

TITLE 2 ADMINISTRATION OF GOVERNMENT

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Chapter 2.04 General

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2.04.010 Officers - Generally

The municipal government of the city is vested in a mayor and city council, to be composed of five (5) council members to be elected at large.

2.04.020 Legislative and Governing Body

The Mayor and City Council are and shall be the legislative and governing body of the City and as such shall have, exercise and discharge all of the rights, powers, privileges and authority conferred by law upon this city and shall perform all duties required of them by law or ordinance and shall perform such other acts and take such other measures not

inconsistent with law as may be necessary for the efficient government of the City.

2.04.030 Officers - Eligibility

All elective officers shall be chosen by qualified voters of the City. No person shall be eligible for any elective office who is not a qualified voter of the City. Any elective officer who moves their domicile outside the city during their term of office shall forfeit their office.

2.04.040 Oaths and Bonds

All elected or appointed officers, shall, before they enter upon the duties of their respective office, take the constitutional oath of office. The City Treasurer shall post a bond in the minimum amount set by the State Money Management Council. The City will provide an Employee Theft and Faithful Performance of Duty bond for other employees in an amount it determines adequate. The premium charged for any official bond shall be paid by the City.

2.04.050 Compensation of Officers

A. The elected, appointed, and statutory officers shall receive such compensation for their services as the city council may fix, adopting compensation or compensation schedules enacted after public hearing, which hearing may be part of the budget hearing.

B. The council shall comply with Utah Code Annotated §10-3-818 in setting compensation for elected and statutory officers.

2.04.060 Conflict of Interest

No officer or employee of the City shall be directly or indirectly interested in any contract, work, project, business or in the sale of any item involving the City without first disclosing this interest to the city manager. All officers and employees of the city shall comply with and be bound by the "Municipal Officer's and Employee's Ethics Act", (UCA §10-3-1301 et seq.) and the "Utah Public Officer's and Employee's Ethics Act", (UCA §67-16-1 et seq.).

2.04.070 Nepotism

All officers and employees of the city with the responsibility for making appointments or hiring must comply with and be bound by state law prohibiting the employment of relatives found in Utah Code Annotated §52-3-1 et seq.

2.04.080 Delivering Property to Successor in Office

If any person having been an officer, employee, or other official of this city shall not, within five (5) days after notification and request, deliver to his or her successor in office all property, papers, and effects of every description in his or her actual or constructive possession belonging to the city or appertaining to the office or position he or she held, he or she is guilty of a Class B Misdemeanor.

2.04.090 Minutes of Council Meetings

The City Council shall cause minutes of its public meetings to be kept. The Council shall have the draft minutes for approval at a regularly scheduled meeting after the public meeting for which minutes are kept. If the Council does not take action to approve the draft minutes within sixty (60) days after the public meeting, the draft minutes shall be deemed to have been approved by the Council and will stand as approved.

(Ord. No. 14-14, Created 09/02/2014)

Chapter 2.08 City Council

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2.08.030	<u>Telecommunications Meetings</u>
2.08.040	<u>Council – Voting</u>
2.08.050	<u>Council - Special Meetings</u>
2.08.060	<u>Council – Quorum</u>
2.08.070	<u>Council - Rules - Member Expulsion</u>
2.08.080	<u>Members - Appointments to Other Offices</u>
2.08.090	<u>Audit of Accounts – Report</u>
2.08.100	<u>Vacancies</u>
2.08.110	<u>Budgetary Process</u>
2.08.120	<u>Fiscal Year</u>
2.08.130	<u>Liability Claims Approval</u>
2.08.140	<u>Appointment of Judges of Election - Voting Places</u>
2.08.150	<u>Canvass Returns of Election - Issuance of Certificates</u>
2.08.160	<u>Evaluation of Manager</u>

2.08.010 Powers and Duties

The city council shall perform all duties that are prescribed by the statutes of this state or by the city ordinances and shall perform such other acts and take such other measures not inconsistent with law as may be necessary for the efficient government of the city.

2.08.020 Council - Regular Meetings

The City Council shall conduct business at two regular meetings each month, which shall be held on the first and third Tuesdays of the month, at the Spanish Fork City office building, 40 South Main. Meetings shall begin promptly at 6:00 p.m. If the meeting day is on a legal holiday, then the meeting may be held at the city office building at another date and time established by the Council. The Council shall conform to the state open meeting law in rescheduling meetings or calling special meetings.

2.08.030 Telecommunications Meetings**A. Definitions**

As used herein, the following terms shall have the following meanings:

“**Anchor Locations**” means Spanish Fork City offices, or such other place where a public meeting is held, as established by law;

“**City**” means Spanish Fork City;

“**Council**” means the Spanish Fork City Council;

“**Member**” means an individual who serves either on the Council or as staff of City;

“**Real Time**” means instantaneous communications such as speaking face to

face, without undue delays, hearing and/or seeing what is being said or done;

“**Remote Location**” means any place other than the anchor location, where a Member is at who participates in a telecommunications meeting;

“**Telecommunications Meeting**” means a formal meeting of the City where one or more Members participates from a remote location via-telephone, internet, television, or other telecommunication means now known or yet to be developed.

B. Telecommunications Meetings Authorized

1. Members may participate in meetings via telecommunications media.
2. Any form of telecommunication may be used, as long as it allows for real time interaction in the way of discussions, questions and answers, and voting.
3. Members who desire to participate in a meeting of the City via telecommunications should notify the City of their intent in advance of the meeting, as set forth in paragraph E (iii), so that appropriate arrangements can be made to conduct the meeting via telecommunications. The notice may be waived by the City in the event of emergency conditions which preclude the ability to give notice.
4. Any member(s) participating from remote locations shall make contact with the City prior to the start of the meeting to ensure the equipment to be used is in proper working order.

C. Notices

1. Notices of meetings are to be given in the manner and within the time frame set forth by law.
2. Public notices, to the extent applicable, are to be given according to law, listing the anchor location as the site of the meeting.

D. Quorum

1. Members participating via telecommunications are to be considered present for purposes of establishing a quorum, as defined by law.
2. In the event of failure of equipment, or other factor, which causes a lack of communications with a member(s) causing lack of a quorum, no additional business may be conducted until the quorum can be reconstituted. Continuances may be granted as set forth by law. Business already conducted remains valid and binding.

E. Location

1. Whenever a meeting is to be held with a member(s) via telecommunications, the anchor location, identified in all notices, shall be the City offices, 40 South Main Spanish Fork, Utah or such other location as determined by the Council in accordance with law.
2. Public participation is limited to the anchor location.

3. Members who desire to participate in a meeting of the City via telecommunications should notify the City of their intent far enough in advance of the meeting so that appropriate arrangements can be made to conduct the meeting via telecommunications. Notice shall be given to the City Manager's office, which office shall determine what is adequate notice.

F. Method

1. Any telecommunications method now known or hereafter developed may be used to conduct a telecommunications meeting, so long as the criteria set forth herein can be met.
2. All persons at the anchor location shall be required to have real time video and/or audio contact with member(s) participating from remote locations, so as to know the entire discussion and deliberations of the Council.
3. Members participating from remote locations shall have the obligation to use appropriate equipment or take other precautions to eliminate static or other disturbances to the orderly conduct of the meeting.
4. If available, and not cost prohibitive, an audio and video feed is the preferred method of conducting a telecommunications meeting.

G. Costs

1. The City may elect to pay the costs of a telecommunications meeting.
2. If the City is paying the costs, it may make the arrangements and initiate the contact in order to conduct the meeting.

2.08.040 Council - Voting

A roll call vote shall be taken upon the passage of all ordinances and all propositions to create any liability against the city and in all other cases at the request of any member of the City Council, which shall be entered upon the journal of its proceedings. The concurrence of a majority of the members present shall be necessary to the passage of any such ordinances or proposition, provided that at least three votes are required to pass any matter.

2.08.050 Council - Special Meetings

The Mayor or any two (2) members of the Council may call a special meeting of the city council by giving notice of it to each of the members of the Council, served personally or left at their usual place of abode. No vote of the City Council shall be reconsidered or rescinded at a special meeting, unless at such special meeting there is present as large a number of members as were present when the initial vote was taken.

