

Council Meeting of Sept. 7, 2016

Agenda Item No. 7.F.

REQUEST FOR COUNCIL ACTION

SUBJECT: Ordinance to create a City Ethics Commission and certain ethical standards and guidelines for the elected officials (City Council).

SUMMARY: Approval of the Ordinance will allow for clear guidelines and additional flexibility to appropriately respond to ethical concerns in the future.

FISCAL AND/OR ASSET IMPACT: There is minimal potential fiscal impact associated with the approval of this Ordinance, since existing City staff will be utilized, and there will only be *de minimus* reimbursement to Commission members.

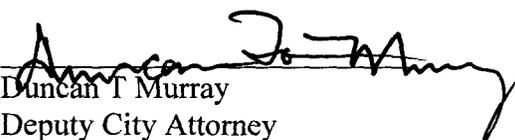
STAFF RECOMMENDATION: Staff recommends approval of the Ordinance, with or without changes.

MOTION RECOMMENDED:

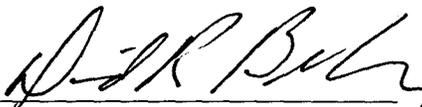
"I move to approve Ordinance 16-38 (Ethics for Elected Officials)."

[Roll Call vote required]

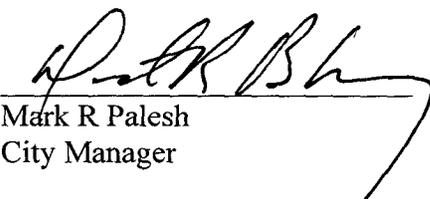
Prepared by:


Duncan T Murray
Deputy City Attorney

Reviewed by:


David R Brickey
City Attorney

Recommended by:

for 
Mark R Paesh
City Manager

BACKGROUND DISCUSSION:

The purpose of this Ordinance is to prevent improper influence, avoid the appearance of impropriety, and prohibit elected officials from receiving unjust financial gain from public service. This Ordinance also establishes a City of West Jordan Ethics Commission, as allowed by state law, and seeks to increase public confidence by assuring that governmental actions are taken ethically.

City staff recommends approval of the Ordinance, which was recommended by some of the members of the City Council.

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

ORDINANCE NO. 16-38
[ETHICS FOR ELECTED OFFICIALS]

AN ORDINANCE AMENDING TITLE 1, “ADMINISTRATION.”

WHEREAS, as required by § 10-3-606, Utah Code Ann., the City Council of the City of West Jordan has adopted Council Rules, Policies, and Procedures in order to assist with the governing body’s decision-making and operational activities; and

WHEREAS, Sub-§ A.2(a)(4) of the Council Rules, Policies, and Procedures cites that one of the goals of responsible government is “. . . acting and requiring the highest standards of ethical conduct, at all levels of City government; . . .” and

WHEREAS, under the provisions of § 10-3-827, Utah Code Ann., and Sub-§ 1-7C-3(B), City Code of West Jordan, each Council Member swears to uphold the constitutional oath of office, which states that he or she will “support, obey and defend the constitution of the United States and the constitution of this State and the laws and ordinances of the city of West Jordan . . . ,” which includes the Council Rules, Policies, and Procedures and the City Code; and

WHEREAS, one of the governing constitutional principles upon which the United States of America is founded is the “Rule of Law,” which means that the law is uniformly applied to all citizens, and that no individual citizen has a status “above the law”; and

WHEREAS, the City Council desires to add to the City Code, to encourage and to commit to “the highest standards of ethical conduct” at the “highest level” of City government (the Mayor and Council); and

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, Chapter 7 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 7, Article E, Section 1 through 17 of the 2009 City Code shall be adopted and hereafter read as follows:

TITLE 1, CHAPTER 7

OFFICERS AND EMPLOYEES

ARTICLE E. ETHICS FOR ELECTED OFFICIALS

- 1-7E-1: Purpose.**
- 1-7E-2: Definitions.**
- 1-7E-3: Types of Conduct-Related Ethical Duties (and Violations).**
- 1-7E-4: Ethics Acts (including State Statutes).**
- 1-7E-5: Remedies for Violations of Ethics Acts.**
- 1-7E-6: City Attorney Advisory Opinions.**
- 1-7E-7: City of West Jordan Ethics Commission.**
- 1-7E-8: Filing of Ethics Complaints with Commission.**
- 1-7E-9: Privacy.**
- 1-7E-10: Initial Review of Complaint.**
- 1-7E-11: Consideration of Complaint after Acceptance.**
- 1-7E-12: Contempt Powers.**
- 1-7E-13: Request by Elected Official for Legal Representation.**
- 1-7E-14: Determination by Commission.**
- 1-7E-15: Action by City Council.**
- 1-7E-16: Knowingly Filing a False Complaint.**
- 1-7E-17: Annual Commission Report.**

1-7E-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, to avoid the appearance of impropriety, 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. (Ord. 16- __, __-__-2016)

1-7E-2: Definitions.

