

Memorandum to Town Council
From: Rick Wixom, Greg Hardman, Victoria Carlton
Date: March 3, 2022
Re: Ordinance Revisions to Title 1 - Administration

Executive Summary

Title 1 of the Springdale Town Code concerns the administration of the Town. Title 1 sets forth the title of the code of ordinances created by the Town; the allowance of amendments to the Code; the savings clause (meaning if part of an ordinance is found invalid it will not affect the remainder portions of the Code); general definitions for the Town Code; penalties for violations of the Town Code; defining the roles and election of Mayor and Town Council; defining the roles and benefits of officers, appointed persons, and employees; conducting elections; jurisdiction of the justice court; the procurement policy; and, adoption of the government records access and management act.

As we are aware here in Springdale, laws that govern are drafted and created, every outcome cannot be foreseen, and laws are malleable and ever-changing. Many municipalities have ordinances that include legalese or jargon clouding the clarity of the rules and making it difficult for everyday persons to read and understand, Springdale's code included. Now, in a world of instant information, communities demand access to rules and laws (*see e.g.*, Utah Code completely online and available, Springdale Town Code is available online) and more clarity in those laws, and with clear and unambiguous ordinances citizens, visitors, and business owners will better understand the rules and regulations governing their time in Springdale.

The changes proposed in this amendment to Title 1 would add this clarity and comply with all applicable laws and regulations.

Outline of Proposed Changes

1. Traditionally, laws favored using "he/him" to assume all genders. Laws govern all genders and now law drafters favor a gender-neutral approach. The amendments to Title 1 involved removing he, or even she if present, to simply refer to the position, such as referring to the Mayor as Mayor and not "him." *See* 1-5-7(B), (E)(1) (removing "he" and replacing with "the officer" or "the mayor").
2. Updated citations to Utah Code to remain consistent with the citation standards used by the Utah appellate courts. When used in a sentence, the Utah Code is referred to as such: "Utah Code section 10-1-101 reads . . ." When used at the end of sentence, after the period, as a citation it should be cited as such: "Utah Code Ann. § 10-1-101." *See e.g.*, 1-5-7(C)(2)(c), (E)(1).
3. Each chapter in Title 1 has been amended to add clarity, remove complex legalese and wordy jargon to allow for simplicity in understanding the penalties for unlawful and criminal actions under the code of ordinances.

4. Each chapter in Title 1 has been amended to comply with other Code sections and with State and Federal laws; this also includes removal of language that may change from time to time as state code is amended. *See e.g.*, 1-5-7(D) (removing the statutory requirements and adding the statute as reference for guidance).
5. In Town Code section 1-3-2, the definitions have been updated for clarity and ambiguity. For instance, to clear up any ambiguity with the use of “shall” the definition now includes both must and shall as meaning “required or mandatory.” The term “Nuisance” has not been amended to adopt the language of nuisance under Utah Code section 78B-6-1101(1).
6. In Chapter 4, General Penalty, the outlined penalties have been amended to add clarity and readability. In Town Code section 1-4-2(E) this has been amended to reflect changes in Utah Code section 10-3-703(1)(b).
7. In Chapter 6, Section 6, the employee appeal board has been removed and all appeals will now be appealed to the Town Council.
8. In Chapter 7, Section 1, the language for the Town’s conducting of elections has been amended to reflect the changes in the State code and the repeal of 20A-3-302 by simply referring to statutory guidelines.
9. In Chapter 8, Section 1, has been amended to correctly identify the justice court as the Washington County Justice Court.
10. Chapters 11 and 12 regarding equal employment and equal housing for purposes of removing the responsibility from the Town now that the Utah code expressly addresses and prohibits discrimination based on a person’s “sexual orientation” and “gender identity.” The Town previously enacted Chapters 11 and 12 to allow those discriminated on the basis of their “sexual orientation” or “gender identity” an avenue for recourse because at that time the Utah legislature had yet to give these protections under the equal employment and housing laws. In 2016, the Utah legislature amended Utah Code sections 34A-5-106 and 57-21-5 to grant these protections and an avenue of recourse through the labor and housing commissions.

ORDINANCE 2022-03

AN ORDINANCE OF THE SPRINGDALE TOWN COUNCIL, AMENDING MULTIPLE CHAPTERS OF TITLE 1 OF THE SPRINGDALE TOWN CODE TO IMPROVE READABILITY, CLARITY, CONSISTENCY, AND FORMATTING

Whereas, Title 1 of the Springdale Town Code contains the Town’s regulations regarding the administration of the Town, and

Whereas, the Town Council desires to ensure these regulations are as clear and easy to understand as possible, thus benefiting residents, property owners, and others impacted by the land use regulations, and

Whereas, the Town Council also desires that these regulations be internally consistent, and consistent with State and Federal laws, and

Whereas, certain changes and revisions to these regulations are necessary and will help the Town achieve the goals stated above, and

Now therefore be it ORDAINED by the Springdale Town Council that Title 1 of the Town Code is revised as shown in the attached document.

Passed and approved by the Springdale Town Council on March 9, 2022.

Barbara Bruno, Mayor

Attest:

Darci Carlson, Town Clerk

TITLE 1
ADMINISTRATION
CHAPTER 1
OFFICIAL TOWN CODE
SECTION:

1-1-1: TITLE:

Upon the adoption by the town council, this town code is ~~hereby declared to be and shall hereafter constitute~~ the official town code of Springdale. This town code of ordinances shall be known and cited as the SPRINGDALE TOWN CODE and is ~~hereby~~ published by authority of the town council ~~and shall be supplemented to incorporate the most recent legislation of the town as provided in section 1-1-3 of this chapter. Any reference to the number of any section contained herein shall be understood to refer to the position of the same number, its appropriate chapter and title heading, and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this town code by title in any legal documents.~~ (1978 Code § 1-001; amd. 2001 Code)

1-1-2: ACCEPTANCE:

The town code ~~as it may be amended from time to time, as hereby presented in printed form,~~ shall ~~hereafter~~ be ~~received-admitted~~ without further proof in all courts and in administrative tribunals of this state as the ordinances of the town of general and permanent effect, ~~except the excluded ordinances enumerated in section 1-2-1 of this title.~~ (2001 Code)

1-1-3: AMENDMENTS:

Any ordinance amending the town code ~~shall-must~~ set forth the title, chapter, and section number of the section or sections to be amended, and this shall constitute sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this town code. All such amendments or revisions by ordinance ~~shall-must~~ be immediately forwarded to the codifiers, and the said ordinance material shall be prepared for insertion in its proper place in each copy of this town code. Each such replacement page shall be properly identified and shall be inserted in each individual copy of the town code. (2001 Code)

1-1-4: CODE ALTERATIONS:

It ~~shall be deemed is~~ unlawful for any person to alter, change, replace or deface in any way any section or any page of this town code in such a manner that the meaning of any phrase or order may be changed or omitted, ~~without authorization to do so.~~ Replacement pages may be inserted according to the official instructions when so authorized by the town council. The town clerk shall see that the replacement pages are properly inserted in the official copies maintained in the office of the town clerk. ~~Any person having custody of a copy of the town code shall make every effort to maintain said code current as to the most recent ordinances passed. Such person shall see to the immediate insertion of new or replacement pages when such are delivered or made available to such person through the~~

Commented [VC1]:

Commented [VC2R1]: In my review, I have also made minor edits specifically to series sentences to add an oxford comma. The purpose of this is because the law is moving towards the use of the oxford comma, the Chicago Manual of Style and other legal codes use an oxford comma in series sentences. It clears up confusion and I think the Town of Springdale should begin using the oxford comma. Even the AP Stylebook (which has been the opposing view on oxford commas) has recently stated that oxford commas should be used when clarity is needed.

Commented [VC3]: Another minor change I made throughout is making language gender neutral, such as: referring to the mayor or elected official as mayor or elected official and not "he" or "him." This adds clarity and allows that position to be referred to in gender neutral terms. This aligns legislatures and courts move towards gender-neutral language.

Commented [VC4]: To save the hassle of making all the "shall" changes to "must", under new Supreme Court law, I have added in 1-3-3, which defines Must and Shall as "required or mandatory." This is similar to the legislature's use of shall and how other municipalities have addressed this issue (see santa clara city).

office of the town clerk. Said code books, while in actual possession of officials and other interested persons, shall be and remain the property of the town and shall be returned to the office of the town clerk when directed so to do by order of the town council. (2001 Code)

1-1-5: INCORPORATION OF STATUTES:

Any reference or citation to any statute shall not be interpreted or construed to include, incorporate or make the citation or statute part of this code unless the provisions of this code specifically include, incorporate or make the citation or statute part of this code by reference or incorporation, and any such reference or citation not specifically included or incorporated may be changed, amended or deleted without publication on an order of the town council. (1978 Code § 1-009)

CHAPTER 2

SAVING CLAUSE

SECTION:

1-2-1: Repeal Of General Ordinances

1-2-2: Public Ways And Public Utility Ordinances

1-2-3: Court Proceedings

1-2-4: Severability Clause

1-2-1: REPEAL OF GENERAL ORDINANCES:

A. Repealer; Exceptions: All general ordinances of the town passed prior to the adoption of this town code are hereby repealed, except such as are included in this town code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), and excluding the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; fee ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the town; and all special ordinances. (1978 Code § 1-002; amd. 2001 Code)

B. Effect Of Repealing Ordinances: The repeal of the ordinances provided in subsection A of this section shall not affect any debt or fee which is accrued, any duty imposed, any penalty incurred, nor any action or proceeding commenced under or by virtue of the ordinances repealed or the term of office of any person holding office at the time these ordinances take effect; nor shall the repeal of any ordinance have the effect of reviving any ordinance heretofore repealed or superseded. (1978 Code § 1-003)

1-2-2: PUBLIC WAYS AND PUBLIC UTILITY ORDINANCES:

No ordinance relating to railroad crossings with streets and other public ways, or relating to the conduct, duties, service, or rates of public utilities shall be repealed by virtue of the adoption of this town code or by virtue of the preceding section, excepting as the town code may contain provisions for such matters, in which case, this town code shall be considered as amending such ordinance or ordinances in respect to such provisions only. (2001 Code)

1-2-3: COURT PROCEEDINGS:

A. Prior Acts: No new ordinance shall be construed or held to repeal a former ordinance whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture or punishment may be mitigated by any provision of a new ordinance, such provision may be, by consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

B. Scope Of Section: This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

C. Actions Now Pending: Nothing contained in this chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the town herein repealed, and the provisions of all general ordinances contained in this code shall be deemed to be continuing provisions and not a new enactment of the same provisions; nor shall this chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the town under any ordinance or provision thereof in force at the time of the adoption of this town code. (2001 Code)

1-2-4: SEVERABILITY CLAUSE:

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this town code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this code, or any part thereof. The town council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. (1978 Code § 1-007; amd. 2001 Code)

CHAPTER 3 DEFINITIONS

SECTION:

1-3-1: Construction Of Words

1-3-2: Definitions, General

1-3-3: Catchlines

1-3-1: CONSTRUCTION OF WORDS:

A. Whenever any word in any section of this code importing the plural number is used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party or person is referred to in this code by words importing the singular number only, or a particular gender, several matters, parties or persons and the opposite gender and bodies corporate shall be deemed to be included; provided, that these rules of construction shall not be applied to any section of this code which contains any express provision excluding such construction or where the subject matter or context may be repugnant thereto. The use of any verb in the present tense shall include the future and past tense when applicable.

B. All words and phrases shall be constructed and understood according to the common use and understanding of the language; the technical words and phrases and such other words and phrases as may have acquired a particular meaning in law shall be construed and understood according to such particular meaning.

C. The word "ordinance" contained in the ordinances of the town has been changed in the content of this code to "title", "chapter", "section" and/or "subsection", or words of like import for organizational and clarification purposes only. Such change to the town's ordinances is not meant to amend passage and effective dates of such original ordinances. (1978 Code § 1-005; amd. 2001 Code)

1-3-2: DEFINITIONS, GENERAL:

Whenever the following words or terms are used in this code, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

AGENT: A person acting on behalf of another with authority conferred, either expressly or by implication.

BUSINESS: Includes any trade, profession, calling, activity, operation, or enterprise for which a license or permit is required by any ordinance of the town.

CODE: The town code of the town of Springdale, Utah.

COUNTY: Washington County, Utah.

EMPLOYEES: Whenever reference is made in this code to a town employee by title only, this shall be construed as though followed by the words "of the town of Springdale".