2.08.060 Council - Quorum

Three (3) members of the Council, constitute a quorum to do business but a smaller number may adjourn from time to time and are in power to compel the attendance of an absent member and may, when necessary, direct the chief of police or any police officer of

the city to bring in such member or members under arrest. Should any member of the Council be absent when notified by the chief of police or other proper authority that his or her presence is necessary to form a quorum unless he or she presents an excuse satisfactory to the Council at its next regular meeting, or should any member leave the Council when in session without the consent of the Council, when said leaving would break the quorum, he or she may be fined any sum not exceeding two hundred fifty dollars (\$250.00).

2.08.070 Council - Rules - Member Expulsion

The City Council shall determine its own rules of proceedings, may punish its members for disorderly conduct, and, with the concurrence of two-thirds of the members, may expel a member for cause. Cause shall include, but not necessarily be limited to, conviction of a felony or conviction of any crime involving moral turpitude.

2.08.080 Members - Appointments to Other Offices

No member of the City Council shall hold or be appointed to any office which shall have been created during the term for which he or she was elected.

2.08.090 Audit of Accounts - Report

The City Council shall require an annual audit of the accounts of all officers of the City having the care, management, collection or disbursement of money belonging to the City or appropriated by law or otherwise for the use and benefit of the City. The annual audit shall be performed by or under the direction of a competent public accountant, not an officer of the City, and shall be prepared within one hundred eighty (180) days following the close of the fiscal year. Copies of all audit reports made pursuant to this section shall be filed in the office of the City Finance Director and with the State Auditor's office, and may be used in addition to or in lieu of the annual report of the City Finance Director as may be required by the City Council.

2.08.100 Vacancies

If any vacancy occurs in the office of a City council member, such vacancy shall be filled by appointment by the City Council. The appointment shall be good until the next municipal election. The City will follow the requirements of state law in making any such appointment.

2.08.110 Budgetary Process

The City shall prepare a budget for each fiscal year in conformance the "Utah Municipal Fiscal Procedures Act".

2.08.120 Fiscal Year

The fiscal year shall begin July 1 and end June 30 of the following year.

2.08.130 Liability Claims Approval

All liability claims properly presented to the City shall be referred to Utah Risk Management Mutual Association for their review. Any claims referred back to the city by U.R.M.M.A. shall be reviewed pursuant to the liability policy of the City.

2.08.140 Appointment of Judges of Election - Voting Places

In all municipal elections the City Council shall appoint election poll workers and designate the places of voting. All elections must be conducted according to the general laws of the State, and all notices and lists of names required to be posted by registry agents prior to any general election shall also be posted by the registry agents prior to any municipal election, the necessary changes being made as to time of posting the same.

2.08.150 Canvass Returns of Election - Issuance of Certificates

The City Council, acting as the municipal canvassers, no sooner than seven, nor later than fourteen days following any municipal election, must convene and publicly canvass the result and issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal number of votes for any of the offices voted for, and would be elected except for the tie, the tie shall be decided by lot in the presence of the Mayor and City Recorder upon a day designated by the Mayor.

2.08.160 Evaluation of Manager

The Council and Mayor shall perform an annual performance evaluation of the City Manager.

Chapter 2.12 Mayor**2.12.010 Powers and Duties****2.12.020 Temporary Absence - Appointment of Mayor Pro tempore****2.12.030 No Veto****2.12.040 Vacancy****2.12.010 Powers and Duties**

- A. The Mayor shall preside at all meetings of the City Council, but shall not vote except in case of a tie when he or she shall cast the deciding vote, or when the powers, duties, or functions of the Mayor are being enlarged or restricted.
- B. The Mayor has a vote, with the Council, to appoint or remove a city manager.
- C. The mayor shall have such powers and duties as granted by state law or local ordinance and shall perform all duties prescribed by law, ordinance, or resolution.
- D. The Mayor has the power to appoint and remove the City Recorder and City Treasurer, which appointments or removals must be approved by a majority of the Council.
- E. The Mayor and Council shall perform an annual evaluation of the City Manager. The Mayor shall be responsible to schedule the evaluation with the Council and Manager.
- F. The Mayor shall appoint, with the consent of a majority of the Council, members of the commissions, boards, and committees of the City, unless otherwise established by ordinance.

2.12.020 Temporary Absence - Appointment of Mayor Pro Tempore

In the absence of the Mayor or because of his or her inability or refusal to act, the Council may elect a member from the Council to preside over the meeting as mayor pro tempore, who shall have all of the powers and duties of the Mayor during the Mayors absence or disability. The election of a mayor pro tempore shall be entered in the minutes of the meeting. The Mayor Pro Tempore shall retain his/her vote as a member of the Council.

2.12.030 No Veto

The Mayor shall have no power to veto any act of the City Council unless otherwise specifically authorized by state statute.

2.12.040 **Vacancy**

Whenever a vacancy in the office of mayor occurs the City Council shall elect a mayor who shall serve until the next municipal election and until his or her successor is elected and qualified.

Chapter 2.16 City Manager**2.16.010 Creation of City Manager****2.16.020 Powers and Duties****2.16.010 Creation of Office and Appointment of City Manager**

The City Council hereby creates the office of City Manager pursuant to Utah Code Annotated §10- 3b-303(1) (b) (iii). The Manager is appointed by the Governing Body in accordance with Utah Code Ann. §§10-3b-302 and 303.

2.16.020 Powers and Duties

- A. The City Manager shall exercise said powers and perform said duties as set forth herein or established by ordinance or resolution. The powers and duties of the Manager will be to:
1. Faithfully execute and enforce all applicable laws, ordinances, rules, and regulations of the City, create and administer policies, rules, and regulations unless otherwise reserved to the Council, and see that all franchises, leases, permits, contracts, licenses, and privileges granted by the City are observed, having been delegated all administrative powers belonging to the Mayor and Council;
 2. Function as the chief administrative officer of the City, having authority, supervision and direction over all departments directors and direct the officers and employees of the City through the designated department directors;
 3. Appoint, remove, promote and demote any and all officers and employees of the City, subject to all applicable personnel ordinances, rules, and regulations, except for the City Recorder and City Treasurer. Department directors shall be appointed and removed by the Manager only after consultation with all members of the Governing Body;
 4. Carry out all policies and programs as established by the Mayor and City Council;
 5. Create all necessary departments, divisions, sections, and offices necessary for the government of the City; prepare recommendations for the governing body regarding the addition, deletion, or reduction in municipal services;
 6. Attend all meetings of the City Council and take part in its discussions and deliberations, but without the right to vote;
 7. Prepare or have prepared for the Mayor and City Council the annual budget and be responsible for the administration of the budget upon adoption;
 8. Submit to the Mayor and City Council plans and programs relating to the development and needs of the City, and annual and special reports concerning the financial, administrative and operational activities of the City, together with his or her evaluation and recommendations relating to them;

9. Discharge any other duties specified by ordinance or imposed by the Mayor and City Council.
- B. Nothing in this section shall be construed to delegate to the Manager the legislative and judicial powers of the Mayor, the Mayor's position as chairperson of the governing body, or any *ex officio* position which the Mayor shall hold.

Chapter 2.20 City Recorder

- 2.20.010 Appointment**
- 2.20.020 Supervision**
- 2.20.030 Record Keeping**
- 2.20.040 Countersigning Contract**
- 2.20.050 General Duties**

2.20.010 Appointment

On or before the first Monday in February following a mayoral municipal election there shall be appointed by the Mayor, with the advice and consent of at least three (3) members of the City Council, a City Recorder who shall perform the duties required of him or her by law, the ordinances of the City and the State of Utah, and such other duties as the City Council may require. The City Recorder shall serve until his/her successor is appointed, qualified, and sworn in.

2.20.020 Supervision

The City Recorder shall be under the direction and supervision of the City Manager.

2.20.030 Record Keeping

The City Recorder shall keep a record of the proceedings of the City Council, whose meetings it shall be his or her duty to attend. He or she shall accurately record all ordinances and resolutions passed by the City Council in a book kept for that purpose. He or she shall certify to the publication of all ordinances and retain the affidavits of publication. He or she shall attest all papers signed by the Mayor in his/her official capacity. He or she shall also keep, in a book provided for that purpose, the names of persons elected or appointed to any office, commission, board or committee within the City, together with the dates on which they entered upon the duties of their respective offices or positions and the date of their resignation or removal therefrom.

