business days for good cause.

(2) Notwithstanding subsection D11a(1) of this section, appeals filed in connection with a reduction in force must be processed rapidly in the best interests of the employees involved. In such cases the appeal board must report its decision within twenty four (24) hours of the end of the hearing.

b. The appeal board shall prepare written findings of fact and conclusions to support its decision.

c. If the appeal board finds in favor of the employee, the board shall provide that the employee shall receive, except as may have been previously agreed between the parties:

(1) His/her salary for the period of time during which the employee is discharged or suspended without pay; or

(2) Any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

E. ~~Certify Final Decision To Parties: The city clerk-recorder shall certify written copies of the appeal board's decision to the employee, the department head from whose order the appeal was taken, the city manager and the city attorney within ten (10) business days after receiving the decision.~~

F. ~~Court Of Appeals: The final action or decision of the appeal board may be reviewed by the Utah court of appeals in accordance with Utah code section 10-3-1106(6) or any successor provision, and in accordance with the Utah rules of appellate procedure. (2001 Code § 2-6-202; amd. Ord. 10-02, 1-27-2010; Ord. 15-27, 9-9-2015; §1-12-2, Ord. 19-____, ____-2019, Repeal effective at 12 noon on January 6, 2020)~~