FEE: A sum of money charged by the town for the carrying on of a business, profession, or occupation.

GENDER: A word importing either the masculine or feminine gender only shall extend and be applied to the other gender and to persons.

HIGHWAY; ROAD: Includes public bridges, and may be equivalent to the words "county way", "county road", "common road" and "state road".

LICENSE: The permission granted for the carrying on of a business, profession, or occupation. The term "license" includes any certificate, permit, or license issued by the town.

LOCATION: Whenever any act, conduct, or offense is prohibited or required and no reference is made to location, unless the context specifically indicates otherwise, the act, conduct, or offense prohibited or required shall be within the boundaries of the town.

MUST AND SHALL: Each means required or mandatory.

NUISANCE: Any condition, action or activity which:

- A. Is specifically identified as a nuisance in any section of this code; ~~or~~
- B. Creates a hazard which threatens the health and welfare of the inhabitants of the town;

C. Is offensive to the sensibilities of reasonable persons;

D. Can reasonably said to have a detrimental effect on the property of a person or persons within the town; or

~~CE.~~ Renders soil, air, water or food impure or unwholesome.

~~Any condition, action or activity which fits this definition shall be considered a nuisance and unlawful.~~

OCCUPANT OR TENANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.

OFFENSE: Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code.

OFFICERS OR OFFICIALS: Any elected or appointed person employed by the town, unless the context clearly indicates otherwise. Whenever reference is made in this code to a town officer or official by title only, this shall be construed as though followed by the words "of the town of Springdale";

OPERATOR: The person who is in charge of any operation, business or profession.

OWNER: As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

PERSON: Any public or private corporation, company, firm, partnership, association, organization, government, or any other group acting as a unit, as well as a natural person.

PERSONAL PROPERTY: Shall include every description of money, goods, chattels, effects, evidence of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished and every right or interest therein.

PROPERTY: Includes both real and personal property.

REASONABLE TIME: In all cases where any ordinance requires that an act be done in a reasonable time or that reasonable notice be given, such reasonable time for such notice shall be deemed to mean such time as may be necessary for the expeditious performance of such duty or compliance with such notice.

RETAILER: Unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles, or things direct to the consumer.

RIGHT OF WAY: The privilege of the immediate use of the roadway or other property.

STATE: The state of Utah.

Commented [VC5]: This would clear up any ambiguity to shall. The Utah legislature also does this, see Utah Code Ann Section 68-3-12.

STREET: Includes alleys, lanes, courts, boulevards, public ways, public squares, public places, sidewalks, gutters and culverts, crosswalks, and intersections.

TENANT OR OCCUPANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

TIME COMPUTED: The time within which an act is to be done as provided in any ordinance or in any resolution or order of the town, when expressed in days, shall be determined by excluding the first day and including the last day, except if the last day be a Sunday or a legal holiday, then the last day shall be the day next following such Sunday or legal holiday which is not a Sunday or legal holiday. When time is expressed in hours, Sunday and all legal holidays shall be excluded.

TOWN: The ~~town~~-Town of Springdale, Washington County, Utah.

TOWN CLERK: The individual appointed to act as the town clerk of the town.

TOWN COUNCIL: Unless otherwise indicated, the town council of the town of Springdale, Utah.

WEEK: Shall be construed to mean any seven (7) day period.

WHOLESALE: The terms "wholesaler" and "wholesale dealer", as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles, or things to persons who purchase for the purpose of resale.

WRITTEN, IN WRITING: May include printing and any other mode of representing words and letters, including through any electronic transmission, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person or a legally valid electronic signature, or in case such person is unable to write, by such person's proper mark. (1978 Code § 1-005; amd. 2001 Code; Ord. 2007-13, 10-23-2007)

1-3-3: CATCHLINES:

The catchlines of the several sections of this code are intended as mere catchwords to indicate the content of the section and shall not be deemed or taken to be titles of such sections, nor be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division or section hereof, nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. (1978 Code § 1-006)

CHAPTER 4

GENERAL PENALTY

SECTION:

1-4-1: Sentencing

1-4-2: Offenses Designated; Classified

1-4-3: Administrative Hearings

1-4-4: Civil Enforcement For Violations Of Title 10

1-4-5: Civil Enforcement For Other Violations

1-4-1: SENTENCING:

A. Criminal Penalty For Violation Of Ordinance 1: ~~1~~ ~~+~~

~~1. Specified-~~ The town council may impose a minimum criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code ~~Annotated~~ section 76-3-301 or by a term of imprisonment up to six ~~(6)~~ months, or by both the fine and term of imprisonment.

~~2. Exceptions:~~

~~a. Except as provided in subsection A2b of this section, the town council may prescribe a minimum civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code Annotated section 76-3-301.~~

~~b. The municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance, except as authorized in Utah Code Annotated section 10-3-703.5. (2001 Code)~~

B. Term Of Imprisonment For Misdemeanors 2 : A court may sentence a person who has been convicted of a misdemeanor ~~may be sentenced to imprisonment~~ as follows:

1. Class A misdemeanor: A term of imprisonment up to six months not exceeding one (1) year;

~~21. In the case of a c~~Class B misdemeanor, ~~for a: A term not of imprisonment up to exceeding six (6) months; or~~

~~32. In the case of a c~~Class C misdemeanor; ~~A, for a term of imprisonment not exceeding up to ninety (90) days. (1978 Code § 1-322)~~

C. Infractions 3 :

1. A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture, and disqualification, or any combination.

2. ~~Whenever If~~ a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor. (1978 Code § 1-323; amd. 2001 Code)

D. Fines Of Persons 4 : In addition to any term of imprisonment, A a court may, in addition to any term of imprisonment, impose a fine upon a person convicted of an offense in the following amounts fixed by the court, not exceeding: in the following amounts against a person who is convicted of an offense may, in addition to any term of imprisonment imposed, be sentenced to pay a fine not to exceed:

1. Class A Misdemeanor:- \$21,500.00 when the conviction is offor a a-class A Mmisdemeanor;

2. Class B Misdemeanor: One thousand dollars (\$1,000.00) when the conviction is offor a a-class B Mmisdemeanor conviction; and

23. Class C Misdemeanor; or Infraction: Seven hundred fifty dollars (\$750.00) when the conviction is offor a a-class C misdemeanor conviction or infraction conviction. (1978 Code § 1-331; amd. 2001 Code)

E. Fines Of Corporations 5 : The sentence to pay a fine, when imposed upon a corporation, association, partnership, or governmental instrumentality for an offense defined in this code, or the ordinances of the town, or for an offense defined outside of this code over which this town has jurisdiction, for which no special corporate fine is specified, ~~shall-must~~ be to pay an amount fixed by the court, not exceeding:

~~1. —1. \$10,000 for a class A Misdemeanor;~~

~~2. \$5,000 for a class B Misdemeanor; and~~

~~3. \$1,000 for a class C Misdemeanor or infraction.~~

~~1. — Class B Misdemeanor: Five thousand dollars (\$15,000.00) when the conviction is for a class B misdemeanor conviction; and~~

~~— 2. Class C Misdemeanor; Infraction: One thousand dollars (\$1,000.00) when the conviction is for a class C misdemeanor conviction or for an infraction conviction. (1978 Code § 3-332; amd. 2001 Code)~~

F. The violation of any part of Title 10 of the Utah Code is punishable as a class C misdemeanor upon conviction as a class C misdemeanor.

Notes

1 ~~1~~-U.C.A. § 10-3-703.

2 ~~2~~-U.C.A. § 76-3-204.

3 ~~3~~-U.C.A. § 76-3-205.

4 ~~1~~-U.C.A. § 76-3-301.

5 ~~2~~-U.C.A. § 76-3-302.

1-4-2: OFFENSES DESIGNATED; CLASSIFIED:

A. Sentencing In Accordance With Chapter:

~~—1. A person adjudged guilty of an offense under this code or the ordinances of this town shall must be sentenced in accordance with the provisions of this chapter.~~

~~—2. Ordinances enacted after the effective date of this code which involve an offense should be classified for sentencing purposes in accordance with this chapter, unless otherwise expressly provided. (1978 Code § 1-311)~~

B. Designation Of Offenses: Offenses are designated as misdemeanors or infractions. (1978 Code § 1-312)

C. Misdemeanors Classified 1 :

1. Misdemeanors are classified into ~~two~~ three ~~(3)~~ (2) categories:

a. Class A misdemeanors;

b. Class B misdemeanors; and

~~bc.~~ Class C misdemeanors.

2. An offense designated as a misdemeanor or any act prohibited or declared to be unlawful in this code or any ordinance of this town when no other specification as to punishment or category is made, is a class B misdemeanor. (1978 Code § 1-313)

D. Infractions:

1. Infractions are not classified.

2. Any offense which is made an infraction in this code or other ordinances of this town, or which is expressly designated an infraction and any offense designated by this code or other ordinances of this town which is not designated as a misdemeanor and for which no penalty is specified is an infraction. (1978 Code § 1-314)

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.22" + Indent at: 0.47"

Formatted: No bullets or numbering

E. Continuing Violation: In all instances where the violation of this code or any ordinance hereinafter enacted is a continuing violation, a separate offense shall be deemed committed on each day during or on which the violation occurs or continues to occur. (1978 Code § 1-315)

F. Employers and Agents: When a provision of any section of this code prohibits the commission of an act, not only the person actually doing the prohibited act or omitting the directed act, but also the employer and all other persons concerned with or in aiding or abetting the said person, shall be guilty of the offense described and liable to the penalty set forth.

G. Limitations under State Law: No part of this code may be applied or enforced in such a way that violates the limitations imposed under Section 10-3-703(1)(b), as may be amended from time to time.

Commented [DS6]: This is added to comply with limitations on infractions regarding a person's pet and an individual's use of the individual's residence.

Notes

1. U.C.A. § 76-3-104.

1-4-3: ADMINISTRATIVE HEARINGS:

A. Request: Unless otherwise specifically provided in any ordinance of the town or any code adopted by reference, a hearing before the town council may be requested by any person:

1. Who is denied or refused a permit or license by any officer, agent, or employee of this town.

2. Whose permit or license is revoked, restricted, qualified, or limited from that for which it was first issued. (1978 Code § 1-411)

B. Form Of Request: The request for hearing must be made in writing to the mayor or town clerk and made within thirty (30) days following the date notice denying, refusing, revoking, qualifying, or restricting the license or permit is mailed by the town to the applicant or license holder at his address as it appears on the application or license. (1978 Code § 4-412)

C. Procedure:

1. Time And Place: Following receipt of a request for hearing, the town council shall inform the person requesting a hearing of the time and place the hearing is to be held.

2. Witnesses; Evidence: At the hearing, the aggrieved party shall have the right to hear and examine any witnesses the town may produce to support its decision and to present his own evidence in support of his contention.

3. Decision Of Town Council: The town council shall, within ten (10) days following the conclusion of the hearing, in writing, inform the person who requested the hearing of the decision of the town council. (1978 Code § 1-413)

D. Not Additional Remedy; **Exclusions:** This section shall not be construed so as to afford any aggrieved party more than one hearing before the town council. ~~nor shall it~~ The hearing provided in this section **does not** apply to any criminal complaint or proceeding. This section does not apply where a specific review process is designated elsewhere in the code

for a permit or license that is denied, refused, revoked, restricted, qualified, or limited.
(1978 Code § 1-414)

1-4-4: CIVIL ENFORCEMENT FOR VIOLATIONS OF TITLE 10:

The town may impose civil penalties for the violation of any requirement, regulation, or other provision contained in Title 10. When imposing a civil penalty for violation of any requirement, regulation, or other provision contained in Title 10, the town ~~shall~~will follow the procedure in this section. Civil enforcement of any violation is only one option for enforcement. Nothing in this section removes the Town's ability to use criminal proceedings or other enforcement strategies authorized by state law and this code in the resolution of code violations.

A. Notice of violation. Upon inspection and discovery that any provision of Title 10 has been violated or is currently being violated, the director of community development or code enforcement officer, or designee, ~~shall~~may provide written notice of the violation to the property owner, and in addition, may provide written notice of the violation to any other responsible party.

1. The notice of violation shall: (1) indicate the nature of the violation; (2) order the necessary action to correct the violation; (3) establish a reasonable time period for the necessary corrective actions to be completed (the "warning period"); and (4) state that the property owner and other responsible party (if any) will be subject to civil penalties if the violation is not corrected within the warning period.