2.20.040 Countersigning Contract

The City Recorder shall countersign all contracts made on behalf of the City. Every contract made on behalf of the City or to which the City is a party shall be void unless countersigned by the Recorder. He or she shall maintain a record of all contracts, properly indexed, which record shall be open to the inspection of all interested persons.

2.20.050 General Duties

The City Recorder shall perform such other duties as may be required by city ordinance or state law.

Chapter 2.24 City Treasurer**2.24.010 Appointment****2.24.020 Supervision****2.24.030 Duties of Treasurer****2.24.040 Fiscal Procedures****2.24.010 Appointment**

On or before the first Monday in February following a mayoral municipal election there shall be appointed by the Mayor, with the advice and consent of at least three members of the City Council, a City Treasurer who shall perform the duties required of him or her by law, the ordinances of the City and state of Utah, and such other duties as the City Council may, by resolution, require. The Treasurer shall serve until his/her successor is appointed, qualified, and sworn in.

2.24.020 Supervision

The City Treasurer shall be under the direction and supervision of the City Finance Director.

2.24.030 Duties of Treasurer

The City Treasurer shall: 1) be the custodian of all money, bonds or other securities of the City; 2) determine the cash requirements of the City and provide for the investments of all idle cash; 3) receive all public funds and money payable to the City, within three (3) business days after collection, including all taxes, license's, fines, intergovernmental revenue, and keep an accurate detailed account thereof in the manner provided in the Uniform Fiscal Procedures Act for Utah Cities, and as the City Council may, by ordinance or resolution, from time to time direct; 4) collect all special taxes and assessments as provided by law and ordinance.

2.24.040 Fiscal Procedures

The City Treasurer shall act in conformance with and comply with the procedures set forth in the Uniform Fiscal Procedures Act for Utah Cities.

Chapter 2.28
Repealed.

Chief of Police

Chapter 2.32
Repealed.

City Engineer

Chapter 2.40
Repealed

City Finance Director

Chapter 2.44
Repealed

City Attorney

Chapter 2.48 Elections

- 2.48.010 General, Primary, and Special Elections**
- 2.48.020 Elective Offices and Terms**
- 2.48.030 Cancellation of Elections**
- 2.48.040 Candidates**
- 2.48.050 Objections to and Withdrawal of Candidacy**
- 2.48.060 Conduct of Elections**
- 2.48.070 Election Offences**

2.48.010 General, Primary, and Special Elections

General, primary, and special elections shall be held at the times and in the manner identified in Utah Code Ann. §§20A-1-202, 20A-1-203, and 20A-9-404.

2.48.020 Elective Offices and Terms

There shall be elected in the year 2013 a mayor, and two council members for the term of four years and quadrennially thereafter. In the year 2015 there shall be elected three council members for a term of four years and quadrennially thereafter.

The officers so elected shall be required to take the oath of office on the first Monday in January, following the election, at 12:00 noon, or as soon thereafter as practically possible.

2.48.030 Cancellation of Elections

Pursuant to the provisions of Utah Code Ann. §20A-1-206, if the number of candidates for the at large offices, including eligible write-in candidates, does not exceed the number of open at-large offices, and there are no other ballot propositions, the City Recorder may cancel the election and declare the eligible candidates elected to office.

2.48.040 Candidates

Persons become a candidate for elective office by meeting the qualifications and deadlines, and following the procedures found in Utah Code Ann. §20A-9-203.

2.48.050 Objections to and Withdrawal of Candidacy

A. A Declaration of Candidacy filed in conformity with §2.48.040 is valid unless written objection thereto is made within three (3) days after the declaration is filed. If an objection is made, notice of the objection shall be mailed or personally delivered to the affected candidate immediately. All objections shall be decided within forty-eight (48) hours after they are filed with the City Recorder. If the objection is sustained by the City Recorder, it may be cured by an amendment whereby filing a new declaration within three (3) days after the objection is sustained but in no event later than eighteen (18) days before the day of the election. The City Recorder's decision upon objections to form is final. The City Recorder's decision upon substantive matters is reviewable by a District Court if prompt application is made to the Court pursuant to state law.

B. Any person who has filed a declaration of candidacy or who has been otherwise nominated, may at any time up to twenty-three (23) days before the election withdraw the nomination by written affidavit filed with the City Recorder.

2.48.060 Conduct of Elections

The City Recorder shall be the election officer of the City and shall follow the election requirements found in Utah Code Annotated, Title 20A.

2.48.070 Election Offences

Violation by any person of any of the provisions of this chapter, or any person who violates the provisions of Title 20A, Utah Code Ann. shall be punished as set forth by state law.

Chapter 2.52
Repealed

Other Offices

Chapter 2.56 Government Records Access and Management Act

2.56.010	<u>Short Title</u>
2.56.020	<u>Purpose and Intent</u>
2.56.030	<u>Definitions</u>
2.56.040	<u>Right of Public Access</u>
2.56.050	<u>Access to Non-Public Records</u>
2.56.060	<u>Fees</u>
2.56.070	<u>Procedures for Access</u>
2.56.080	<u>Denials</u>
2.56.090	<u>Public Records</u>
2.56.100	<u>Private Records</u>
2.56.110	<u>Controlled Records</u>
2.56.120	<u>Protected Records</u>
2.56.130	<u>Records Classification</u>
2.56.140	<u>Records Retention</u>
2.56.150	<u>Segregation of Records</u>
2.56.160	<u>Appeals</u>
2.56.170	<u>Judicial Review</u>
2.56.180	<u>Confidential Treatment of Records for which No Exemption Applies</u>
2.56.190	<u>Request To Amend a Record</u>
2.56.200	<u>Criminal Penalties</u>

2.56.010 Short Title

The Ordinance is known as the "Spanish Fork City Government Records Access and Management Act".

2.56.020 Purpose and Intent

- A. In enacting this act, the city recognizes two fundamental constitutional rights:
1. the right of privacy in relation to personal data gathered by the City; and
 2. the public's right of access to information concerning the conduct of the public's business.
- B. It is the intent of the City to:
1. establish fair information practices to prevent abuse of personal information by the City while protecting the public's right of easy and reasonable access to unrestricted public records;
 2. provide guidelines of openness to government information and privacy of personal information consistent with nationwide standards.
 3. Establish and maintain an active, continuing program for the economical and efficient management of the city's records as provided in this ordinance.

2.56.030 Definitions

"Audit" means:

1. a systematic examination of financial, management, program, and related records for the purpose of statements, adequacy of internal controls, or compliance with laws and regulations; or
2. a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

"Chronological Logs" means the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

"Classification", "Classify", and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, or protected, or exempt from disclosure under Utah Code Annotated §63G-2-201(3)(b).

"Computer Program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

1. "Computer Program" does not mean
 - a. the original data, including numbers, text, voice, graphics, and images;
 - b. analysis, compilation, and other manipulated forms of the original data produced by use of the program; or
 - c. the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were to be produced manually.

"Controlled Record" means a record containing data on individuals that is controlled as provided by §110.

"Contractor" means

1. any person who contracts with the city to provide goods or services directly to the City; or
2. any private, nonprofit organization that receives funds from the city.
3. "Contractor" does not mean a private provider.

"Gross Compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

"Designation", "Designate" and their derivative forms means indicating, based on the city's familiarity with a record series or based on the city's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record

series would be given if classified.

"Initial Contact Report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

1. the date, time, location, and nature of the complaint, the incident, or offense;
2. names of victims;
3. the nature or general scope of the agency's initial actions taken in response to the incident;
4. the name, address, and other identifying information about any person arrested or charged in connection with the incident; and
5. the identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident.
6. "Initial Contact Reports" do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Utah Code Annotated §63G-2-201(3)(b).

"Individual" means a human being.

"Person" means any individual, nonprofit or profit corporation, partnership, limited liability company, limited liability partnership, sole proprietorship, or other type of business organization.

"Private Record" means a record containing data on individuals that is classified private as provided by §100.

"Private Provider" means any person who contracts with the City to provide services directly to the public.

"Protected Record" means a record that is classified protected as provided by §120.

"Protected Record" means a record that has not been appropriately classified private, controlled, or protected as provided in §§100, 110, and 120 of this ordinance.

"Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recording, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the city;

1. "Record" does not mean:
 - a. temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;
 - b. materials that are legally owned by an individual in his private capacity;
 - c. materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the City;
 - d. proprietary software;
 - e. junk mail or commercial publications received by the City or an official

- or employee of the City;
- f. books and other materials that are catalogued, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;
 - g. daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working; or
 - h. computer programs as defined that are developed or purchased by or for the City for its own use;
 - i. notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, or a member of any other body charged by law with performing a quasi-judicial function.

"Record Series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

"Records Officer" means the City Recorder unless another individual is appointed by the City Manager to work in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

"Summary Data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

"UCA" means Utah Code Annotated.

2.56.040 Right of Public Access

A. Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the payment of costs and fees pursuant to §060 of this ordinance.

B. All records are public unless otherwise expressly provided by this ordinance or State or Federal law or regulation.

C. The following records are not public:

1. records that are appropriately classified private, controlled, or protected as allowed by §§100, 110, and 120 of this ordinance; and
2. records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

D. Only those records specified in §§100, 110, and 120 may be classified private, controlled, or protected.

E. The City may not disclose a record that is private, controlled, or protected to any

person except as provided in Subsection (5) (b) or §050.

1. The City may, at its discretion, disclose records that are private under Subsection 100.2 or protected under §120 to persons other than those specified in §050 if the City Council, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweigh the interest favoring restriction of access.

F. The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation.

1. This chapter applied to records described in Subsection (a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

G. The City shall provide a person with a certificated copy of a record if:

1. the person requesting the record has a right to inspect it;
2. has identified the record with reasonable specificity; and
3. pays the lawful fees.

H. The City is not required to create a record in response to a request.

1. Nothing in this ordinance requires the City to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

I. If a person requests copied of more than fifty (50) pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the City may:

1. provide the requester with the facilities for copying the requested records and require that the requester make the copies him/herself; or
2. allow the requester to provide his/her own copying facilities and personnel to make the copies at the city offices, and waive the fees for copying the records.

J. If the City owns an intellectual property right and offers the intellectual property right for sale or license, the City may control by ordinance or policy the duplication, and distribution of the material based on terms the City considers to be in the public interest.

1. Nothing in this ordinance shall be construed to limit or repair the rights or protections granted to the city under federal copyright or patent law as a result of its ownership of the intellectual property right.

K. The City may not use the physical form, electronic or otherwise, in which a record is

stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this ordinance.

2.56.050 Access to Non-Public Records

- A. Upon request the City shall disclose a private record to:
1. The subject of the record;
 2. the parent or legal guardian of an unemancipated minor who is the subject of the record;
 3. the legal guardian of a legally incapacitated individual who is the subject of the record;
 4. any other individual who:
 - a. has a power of attorney from the subject of the record; or
 - b. submits a notarized release from the subject of the record of his/her legal representative dated no later than 90 ninety (90) days before the date the request is made; or
 5. any person to whom the record must be provided pursuant to court order.
- B. Upon request, the City shall disclose a controlled record to:
1. a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than ninety (90) days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection b; and
 2. any person to whom a record must be disclosed pursuant to court order.
 3. A person who receives a record from the City in accordance with Subsection 050(2) (a).
 4. may not disclose controlled information from that record to any person, including the subject of the record.
- C. If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
- D. Upon request the City shall disclose a protected record to:
1. the person who submitted the information in the record;
 2. any other individual who
 - a. has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - b. submits a notarized release from their legal representatives dated no more than ninety (90) days prior to the date the request is made; or
 3. any person to whom a record must be provided pursuant to a court order.

- E. The City may disclose a record classified private, controlled, or protected to another governmental entity, city, another state, the United States, or a foreign government only as provided by Utah Code Annotated §63G-2-206.
- F. Before releasing a private, controlled, or protected record, the City shall obtain evidence of the requester's identity.
- G. The City shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
 - 1. the record deals with a matter in controversy over which the court has jurisdiction.
 - 2. the court has considered the merits of the request for access to the record; and
 - 3. The court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under UCA Subsections 63G-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;
 - 4. to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
 - 5. where access is restricted by a rule, statute, or regulation referred to in Subsection 2.56.040(3)(b) the court has authority independent of this ordinance to order disclosure.
- H. The City may disclose or authorize disclosure of private or controlled records for research purposes if the City:
 - 1. determines that the research purpose cannot reasonably be accomplished without use of disclosure of the information to the researcher in individually identifiable form;
 - 2. determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;
 - 3. requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
 - 4. prohibits the researcher from disclosing the record in individually identifiable form except as provided in Subsection (b), or from using the record for purposes other than the research approved by the City; and
 - 5. secures from the researcher a written statement of his understanding of and agreement to conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal

prosecution under Utah Code Annotated §63G-2-801.

6. A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.
 7. The City may require indemnification as a condition of permitting research under this subsection.
- I. Under Subsections 2.56.040(5)(b) and 2.56.160(4) the City may disclose records that are private under §100, or protected under §120 to persons other than those specified in this section.
 1. Under §160 the City Council may require the disclosure of records that are private under §100, controlled under §110, or protected under §120 to persons other than those specified in this section.
 2. Under Utah Code Annotated §63G-2-404(8) the court may require the disclosure of records that are private under §100, controlled under §110, or protected under §130 to persons other than those specified in this section.

2.56.060 Fees

- A. The City may charge a reasonable fee to cover the City's cost of duplicating a record or compiling a record in a form other than that maintained by the City. The fees may be set by Resolution. The initial fee, until changed by Resolution, is as set forth in Exhibit "A" hereto.
 1. The City may fulfill a record request without charge when it determines that
 - a. releasing the record primarily benefits the public rather than a person;
 - b. the individual requesting the record is the subject of the record; and
 - c. the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.
 2. The City may not charge a fee for
 - a. reviewing a record to determine whether it is subject to disclosure; or
 - b. inspecting a record.

2.56.070 Procedures for Access

- A. A person making a request for a record shall furnish the City with a written request containing his/her name, mailing address, daytime telephone number if available, and a description of the records requested that identifies the record with reasonable specificity.
- B. A soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the City shall respond to the request by:

1. approving the request and providing the record;
 2. denying the request;
 3. notifying the requester that it does not maintain the record and providing, if known, the name and address of where the record can be found; or
 4. notifying the requester that because of one of the extraordinary circumstances listed in Subsection 4, it, cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the earliest time and date when the records will be available.
- C. The following circumstances constitute "extraordinary circumstances" that allow the City to delay approval or denial by an additional period of time as specified in Subsection 4 if the City determines that due to the extraordinary circumstances it cannot respond within the time limits provided in subsection 2:
1. another governmental entity is using the record, in which case the City shall promptly request that the governmental entity currently in possession to return the record;
 2. another governmental entity is using the record as part of an audit and returning the record before the completion of the audit would impair the conduct of the audit;
 3. the request is for a voluminous quantity of records;
 4. the City is currently processing a large number of record requests;
 5. the request requires the City to review a large number of records to locate the records requested;
 6. the decision to release a record involves legal issues that require the City to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;
 7. segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.
- D. If one of the extraordinary circumstances listed in Subsection 4, precludes approval or denial within the time specified in Subsection 2, the following time limits apply to the extraordinary circumstances:
1. for claims under Subsection 3(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work.
 2. for claims under Subsection 3(b), the originating city shall notify the requester when the record is available for inspection and copying;
 3. for claims under Subsections 3(c), (d), and (e), the City shall:
 - a. disclose the records that it has located which the requester is entitled to inspect.
 - b. provide the requester with an estimate of the amount of time it will

- take to finish the work required to respond to the request; and
 - c. complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible;
 - 4. for delays under Subsection 3(f), the City shall either approve or deny the request within five business days after the response time specified for the original request has expired;
 - 5. for delays under Subsection 3(g), the City shall fulfill the request within 15 business days from the date of the original request; or
 - 6. for delays under Subsection 3(h), the City shall complete its programming and disclose the requested records as soon as reasonably possible.
- E. If the City fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

2.56.080 Denials

- A. If the City denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- B. The notice of denial shall contain the following information:
- 1. a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
 - 2. citations to the provisions of this ordinance, another state statute, federal statute, court rule or order or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled or protected information;
 - 3. a statement that the requester has the right to appeal the denial to the City Manager; and
 - 4. a brief summary of the appeals process, and the time limits for filing an appeal.
- C. Unless otherwise required by a court or agency of competent jurisdiction, the City may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