For the purposes of this article, the term:

- A. “Commission” means the City of West Jordan Ethics Commission formed pursuant to § 1-7E-7 of this article.
- B. “Elected officials,” “City Council,” or “Council” includes only the Mayor and other members of the City Council of the City of West Jordan, unless otherwise indicated, and does *not* include the Justice Court Judge.

- C. “City” means the City of West Jordan, unless otherwise indicated.
- D. “Ethics Acts” includes §§ 10-3-1301, *et seq.* and §§ 67-16-1, *et seq.*, Utah Code Ann., all similar state statutes, and the applicable portions of the City Code of West Jordan (including “Conflicts of Interest” in §§ 1-11-1 to 1-11-22 inclusive; and “Types of Conduct-Related Ethical Duties” in § 1-7E-3 herein). (Ord. 16-__, __-__-2016)

1-7E-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. “Rule of Law”; Claim of Special Privileges/Status. The elected officials:
 - 1. Shall have respect for and shall comply with the law (local, state, and federal); and
 - 2. Shall *not* have special privileges or status which places them “above the law”; and
 - 3. Shall never make a claim of having special privileges or status “above the law,” especially since they have each sworn to uphold the constitutional oath of office.
- B. Interaction with Law Enforcement/Government Personnel; Request for Preferential Treatment. The elected officials should never attempt to use their positions to request or obtain preferential treatment from police or law enforcement personnel or other government personnel, whether local, state, or federal.
- 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, as amended during the year. There is a duty to attend at least twenty-one (21) of these meetings. If an elected official misses any four (4) or more of these meetings in a given calendar year, or three (3) or more consecutive meetings, then said elected official:
 - 1. Shall *not* receive any compensation until the time that said elected official attends another regular Council meeting; and
 - 2. Shall have such compensation reduced by, or immediately pay a fine in the amount of, \$750.00 per missed regular Council meeting in excess of three (3) missed meetings; unless
 - 3. The Council, in an open meeting, based upon a valid reason(s), removes some or all of this reduction or fine (with said elected official abstaining, to avoid a conflict of interest); and
 - 4. “Missed” meetings shall include meetings missed on or after September 7, 2016, but not before September 7, 2016; and
 - 5. An elected official shall not be allowed to participate in more than four (4) electronic Council meetings (regular, special, or otherwise) per calendar year.

- D. Contact Information Provided to the City Clerk. 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) email address to the City Clerk; and
 2. Shall each, if there is a change, provide new information to the City Clerk 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.
- E. Personal Expenditures of City Funds. With regards to all personal expenditures of City funds, the elected officials:
1. Shall provide receipts, statements, and other documents to prove a valid City purpose; and
 2. Shall never spend funds that were *not* specifically budgeted; and
 3. Shall comply with all similar ordinances and policies.
- F. Personal Behavior and Respect for Others. The elected officials:
1. Shall be courteous, considerate, and professional in their behavior and conduct; and
 2. Shall be respectful of other people at all times.
- G. 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 elected officials, in order to avoid interference with the judicial process, shall *not* discuss or take any action regarding the criminal charge(s), in the public or in any meeting or otherwise, unless said charged elected official is found guilty in a court of law; and
 2. An elected official, or an appropriate individual(s), may request one or more of the remedies in Sub-§§ 1-7E-5 (B, C, and D), if a charged elected official is found guilty in a court of law.
- H. Crime of "Official Neglect and Misconduct." According to § 10-3-826, Utah Code Ann., if an elected official willfully fails to perform any duty, or is willfully involved in misfeasance or malfeasance in office, then 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 Sub-§§ 1-7E-5 (A, B, C, and D). (Ord. 16-__, __-__-2016)

1-7E-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. Included in the “state statute portions of the Ethics Acts” (among others, §§ 10-3-1301, *et seq.* and §§ 67-16-1, *et seq.*, Utah Code Ann.) 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 in order to further substantially their personal economic interest or to secure special privileges or exemptions for the elected official or others; and avoid the use of their office for personal benefit; and
 2. *Not* use or attempt to use their position to further substantially their personal economic interest or secure special privileges for the elected official or for others; and
 3. *Not* knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the elected official or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:
 - a. 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. 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.
- C. Public Disclosure and Filings. The state statute portions of the Ethics Acts also require public disclosures and filings in certain circumstances as described in the Act, including:
1. Where an elected official receives or agrees to receive compensation for assisting any person or business entity in any transaction involving the City; and
 2. Where an elected official is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to regulation by the City; and
 3. Where the elected official is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the City; and
 4. Where an elected official has a personal interest or investment which creates a conflict between the elected official’s personal interests and the elected official’s public duties. (Ord. 16-__, __-__-2016)

1-7E-5: Remedies for Violations of Ethics Acts.