2. The warning period shall be the minimum time period reasonably necessary to correct the violation, given the nature of the violation and the amount of effort needed to correct the violation. The warning period could be as short as several hours or as long as several weeks.

3. The notice of violation shall be delivered personally or mailed to the owner of record at the address shown on the records of the county recorder, or to a person designated, in writing, by the owner of record as the owner's agent for the purpose of receiving notice of an ordinance violation. The notice of violation may also be delivered personally or mailed to any other responsible party. Personal delivery or mailing of the written notice shall serve to start the warning period.

B. Civil Citation. If the violation remains uncorrected at the end of the warning period, the director of community development or code enforcement officer may issue a civil citation to the property owner and/or other responsible party.

1. The civil citation shall be personally delivered, or mailed to property owner, as shown on the records of the county recorder.

2. The civil citation shall serve to start imposition and accrual of civil penalties. The civil citation shall state that civil penalties are being assessed to the property owner and/or other responsible party for each day the violation persists, beginning on the date the civil citation is personally delivered or mailed.

C. Referral to Police Department: The director of community development or code enforcement officer may refer any violation to the chief of police for an immediate criminal enforcement action, as allowed by state law.

D. Daily violations. Each day a violation is continued or maintained after the date the civil citation is either personally delivered or mailed is considered a separate violation and shall give rise to a separate civil penalty for each day of violation. The filing of an appeal does not stop the daily accrual of any penalty unless the civil hearing officer ultimately dismisses the citation.

E. Civil Penalties. A violation of any provision of Title 10 shall result in a civil penalty pursuant to the following schedule:

Violation	Penalty
General penalty for any violation not otherwise specified	\$100 per day
Grading construction violation (Section 10-15B-6)	\$350 per day
Grading without a permit (Section 10-15B-13)	\$750 per day
Short term rental in a residential zone (sections 10-9A-14(A)) and 10-9B-13(A))	\$1,000 per day

F. Correction of violation required. The payment of a civil penalty does not relieve the obligation to correct the violation. The property owner or other responsible party is required to correct the violation regardless of whether or not the civil penalty has been paid.

G. Citation Appeal. Any person who has received a civil citation and who wishes to dispute the violation may appeal the citation in writing to the civil hearing officer within 15 calendar days after the citation has been issued. If a person who has received a citation does not appeal within 15 days, the right to an appeal is lost. In such case, the person shall be responsible for both correcting the violation and paying all applicable civil penalties.

H. Appeal Procedures.

1. The Town Manager shall appoint the civil hearing officer.

2. The hearing officer shall adopt rules of procedure that govern the review and adjudication of civil citation appeals. Such rules shall provide meaningful opportunity for the appellant to present evidence documenting one of the following defenses:

a. ~~At the time of the citation and at all times ensuing, t~~he alleged violation did not occur:

~~b. The alleged violation was corrected before the end of the warning period, did not and does not exist.~~

~~b.c.~~ At the time of citation, compliance with the subject ordinance(s) would have violated the criminal laws of the state.

~~ed.~~ Compliance with the subject ordinance(s) would have presented an imminent and irreparable physical injury to persons or property.

~~de.~~ The violation and failure to correct the violation were both caused by a force majeure event such as war, act of nature, or civil disturbance.

f. Any other defense as required for due process.

3. After reviewing the appeal, the civil hearing officer may dismiss the citation only on a finding that ~~one of the~~ ~~four~~ defenses listed in paragraph 2 above applies to the appeal. If the hearing officer finds none of the defenses apply, the hearing officer shall uphold the citation and associated civil penalties. If the hearing officer upholds the citation, daily civil penalties ~~that began on the date the citation was issued~~ shall continue to accrue after the hearing until the violation is corrected.

4. If the hearing officer upholds the citation, the hearing officer may, in the interest of justice and on behalf of the Town, enter into an agreement for the delayed or periodic payment of the civil penalty by the violator.

5. If the civil hearing officer upholds the citation, the hearing officer may partially or wholly abate the civil penalties for one of the following reasons only:

a. The violation was corrected promptly after the issuance of the civil citation and at the time of the appeal hearing the violation does not exist.

b. There has been a change in the actual ownership of the property where the violation exists since the time the citation was written, and the new owner is not related by blood, marriage, adoption, or common ownership to the prior owner.

I. Late Fees. A late fee will be assessed for any unpaid civil penalty in instances where daily penalties are not accruing (such as when a violation has been corrected on the property but the civil penalty imposed by a citation for the earlier violation has not been paid, or when the violation was transitory and the unpaid civil penalty was only imposed for the period of time the violation existed). In such cases, a late fee equivalent to 25% of the civil penalty will be assessed 30 days after the date the civil citation is issued, or 15 days after the date of the appeal hearing, whichever is later. The property owner shall pay any late fee that is assessed in accordance with this section.

J. Collection of Civil penalties. The town may file a civil action to collect any unpaid amount under this Section. The violator and any responsible person shall pay for all costs of collection, including but not limited to ~~costs and~~ attorney's fees ~~and costs~~. (Ord. 2020-01, 5-20-2020)

1-4-5: CIVIL ENFORCEMENT FOR OTHER VIOLATIONS:

This section governs the procedure for civil penalties issued for violations of the Springdale Town Code, except as specifically provided in subsection A below. Civil enforcement of any violation is only one option for enforcement. Nothing in this section removes the Town's ability to use criminal proceedings or other enforcement strategies authorized by state law and this code in the resolution of code violations.

A. Exclusions. Section 1-4-5 does not apply to any code violation that is governed under Section 1-4-4 or Chapter 6-2. ~~The town may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance.~~

B. Civil Citation. Upon inspection and discovery that any provision of this code ~~has been violated or~~ is being violated, the director of community development, the chief of police, a code enforcement officer, or designee, may issue a civil citation to the violator, property owner, and/or other responsible party. The civil citation will be issued via personal delivery or mail. Delivery of the civil citation shall serve to start imposition and accrual of any civil penalties. The civil citation may state that civil penalties are being assessed to the

Commented [VC7]: UCA 10-3-703(2)

violator, property owner, and/or other responsible party for each day the violation persists, beginning on the date the civil citation is personally delivered or mailed.

C. Referral to Police Department: The director of community development or code enforcement officer may refer any violation to the chief of police for an immediate criminal enforcement action, as allowed by state law.

D. Daily violations. If provided in the citation, each day a violation is continued or maintained after the date the civil citation is personally delivered or mailed is considered a separate violation and shall give rise to a separate civil penalty for each day of violation. The filing of an appeal does not stop the daily accrual of any penalty unless the civil hearing officer ultimately dismisses the citation.

E. Civil Penalties. A violation of any provision of this code shall result in a civil penalty pursuant to the following schedule:

Violation	Penalty
General penalty for any violation not otherwise specified	\$100 per instance or day
Operating a business without a license (3-1-4)	\$500 per day
Weed violation (Chapter 4-3A)	\$50 per day
Noise violation (Chapter 4-3B)	\$350 per instance
Building without a permit (Section 9-1-4)	\$500 per day

F. Correction of violation required. The payment of a civil penalty does not relieve the obligation to correct the violation. The violator, property, and/or responsible party is required to correct the violation regardless of whether the civil penalty has been paid.

G. Citation Appeal. Any person who has received a civil citation and who wishes to dispute the violation may appeal the citation in writing to the civil hearing officer within 15 calendar days after the citation has been issued. If a person who has received a citation does not appeal within 15 days, the right to an appeal is lost. In such case, the person shall be responsible for both correcting the violation and paying all applicable civil penalties.

H. Appeal Procedures.

1. The Town Manager shall appoint the civil hearing officer.

2. The hearing officer shall adopt rules of procedure that govern the review and adjudication of civil citation appeals. Such rules shall provide meaningful opportunity for the appellant to present evidence documenting one of the following defenses:

a. ~~At the time of the citation and at all times ensuing, the~~ alleged violation did not occur ~~or did not exist.~~

b. The alleged violation was corrected before the end of the warning period.

~~b~~c. At the time of citation, compliance with the subject ordinance(s) would have violated the criminal laws of the state.

~~c~~d. Compliance with the subject ordinance(s) would have presented an imminent and irreparable physical injury to persons or property.

~~d~~e. The violation and failure to correct the violation were both caused by a force majeure event such as war, act of nature, or civil disturbance.

f. Any other defense as required for due process.

3. After reviewing the appeal, the civil hearing officer may dismiss the citation only on a finding that one of the ~~four~~ defenses in paragraph 2 above applies to the appeal. If the hearing officer finds none of the defenses apply, the hearing officer shall uphold the citation and associated civil penalties. If the hearing officer upholds the citation, daily civil penalties that began on the date the citation was issued shall continue to accrue after the hearing until the violation is corrected.

4. If the hearing officer upholds the citation, the hearing officer may, in the interest of justice and on behalf of the Town, enter into an agreement for the delayed or periodic payment of the civil penalty by the violator.

5. If the civil hearing officer upholds the citation, the hearing officer may partially or wholly abate the civil penalties for one of the following reasons only:

a. The violation was corrected promptly after the issuance of the civil citation and at the time of the appeal hearing the violation does not exist.

b. There has been a change in the actual ownership of the property where the violation exists since the time the citation was written, and the new owner is not related by blood, marriage, adoption, or common ownership to the prior owner.

I. Late Fees. A late fee will be assessed for any unpaid civil penalty in instances where daily penalties are not accruing (such as when a violation has been corrected on the property but the civil penalty imposed by a citation for the earlier violation has not been paid, or when the violation was transitory and the unpaid civil penalty was only imposed for the period of time the violation existed). In such cases, a late fee equivalent to 25% of the civil penalty will be assessed 30 days after the date the civil citation is issued, or 15 days after the date of the appeal hearing, whichever is later. The property owner shall pay any late fee that is assessed in accordance with this section.

J. Collection of Civil penalties. The town may file a civil action to collect any unpaid amount under this Section. The violator and any responsible person shall pay for all costs of collection, including but not limited to attorney's fees and costs. (Ord. 2020-01, 5-20-2020)

CHAPTER 5

MAYOR AND TOWN COUNCIL

SECTION:

1-5-1: Eligibility And Residency Requirements

1-5-2: Membership; Terms

1-5-3: Mayor As Member Of Town Council

1-5-4: Municipal Administration

1-5-5: Meetings; Procedure And Conduct

1-5-6: Method Of Communication For Professional Services

1-5-7: Ordinances And Resolutions; Procedures

1-5-1: ELIGIBILITY AND RESIDENCY REQUIREMENTS:

A. Declaration Of Candidacy: A person filing a declaration of candidacy for a town office ~~must shall:~~

~~1. Have been a resident of the town for at least one year immediately before the date of the election; and~~

~~2. Meet the other requirements of Utah Code ~~Annotated~~ section 20A-9-203(1), as may be amended from time to time.~~

~~B. Annexed Areas: A person living in an area annexed to the town meets the residency requirement of this section if that person resided within the area annexed to the town for at least one year before the date of the election.~~

~~C.B.~~ Registered Voter: Any person elected to town office shall be a registered voter in the town.

~~D.C.~~ Continuous Absence From Town: If an elected town officer is absent from the town any time during his or her term of office for a continuous period of more than ~~sixty (60)~~ days without the consent of the town council, the town office is automatically vacant, in which case the vacancy may be filled in accordance with local and state law. This subsection is subject to the provisions of Utah Code Section 20A-1-513, as applicable. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

Commented [DS8]: The residency requirements are provided within this statute, which annexation is also dealt with there.

1-5-2: MEMBERSHIP; TERMS:

A. Composition: The town council ~~shall be a council~~ consists of five ~~(5) persons~~ members, one of whom ~~shall be~~ is the mayor ~~and the remaining four (4) shall be council members.~~ (2001 Code)

B. Election; Terms: The election and terms of officers shall be as follows: the offices of mayor and all council members shall be filled in municipal elections. The terms for each shall be for four ~~(4)~~ years. The elections for mayor and two ~~(2)~~ council members shall be staggered from the election of the other two ~~(2)~~ council members such that there shall be a two ~~(2)~~ year separation between said elections.