2.56.090 Public Records

- A. The following records are public.
1. laws and ordinances;
 2. names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and relevant education, previous employment, and similar job qualification of the City's former and present employees and officers excluding undercover law enforcement personnel or investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety.
 3. final opinions, including concurring and dissenting opinions, and orders that are made by the City in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they obtain information that is private, protected, or controlled;
 4. final interpretation of statutes or rules by the City unless classified as protected as provided in §§120 (15), (16) and (17).
 5. information contained in or compiled from a transcript, minutes, or report of the open portion of a meeting of the City.
 6. judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this ordinance;
 7. data on individuals that would otherwise be private under this ordinance if the individuals that would otherwise be private under this ordinance if the individual who is the subject of the record has given the City written permission to make the records available to the public;
 8. documentation of the compensation that the City pays to a contractor or private provider; and
 9. summary data.
- B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 3(b) or §100, 110 or 120:
1. administrative staff manuals, instructions to staff, and statements of policy;
 2. records documenting a contractor's or private provider's compliance with the terms of a contract with the City;
 3. records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the City;
 4. contracts entered into by the City;
 5. any account, voucher, or contract that deals with the receipt or expenditure of funds by the City;
 6. records relating to governmental assistance or incentives publicly disclosed, contracted for, or given by the City, encouraging a person to expand or

- relocate a business in Utah, except as provided in §63G-2-304(34).
7. chronological logs and initial contact reports;
 8. correspondence by and with the City in which the City determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
 9. empirical data contained in drafts if:
 - a. the empirical data is not reasonably available to the requester elsewhere in similar form; and
 - b. the City is given a reasonable opportunity to correct any errors or make non-substantive changes before release;
 10. drafts that are circulated to anyone other than the City, state or to anyone other than a federal agency if the City, state or federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and
 11. drafts that have never been finalized but were relied upon by the City in carrying out action or policy;
 12. original data in a computer program if the City chooses not to disclose the program;
 13. arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 14. search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
 15. records that would disclose information relating to formal charges or disciplinary actions against a past or present city employee if:
 - a. the disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - b. the formal charges were sustained;
 16. final audit reports;
 17. occupational and professional licenses;
 18. business licenses; and
 19. a notice of violation, a notice of agency action under Utah Code Annotated § 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the city, but not including records that initiate employee discipline.

C. The list of public records in this section is not exhaustive and should not be used to limit access to records.

2.56.100 Private Records

A. The following records are private:

1. records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

2. records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
 3. records of publicly funded libraries that, when examined alone or with other records, identify a patron;
 4. records concerning a current or former employee of , or applicant for employment with the city, that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.
- B. The following records are private if properly classified by the City:
1. records concerning a current or former employee of, or applicant for employment with the City, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under §2.56.090(b),(2)(0) or private under §2.56.100(1)(d).
 2. records describing an individual's finances, except that the following are public:
 - a. records described in §2.56.090(1).
 - b. information provided to the city for the purpose of complying with a financial assurance requirement; or
 - c. records that must be disclosed in accordance with another statute;
- D. records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
- E. other records containing data on individuals, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
- F. records provided by the United States or by a governmental entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

2.56.110 Controlled Records

- A. A record is controlled if:
1. the record contains medical, psychiatric, or psychological data about an individual;
 2. the City reasonably believes that:
 - a. releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - b. releasing the information would constitute a violation of normal professional practice and medical ethics; and

- c. the City has properly classified the record.

2.56.120 Protected Records

A. The following records are protected:

1. trade secrets as defined in Utah Code Annotated §13-24-2, if the person submitting the trade secret has provided the City with the information specified in §63G-2-308.
2. commercial information or nonindividual financial information obtained from a person if:
 - a. disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair that ability of the City to obtain necessary information in the future;
 - b. the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
 - c. the person submitting the information has provided the City with the information specified in Utah Code Annotated §63G-2-308.
3. commercial or financial information acquired or prepared by the City to the extent that a disclosure would lead to financial speculations in
 - a. currencies, securities, or commodities that will interfere with a planned transaction by the City or cause substantial financial injury to the City or cause substantial financial injury to the City or state economy;
4. test questions and answers to be used in future license, certifications, registration, employment, or academic examinations;
5. records, the disclosure of which would impair governmental procurement or give an unfair advantage to any person proposing to enter into a contract or agreement with the City, except that this subsection does not restrict the right of a person to see bids submitted to or by the City after bidding has closed;
6. records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless;
 - a. public interest in obtaining access to the information outweighs the city's need to acquire the property on the best terms possible;
 - b. the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
 - c. on the case of records that would identify property, potential sellers of the property described have already learned of the city's plans to acquire the property;
 - d. on the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the City's estimated value of the property;
7. records prepared in contemplation of sale, exchange, lease, rental, or other

- compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:
- a. the public interest in access outweighs the interests in restricting access, including the city's interest in maximizing the financial benefit of the transaction; or
 - b. when prepared by or on behalf of the City, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the City.
8. records created or maintained for civil, criminal, or administrative enforcement purposes, or for discipline, licensing, certification, or registration purposes if release of the records:
 - a. reasonably could be expected to interfere with investigations undertaken or for enforcement, discipline, licensing, certification, or registration purposes;
 - b. reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
 - c. would create a danger of depriving a person of a right to a fair trial or impartial hearing;
 - d. reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or
 - e. reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;
 9. records, the disclosure of which would jeopardize the life or safety of an individual;
 10. records, the disclosure of which would jeopardize the security of governmental property, governmental record keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
 11. records that, if disclosed, would jeopardize the security or safety of a correctional facility or records relating to incarceration, treatment, probation or parole;
 12. records that, if disclosed, would reveal recommendations made to the Board of Pardons.
 13. records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
 14. records prepared by or on behalf of the City solely in anticipation of litigation that are not available under the rules of discovery;
 15. records disclosing an attorney's work product, including the mental

- impressions or legal theories of an attorney or other representative of the City concerning litigation;
16. records of communications between the city and an attorney representing, retained or employed by the city if the communications would be privileged as provided in UCA §78B-1-137(2).
 17. drafts, unless otherwise classified as public;
 18. records concerning the City's strategy about collective bargaining or pending litigation;
 19. records of investigations of loss occurrences and analyses of loss occurrences.
 20. records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute
 - a. a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest.
 21. records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;
 22. records provided by the United States or by a government entity outside the state that are given to the City with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;
 23. transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in UCA §52-4-206.
 24. records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;
 25. memoranda prepared by staff and used in the decision-making process by an administrative law judge, or a member of any other body charged by law with performing quasi-judicial function;
 26. records that would reveal negotiations regarding assistance or incentives offered by or requested from the city for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the City at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract; and
 27. materials to which access must be limited for purposes of securing or maintaining the city's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets.

2.56.130 Records Classification

A. The City shall:

1. evaluate all record series that it uses or creates;

2. designate those record series as provided by this Ordinance
 3. report the designation of its record services to the state archives.
- B. The City may classify a particular record, record or series or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.
- C. The City may redesignate a record series or reclassify a record or record series, or information within a record at any time.

2.56.140 Records Retention

The City shall use the retention schedule as established by the State Archivist.

2.56.150 Segregation of Records

Notwithstanding any other provision in this Ordinance, if the City receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this Ordinance, and, if the information the requester is entitled to inspect is intelligible, the City:

1. shall allow access to information in the record that the requester is entitled to inspect under this Ordinance; and
2. may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial.

2.56.160 Appeals

- A. Any person aggrieved by the City's access determination under this ordinance, may appeal the determination as set forth herein.

If the City claims extraordinary circumstances and specifies the date when the records will be available and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the City's claim of extraordinary circumstances or date for compliance within thirty (30) days after notification of a claim of extraordinary circumstances by the City, despite the lack of "determination" or its equivalent.

- B. If the appeal involves a record that is the subject of a business confidentiality claim under UCA §63G-2-308, the City recorder shall:
1. send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible;
 2. send notice of the business confidentiality claim and the schedule for the city recorder's determination to the requester within three business days after receiving notice of the requester's appeal.

The claimant shall have seven (7) business days after notice is sent by the City

Recorder to submit further support for the claim of business confidentiality.