If there is an allegation that an elected official has committed a major violation or multiple violations of the Ethics Acts, 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. **Non-criminal allegations** may be submitted for review to the **City of West Jordan Ethics Commission** (“Commission”), assuming one is functioning, as per § 10-3-1311, Utah Code Ann., and § 1-7E-7 herein; otherwise, the allegations may be submitted to the Political Subdivisions Ethics Review Commission, as per §§ 11-49-101, *et seq.*, Utah Code Ann.; and/or
- C. A **censure resolution**, stating, in ordinary and concise language, the **non-criminal grounds** for censure, may be placed, according to regular agenda rules, **on the Council agenda** (preferably with prior review of the underlying allegations by the Commission); with a copy of the resolution to be provided 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 §§ 77-6-1, *et seq.*, Utah Code Ann., 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 non-criminal 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 state law (§ 78B-2-310, Utah Code Ann.). (Ord. 16-__, __-__-2016)

1-7E-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, 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 the City Council.
- B. Availability of an Opinion. All advisory opinions shall be available for public review, but 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-__, __-__-2016)

1-7E-7: City of West Jordan Ethics Commission.

- A. Members and Chair. The City hereby establishes a City of West Jordan Ethics Commission (“Commission”) pursuant to § 10-3-1311, Utah Code Ann. The Commission shall consist of five (5) regular members and one (1) alternate member, who may or may *not* be residents of the City, and who are *not* currently officials, officers, or employees of the City, as follows:
1. One of the regular members, who shall serve as the Chair, shall have previously served as an appellate judge, district court judge, justice court judge, or administrative law judge in the state of Utah; 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 as another type of professional investigator; and
 4. One of the regular members shall have previously served 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 one alternate member shall be a current resident of the City, who has been a resident for at least one year. The alternate member may be a substitute for any of the regular members.
- B. Appointment Process. The City Manager shall, with the advice and consent of the City Council, and as set forth herein, appoint the members of the Commission.
- C. Chair Pro Tem. The Commission may elect, among themselves, a Chair Pro Tem in the absence of the Chair.
- D. 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. When participating, the alternate member shall be the same, in all respects, as any other member. A majority consensus of the quorum present shall be required to take any action.

- E. Staff and Other Support; Compensation. The Human Resources Director shall provide the Commission such administrative staff, equipment, and other support, as requested by the Commission. Each member of the Commission shall receive \$100.00, as well as mileage according to City policy, for each meeting in which the member participates. (Ord. 16- __, __-__-2016)

1-7E-8: Filing of Ethics Complaints with Commission.

- A. Conditions Required to File Complaint. A 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 of the Ethics Acts; and
2. The complaint must be filed with the Human Resources Director of the City on behalf of the Commission; and
3. The complaint must be made by:
 - a. Two (2) members of the 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 ethics violation; and
5. The complaint may *not* be filed during the sixty (60) calendar days immediately before a municipal primary election, if the accused elected official is a candidate in the primary election; and
6. The complaint may *not* be filed during the sixty (60) calendar days immediately before a municipal general election in which the accused elected official is a candidate, unless the accused elected official is unopposed in the election; and
7. The complaint must be in writing and contain:
 - a. The name and position of the elected official alleged to be in violation; and
 - b. The name, address, and telephone number of each individual who is filing the complaint; and
 - c. A description of each alleged violation of the Ethics Acts, including a reference to the section(s) of the Ethics Acts 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: the name, address, and, if available, one or more telephone numbers of the witness; a brief summary of the testimony to be provided by the witness; 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 accused 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

g. A statement with the signature of each complainant.

- B. Procedure after Receipt of Complaint. Upon receipt of any ethics complaint, the Human Resources Director shall immediately refer the complaint to the Commission. The Human Resources Director shall *not* notify or inform any other person of the filing of the complaint, other than the City Attorney.
- C. Attorney Fees and Costs. A person filing a complaint under this article is *not* entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings. (Ord. 16-__, __-__-2016)

1-7E-9: Privacy.