C. Vacancy In Office: Mayor or town council vacancies shall be filled as provided in Utah Code ~~Annotated~~ section 20A-1-510. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-5-3: MAYOR AS MEMBER OF TOWN COUNCIL:

A. Presiding Officer; Mayor Pro Tempore: The mayor ~~shall be~~ is the chairperson and presides at the meetings of the town council. In the absence of the mayor or because of ~~his~~ the mayor's inability or refusal to act, the town council may elect a member of the town council to preside over the meeting as mayor pro tempore, who shall have all the powers and duties of the mayor during ~~his~~ the mayor's absence or disability. The election of a mayor pro tempore shall be entered in the minutes of the meeting.

B. Voting: The mayor shall vote as a member of the town council. Any member of the town council appointed to act as mayor pro tempore shall cast only one vote.

C. Powers And Duties: The mayor:

1. Shall execute on the town's behalf all bonds, notes, contracts, and written obligations of the town;

2. Shall appoint, with the advice and consent of the town council, persons to fill town offices or vacancies on commissions or committees of the town.

D. No Veto: The mayor ~~shall have~~ no power to veto any act of the town council, unless otherwise specifically authorized by statute. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-5-4: MUNICIPAL ADMINISTRATION:

A. Additional Powers And Duties Of Elected Officials: The town council may, by resolution, prescribe additional duties, powers, and responsibilities for any elected or appointed official which are not prohibited by any specific statute, except that the mayor may not serve as clerk or town manager and neither the mayor nor the clerk may serve as treasurer. A justice court judge may not hold any other town office or position of employment with the town. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

B. Rules And Regulations For Administration: The town council shall approve rules and regulations which are not inconsistent with the laws of this state, as it deems best for the efficient administration, organization, conduct, and business of the town.

1. Contracts And Agreements: All contracts or agreements made for the benefit of the town with any person, agency, business, or governmental entity shall be written, fully integrated documents and must either be signed by the mayor or signed by another authorized agent of the town, then countersigned and filed with the town clerk in accordance with Utah Code [Annotated section 10-5-122](#).

2. Internal Communication: Elected and appointed town officials and town staff members who are made aware of information about any incident or circumstance that may reflect positively, negatively, or compromise the town's well-being shall immediately report such information to the town manager, who shall expeditiously report the information to the mayor and town council. (Ord. 2012-10, 7-11-2012)

C. Appointed Officers; Residency Requirements: The town council may require by ordinance that any or all appointed officers reside in the town. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-5-5: MEETINGS; PROCEDURE AND CONDUCT:

A. Regular Meetings: The town council shall hold one regularly scheduled meeting per month, which shall be held at the Canyon Community Center, 126 Lion Boulevard, Springdale, Utah, on a day and at a time established by the town council on at least an annual basis; provided, that:

1. If the meeting date is a legal holiday, then the meeting shall be held at the same time and place above described on an alternate date determined by the town council.

2. Upon approval of each member, the town council may provide for a different time and place for holding any regular meeting in any given month, provided notice of the change and of the new meeting time and place is posted on the Utah Public Notice website and at the principal office of the public body no later than the Friday preceding the meeting.

3. The town council may also call for and hold work meetings as deemed necessary to discuss matters of town business, said meetings shall be held at the Canyon Community

Center 126 Lion Boulevard, and noticed in compliance with ~~state law~~ open meeting regulations, Utah Code Annotated sections 52-4-1 et seq., and 10-3-502.

B. Special Meetings: If at any time the business of the town requires a special meeting of the town council, such meeting may be ordered in accordance with state law ~~by the mayor or any two (2) members of the town council. The order shall be entered into the minutes of the town council.~~

C. Electronic Meetings: The town council may convene and conduct an electronic meeting with or without an anchor location in accordance with state law ~~Utah Code Annotated 52-4-207 and 52-4-207 as amended.~~

1. A quorum of the council must be present, either in person at the anchor location or by electronic participation. If, for any reason, lack of communication with a member of the council causes a lack of a quorum, no additional business may be conducted until the quorum can be reconstituted. Business already conducted remains valid and binding.

2. For meetings with an anchor location, a council member must give notice to the town clerk as to what electronic means they intend to utilize to attend a meeting at least ~~forty-eight (48)~~ hours prior to the meeting to allow for arrangements to be made for the electronic meeting. One anchor location for electronic meetings ~~shall be~~ is the Canyon Community Center, 126 Lion Boulevard. Other locations may be deemed acceptable as required by circumstances, as long as adequate facilities are provided for public participation. ~~One anchor location for electronic meetings shall be the Canyon Community Center, 126 Lion Boulevard. Other locations may be deemed acceptable as required by circumstances, as long as adequate facilities are provided for public participation.~~

3. Electronic meetings may be prohibited or limited based on budget, public policy or logistical circumstances.

4. Notice of the meeting is to be given pursuant to state law ~~Utah Code Annotated 52-4-207 and 52-4-202.~~

D. Open Meetings; Exceptions: Every meeting is open to the public, unless closed pursuant to state law ~~Utah Code Annotated sections 52-4-4 and 52-4-5.~~

E. Quorum:

1. Defined: The number of members of the town council necessary to constitute a quorum is three ~~(3)~~ or more.

2. Necessary: No action of the town council ~~shall be~~ is official or of any effect, ~~except when~~ unless a quorum of the members is present. Fewer than a quorum may adjourn from time to time.

3. Compelling Attendance: The town council ~~shall have the power to~~ may compel the attendance of its own members and provide such penalties as it deems necessary for the failure to comply therewith.

F. Voting:

1. How Vote Taken: A roll call vote shall be taken and recorded for all ordinances, resolutions and any action which would create a liability against the town and in any other case at the request of any member of the town council by a "yes" or a "no" vote and shall be recorded. Every resolution or ordinance shall be in writing before the vote is taken. ~~Notes are taken in accordance with state law~~

2. Minimum Vote Required: The minimum number of "yes" votes required to pass any ordinance, resolution or to take any action by the town council, unless otherwise prescribed by law, shall be a majority of the members of the quorum, but shall never be less than three ~~(3)~~.

a. Any ordinance, resolution, or motion of the town council having fewer favorable votes than required herein ~~shall be deemed~~is defeated and ~~is~~ invalid, except a meeting may be adjourned to a specific time by a majority vote of the town council even though such majority vote is less than that required herein.

b. A majority of the members of the town council, regardless of number, may fill any vacancy in the town council.

3. Reconsideration: Any action taken by the town council shall not be reconsidered or rescinded at any special meeting unless the number of members of the town council present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.

G. Record Of Proceedings: The town council shall keep a journal of its proceedings. The books, records, accounts and documents of the town shall be kept at the office of the town clerk and approved copies shall be open and available to the public during regular business hours for examination and copying. The town council may by resolution establish reasonable charges for providing copies of its public records to individuals, except when by law the town must provide the records without cost to the public.

H. Procedure; Conduct:

1. Rules Of Procedure: The procedure governing meetings of the town may be established by ~~resolution~~.

2. Rules Of Conduct:

a. The town council may fine or expel ~~any~~ member ~~for disorderly conduct~~as allowed by state law only on a two-thirds ~~(2/3)~~ vote of the members of the town council.

b. The town council, on a two-thirds ~~(2/3)~~ vote, may expel any person who is disorderly during the meeting of the town council. This subsection or any action taken by the town council pursuant hereto, shall not preclude prosecution under any other provision of law.

I. Action On Committee Reports: Final action on any report of any committee appointed by the town council shall be deferred to the next regular meeting of the town council on the request of any two ~~(2)~~ members, except that the town council may call a special meeting to consider final action.

J. Requiring Attendance Of Witness; Production Of Evidence: The town council may require the attendance of any person to give testimony or produce records, documents, or things for inspection, copying or examination necessary or useful for the governance of the town. The town council may by ordinance establish its own procedures for issuing subpoenas to require attendance and production under this subsection or it may issue subpoenas in its own name in the same manner as is provided in the Utah ~~rules~~ Rules of civil ~~Civil procedure~~ Procedure. (Ord. 2009-10, 11-18-2009; amd. Ord. 2020-06, 8-12-2020)

1-5-6: METHOD OF COMMUNICATION FOR PROFESSIONAL SERVICES:

Commented [DS9]: Required under state law. Are these available on our website? Verify.

Commented [CU10R9]: 10-3-606 - requirement for posting. We do have this available online. Public hearing format.

Commented [DS11]: State law includes other grounds. (financial conflict of interest). The town can also include other grounds if desired.

Any requests made upon persons or entities under contract for professional services for legal, accounting, engineering, or other professional opinions or services ~~shall~~ may be sent by the ~~town clerk or deputy town clerk and signed by two (2) council members, except as provided for in subsection 1-6A-4] of this title, wherein it is provided that the town manager or other point of contact at the town is to act as the liaison with those rendering professional services.~~ (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-5-7: ORDINANCES AND RESOLUTIONS; PROCEDURES:

A. Legislative Power Exercised By Ordinance: Except as otherwise specifically provided, the town council shall exercise its legislative powers through ordinances.

B. Power Exercised By Ordinance: The town council may pass any ordinance to regulate, require, prohibit, govern, control, or supervise any activity, business, conduct, or condition authorized by statute or any other provision of law. An officer of the town shall not be convicted of a criminal offense where ~~he the officer~~ relied on or enforced an ordinance ~~he that the officer~~ reasonably believed to be a valid ordinance. It shall be a defense to any action for punitive damages that the official acted in good faith in enforcing an ordinance or that ~~the officer~~ enforced an ordinance on advice of legal counsel.

C. Penalty For Violation Of Ordinance:

1. Specified: The town council may impose a minimum criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code ~~Annotated~~ section 76-3-301 or by a term of imprisonment up to six ~~(6)~~ months, or by both the fine and term of imprisonment.

2. Exceptions:

a. Except as provided in subsection C.2.b. of this section, the town council may prescribe a minimum civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Utah Code ~~Annotated~~ section 76-3-301.

b. The municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance, except as authorized in Utah Code ~~Annotated~~ section 10-3-703.5.

~~c. Notwithstanding subsection C.1. of this section, the town may impose only an infraction for certain violations specified under Utah Code ~~Section~~ section 10-3-703, as amended from time to time.~~

D. Form Of Ordinance: Any ordinance passed by the town council shall ~~contain~~ contain ~~the matters required by state law, and be in substantially the following order and form:~~

- ~~— 1. A number;~~
- ~~— 2. A title which indicates the nature of the subject matter of the ordinance;~~
- ~~— 3. A preamble which states the need or reason for the ordinance;~~
- ~~— 4. An ordaining clause which states "Be it ordained by the town of Springdale:";~~
- ~~— 5. The body or subject of the ordinance;~~
- ~~— 6. When applicable, a statement indicating the penalty for violation of the ordinance or a reference that the punishment is covered by an ordinance which prescribes the fines and terms of imprisonment for the violation of the town ordinance; or, the penalty may~~

~~establish a classification of penalties and refer to such ordinance in which the penalty for such violation is established;~~

~~—7. A statement indicating the effective date of the ordinance or the date when the ordinance shall become effective after publication or posting as required by this section;~~

~~—8. A line for the signature of the mayor or mayor pro tem to sign the ordinance; and~~

~~—9. A place for the town clerk to attest the ordinance and affix the seal of the town.~~

E. Requirements As To Form; Effective Date:

1. Ordinances passed or enacted by the town council shall be signed by the mayor, or if ~~the mayor~~ is absent, by the mayor pro tempore, or by a quorum of the town council, and shall be recorded before taking effect. No ordinance shall be void or unlawful by reason of its failure to conform to the provisions of Utah Code ~~Annotated~~ section 10-3-704(1) through (4).

2. Ordinances shall become effective twenty (20) days after publication or posting or thirty (30) days after final passage by the town council, whichever is closer to the date of final passage, but ordinances may become effective at an earlier or later date after publication or posting if so provided in the ordinance.

3. Ordinances which do not have an effective date shall become effective twenty (20) days after publication or posting, or thirty (30) days after final passage by the town council, whichever is sooner.

F. Publication And Posting Of Ordinances: All ordinances, except those enacted pursuant to Utah Code ~~Annotated~~ sections 10-3-706 to 10-3-710, before taking effect shall be deposited in the office of the town clerk and a short summary of the ordinance published at least once in a newspaper published within the town, or if there is no newspaper published therein, then by posting complete copies in three (3) public places within the town. Any ordinance, code, or book, other than the state code, relating to building or safety standards, town functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting, if reference is made to the code or book and at ~~least three (3) copies have one copy has~~ been filed for use and examination by the public in the office of the town clerk prior to the adoption of the ordinance by the town council. Any state law relating to building or safety standards, town functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting if reference is made to the state code. The ordinance adopting the code or book shall be published in the manner provided in Utah Code ~~Annotated~~ sections 10-3-709 and 10-3-710.

