

Legal Review-Date/Initial: _____/_____
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Adopted: ____-____-2016 Effective: _____

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 an article to the City Code regarding "Ethics for Elected Officials" to encourage and to commit to "the highest standards of ethical conduct" at the "highest level" of City government; namely, the members of the 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: [Reserved for City of West Jordan Ethics Commission].**
- 1-7E-8: [Reserved for Filing of Ethics Complaints with Commission].**
- 1-7E-9: [Reserved for Privacy].**
- 1-7E-10: [Reserved for Initial Review of Complaint].**
- 1-7E-11: [Reserved for Consideration of Complaint after Acceptance].**
- 1-7E-12: [Reserved for Contempt Powers].**
- 1-7E-13: [Reserved for Request by Elected Official for Legal Representation].**
- 1-7E-14: [Reserved for Determination by Commission].**

- 1-7E-15: Action by City Council.**
- 1-7E-16: Knowingly Filing a False Complaint.**

- 1-7E-17: [Reserved for 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, 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 and § 10-3-1311, Utah Code Ann.; otherwise, it means the Political Subdivisions Ethics Review Commission, as per §§ 11-49-101, *et seq.*, Utah Code Ann.

- 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).
- E. "Violation" means 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. (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. Request for Inappropriate Relief from Enforcement Action. The elected officials should 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 Rule D of the Council Rules, Policies, and Procedures; and § 1-6-8, City Code of West Jordan.
- 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. 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 this constitutes a violation and said elected official:
 - 1. May *not* receive any compensation until the time that said elected official attends another regular Council meeting; and
 - 2. May receive 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 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.

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; and

4. 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 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 (which constitutes a violation); 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.

G. Crime of "Official Neglect and Misconduct." According to § 10-3-826, Utah Code Ann., 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 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; and Public Disclosure. 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; 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 §§ 1-11-1 to 1-11-22 inclusive of the City Code of West Jordan):
 - 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 in certain circumstances, 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 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 violation(s) 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”), 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** 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 §§ 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 § 78B-2-310, Utah Code Ann.; and/or
- E. **The Council reserves the option to pursue other remedies**, including but limited to censure (without a recommendation from the Commission), allowed by City ordinances and rules and state statutes. (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 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-__, __-__-2016)

1-7E-7: [Reserved for City of West Jordan Ethics Commission].

1-7E-8: [Reserved for Filing of Ethics Complaints with Commission].

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

1-7E-14: [Reserved for Determination by Commission].

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: [Reserved for Annual Commission Report].

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:

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

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CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

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]