- A. Once an ethics complaint has been filed with the Human Resources Director, neither the Human Resources Director, the Commission, nor any City official, officer, or employee may disclose the existence of the complaint, any response to the complaint, or any information concerning the alleged ethics violation that is the subject of the complaint, unless otherwise provided in this article. Exception: in response to a specific request, question, or concern by the public, a member of the Council may indicate that he/she has filed, is in the process of filing, or will be filing a complaint (but shall not provide any specifics of the complaint).
- B. Nothing in the restrictions above may be construed to hinder or prevent the City Attorney or another person from disclosing the facts or allegations about potential criminal violations to a law enforcement authority.
- C. Nothing in this article may be construed to hinder or prevent the named elected official from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the Commission.
- D. Nothing in this article may be construed to hinder or prevent any person from disclosing public records.

- E. If any City official, officer, or employee publicly discloses any private information, appropriate disciplinary action may be taken against such individual.
- F. If a complainant publicly discloses, either directly or indirectly, any private records or information obtained from private records, the Commission may summarily dismiss the complaint without prejudice, and may determine that a complainant should be investigated by a law enforcement agency.
- G. As per § 63G-1-302, Utah Code Ann. (“GRAMA”), all records received by or generated by or for the Commission are private and *not* subject to disclosure or release, except for the Commission’s summary findings and recommendation for the City Council or any document that is classified as public in accordance with Title 11, Chapter 49, Utah Code Ann. (Ord. 16- __, __-__-2016)

1-7E-10: Initial Review of Complaint.

- A. Within fourteen (14) calendar days after receipt of an ethics complaint, the Commission shall examine the complaint to determine if it is in compliance with the filing requirements of this article.
- B. If the Commission determines that the complaint does *not* comply with the filing requirements of this article, the Commission shall return the complaint to the first complainant named on the complaint with a statement detailing the reason(s) for non-compliance. At the same time, the Commission shall notify the members of the City Council, the City Manager, and the City Attorney that a complaint filed against an unidentified elected official has been returned for non-compliance with this article and the fact that a complaint was filed and returned shall be kept confidential until the Commission submits its annual summary report to the City Manager and City Council. If a complaint is returned by the Commission, the complainants may file another complaint if the new complaint independently meets the filing requirements of this article.
- C. If the Commission determines that the complaint complies with the filing requirements of this article, the Commission shall:
 - 1. Accept the complaint; and
 - 2. Promptly forward the complaint to the elected official who is named in the complaint, together with directions for providing a response 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 Human Resources Director, and the employees in the office of the City Attorney of the privacy requirements of this article.
- D. At its discretion, the Commission may determine whether the subject of the complaint should be investigated by a law enforcement agency.

- E. If the Commission learns that the subject of the complaint is under criminal investigation, the Commission may suspend its review of the complaint pending the resolution of the criminal investigation.
- F. 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 the complaint was forwarded to and received by the elected official.
- G. The Commission shall dismiss an ethics complaint if:
 - 1. The named elected official resigns or is removed from office with the City; or
 - 2. The named elected official is charged with a criminal violation of the Ethics Acts where the facts and allegations presented in the ethics complaint assert substantially similar facts and allegations as those asserted in the criminal charges; or
 - 3. The allegations in the complaint, if assumed to be true, do *not* state a violation of the Ethics Acts. (Ord. 16-__, __-__-2016)

1-7E-11: Consideration of Complaint after Acceptance.

- A. 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 non-criminal 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. If the Commission uses a hearing to review the complaint, the Commission shall:
 - 1. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments; and
 - 2. Close the hearing to the public; and
 - 3. Allow the complainants and the named elected official to retain legal representation, at their discretion; and
 - 4. Provide administrative subpoenas pursuant to its subpoena powers, as provided in §§ 1-14C-1, *et seq.* of this Code.
- C. For any hearing the Commission must provide a notice to the first named complainant and the named elected official at least seven (7) calendar days prior to the hearing.

- D. The Commission shall determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a City Attorney ethics advisory opinion. The Commission shall 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.
- E. 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-__, __-__-2016)

1-7E-12: Contempt Powers.

- A. 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. Upon finding a person in contempt, the Commission shall report the person to the Third District Court and request a warrant of attachment or order to show cause, as provided in § 78B-6-313, Utah Code Ann. (Ord. 16-__, __-__-2016)

1-7E-13: Request by Elected Official for Legal Representation.

- A. The named elected official may request that the City provide a legal defense 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; otherwise, the City shall not provide a legal defense.
- B. The City Attorney may arrange for such legal defense, where appropriate. (Ord. 16-__, __-__-2016)

1-7E-14: Determination by Commission.