G. Recording; Numbering; Certification Of Passage: The town clerk shall record, in a book used exclusively for that purpose, all ordinances passed by the town council. The town clerk shall give each ordinance a number, if the town council has not already so done. Immediately following each ordinance, or codification of ordinances, the town clerk shall make or cause to be made a certificate stating the date of passage and of the date of publication or posting, as required. The record and memorandum, or a certified copy thereof, shall be prima facie evidence of the contents, passage and publication or posting of the ordinance or codification. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

H. Resolutions:

Commented [DS12]: 10-3-711

1. Purpose: Unless otherwise required by law, the town council may exercise all administrative powers by resolution, including, but not limited to: a) establishing water and sewer rates; b) charges for garbage collection and fees charged for town services; c) establishing personnel policies and guidelines; and d) regulating the use and operation of town property. Punishment, fines or forfeitures may not be imposed by resolution.

2. Form: Any resolution passed by the town council shall be in a form and contain sections substantially similar to that prescribed for ordinances.

~~3.~~ 4. Publication; Effective Date: Resolutions may become effective without publication or posting and may take effect on passage or at a later date as the town council may determine, but resolutions may not become effective more than ~~three~~ 90 days from the date of passage. (Ord. 10-93, 9-2-1993)

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.22" + Indent at: 0.47"

Formatted: Indent: Left: 0.47"

CHAPTER 6

OFFICERS AND EMPLOYEES

SECTION:

1-6-1: Creating Offices; Filling Vacancies

1-6-2: Director Of Finance, Town Clerk And Town Treasurer

1-6-3: Bonds Of Officers

1-6-4: Oath Of Office

1-6-5: Compensation

1-6-6: Official Neglect And Misconduct

1-6-7: Employee Appeals Board

1-6-1: CREATING OFFICES; FILLING VACANCIES:

A. Offices Created By Council: The town council may create any office deemed necessary for the government of the town and provide for filling vacancies in elective and appointive offices.

B. Mayor To Appoint And Fill Vacancies: The mayor, with the advice and consent of the town council, may appoint and fill vacancies in all offices provided for by law or ordinance.

C. Continuation In Office: All appointed officers shall continue in office until their successors are appointed and qualified. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-6-2: DIRECTOR OF FINANCE, TOWN CLERK AND TOWN TREASURER:

A. Appointment: On or before the first Monday in February following a town election, the mayor, with the advice and consent of the town council, shall appoint a qualified person to each of the offices of town clerk and town treasurer. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

B. Ex Officio Auditor: The ~~town~~ manager, appointed as director of finance, is ex officio town auditor and shall perform the duties of that office. (Ord. 2010-03, 5-12-2010)

Commented [DS13]: 10-3-916

Commented [CU14R13]: 10-5-123(1); 10-6-157

1-6-3: BONDS OF OFFICERS:

A. Bonds Required: All elected officers of the town, before taking office, shall execute a bond with good and sufficient sureties, payable to the municipality in such amount as shall be set by the town council by ordinance or resolution from time to time, conditioned for the faithful performance of the duties of the respective officers and the payment of all monies received by such officer according to law and the ordinances of the municipality.

B. Approval Of Bonds: The bonds of the mayor and the council members shall be approved by the town council at the first meeting of the town council in January following a town election.

C. Premium Paid By Town: The premium charged by a corporate surety for any bond required by the town shall be paid by the town.

D. Additional Bonds; Filing: The town council may at any time require further and additional bonds of any or all officers elected or appointed, with good and sufficient sureties, payable to the town in such sum as the resolution or ordinance may establish, conditioned for the faithful performance of the duties of their office and the payment of all monies received by such officers according to law and the ordinances of the town. All bonds given by the officers, except as otherwise provided by law, shall be filed with the town treasurer.

E. Treasurer's Bond: The town treasurer's bond, or the bond of any person who acts as town treasurer, may be set by town council resolution or ordinance in any amount, not less than that established by the state money management council, in accordance with Utah Code [Annotated section 51-7-15](#). The town treasurer's bond shall be superseded by any rule, ~~regulation~~[regulation](#), or directive of the state money management council when such rule, regulation or directive is binding on the town.

F. Blanket Bond: The bond(s) required in this section may be included within public blanket bonds in such amount as may be determined by the town council. (Ord. 2006-06, 3-8-2006)

1-6-4: OATH OF OFFICE:

A. Constitutional Oath Of Office: All officers, whether elected or appointed, before entering on the duties of their respective offices shall take, subscribe, and file the constitutional oath of office. The form of oath shall be as provided in the Utah constitution article IV, section 10.

B. Filing: The oath of office required under this section shall be administered by any judge, notary public, or by the town clerk. Elected officials shall take their oath of office at twelve o'clock (12:00) noon on the first Monday in January following their election or as soon thereafter as is practical. Appointed officers shall take their oath at any time before entering on their duties. All oaths of office shall be filed with the town clerk.

C. Acts Of Officials Not Voided: No official act of any town officer shall be invalid for the reason that [the town officer](#) failed to take the oath of office. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-6-5: ~~COMPENSATION~~:

A. Specified: The salary of the elective and statutory/appointive officers of this town shall be paid in the amount and at such times as is below specified:

Commented [DS15]: See UCA 10-3-818 (effective 7/1). requires hearing/process for setting the compensation for any "statutory officer."

Mayor	\$ 4,917 6,500.00 per year
Council member	Not compensated \$5,200 per year
Planning commission	Not compensated \$2,600 per year
Town clerk	Hourly Annual salary, as set by town council <u>in accordance with state law</u>
Town treasurer	Annual salary Hourly, as set by town council <u>in accordance with state law</u>
Chief of police	Hourly, as set by town council As agreed upon in employment contract approved at public hearing
Town engineer	As agreed upon in employment contract approved at public hearing held as provided in this section
Town attorney	As agreed upon in employment contract approved <u>in accordance with state law at public hearing held as provided in this section</u>
Town manager	As agreed upon in employment contract approved <u>in accordance with state law at public hearing held as provided in this section</u>

(Ord. 2007-08, 7-11-2007)

B. Benefits: In addition to the salary paid the elective and statutory/appointive officers of this town, they shall receive the following benefits:

1. The employees' share of the social security tax.
2. Health and accident insurance ~~for themselves and their families on such basis and cost to the employee or officer as the town council may from time to time establish by resolution~~in accordance with town policies and procedures.
3. Vacation and sick leave ~~on such basis as the town council may from time to time establish by resolution~~in accordance with town policies and procedures.
4. Participation in the Utah state retirement program ~~on such basis and cost as in accordance with town policies and procedures the town council may from time to time by resolution establish.~~

C. Serving Two Or More Positions: Whenever any person serves in two (2) or more positions either as officers or employees of this town, unless otherwise specifically provided in the employment agreement, by ordinance or by resolution, that person shall receive the salary or compensation of the office or employment paying the greater amount.

(Ord. 10-93, 9-2-1993)

D. Travel Expenses; Per Diem: In addition to all other compensation or salary, any officer or employee of this town may receive, following the submission to the town clerk of a claim, travel expenses and per diem established by the Utah state department of finance for expenses actually incurred by the person for attending any meeting, conference, seminar or training session, provided attendance shall have been approved in advance by the town manager. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

E. Review Of Compensation; Public Hearing: Upon its own motion, the town council may review or consider the compensation of any officer of the town, or a salary schedule applicable to any officer of the town, for the purpose of determining whether or not it should be adopted, changed or amended. In the event that the town council decides that the compensation or compensation schedule should be adopted, changed or amended, it shall set a time and place for a public hearing at which all interested persons shall be given an opportunity to be heard.

F. Notice Of Public Hearing: Notice of the time, place and purpose of the meeting shall be published ~~in accordance with state law at least seven (7) days prior thereto by publication at least once in a newspaper published in the county within which the town is situated and generally circulated in the town. If there is no such newspaper, then notice shall be given by posting such notice in three (3) public places in the town.~~

G. Ordinance Enacted: After the conclusion of the public hearing, the town council may enact an ordinance fixing, changing, or amending the compensation of any elective or appointive officer of the town or adopting a compensation schedule applicable to any officer. (Ord. 10-93, 9-2-1993)

1-6-6: OFFICIAL NEGLIGENCE AND MISCONDUCT:

In case any town officer shall at any time ~~wilfully~~willfully omit to perform any duty, or ~~wilfully~~willfully and corruptly be guilty of oppression, ~~malconduct~~misconduct, misfeasance or malfeasance in office, the person is guilty of a class A misdemeanor 1, shall be removed from office and is not eligible for any town office thereafter. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

Notes

1. UCA § 76-3-204 for penalty provisions.

1-6-7: EMPLOYEE APPEALS BOARD:

~~A. Pursuant to Board Established: The employee appeals board shall consist of five (5) members. Three (3) members shall be elected by and from the appointed officers and employees, and two (2) members who shall be members of the town council, shall be appointed by the mayor, with the advice and consent of the town council. (Ord. 10-93, 9-2-1993; amd. 2001 Code)~~

~~—B. Nominations: Nominations for the members of the employee appeals board may be received from town employees from the period January 1 through January 15 of each year, or within fifteen (15) days after adoption of the ordinance codified herein. Employees may nominate themselves or another town employee. Nominations shall be filed with the town clerk. Any persons nominated may withdraw their names prior to the election by requesting the town clerk to do so in writing.~~

~~—C. Elections: After the nominations are closed, employee board members sufficient to fill vacancies on the board shall be chosen by secret ballot, each employee of the town being~~

Commented [CU16]: UPDATE: appeal is to City Council; will also need to update policy manual. UCA 10-3-1106(7)(b).

entitled to cast one vote. The persons elected shall serve as members of the board for one year. In the case of a tie, the toss of a coin by the town clerk shall determine the winner.

—D. Appointment: At the first town council meeting in any year, upon the adoption of the ordinance codified herein, the mayor shall appoint, with the consent of the town council, two (2) members of the town council to serve as members of the employee appeals board. Each shall serve for a one year ~~one year~~ term. (Ord. 10-93, 9-2-1993)

—E. Regular Meeting: The members of the employee appeals board shall meet the first week after the election and select a chairperson who shall serve until the completion of the next election. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

—F. Vacancies: In the case of a vacancy among the employee elected members of the board, the employee members of the board shall select an employee to fill the unexpired term. In the event of a vacancy in the members from the town council, the town council shall select one of its number to fill the unexpired term.

~~G. Duties: The employee appeals board has the duties specified in the Personnel Policies and Procedures Manual for the Town of Springdale Utah Code section 10-3-1106(7). a Town employee may appeal the final decision to discharge, suspend without pay, or involuntarily transfer to the Town Council. (Ord. 10-93, 9-2-1993)~~

ARTICLE A. TOWN MANAGER

SECTION:

1-6A-1: Appointment

1-6A-2: Term Of Office; Compensation

1-6A-3: Acting Town Manager

1-6A-4: Powers And Duties

1-6A-5: Legislative Powers And Official Position Of Mayor Not Delegated

1-6A-1: **SELECTION AND APPOINTMENT:**

The town council may by two-thirds (2/3) vote appoint any person ~~to be known~~ as the town manager. The town manager ~~shall must~~ be ~~appointed selected solely on the basis of~~ ~~of the candidate's~~ his abilities, integrity, and prior experience relating to the duties of the office, including, but not limited to, abilities in public administration and executive leadership. ~~The manager must, and shall possess such managerial capabilities as~~ in the opinion of the town council, ~~have the managerial capabilities benefit him/her necessary~~ to provide professional direction to the mayor and town council. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-6A-2: TERM OF OFFICE; COMPENSATION:

The town manager shall serve at the pleasure of the town council, ~~except that the town council may employ the town manager for a term not to exceed three (3) years. The term of employment may be renewed at any time.~~ Any person serving as town manager under this article may be removed with or without cause by a majority vote of the town council, subject to the provisions of any contracts entered into between the town manager and the

town. The town manager shall receive compensation at the rate and in the form to be determined by the town council. (Ord. 10-93, 9-2-1993)

1-6A-3: ACTING TOWN MANAGER:

The town manager, with the advice and consent of the town council, may appoint an acting town manager during any period of absence or disability of the town manager. ~~Such~~ The acting town manager ~~shall~~ must, while he/she is in office during the effective dates of the appointment, have all the responsibilities, duties, functions, and authority of the town manager. (Ord. 10-93, 9-2-1993)