- C. The City Manager shall make a determination on any appeal within the following period of time:
1. within five (5) business days after the City Manager's receipt of the notice of appeal; or
 2. within twelve (12) business days after the City sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

If the City Manager fails to make determination within the time specified in Subsection (a), the failure shall be considered the equivalent of an order denying the appeal.

The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

- D. The City Manager may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under §100.2 or protected under §120 if the interests favoring access outweigh the interest favoring restriction of access.
- E. The City shall send written notice of the determination of the City, and to all participants. If the City Manger affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to the City Council, and the time limits for filing an appeal.
- F. The duties of the City Manager under this section may be delegated.
- G. The notice of appeal to the City Council must be filed with the City Recorder no later than 30 days after the City Manager has denied the appeal or fails to make a determination within the time specified in Subsection 160(3)(a).
- H. The notice of appeal shall contain the following information:
1. the petitioner's name, mailing address, and daytime telephone number: and
 2. the relief sought.
- I. The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.
- J. No later than three days after receiving a notice of appeal, the recorder shall:
1. schedule a hearing for the city council to discuss the appeal which shall be held no sooner than 15 days and no later than 30 days from the date of the filing of the appeal;
 2. At the hearing, the City Council shall allow the parties to testify, present

evidence, and comment on the issues. The City Council may allow other interested persons to comment on the issues.

3. No later than three business days after the hearing, the City Council shall issue a signed order either granting the petition in whole or in part or upholding the determination of the City Manager in whole or in part.
 4. The order of the City shall include:
 - a. a statement of reasons for the decision, including citations to this Ordinance or federal regulation that governs disclosure of the record provided that the citations do not disclose private, controlled, or protected information;
 - b. a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information;
 - c. a statement that any party to the appeal may appeal the City's decision to the district court of Utah County; and
 - d. a brief summary of the appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.
- K. A person aggrieved by the City's classification or designation determination under this chapter, may appeal that determination using the procedures provided in this section.

2.56.170 Judicial Review

- A. Any party to proceeding before the City Council may petition for judicial review by the district court of Utah County of the City Council's order. The petition shall be filed no later than 30 days after the date of the City Council's order.

2.56.180 Confidential Treatment of Records for which No Exemption Applies

- A. A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:
 1. there are compelling interests favoring restriction of access to the record; and
 2. the interests favoring restriction of access outweigh the interests favoring access.
- B. This section does not apply to records that are specifically required to be public under §2.56.090 of this Ordinance or UCA §63G-2-301 of the Utah Code Ann., except as provided in Subsection 3.
- C. Access to drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interest that relate to the underlying information, and not to the deliberative nature of the record.

Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of

access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

2.56.190 Request To Amend a Record

- A. Subject to Subsection 7, an individual may contest the accuracy or completeness of any public, private, or protected record concerning him by requesting the city to amend the record. However, this section does not affect the right of access to private or protected records.

The request shall contain the following information:

1. The requester's name, mailing address, and daytime telephone number; and
 2. a brief statement explaining why the City should amend the record.
- B. The City shall issue an order either approving or denying the request to amend no later than thirty (30) days after receipt of the request.
- C. If the City approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A City may not disclose the record until it has amended it.
- D. If the City denies the request it shall:
1. inform the requestor in writing; and
 2. provide a brief statement giving its reasons for denying the request.
- E. If the City denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
- The City shall:
1. file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the recorder make the statement accessible if the record is no in a form such that the statement can accompany the record; and
 2. disclose the requester's statement along with the information in the record whenever the city discloses the disputed information.
- F. The requester may appeal the denial of the request to amend a record pursuant to §2.56.160.
- G. This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the city determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

2.56.200 Criminal Penalties

- A. A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor.
- It is a defense to prosecution under Subsection (1)(a) that the actor released private, controlled or protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.
- It is a defense to prosecution under Subsection (1) (a) that the record could have lawfully been released to the recipient if it had been properly classified.
- B. A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.
- No person shall be guilty under Subsection (2) (a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.
- C. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a city, or a court, is guilty of a class B misdemeanor.

SCHEDULE A - FEES

Copies per page	\$ 0.10
Certified copies per page	\$ 2.00
Compilation time shall be the wage, including benefits, of the lowest paid employee qualified to provide the requested records.	

SCHEDULE B - RETENTION SCHEDULE

The retention schedule of this municipality is the schedule promulgated by the Utah Division of Archives and Record Service for local governments.

(Res. No. 15-17, Enacted 11/03/2015)

Chapter 2.60 Constitutional Taking Issues**2.60.010 Policy Considerations****2.60.020 Definitions****2.60.030 Guidelines Advisory****2.60.040 Review of Decision****2.60.050 Reviewing Guidelines****2.60.060 Results of Review****2.60.010 Policy Considerations**

There is an underlying policy in Spanish Fork City strongly favoring the careful consideration of matters involving constitutional taking claims, in fairness to the owner of private property bringing the claim and in view of the uncertainty and expense involved in defending law suits alleging such issues. At the same time, the legitimate role of government in lawfully regulating real property must be preserved and the public's right to require the dedication or exaction of property consistent with the Constitution. Consistent with this policy, it is desired that a procedure be established for the review of actions that may involve the issue of a constitutional taking. These provisions are to assist governments in considering decisions that may involve constitutional takings. It is intended that a procedure for such a review be provided, as well as guidelines for such considerations. This ordinance is further intended and shall be construed to objectively and fairly review claims by citizens that a specific government action should require payment of just compensation, yet preserve the ability of the City to lawfully regulate real property and fulfill its other duties and functions.

2.60.020 Definitions

- A. "**Constitutional Taking**" means actions by the City involving the physical taking or exaction of private real property that might require compensation to private real property owners because of:
1. The Fifth or Fourteenth Amendment to the Constitution of the United States;
 2. Article I, Section 22, of the Utah Constitution;
 3. Any court ruling governing the physical taking or exaction of private real property by a government entity;
- B. Actions by the City involving the physical taking or exaction of private real property is not a Constitutional Taking if the physical taking or exaction:
1. Bears an essential nexus to legitimate governmental interests; and
 2. Is roughly proportionate and reasonably related, on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest.

2.60.030 Guidelines Advisory

The guidelines adopted and decisions rendered pursuant to the provisions of this section are advisory, and shall not be construed to expand or limit the scope of the City's liability for a constitutional taking. The reviewing body or person shall not be required to make any determination under this ordinance except pursuant to Section 2.60.040.

2.60.040 Review of Decision

Any owner of private real property who claims there has been a constitutional taking of their private real property shall request a review of the final decision of any officer, employee, board, commission, or council. The following are specific procedures established for such a review:

- A. The person requesting a review must have obtained a final and authoritative determination, internally, within the City, relative to the decision from which they are requesting review.
- B. Within thirty (30) days from the date of the final decision that gives rise to the concern that a constitutional taking has occurred, the person requesting the review shall file in writing, in the office of the City Manager, a request for review of that decision.
- C. The City Council, or an individual or body designated by the City Council, shall immediately set a time to review the decision that gave rise to the Constitutional takings claim.
- D. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:
 1. The name of the applicant requesting review;
 2. The name and business address of the current owner of the property, form of ownership, whether sole proprietorship, corporation, not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, the name and address of all principal shareholders or partners;
 3. A detailed description of the grounds for the claim that there has been a constitutional taking;
 4. A detailed description of the property taken;
 5. Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of that same property before and after the alleged constitutional taking, the name of the party from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired;
 6. The nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest, etc.;

7. The terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three years prior to the date of application;
 8. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application;
 9. The assessed value of and ad valorem taxes on the property for the previous three years;
 10. All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, the right of purchasers to assume the loan;
 11. All listings of the property for sale or rent, the price asked therefore, any offers received, all within the previous three years;
 12. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning the feasibility of development or utilization of the property;
 13. For income producing property, itemized income and expense statements from the property for the previous three years;
 14. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property;
 15. Such other information as may be requested by the City Council which is reasonably necessary, in its opinion, to arrive at a conclusion concerning whether there has been a constitutional taking.
- E. An application shall not be deemed to be "complete" or "submitted" until the reviewing body or official certifies to the applicant, that all the materials and information required have been received by the City. The reviewing body or official shall promptly notify the applicant of any incomplete application.
- F. The City Council, or individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, the City, or any other interested party.
- G. A final decision on the review shall be rendered within twenty-one (21) days from the date the complete application for review has been received by the City Manager. The decision of the City Council, or its designee, regarding the results of the review shall be given in writing to the applicant and the officer, employee, board, commission or council that rendered the final decision that gave rise to the constitutional takings claim.
- H. If the City Council fails to hear and decide the review within twenty-one (21) days, the decision appealed from shall be presumed to be approved.