- A. After review of the complaint, the Commission shall determine whether there is clear and convincing evidence supporting a violation of the Ethics Acts 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. If the Commission determines that no 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 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 named complainant on the complaint.
- C. 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 each complainant and the name of the subject elected official; and
 - b. For each allegation that was proven:
 - (1) Provide the reference to the Ethics Acts; and
 - (2) Summarize the evidence supporting a violation by clear and convincing evidence; and
 - (3) Make factual findings; and
 - c. Recommend appropriate action to the City Council; and
 2. Notify the named elected official and the first complainant on the complaint of the written summary findings and recommendation for 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. If the Commission finds a violation of the Ethics Acts, the Commission may recommend to the City Council any appropriate action or remedy, including but *not* limited to censure, reprimand, additional ethics training, or removal from office. Removal from office may be initiated by “removal by judicial proceedings,” as per § 1-7E-5(D) herein. The Commission’s recommendation may depend on the severity of the violation, the 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. (Ord. 16-__, __-__-2016)

1-7E-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-__, __-__-2016)

1-7E-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-__, __-__-2016)

1-7E-17: Annual Commission Report.

- A. The Commission shall prepare, on an annual basis, a summary report that contains:
1. A general description of the Commission's activities during the past year; and
 2. The number of ethics complaints filed with the Commission; and
 3. The number of ethics complaints dismissed; and
 4. An executive summary of each complaint where the Commission found a violation of the Ethics Acts.
- B. The annual report of the Commission:
1. Shall be filed with the City Council; and
 2. Shall be a public record. (Ord. 16-__, __-__-2016)

Section 2. 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 3. This Ordinance shall become immediately effective, with no retroactive application.

Passed and adopted by the City Council of the City of West Jordan, Utah this 7th day of September, 2016.

CITY OF WEST JORDAN

By: _____
KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council

“AYE”

“NAY”

- Council Member Dirk Burton**
- Council Member Jeff Haaga**
- Council Member Zach Jacob**
- Council Member Chris McConnehey**
- Council Member Chad Nichols**
- Council Member Sophie Rice**
- Mayor Kim V. Rolfe**

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

ORD 16-38

I, Melanie S. Briggs, 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 _____, 2016, pursuant to Utah Code Annotated, 10-3-711.

MELANIE S. BRIGGS, MMC
City Clerk/Recorder

[SEAL]

Legislative

TITLE 1, CHAPTER 7

OFFICERS AND EMPLOYEES

TITLE 1, CHAPTER 7

OFFICERS AND EMPLOYEES

ARTICLE E. ETHICS FOR ELECTED OFFICIALS

1-7E-1: Purpose.

1-7E-2: Definitions.

1-7E-3: Types of Conduct-Related Ethical Duties (and Violations).

1-7E-4: Ethics Acts (including State Statutes).

1-7E-5: Remedies for Violations of Ethics Acts.

1-7E-6: City Attorney Advisory Opinions.

1-7E-7: City of West Jordan Ethics Commission.

1-7E-8: Filing of Ethics Complaints with Commission.

1-7E-9: Privacy.

1-7E-10: Initial Review of Complaint.

1-7E-11: Consideration of Complaint after Acceptance.

1-7E-12: Contempt Powers.

1-7E-13: Request by Elected Official for Legal Representation.

1-7E-14: Determination by Commission.

1-7E-15: Action by City Council.

1-7E-16: Knowingly Filing a False Complaint.

1-7E-17: Annual Commission Report.

1-7E-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, to avoid the appearance of impropriety, 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. (Ord. 16-__ , __ - __ -2016)

1-7E-2: Definitions.

For the purposes of this article, the term:

A. “Commission” means the City of West Jordan Ethics Commission formed pursuant to § 1-7E-7 of this article.

- B. “Elected officials,” “City Council,” or “Council” includes only the Mayor and other members of the City Council of the City of West Jordan, unless otherwise indicated, and does *not* include the Justice Court Judge.
- C. “City” means the City of West Jordan, unless otherwise indicated.
- D. “Ethics Acts” includes §§ 10-3-1301, *et seq.* and §§ 67-16-1, *et seq.*, Utah Code Ann., all similar state statutes, and the applicable portions of the City Code of West Jordan (including “Conflicts of Interest” in §§ 1-11-1 to 1-11-22 inclusive; and “Types of Conduct-Related Ethical Duties” in § 1-7E-3 herein). (Ord. 16-__, -__-2016)