1-6A-4: POWERS AND DUTIES:

The town manager, ~~acting acts~~ under the control and supervision of the mayor and town council, ~~The manager shall be~~ is responsible for the ~~proper~~ administration of all affairs of the town. ~~placed in his/her charge and, to that end, he/she shall have the power and duty and be required to~~ The manager's powers and duties are as follows:

A. Be responsible for the enforcement of the laws, ordinances, rules and regulations of the town, and see that all franchises, leases, permits, contracts, licenses and privileges granted by the town are observed;

B. Appoint, hire, suspend, supervise, transfer, and remove ~~all any~~ town employees, ~~with the advice and consent of the town council, excepting those a persons or entities providing professional services, including the town attorney.~~ The power of the town manager to appoint, hire, suspend, supervise, transfer and remove shall not apply to elected, statutory or appointed officials of the town; (Ord. 10-93, 9-2-1993)

C. Serve as the town financial director upon appointment by the mayor, with the advice and consent of the town council; (Ord. 2010-03, 5-12-2010)

D. Cause a proposed budget to be prepared annually and submitted to the mayor and town council and be responsible for the administration of the budget after its adoption (said budget to be construed as a financial estimate only); (Ord. 10-93, 9-2-1993)

E. Be appointed director of finance and perform the financial duties and responsibilities of an ex officio auditor as described in Utah Code ~~Annotated-section~~ 10-5-123. Provide for and assist in the conduct, performance and presentation of the annual financial report to the mayor and town council. The annual financial report shall be prepared within one hundred eighty (180) days of the close of the fiscal year. The town manager shall submit all required reports to state and other agencies as compiled from the audited financial statement. Upon written request of the mayor or town council, the town manager shall make written or verbal reports at any time concerning the affairs of the town under his supervision; (Ord. 2010-03, 5-12-2010)

F. Keep the mayor and the town council advised of the financial condition and future needs of the town and make such recommendations to the mayor or town council for adoption as he/she may deem necessary or expedient;

G. Be responsible for the enforcement of all terms and conditions imposed in favor of the town in any contract or public utility franchise, and upon knowledge of any violation thereof, report the same to the mayor and town council for such action and proceedings as may be necessary to enforce the same;

H. Attend council meetings and participate in discussions with the mayor and town council in an advisory capacity;

I. Establish a system of accounting and auditing for the town which shall reflect, in accordance with the generally accepted accounting principles, the financial condition and financial operation of the town;

J. ~~Shall act~~ as the liaison officer, where not specifically excluded by law or otherwise excluded by majority vote of the mayor and town council, between the town and other outside parties, consultants and agencies, including, but not limited to, those providing professional services to the town (including the town attorney), developers, national park service administration and persons or entities contracting with the town; (Ord. 10-93, 9-2-1993)

K. Carry out the policies and programs established by the town council;

L. Organize and direct the management of the executive affairs of the town in a manner consistent with state law and town ordinances; and

M. Perform such other duties as may be prescribed by ordinance or requested ~~of him~~ by the mayor and town council ~~which that~~ are ~~not in~~ consistent with ~~the state~~ laws of the state. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

~~1-6A-5: LEGISLATIVE POWERS AND OFFICIAL POSITION OF MAYOR NOT DELEGATED:
The legislative and judicial powers of the mayor, his position as chairman of the town council and any ex officio position the mayor may hold, shall not be delegated to the town manager. (Ord. 10-93, 9-2-1993; amd. 2001 Code)~~

Commented [DS17]: Provided in the state code, with some variation. Best practice is to leave out redundant/contradictory legal provisions.

ARTICLE B. TOWN ENGINEER

SECTION:

1-6B-1: Appointment

1-6B-2: Powers And Duties

1-6B-3: Recordings Not In Lieu Of Other Recordings

1-6B-1: APPOINTMENT:

The mayor, with the advice and consent of the town council, ~~shall may~~ appoint a town engineer. ~~The person so appointed as town engineer shall be a registered professional engineer under Utah Code Annotated title 58, chapter 22.~~ (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-6B-2: POWERS AND DUTIES:

A. Specified: The town engineer shall:

1. Be custodian of all maps, plans, plats, profiles, drawings, final estimates, specifications, and contracts which in any way relate to the public improvements and engineering affairs of the town;

2. Record all maps, plats, ~~etc.~~ ~~and other materials~~, that relate to public improvements; and

3. Be responsible for and coordinate construction of, by example and not by way of limitation, bridges, roads, water systems, sewer systems, irrigation systems, reservoirs, power stations and utilities.

B. Other Duties: The town engineer shall also perform all other duties as directed from time to time by the town council. (Ord. 10-93, 9-2-1993)

1-6B-3: RECORDINGS NOT IN LIEU OF OTHER RECORDINGS:

Recording or filing of a document in the town engineer's office does not remove the obligation to file a drawing or instrument in other offices. ~~Subdivision plats must be filed with the mayor, town engineer, town attorney, town clerk and county recorder 1.~~ (Ord. 10-93, 9-2-1993; amd. 2001 Code)

Notes

1. ~~1. See also subsection 10-14-8A of this code.~~

Formatted: Body Text

Formatted: Body Text

ARTICLE C. TOWN ARCHITECT

SECTION:

1-6C-1: Appointment

1-6C-2: Powers And Duties

1-6C-1: APPOINTMENT:

The mayor ~~shall~~may appoint, with the advice and consent of the town council, a town architect. Rate of pay and terms of the contract shall be negotiated from time to time by the town manager and ratified by the town council. Contact with the town architect for assistance will be authorized by the town manager or the director of community development. This appointment is at the will of the town council and can be terminated without cause or notice, at which time the vacancy could be filled by appointment of another qualified licensed architect. (Ord. 99-2, 3-4-1999; amd. 2001 Code)

1-6C-2: POWERS AND DUTIES:

The town architect ~~will have~~has the following powers and duties:

A. To participate in the design review of homes, businesses or other structures, as deemed necessary by the planning commission, town council, or director of community development (DCD);

B. To make recommendations to the DCD and planning commission, or town council, based on those reviews;

C. Other relevant reviews as deemed necessary by the planning commission, town council, DCD, or town manager. (Ord. 99-2, 3-4-1999)

ARTICLE D. TOWN ATTORNEY AND TOWN PROSECUTOR

SECTION:

1-6D-1: Town Attorney

1-6D-2: Town Prosecutor

1-6D-1: TOWN ATTORNEY:

A. Powers And Duties: The town attorney may prosecute violations of town ordinances and under state law, infractions and misdemeanors occurring within the boundaries of the town. The town attorney has the same powers in respect to the violations as are exercised by a county attorney or district attorney, including, but not limited to, granting immunity to witnesses. The town attorney shall represent the interests of the state or the town in the appeal of any matter prosecuted in any trial court by the town attorney. The town attorney may provide general legal representation to the town and may represent the town in state and federal court.

B. Appointment: The mayor ~~shall~~ may appoint, with the advice and consent of the town council, a town attorney. Rate of pay and terms of the contract shall be negotiated from time to time by the town manager and ratified by the town council. Contact with the town attorney for assistance will be authorized by the town manager or the director of community development. This appointment is at the will of the town council and can be terminated without cause or notice, at which time the vacancy ~~could~~ may be filled by appointment of another qualified licensed attorney. (Ord. 10-93, 9-2-1993; amd. 2001 Code)

1-6D-2: TOWN PROSECUTOR:

The mayor ~~shall~~ may appoint, with the advice and consent of the town council, a town prosecutor. Rate of pay and terms of the contract shall be negotiated from time to time by the town manager and ratified by the town council. Contact with the town prosecutor for assistance will be authorized by the town manager or the director of community development. This appointment is at the will of the town council and can be terminated without cause or notice, at which time the vacancy ~~could~~ may be filled by appointment of another qualified licensed attorney. (2001 Code)

CHAPTER 7

ELECTIONS

SECTION:

1-7-1: Conduct Of Municipal Elections

1-7-2: Primary Elections

1-7-3: Campaign Finance Disclosure Requirements

1-7-1: CONDUCT OF MUNICIPAL ELECTIONS:

Election for mayor, council members, and other elections conducted within the Town shall be in accordance with the Utah election code, as set out in Utah Code, Title 20A. Election for

~~mayor and council members shall be conducted according to the municipal election section of the Utah code. (Ord. 11-95, 5-11-1995; amd. 2001 Code)~~

~~—A. Due to the fact that its precinct contains less than five hundred (500) registered voters, the town of Springdale hereby identifies itself as a vote by mail (absentee ballot) precinct, which would eliminate the requirement for poll workers and election judges during early voting and on all election days, including primary, special and general. An absentee ballot will be mailed to each valid registered voter pursuant to Utah Code Annotated 20A-3-302. (Ord. 2009-03, 8-12-2009)~~

1-7-2: PRIMARY ELECTIONS:

This chapter provides for the candidates for mayor and council members to be nominated at a primary election, if required. A primary election will be held only when the number of candidates filing for an office exceeds twice the number to be elected. The candidates nominated at the primary election, plus candidates that were not required to run in the primary, are to be placed on the November ballot. (Ord. 11-95, 5-11-1995)

1-7-3: CAMPAIGN FINANCE DISCLOSURE REQUIREMENTS:

A. Definitions:

CONTRIBUTION: Monetary and nonmonetary 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.

EXPENDITURE: 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.

B. Filing Of Disclosure Reports: Each candidate for elective municipal offices shall file with the town clerk, dated, signed, and sworn financial reports which comply with this section and applicable state statutes.

C. Time Of Filing: Each candidate for elective municipal office shall report their itemized and total contributions and expenditures at least once no later than seven ~~(7)~~ days before the municipal general election and at least once no later than thirty ~~(30)~~ days following the municipal general election. Each candidate for elective municipal office who is eliminated at a municipal primary election shall report their itemized and total contributions and expenditures no later than thirty ~~(30)~~ days after the date of the municipal primary election.

D. Financial Reports; Required Information: Financial reports required by this section shall identify:

1. For each contribution of more than fifty dollars (\$50.00):
 - a. The name of the donor of the contribution; and
 - b. The actual amount of the contribution.
2. The aggregate total of all contributions under fifty dollars (\$50.00).
3. For each campaign expenditure:
 - a. The name of the recipient of each expenditure; and
 - b. The actual amount of each expenditure.

E. Public Information: The statements required by this section shall be public documents and shall be available for public inspection and copies may be requested in accordance with the government records access and management act.

F. Penalty For Noncompliance: Any candidate who fails to comply with this section shall be guilty of an infraction. (Ord. 2007-09, 7-11-2007)

CHAPTER 8
JUSTICE COURT
SECTION:

1-8-1: Establishment

1-8-1: ESTABLISHMENT:

A. Authority: The town council may by ordinance or interlocal agreement establish or designate a justice court. (Ord. 12-93, 9-2-1993)

B. Established: The town has is served by the Washington County Justice Court established by interlocal agreement the Hurricane/Springdale/Rockville justice court. Said agreement is on file in the town office. The justice court is located at 87 North 200 East, 3rd floor, St. George, UT 84770. (Res. 01-0110, 1-10-2001)

CHAPTER 9
PROCUREMENT
SECTION:

1-9-1: Purpose

1-9-2: Authority

1-9-3: Application

1-9-4: Compliance; Exceptions

1-9-5: Definitions

1-9-6: Source Selection

1-9-7: Appeals Of Specifications Or Award Of Bid, Contract Or Proposal

1-9-8: Specifications

1-9-9: Contracts

1-9-10: Payment Of Purchase Orders, Invoices, Accounts Payable

1-9-11: Ethics

1-9-12: Prohibited Activities, Penalties

1-9-13: Surplus Property

1-9-1: PURPOSE:

The underlying purposes and policies of this chapter are:

- A. To simplify, clarify, and modernize the procurement policies of the Town;
- B. To ensure fair and equitable treatment of all persons who conduct, or wish to conduct, business with the Town;
- C. To provide for the greatest possible economy in Town procurement activities; and

D. To foster effective ~~broad-broad~~-based competition within the free enterprise system to ensure the Town will receive the best possible service or product at the lowest possible price. (Ord. 2019-04, 6-12-2019)

1-9-2: PURCHASING AUTHORITY:

A. The Town Council appoints the Town Manager as the Town Purchasing Agent and delegates to the Town Manager authority to purchase supplies, services, or construction work or items when the dollar amount is ten thousand dollars (\$10,000.00) or less, or the payment of a particular obligation that has been specifically approved by the Town Council as part of the annual Town budget, regardless of the budget amount.