2.60.050 Reviewing Guidelines

The City Council shall review the facts and information presented by the applicant to determine whether or not the action by the City constitutes a constitutional taking as defined in this chapter. In doing so, they shall consider:

- A. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest;
- B. Whether a legitimate governmental interest exists for the action taken by the City;
- C. Is the property and exaction taken, roughly proportionate and reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

2.60.060 Results of Review

After completing the review, the reviewing body or person shall make a determination regarding the above issues and where determined to be necessary and appropriate, shall make a recommendation to the City Council, which recommendation is not binding on the Council, nor admissible in court, as to whether or not there has been a constitutional taking.

Chapter 2.64 Campaign Finance Disclosure

2.64.010	<u>General</u>
2.64.020	<u>Definitions</u>
2.64.030	<u>Filing of Disclosure Reports</u>
2.64.040	<u>Time of Filing</u>
2.64.050	<u>Contents of Statements</u>
2.64.060	<u>Public Information</u>
2.64.070	<u>Penalty for Noncompliance</u>

2.64.010 General

All candidates for elective municipal office shall comply with the campaign finance disclosure requirements set forth in this chapter.

2.64.020 Definitions

The following definitions shall be applicable to this Chapter:

- A. **"Candidate"** shall mean any person who files a declaration of candidacy for an elective office of the City; or is nominated by petition; or received contributions or made expenditures or consents to another person receiving contributions or making expenditures with a view to bringing about such person's nomination or election to such office; or causes on his/her behalf, any written material or advertisement to be printed published, broadcast, distributed or disseminated which indicates an intention to seek such office.

- B. **"Contribution"** shall mean monetary and non-monetary contributions such as in-kind contributions and contributions of tangible things but shall not include personal services provided without compensation by individuals volunteering their time on behalf of a candidate.

- C. **"Expenditure"** shall mean a purchase, payment distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any candidate.

2.64.030 Filing of Disclosure Reports

Each candidate for elective office shall file with the City Recorder dated and signed financial reports which comply with this chapter. Forms shall be made available by the City. Other forms in substantially the same format are also acceptable.

2.64.040 Time of Filing

The reports required by this Chapter shall be filed at least 7 days before the municipal general election and no later than 30 days after the municipal general election. A candidate eliminated in the primary election shall file the required report within 30 days after the date of the primary election.

2.64.050 Contents of Statements

- A. The statements filed seven (7) days before the election shall include:
1. a list of each contribution of more than \$50.00 received by the candidate, and the name of the donor;
 2. an aggregate total of all contributions of \$50.00 or less received by the candidate; and
 3. a list of each expenditure for political purposes made during the campaign period as of ten (10) days before the date of the election, and the recipient of each expense.
- B. The statement filed thirty (30) days after the elections shall include:
1. A list of each contribution of more than \$50.00 received after the cutoff date for the statement filed seven (7) days before the election, and the name of the donor;
 2. A total of all contributions of \$50.00 or less received by the candidate after the cutoff date for the statement filed seven (7) days before the election;
 3. A list of all expenditures for political purposes made by the candidate after the cutoff date for the statement filed seven (7) days before the election, and the recipient of each expense.
- C. All contributions and expenditures related to the candidate's candidacy should be accounted for between the pre-election and post-election statements.

2.64.060 Public Information

The statements required by this chapter shall be public documents and shall be available for public inspection and copying during regular business hours. Appropriate costs may be assessed pursuant to the provisions of the Government Records Access and Management Act.

2.64.070 Penalty for Noncompliance

Any candidate who fails to comply with the provisions this chapter is guilty of an infraction.

(Ord. No. 07-12, Enacted 05/15/2012)

Chapter 68 - MUNICIPAL ETHICS COMMISSION

2.68.010	<u>Purpose</u>
2.68.020	<u>Definitions</u>
2.68.030	<u>Municipal Officers' and Employees' Ethics Act</u>
2.68.040	<u>City Attorney Advisory Opinions</u>
2.68.050	<u>Municipal Ethics Commission</u>
2.68.060	<u>Filing of Ethics Complaints with Commission</u>
2.68.070	<u>Privacy</u>
2.68.080	<u>Initial Review</u>
2.68.090	<u>Consideration of Complaint after Acceptance</u>
2.68.100	<u>Contempt Powers</u>
2.68.110	<u>Request by Elected or Appointed Official for Legal Representation</u>
2.68.120	<u>Determination by Commission</u>
2.68.130	<u>Action by City Council</u>
2.68.140	<u>Knowingly Filing of False Complaint</u>
2.68.150	<u>Annual Commission Report</u>
2.68.010	<u>Purpose</u>

The purpose of this Chapter is to create an independent means of investigating and making recommendations concerning alleged violations of the Municipal Officers' and Employees' Ethics Act. It also seeks to increase public confidence by assuring that governmental actions are taken ethically.

2.68.020 Definitions

As used in this Chapter, the following terms shall have these meanings:

- 1) "Commission" means the Municipal Ethics Commission formed pursuant to Section 2.68.050.
- 2) "Elected officials" includes only the Mayor and members of the City Council.
- 3) "Appointed official" means the City Manager.

2.68.030 Municipal Officers' and Employees' Ethics Act

Elected and appointed officials of the City are required to comply with the Municipal Officers' and Employees' Ethics Act (Utah Code §10-3-1301 *et seq.* as amended), which is incorporated herein by reference.

2.68.040 City Attorney Advisory Opinions

1. Elected and appointed officials of the City may request of the City Attorney an advisory opinion concerning the application of the Municipal Officers' and Employees' Ethics Act. The City Attorney shall accept and process these advisory opinion requests. The City Attorney shall render a written opinion to the Mayor, City Council, and to the City Manager within 45 days of receiving such a request. 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.

2. 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 a complainant against the elected or appointed 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.

2.68.050 Municipal Ethics Commission

1. The City, along with other Utah County cities, establishes a Municipal Ethics Commission pursuant to Utah Code §10-3-1311 and Utah Code §11-13-101 *et seq.* The Commission shall be a three (3) person commission as provided for in an Interlocal Agreement between the participating municipalities. Upon receiving a complaint the membership of the Commission shall be determined by random selection from the pool of eligible participating municipalities.
2. The City Attorney's Office shall provide the Commission such administrative or other support as requested by the Commission.

2.68.060 Filing of Ethics Complaints with Commission

1. A complaint may only be filed with the Commission under the following conditions:
 - a. The complaint must be against an elected or appointed official of the City who is currently serving in their elected or appointed position. The complaint must allege a violation of the Municipal Officers' and Employees' Ethics Act;
 - b. The complaint must be filed with the City Recorder;
 - c. The complaint must be made by either:
 - i. two or more registered voters who reside within the boundaries of the City; or
 - ii. two or more registered voters who pay a fee or tax to the City; or
 - iii. one or more registered voters who reside within the boundaries of the City plus one or more registered voters who pay a fee or tax to the City;
 - d. The complaint must be based upon direct evidence or sworn statements by one or more people with actual knowledge of the facts and circumstances supporting the alleged ethics violation;
 - e. The complaint may not be filed during the sixty (60) calendar days immediately preceding a municipal primary election, if the accused elected or appointed official is a candidate in the primary election;
 - f. The complaint may not be filed during the sixty (60) calendar days immediately preceding a municipal general election in which the accused

- elected or appointed official is a candidate, unless the accused elected or appointed official is unopposed in the election;
- g. The complaint must be in writing and contain:
 - i. the name and position of the elected or appointed official alleged to be in violation;
 - ii. the name, address, and telephone number of each individual who is filing the complaint;
 - iii. a description of each alleged violation of the Municipal Officers' and Employees' Ethics Act, including a reference to the section of the Act alleged to have been violated;
 - iv. 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;
 - v. 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;
 - vi. a statement that each complainant:
 1. has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
 2. believes that the complaint is submitted in good faith and not for any improper purpose such as harassing the named elected or appointed official, causing unwarranted harm to the accused elected or appointed official's reputation, or causing unnecessary expenditure of public funds; and
 3. believes the allegations contained in the complaint to be true and accurate.
 - vii. a statement with the signature of each complainant.
 2. Upon receipt of any ethics complaint, the City Recorder shall select the commission using the procedures set forth in the Interlocal Agreement, inform the city attorneys from the selected cities of their selection, then immediately refer the complaint to the commission. The City Recorder shall not notify or inform any other person of the filing of the complaint.
 3. A person filing a complaint under this Chapter is not entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings.
 4. An administrative fee of \$50 must be filed with the complaint. The \$50 filing fee must be paid to the city where the complaint is filed. After the selected commission elects a chairperson, the \$50 administrative fee will be paid to the chairperson's city to defray the costs of administering the complaint.