1-7E-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. “Rule of Law”; Claim of Special Privileges/Status. The elected officials:
1. Shall have respect for and shall comply with the law (local, state, and federal); and
 2. Shall *not* have special privileges or status which places them “above the law”; and
 3. Shall never make a claim of having special privileges or status “above the law,” especially since they have each sworn to uphold the constitutional oath of office.
- B. Interaction with Law Enforcement/Government Personnel; Request for Preferential Treatment. The elected officials should never attempt to use their positions to request or obtain preferential treatment from police or law enforcement personnel or other government personnel, whether local, state, or federal.
- 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, as amended during the year. There is a duty to attend at least twenty-one (21) of these meetings. If an elected official misses any four (4) or more of these meetings in a given calendar year, or three (3) or more consecutive meetings, then said elected official:
1. Shall *not* receive any compensation until the time that said elected official attends another regular Council meeting; and
 2. Shall have such compensation reduced by, or immediately pay a fine in the amount of, \$750.00 per missed regular Council meeting in excess of three (3) missed meetings; unless
 3. The Council, in an open meeting, based upon a valid reason(s), removes some or all of this reduction or fine (with said elected official abstaining, to avoid a conflict of interest); and

4. "Missed" meetings shall include meetings missed on or after September 7, 2016, but not before September 7, 2016; and

5. An elected official shall not be allowed to participate in more than four (4) electronic Council meetings (regular, special, or otherwise) per calendar year.

D. Contact Information Provided to the City Clerk. 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) email address to the City Clerk; and

2. Shall each, if there is a change, provide new information to the City Clerk 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.

E. Personal Expenditures of City Funds. With regards to all personal expenditures of City funds, the elected officials:

1. Shall provide receipts, statements, and other documents to prove a valid City purpose; and

2. Shall never spend funds that were *not* specifically budgeted; and

3. Shall comply with all similar ordinances and policies.

F. Personal Behavior and Respect for Others. The elected officials:

1. Shall be courteous, considerate, and professional in their behavior and conduct; and

2. Shall be respectful of other people at all times.

G. 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 elected officials, in order to avoid interference with the judicial process, shall *not* discuss or take any action regarding the criminal charge(s), in the public or in any meeting or otherwise, unless said charged elected official is found guilty in a court of law; and

2. An elected official, or an appropriate individual(s), may request one or more of the remedies in Sub-§§ 1-7E-5 (B, C, and D), if a charged elected official is found guilty in a court of law.

H. Crime of "Official Neglect and Misconduct." According to § 10-3-826, Utah Code

Ann., if an elected official willfully fails to perform any duty, or is willfully involved in misfeasance or malfeasance in office, then 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 Sub-§§ 1-7E-5 (A, B, C, and D). (Ord. 16- __, __ - __ -2016)

1-7E-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. Included in the “state statute portions of the Ethics Acts” (among others, §§ 10-3-1301, *et seq.* and §§ 67-16-1, *et seq.*, Utah Code Ann.) 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 in order to further substantially their personal economic interest or to secure special privileges or exemptions for the elected official or others; and avoid the use of their office for personal benefit; and

2. *Not* use or attempt to use their position to further substantially their personal economic interest or secure special privileges for the elected official or for others; and

3. *Not* knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the elected official or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:

a. 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. 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.

C. Public Disclosure and Filings. The state statute portions of the Ethics Acts also require public disclosures and filings in certain circumstances as described in the Act, including:

1. Where an elected official receives or agrees to receive compensation for assisting any person or business entity in any transaction involving the City; and

2. Where an elected official is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to regulation by the City; and

3. Where the elected official is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the City; and

4. Where an elected official has a personal interest or investment which creates a conflict between the elected official's personal interests and the elected official's public duties. (Ord. 16-__ , __ - __ -2016)

1-7E-5: Remedies for Violations of Ethics Acts.

If there is an allegation that an elected official has committed a major violation or multiple violations of the Ethics Acts, 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. **Non-criminal allegations** may be submitted for review to the City of West Jordan Ethics Commission ("Commission"), assuming one is functioning, as per § 10-3-1311, Utah Code Ann., and § 1-7E-7 herein; otherwise, the allegations may be submitted to the Political Subdivisions Ethics Review Commission, as per §§ 11-49-101, *et seq.*, Utah Code Ann.; and/or
- C. **A censure resolution**, stating, in ordinary and concise language, the **non-criminal grounds** for censure, may be placed, according to regular agenda rules, **on the Council agenda** (preferably with prior review of the underlying allegations by the Commission); with a copy of the resolution to be provided 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 §§ 77-6-1, *et seq.*, Utah Code Ann., 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 non-criminal 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 state law (§ 78B-2-310, Utah Code Ann.). (Ord. 16-__ , __ - __ -2016)

1-7E-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, 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 the City Council.
- B. **Availability of an Opinion.** All advisory opinions shall be available for public review, but 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-__ , __ - __ -2016)

1-7E-7: City of West Jordan Ethics Commission.