B. The Town Manager may delegate to department Directors, or any other Town employee, authority to purchase supplies, services, or construction work or items when the dollar amount is two thousand dollars (\$2,000.00) or less. These delegations shall be in writing and may be limited in scope as the Town Manager directs.

C. Where the dollar value exceeds ten thousand dollars (\$10,000.00), procurement of supplies, services, or construction work or items shall require approval by the Town Council before being awarded, unless the purchase is for a specific service or for the payment of a particular obligation that the Town Council has specifically approved as part of the annual Town budget. (Ord. 2019-04, 6-12-2019)

1-9-3: APPLICATION:

This chapter applies to ~~agreements and contracts for the~~any procurement ~~procurement of supplies, services and construction work and items, entered into by the Town after the effective date hereof. It shall apply to every expenditure of public funds by the Town for buying, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies or services and all related acquisition processes,~~ irrespective of the source of funds. When ~~the a~~ procurement involves the expenditure of Federal assistance or agreement funds, the procurement shall be conducted in accordance with any mandatory applicable Federal law and regulations. (Ord. 2019-04, 6-12-2019)

1-9-4: COMPLIANCE; EXCEPTIONS:

A. General Policy: ~~It shall be the general policy of the Town Council, and the~~The town, including all departments, agencies, committees, commissions, officials, and employees of the Town, ~~shall, to~~ abide by the terms and provisions of this policy.

B. Grant, Gift Or Bequest: Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

C. Two Thousand Dollars Or Less: Procurements with a dollar amount of two thousand dollars (\$2,000.00) or less may be made by the individual department Directors of the Town, as delegated by the Town Manager.

D. Ten Thousand Dollars Or Less: Procurement with a dollar amount of ten thousand dollars (\$10,000.00) or less may be made by the Town Manager.

E. Other Procurements Not Budgeted: Approval from the Town Council is required for any nonbudgeted procurement that exceeds ten thousand dollars (\$10,000.00).

F. Exchanges: Exchanges of supplies, material, or equipment between the Town and any other public agency that are not by sale or auction shall be by mutual agreement of the respective public agencies.

G. Town Employees: The bidding requirements of the Town Procurement Code do not apply to the following work performed by Town employees:

1. Conducting or managing any department, business or property of the Town;
2. Installing, raising, lowering, or repairing water mains or sewers; and
3. Grading, repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits.

H. Review By Town Council: The Town Council shall review all purchases of one thousand dollars (\$1,000.00) or more as part of its regular monthly Council meeting agenda. (Ord. 2019-04, 6-12-2019)

1-9-5: DEFINITIONS:

The following words and phrases used in this chapter have the following meaning unless a different meaning clearly appears from the context:

AGREEMENT: All types of Town agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

BIDDER: A person who submits a bid or price quote in response to an invitation for bids or a request for proposals.

Commented [VC18]: UCA 63G-6A-103(4), how legislature defines bidder

BIDDING: The procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipment, and contractual services.

CHANGE ORDER: A written order signed by the Town Manager or department Director delegated by the Town manager directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize without consent of the contractor, or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONSTRUCTION: The process of building, renovating, altering, improving, or repairing a public building or public work; but does not include the routine operation, repair, or maintenance of existing structures, building, or real property.

CONTRACT: Any Town agreement for the procurement or disposal of supplies, services, or construction.

CONTRACTOR: Any person having an agreement with the Town.

COST REIMBURSEMENT CONTRACT: A contract under which a contractor is reimbursed for costs that are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

DEPARTMENT: Any Town department, commission, board, or agency requiring the procurement of supplies, services, or construction pursuant to this chapter.

INVITATION TO BID: All documents, whether attached or incorporated by reference, used for soliciting bids.

PERSON: Any business, individual, union, committee, club, other organization, or group of individuals.

PROCUREMENT: Buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction, including description of requirements, selection, and solicitation of sources, preparation of award of agreement, and all phases of agreement administration.

PURCHASE ORDER: A form provided by the Town for the procurement of any goods and/or services of a nonrecurring nature, describing the goods or services and giving the pertinent vendor information.

PURCHASING AGENT: The person or persons designated in this chapter to procure supplies, services, or construction on behalf of the Town.

REQUEST FOR PROPOSALS: All documents, whether attached or incorporated by reference, used for soliciting proposals.

RESPONSIBLE BIDDER OR OFFEROR: A person who has the capability in all respects to perform fully the agreement requirements, and the experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance.

RESPONSIVE BIDDER OR OFFEROR: A person who has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

SERVICES: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance; but does not include employment agreements.

SOLE SOURCE PROVIDER: A provider who is the only provider of a specific material, supply, equipment, or service. This may include providers of specific brands set forth in the specifications or providers of a unique service.

SPECIFICATION: Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

SUPPLIES: All property, including, but not limited to, equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land. (Ord. 2019-04, 6-12-2019)

1-9-6: SOURCE SELECTION:

A. Purchase Order Requirements:

1. Specified:

a. Any procurement over one thousand dollars (\$1,000.00) in total shall be accompanied by a purchase order signed by the department Director and Town Manager, or designee. For purposes of this requirement, no purchase shall be divided in portions as to make each purchase order less than or equal to one thousand dollars (\$1,000.00).

b. Each purchase order shall be attached to an invoice or other documentation supporting the amount of the order.

c. In the case where a staff member or member of the Town Council is being reimbursed, that person shall not be allowed to be signatory on the purchase order.

2. Exceptions: If considered to be a periodically recurring expenditure and the amount is reasonably predictable and consistent from one period to the next, no purchase order will be required on subsequent expenditures.

3. Administrative Procedures: The Town Council shall authorize the Town Manager to develop additional administrative procedures related to the purchase order process as needed, which procedures shall not be inconsistent with this chapter. No administrative procedure shall be interpreted to circumvent or replace any part of this policy.

B. Procurements Requiring No Bid: The following procurements do not require a bid:

1. Small Purchases: Procurements with a dollar amount of one thousand dollars (\$1,000.00) or less ~~shall do~~ not require bids of any type. Procurements shall not be artificially divided so as to constitute a small purchase under this section.

2. State Contracts: Procurements made through the cooperative purchasing contracts administered by the State Division of Purchasing.

3. Sole Source: Procurements made from a sole source provider may be approved, without competition, when the Purchasing Agent, or designee, determines in writing that:

a. There is only one source for the required purchase; or

b. The award is a condition of a donation or grant that will fund the full cost of the purchase.

c. Examples of potential reasons for sole source procurements include, but are not limited to:

(1) The compatibility of equipment, accessories, replacement parts or service is the paramount consideration;

(2) Trial use or testing;

(3) Procurement of items for resale;

(4) Procurement of public utility service; or

(5) Unique properties.

When a sole source procurement has been approved, the Purchasing Agent or designee shall negotiate the price and terms. Unsatisfactory results of such negotiations may prompt additional evaluation of alternatives.

4. Emergency Purchases: Procurements required during an emergency, including, but not limited to, an imminent threat to the public health, welfare, or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to resolve the emergency.

5. Contracts With The Town: Procurement may be approved, without additional competition otherwise required by this chapter, when the procurement is the result of work to be completed through a contract with the Town previously awarded through a competitive bid, competitive proposal, or the hiring of designated professional services as provided herein, and as provided for in the terms of the contract.

6. Other Government Agency Contracts: Procurement may be approved, without additional competition otherwise required by this chapter, when the Purchasing Agent, or designee, determines that another governmental agency has issued a procurement contract based on competitive quotes or bids and either: a) the Town is authorized to purchase

under the terms of that contract; or b) the Town is offered by a vendor a price equal to or less than the bid price offered through the other agency.

7. Direct Government Agency Purchases: When the Purchasing Agent, or designee, determines that the Town would benefit from purchases of goods or services either surplus by or manufactured by another governmental agency, procurement may be approved without additional competition otherwise required by this chapter.

C. Procurements Requiring A Bid:

1. Procurements with a dollar amount over one thousand dollars (\$1,000.00), but less than ten thousand dollars (\$10,000.00) shall require a minimum of three (3) documented telephone bids.

2. Procurements with a dollar amount of ten thousand dollars (\$10,000.00) or more, but less than fifty thousand dollars (\$50,000.00) shall require a minimum of three (3) written bids. When reasonable efforts have been made to receive three (3) written bids, but efforts are unsuccessful, the Town Manager or Purchasing Agent may approve the procurement with fewer than three (3) written bids.

3. Any procurement with a dollar amount of fifty thousand dollars (\$50,000.00) or more shall follow the competitive sealed bid process outlined herein.

D. Competitive Sealed Bids: Except as permitted in this chapter, purchases exceeding fifty thousand dollars (\$50,000.00) shall require competitive sealed bids and shall be awarded to the lowest responsible and responsive bidder, whose bid meets the requirements and criteria set forth in the invitation for bids.

1. Invitation To Bid: Invitations to bid shall include the following terms:

- a. The period of time during which bids will be accepted;
- b. A description of the manner in which a bid shall be submitted;
- c. The place where a bid shall be submitted;
- d. The place and time where bids shall be publicly opened;
- e. A description and specifications for the item or service being bid; and
- f. The objective criteria to be used to evaluate the bids and any required contractual terms and conditions.

2. Review And Approval: The Ordering Department shall prepare a bid request package using standard Town formats. The bid request shall be reviewed and approved by the Town Manager prior to advertising.

3. Advertisements: All sealed bid requests shall be advertised at least once in a generally and widely available medium, which may include a newspaper, business journal, or website. Such advertising shall be completed a minimum of two (2) weeks prior to the deadline for submission of bids. Any procurement subject to noticing requirements of State and/or Federal law shall comply with those requirements.

4. Bid Clarifications: Bidders may submit challenges or requests for clarification of specifications, prior to the date specified in the bid requirements. Responses to challenges and requests shall only be through official addenda issued by the Purchasing Agent, or designee.

5. Bid Opening: All sealed bids shall be received by the Town Purchasing Agent, or designee by the time and date specified in the invitation for bids. Bids shall be opened in a

public meeting held for that purpose by the Purchasing Agent, or designee, and representatives from the Ordering Department. The amount of each bid, and other relevant information as the Purchasing Agent, or designee, deems appropriate, together with the names of each bidder shall be recorded and made available for public inspection.

6. Bid Tabulation, Review, And Recommendation: Bids shall be tabulated and reviewed by the Purchasing Agent, or designee, and the Ordering Department to verify that the bidders are responsible and responsive. The Ordering Department, with concurrence of the Purchasing Agent, or designee, shall prepare a recommendation for award of the bid to the Town Manager for review and approval, prior to submittal to the Town Council for final action.

7. Award: The Town Council shall award the bid to the lowest responsible and responsive bidder.

8. Notification: The Purchasing Agent, or designee, shall notify all bidders of the bid award, within three (3) business days following the award by the Town Council.

9. Administrative Procedures: The Town Council shall authorize the Town Manager to develop additional administrative procedures related to the sealed bid process as needed, which procedures shall not be inconsistent with this chapter. No administrative procedure shall be interpreted to circumvent or replace any part of this policy.

E. Use Of Competitive Sealed Proposals In Lieu Of Bids: Proposals may be solicited in lieu of sealed bids when the Town Manager determines in writing, that: 1) bidding is not practicable or is not advantageous to the Town; 2) waiving sealed bids would not be in contravention of applicable State law; 3) the process will be fair, just, and equitable; and 4) the request for proposals procurement process will provide the best value to the Town. Competitive sealed proposals are most appropriately used for the procurement of professional services, design-build procurement, when cost is not the most important factor to be considered when making the selection that is most advantageous to the Town, or when other factors, in addition to cost, are highly significant in making the selection that is most advantageous to the Town.

1. Contents: A request for proposal (RFP) shall state the period of time during which proposals will be accepted, describe the manner in which a proposal shall be submitted, state the place and time where a proposal shall be submitted, include a description for the item or service being sought, the subjective and objective criteria to be used to evaluate the proposals, and any required contractual terms and conditions.

2. Advertisements: All RFPs shall be advertised at least once in a generally and widely available medium, which may include a newspaper, business journal, or website. Such advertising shall be completed a minimum of two (2) weeks prior to the deadline for submission of proposals. Any procurement subject to noticing requirements of State and/or Federal law shall comply with those requirements.