2.68.070 **Privacy**

1. Once an ethics complaint has been filed with the City Recorder, neither the City Recorder, the Commission, nor any City 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 Chapter.
2. Nothing in the restrictions above may be construed to hinder or prevent a person or the City Attorney from disclosing the facts or allegations about potential criminal violations to a law enforcement authority.
3. Nothing in this Section may be construed to hinder or prevent the named elected or appointed official from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the Commission.
4. Nothing in this Section may be construed to hinder or prevent any person from disclosing public records.
5. If any employee or official of the City publicly discloses any private information, appropriate disciplinary action may be taken against such individual.
6. If a complainant publicly discloses any private records or information obtained from private records, the Commission may summarily dismiss the complaint without prejudice.
7. All records, that are not public 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 to the City Council or any document that is classified as public in accordance with Utah Code §63G-2-301.

2.68.080 **Initial Review**

1. Within twenty (20) business 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 Chapter.
2. If the Commission determines that the complaint does not comply with the filing requirements of this Chapter, 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 City Manager, Mayor, City Council, and the City Attorney that a complaint filed against an unidentified elected or appointed official has been returned for non-compliance with this Chapter and the fact that a complaint was filed and returned shall be kept confidential as to any others. 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 Chapter.
3. If the Commission determines that the complaint complies with the filing requirements of this Chapter, the Commission shall:
 - a. Accept the complaint;

- b. Promptly forward the complaint to the elected or appointed official who is named in the complaint, together with directions for providing a response to the Commission;
 - c. If appropriate, request assistance from the Office of the City Attorney; and
 - d. Notify the complainants, the named elected or appointed official, the City Recorder, and the employees in the Office of the City Attorney of the privacy requirements of this Article.
4. At its discretion, the Commission may determine whether the subject of the complaint should be investigated by a law enforcement agency.
5. 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.
6. The named elected or appointed 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 ten (10) business days from the date the complaint was forwarded to the elected or appointed official.
7. The Commission shall dismiss an ethics complaint if:
 - a. The named elected or appointed official resigns or is removed from office;
 - b. The named elected or appointed official is charged with a criminal violation of the Municipal Officers' and Employees' Ethics Act where the facts and allegations presented in the ethics complaint assert substantially similar facts and allegations as those asserted in the criminal charges; or
 - c. The allegations in the complaint, if assumed to be true, do not state a violation of the Municipal Officer's and Employees' Ethics Act.

2.68.090 Consideration of Complaint after Acceptance

1. After acceptance of a complaint, the Commission has the discretion to:
 - a. Conduct a confidential, independent administrative investigation of the complaint;
 - b. Refer the matter to an independent non-criminal investigator for fact finding and investigation and consider the confidential report of the investigator;
 - c. Conduct a hearing in accordance with Subsection (2) of this Section; or
 - d. Any combination of the above.
2. If the Commission uses a hearing to review the complaint, the Commission shall:
 - a. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments;
 - b. Close the hearing to the public;
 - c. Allow the complainants and the named elected or appointed official to retain legal representation, at their discretion; and
 - d. Provide administrative subpoenas pursuant to its subpoena powers.

3. For any hearing the Commission must provide a notice to the first named complainant and the named elected or appointed official at least five (5) business days prior to the hearing.
4. 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 or appointed official to seek legal direction regarding the subject matter of the complaint and any good faith efforts by the named elected or appointed official in response to legal advice received.
5. The Commission shall ensure that a record of any Commission meeting or hearing is made, which shall include:
 - a. Official summaries or minutes taken during the meeting or hearing;
 - b. Copies of all documents or other items admitted into evidence or considered by the Commission;
 - c. Copies of a document or written order or ruling issued by the Commission;
 - d. Any other information the Commission deems relevant to the findings and recommendation; and
 - e. The Commission has the discretion to make an Audio recording. If an audio recording is made, it shall also be kept as part of the record.
 - f. The record shall be kept for the length of time required by the retention schedule prepared by the State Archivist.

2.68.100 Contempt powers

1. The Commission may hold a person in contempt if the person:
 - a. Refuses to answer a question, without legal justification, after being directed by the Commission to answer; or
 - b. Fails to comply with a subpoena issued by the Commission.
2. Upon finding a person in contempt, the Commission shall report the person to the Fourth District Court and request a warrant of attachment or order to show cause, as provided in Utah Code §78B-6-313.

2.68.110 Request by Elected or Appointed Official for Legal Representation

1. The named elected or appointed official may request that the City provide legal counsel to defend the official 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.
2. The City is obligated to provide legal counsel, upon request, if the Council finds that the allegations in the complaint arise from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority. If no request for legal counsel is made prior to the filing of an answer to the complaint, the City has no obligation to provide legal counsel, but has the discretion to provide part or all of the cost of legal counsel despite the late request.

2.68.120 Determination by Commission

1. After review of the complaint, the Commission shall determine whether there is clear and convincing evidence supporting a violation of the Municipal Officers' and Employees' Act by the named elected or appointed official. If there are multiple alleged violations, the Commission shall separately determine whether clear and convincing evidence supports each alleged violation. The determination shall be by majority vote of the Commission.
2. If the Commission determines that no allegations in the complaint were proved, the Commission shall:
 - a. Issue an order that the complaint is dismissed because no allegations in the complaint were found to have been proven;
 - b. Provide notice of the determination of no violation by an unidentified elected or appointed official at a regular public meeting of the City Council; and
 - c. Provide written notice of the determination to the named elected or appointed official and the first named complainant on the complaint.
3. If the Commission determines that one or more of the allegations in the complaint were proved, the Commission shall:
 - a. Prepare written summary findings:
 - i. Listing the name of each complainant and the name of the elected or appointed official;
 - ii. For each allegation that was proven:
 1. Provide the reference to the Municipal Officers' and Employees' Act;
 2. Summarize the evidence supporting a violation by clear and convincing evidence;
 3. Make factual findings; and
 - iii. Recommend appropriate action to the City Council.
 - b. Notify the named elected or appointed official and the first complainant on the complaint of the written summary findings and recommendation for the City Council; and
 - c. Report the summary findings and recommendation to the City Council in a regular meeting of the City Council.
4. If the Commission finds a violation of the Municipal Officers' and Employees' Ethics Act, 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. The Commission's recommendation may depend on the severity of the violation, the elected or appointed official's intent, any history or pattern of abuse by the named elected or appointed official, and any economic or other benefit received by the named elected or appointed official.

2.68.130 Action by City Council

1. Upon receipt of any finding of violation of the Municipal Officers' and Employees' Ethics Act and recommendation by the Commission, the City Council shall review the recommendation and take action at its discretion.
2. The elected or appointed official referred for a violation may not participate in the City Council's deliberation or cast a vote as the City Council decides whether to take action and what action to take.

2.68.140 Knowingly Filing of False Complaint

Any person who files a complaint against an elected or appointed official pursuant to this Chapter, knowing that such complaint is frivolous, malicious, false, or otherwise without merit, shall be guilty of a class B misdemeanor.

2.68.150 Annual Commission report

1. If there has been any activity by the Commission during the previous year involving an elected or appointed official of the City, the Commission shall prepare a summary report that contains:
 - a. A general description of the activities of the Commission during the past year;
 - b. The number of ethics complaints filed with the Commission;
 - c. The number of ethics complaints dismissed; and
 - d. An executive summary of each complaint where the Commission found a violation of the Municipal Officers' and Employees' Ethics Act or other applicable local ordinance.
2. The annual report of the Commission shall be filed with the Recorder and shall be a public record.

(Ord. No. 11-14, Enacted 05/21/2014)