A. Members and Chair. The City hereby establishes a City of West Jordan Ethics Commission (“Commission”) pursuant to § 10-3-1311, Utah Code Ann. The Commission shall consist of five (5) regular members and one (1) alternate member, who may or may *not* be residents of the City, and who are *not* currently officials, officers, or employees of the City, as follows:

1. One of the regular members, who shall serve as the Chair, shall have previously served as an appellate judge, district court judge, justice court judge, or administrative law judge in the state of Utah; 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 as another type of professional investigator; and

4. One of the regular members shall have previously served 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 one alternate member shall be a current resident of the City, who has been a resident for at least one year. The alternate member may be a substitute for any of the regular members.

B. Appointment Process. The City Manager shall, with the advice and consent of the City Council, and as set forth herein, appoint the members of the Commission.

C. Chair Pro Tem. The Commission may elect, among themselves, a Chair Pro Tem in the absence of the Chair.

D. 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. When participating, the alternate member shall be the same, in all respects, as any other member. A majority consensus of the quorum present shall be required to take any action.

E. Staff and Other Support; Compensation. The Human Resources Director shall provide the Commission such administrative staff, equipment, and other support, as requested by the Commission. Each member of the Commission shall receive \$100.00, as well as mileage according to City policy, for each meeting in which the member participates. (Ord. 16- __, __ - __-2016)

1-7E-8: Filing of Ethics Complaints with Commission.

A. Conditions Required to File Complaint. A 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 of the Ethics Acts; and

2. The complaint must be filed with the Human Resources Director of the City on behalf of the Commission; and

3. The complaint must be made by:

a. Two (2) members of the 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 ethics violation; and

5. The complaint may *not* be filed during the sixty (60) calendar days immediately before a municipal primary election, if the accused elected official is a candidate in the primary election; and

6. The complaint may *not* be filed during the sixty (60) calendar days immediately before a municipal general election in which the accused elected official is a candidate, unless the accused elected official is unopposed in the election; and

7. The complaint must be in writing and contain:

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

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

c. A description of each alleged violation of the Ethics Acts, including a reference to the section(s) of the Ethics Acts 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: the name, address, and, if available, one or more telephone numbers of the witness; a brief summary of the testimony to be provided by the witness; 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 accused 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

g. A statement with the signature of each complainant.

B. Procedure after Receipt of Complaint. Upon receipt of any ethics complaint, the Human Resources Director shall immediately refer the complaint to the Commission. The Human Resources Director shall *not* notify or inform any other person of the filing of the complaint, other than the City Attorney.

C. Attorney Fees and Costs. A person filing a complaint under this article is *not* entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings. (Ord. 16-__, __-__-2016)

1-7E-9: Privacy.

A. Once an ethics complaint has been filed with the Human Resources Director, neither the Human Resources Director, the Commission, nor any City official, officer, or employee may disclose the existence of the complaint, any response to the complaint, or any information concerning the alleged ethics violation that is the subject of the complaint, unless otherwise provided in this article. Exception: in response to a specific request, question, or concern by the public, a member of the Council may indicate that he/she has filed, is in the process of filing, or will be filing a complaint (but shall not provide any specifics of the complaint).

B. Nothing in the restrictions above may be construed to hinder or prevent the City Attorney or another person from disclosing the facts or allegations about potential criminal violations to a law enforcement authority.

C. Nothing in this article may be construed to hinder or prevent the named elected official from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the Commission.

D. Nothing in this article may be construed to hinder or prevent any person from disclosing public records.

- E. If any City official, officer, or employee publicly discloses any private information, appropriate disciplinary action may be taken against such individual.
- F. If a complainant publicly discloses, either directly or indirectly, any private records or information obtained from private records, the Commission may summarily dismiss the complaint without prejudice, and may determine that a complainant should be investigated by a law enforcement agency.
- G. As per § 63G-1-302, Utah Code Ann. (“GRAMA”), all records received by or generated by or for the Commission are private and *not* subject to disclosure or release, except for the Commission’s summary findings and recommendation for the City Council or any document that is classified as public in accordance with Title 11, Chapter 49, Utah Code Ann. (Ord. 16-__ , __ - __ -2016)

1-7E-10: Initial Review of Complaint.

- A. Within fourteen (14) calendar days after receipt of an ethics complaint, the Commission shall examine the complaint to determine if it is in compliance with the filing requirements of this article.
- B. If the Commission determines that the complaint does *not* comply with the filing requirements of this article, the Commission shall return the complaint to the first complainant named on the complaint with a statement detailing the reason(s) for non-compliance. At the same time, the Commission shall notify the members of the City Council, the City Manager, and the City Attorney that a complaint filed against an unidentified elected official has been returned for non-compliance with this article and the fact that a complaint was filed and returned shall be kept confidential until the Commission submits its annual summary report to the City Manager and City Council. If a complaint is returned by the Commission, the complainants may file another complaint if the new complaint independently meets the filing requirements of this article.
- C. If the Commission determines that the complaint complies with the filing requirements of this article, the Commission shall:
 - 1. Accept the complaint; and
 - 2. Promptly forward the complaint to the elected official who is named in the complaint, together with directions for providing a response 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 Human Resources Director, and the employees in the office of the City Attorney of the privacy requirements of this article.
- D. At its discretion, the Commission may determine whether the subject of the complaint should be investigated by a law enforcement agency.

- E. If the Commission learns that the subject of the complaint is under criminal investigation, the Commission may suspend its review of the complaint pending the resolution of the criminal investigation.
- F. 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 the complaint was forwarded to and received by the elected official.
- G. The Commission shall dismiss an ethics complaint if:
 - 1. The named elected official resigns or is removed from office with the City; or
 - 2. The named elected official is charged with a criminal violation of the Ethics Acts where the facts and allegations presented in the ethics complaint assert substantially similar facts and allegations as those asserted in the criminal charges; or
 - 3. The allegations in the complaint, if assumed to be true, do *not* state a violation of the Ethics Acts. (Ord. 16-__, __ - __ -2016)

1-7E-11: Consideration of Complaint after Acceptance.

- A. 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 non-criminal 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. If the Commission uses a hearing to review the complaint, the Commission shall:
 - 1. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments; and
 - 2. Close the hearing to the public; and
 - 3. Allow the complainants and the named elected official to retain legal representation, at their discretion; and
 - 4. Provide administrative subpoenas pursuant to its subpoena powers, as provided in §§ 1-14C-1, *et seq.* of this Code.
- C. For any hearing the Commission must provide a notice to the first named complainant and the named elected official at least seven (7) calendar days prior to the hearing.

- D. The Commission shall determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a City Attorney ethics advisory opinion. The Commission shall 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.
- E. 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-__ , __ - __ -2016)

1-7E-12: Contempt Powers.

- A. 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. Upon finding a person in contempt, the Commission shall report the person to the Third District Court and request a warrant of attachment or order to show cause, as provided in § 78B-6-313, Utah Code Ann. (Ord. 16-__ , __ - __ -2016)

1-7E-13: Request by Elected Official for Legal Representation.

- A. The named elected official may request that the City provide a legal defense 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; otherwise, the City shall not provide a legal defense.
- B. The City Attorney may arrange for such legal defense, where appropriate. (Ord. 16-__ , __ - __ -2016)

1-7E-14: Determination by Commission.

- A. After review of the complaint, the Commission shall determine whether there is clear and convincing evidence supporting a violation of the Ethics Acts 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. If the Commission determines that no 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 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 named complainant on the complaint.

C. 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 each complainant and the name of the subject elected official; and

b. For each allegation that was proven:

(1) Provide the reference to the Ethics Acts; and

(2) Summarize the evidence supporting a violation by clear and convincing evidence; and

(3) Make factual findings; and

c. Recommend appropriate action to the City Council; and

2. Notify the named elected official and the first complainant on the complaint of the written summary findings and recommendation for 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. If the Commission finds a violation of the Ethics Acts, the Commission may recommend to the City Council any appropriate action or remedy, including but *not* limited to censure, reprimand, additional ethics training, or removal from office. Removal from office may be initiated by "removal by judicial proceedings," as per § 1-7E-5(D) herein. The Commission's recommendation may depend on the severity of the violation, the 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. (Ord. 16-__, __ - __-2016)

1-7E-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-__, __-__-2016)

1-7E-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-__, __-__-2016)

1-7E-17: Annual Commission Report.

A. The Commission shall prepare, on an annual basis, a summary report that contains:

1. A general description of the Commission's activities during the past year; and
2. The number of ethics complaints filed with the Commission; and
3. The number of ethics complaints dismissed; and
4. An executive summary of each complaint where the Commission found a violation of the Ethics Acts.

B. The annual report of the Commission:

1. Shall be filed with the City Council; and
2. Shall be a public record. (Ord. 16-__, __-__-2016)