3. Opening Of Proposals: All sealed proposals shall be received by the Town Purchasing Agent, or designee by the time and date specified in the RFP. Proposals shall be opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process. The Purchasing Agent, or designee, shall prepare a register of proposals containing the name of each offeror, the number of modifications received, if any, and a description of the item or service offered. The register of proposals may be open for public inspection only after the proposal award.

4. Best And Final Offers: After proposals are received and opened, the Purchasing Agent, or designee, may conduct discussions with the offerors and allow the offerors to make best and final offers after the discussions. The Purchasing Agent, or designee, shall:
 - a. Ensure that each offeror receives fair and equal treatment;
 - b. Ensure that information in each proposal and gathered in discussions is not shared with other offerors;
 - c. Ensure that auction tactics are not used; and
 - d. Set a time and date for submission of best and final offers.
5. Evaluation Committee: The Purchasing Agent, or designee, shall appoint an Evaluation Committee consisting of at least three (3) individuals, one of which shall be the Purchasing Agent, or designee. No member of the Evaluation Committee shall have contact with an offeror for any reason other than conducting the procurement process.
6. Scoring: The Evaluation Committee shall score proposals on all criteria other than cost before having access to information relating to or scoring of the cost of each proposal. The committee shall provide a detail of scores awarded to each offeror to the Purchasing Agent, or designee.
7. Recommendation: The Purchasing Agent, or designee, shall prepare a recommendation for award of the proposal to the Town Manager for review and approval, prior to submittal to the Town Council for final action.
8. Award: The Town Council shall award the proposal to the responsible and responsive offeror with the highest total score.
- F. Cancellation And Rejection Of Bids Or Proposals: An invitation for bids or request for proposals (RFP) or other solicitation may be canceled or any or all bids or proposals may be rejected, in whole or in part, when it is in the best interest of the Town, as determined by the Town Council.
- G. Contracting For Designated Professional Services: Notwithstanding any term or provision to the contrary herein, the services of professional consultants (including, but not limited to, architects, engineers, attorneys, veterinarians, information technology professionals) may be procured pursuant to the provisions outlined in this chapter, or such other manner as is deemed by the Town Council to be fair and reasonable, efficient and in the best interest of the Town. Such procurements are qualification based. Where practicable, requests for such services should be publicly announced. Contracts should be negotiated by the Town based on demonstrated competence, availability under any applicable time constraints, and fair and reasonable prices. The services of architects and engineers shall be procured in accordance with Utah Code ~~Annotated~~ section 10-7-86 as amended.
- H. Construction Projects: Procurement for construction projects subject to Utah Code ~~Annotated~~ section 11-39 must comply with State bidding requirements.
- I. Determination Of Nonresponsiveness Of Bidder: Determination of nonresponsiveness of a bidder or offeror shall be made in writing. The ~~unreasonable~~ failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsiveness with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this

subsection shall not be disclosed outside of the Purchasing Agent, or designee, without prior written consent by the bidder or offeror.

J. Evaluation Factors: The following evaluation factors shall apply to all invitations for bids and requests for proposals:

1. The quality of supplies ~~and/or work~~ services offered;
2. The ability, capacity, and skill of the ~~supplier/bidder~~ bidder to perform the contract or provide the supplies or service required;
3. Whether the ~~supplier/bidder~~ bidder can perform the contract or provide the supplies promptly, or within the time specified, without delay or interference;
4. The sufficiency of the ~~supplier/bidder's~~ bidder's financial resources and the effect thereof on his ability to perform the contract or provide the supplies or services;
5. The character, integrity, reputation, judgment, experience, and efficiency of the ~~supplier/bidder~~ bidder;
6. The quality of the ~~supplier/bidder~~ bidder's performance on previous orders or contracts for the Town or others;
7. Litigation by or against the ~~supplier/bidder~~ bidder, either pending or threatened, where claim is made that the ~~supplier/bidder~~ bidder provided or furnished materially defective workmanship or materials or failed to substantially comply with bid specifications or contract terms and conditions;
8. Any previous or existing noncompliance by the ~~supplier/bidder~~ bidder with laws and ordinances of the Town relating directly or indirectly to the subject of the contract;
9. The ability of the ~~supplier/bidder~~ bidder to provide future maintenance and service, where such maintenance and service is essential;
10. Possession or ability to obtain all necessary local and State licenses either at the time of bid or before doing business with the Town, as specified by the contracting agent;
11. A statement by ~~supplier/bidder~~ bidder of all subcontractors ~~the bidder~~ he will use who may do or supply ten percent (10%) or more of the total contract being awarded, or a willingness to supply such listing of subcontractors at the time of bid award. (Ord. 2019-04, 6-12-2019)

1-9-7: APPEALS OF SPECIFICATIONS OR AWARD OF BID, CONTRACT OR PROPOSAL:

- ~~A.~~ A. Filing; Time Limit: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a bid, contract, or proposal may appeal to the Purchasing Agent, or designee. The appeal must be in writing.
- B. Appeal Of Specifications: An appeal regarding the specifications of a solicitation must be submitted in writing, prior to the opening of the bid, and must list the pertinent facts giving rise to the appeal.
- C. Appeal Of Award Of Contract Or Purchase: An appeal regarding the award of a bid, contract or proposal must be submitted in writing, within five (5) business days after notice is given of the award of the bid, contract or proposal, and must list the pertinent facts giving rise to the appeal.
- D. Stay Of Proceedings: In the event of a timely appeal, the Town shall not proceed further with the solicitation or with the award of the bid, contract or proposal until the

Commented [VC19]: I replaced "work" with "services" because we have not defined work above.

Commented [VC20]: Bidder and Supplier are not defined in the Town Code. I have defined Bidder according to Utah's procurement statute, and simplified this section to read "bidder" instead of "supplier/bidder"

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.11" + Indent at: 0.36"

appeal is sustained or rejected as provided for herein, unless an immediate award of the contract is required to protect substantial interests of the Town. Untimely protests will not be considered.

E. Decision; Appeal To Town Council: The Purchasing Agent, or designee, shall issue a written decision regarding any appeal, if the appeal is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protester, contractor or prospective contractor of the right to appeal to the Town Council.

F. Final Appeal: The decision of the Purchasing Agent, or designee, may be appealed to the Town Council by submitting a written appeal to the Town within five (5) business days of the decision issued by the Purchasing Agent, or designee. The decision of the Town Council is final. (Ord. 2019-04, 6-12-2019)

1-9-8: SPECIFICATIONS:

A. The Ordering Department shall be responsible for developing complete, accurate, and understandable specifications for the item or service being bid.

B. Specifications shall be in a format acceptable to the Town Purchasing Agent, or designee, and shall comply with all requirements of any applicable Town, State, or Federal contract and procurement policies and regulations, including, but not limited to, bond and insurance requirements.

C. The Town Council, Town Manager, Purchasing Agent, or designee may authorize the Town Engineer, Town Attorney or other individuals or entities as appropriate to prepare specifications for the Town's use in making procurements, provided there is no substantial conflict of interest involved.

D. All specifications shall seek to promote overall economy and best use for the purpose intended and encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. Where practical and reasonable and within the scope of this chapter, local products shall be given preference. (Ord. 2019-04, 6-12-2019)

1-9-9: CONTRACTS:

A. Contract Requirements: With the exception of small purchases, all contracts between the Town and a person or entity providing supplies or services shall be in writing, and approved by department Directors, the Town Manager, Purchasing Agent, or the Town Council as authorized herein. Contracts approved by the Town Council shall be signed by the Mayor and attested by the Town Clerk.

B. Exclusive And Nonexclusive Contracts: Exclusive and nonexclusive contracts may be awarded by the Town. Unless a contract specifically states it is exclusive, it shall be deemed to be nonexclusive. "Nonexclusive" means that the Town may award multiple contracts to more than one contractor for similar supplies or services, as it deems appropriate.

C. Period Of Time For Contracts:

1. Terms Included: A contract for supplies and services may be entered into for any period of time deemed to be in the best interest of the Town; provided, that the term of any contract and the conditions of renewal or extension, if any, are included in the solicitation.

2. Pay And Performance Obligations: Pay and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriations of funds by the Town Council.

D. Prohibited Contracts:

1. "Open ended" (starting date only) contracts, and "evergreen" (automatically renewed) contracts, are prohibited, unless it is subject to a written provision authorizing the Town to cancel without penalty or charge on a not greater than thirty (30) calendar days' notice.

2. Cost plus percentage of cost contracts are prohibited.

E. Modification Of Contracts/Change Orders: Contracts (including purchase orders) may be amended, modified, or supplemented only by written amendment to the contract and, executed by the parties to the contract.

F. Cost Reimbursement Contracts: A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

G. Required Contract Clauses: Required contract clauses are as follows:

1. The unilateral right of the Town to order, in writing, changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work.

2. Variations occurring between estimated quantities of work in a contract and actual quantities.

3. Suspension of work ordered by the Town.

4. Warranties of title and quality of construction; timely correction of defects.

5. Compliance with local, State, and Federal laws applicable to contract.

6. Indemnification of Town by contractor for contractor's negligence, inclusive of contractor's agents, assigns, and subcontractors, while engaged in the performance of the contract and resulting damage or injury to persons or property.

7. Contractor assumes risk of loss until completion and final acceptance of contract or service by Town.

8. Venue and jurisdiction; governing law; and attorney fees awarded to prevailing party in any dispute to interpret or enforce the terms of the contract.

9. All other contract clauses as the Town Attorney may deem appropriate for the particular procurement.

H. Review Of Contracts By Town Attorney: All procurements utilizing a request for proposal or an invitation to bid shall be reviewed and approved as to form by the Town Attorney. (Ord. 2019-04, 6-12-2019)

1-9-10: PAYMENT OF PURCHASE ORDERS, INVOICES, ACCOUNTS PAYABLE:

A. Prepared Weekly: Payment shall be prepared weekly for all purchase orders, contract payments, or invoices prepared in accordance with this chapter.

B. Payment To Payee: Payment shall be made directly to the payee shown on the purchase order, contract payment, or invoice.

C. Check Payments: Check payments may be issued only upon full conformity of the requirements of this chapter and following appropriate signatures (2 required) on each check. (Ord. 2019-04, 6-12-2019)

1-9-11: ETHICS:

A. Personal Investment: No person involved in making procurement decisions may have personal investments in any business entity that will create a substantial conflict between their private interests and their public duties.

B. Items Of Value Used To Influence Award Of Contract: It shall be unlawful for any employee of the Town (or family member of an employee) to ask for or receive; or for a supplier, provider, or contractor to offer; a gratuity, gift, reward, or anything of value, to any employee of the Town (or family member of an employee) which could be reasonably intended to influence the award of any contract or purchase order; or otherwise violate State or Town conflict of interest laws.

C. Gifts Permitted; Conditions: Reasonableness shall be interpreted conservatively, and may be additionally defined or limited by the Mayor, Town Council, or Town Manager, as occasions warrant. Seasonal gifts offered to general Town staff and not intended for exclusive personal use, are acceptable if not in violation of the Town Conflict of Interest Ordinance. Other minor gifts, including business meals, may be acceptable if they otherwise comply with this Code, but in no case shall such gifts exceed fifty dollars (\$50.00) in value in any fiscal year. Any such gift shall be reported by the employee within five (5) working days to the supervising department Director and the Town Manager. (Ord. 2019-04, 6-12-2019)

1-9-12: PROHIBITED ACTIVITIES, PENALTIES:

A. Conflicts Of Interest: No member of the Town Council or Town employee may be interested directly or indirectly in any contract entered into by the Town. A violation of this provision shall be cause for removal or other disciplinary action; provided, however, that no violation shall be deemed to have occurred if the interested member of the Town Council or employee declares, prior to awarding of any contract, ~~their~~his interest and the potential for conflict of interest.

B. Collusion Among Bidders: Any agreement or collusion among bidders or prospective bidders, ~~in or any~~ restraint of freedom of competition, by agreement to bid a fixed price or otherwise, shall render the bids of such bidders void.

C. Bid Disclosure: It is unlawful for any elected official, officer, or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding process.

D. Benefit From Active Participation: It is unlawful for any elected official, officer, or employee to actively participate in the awarding of the contract from which ~~the elected official~~he will directly benefit, without fully disclosing any interest ~~the elected official~~he has therein.

E. Purchases In Violation: Any employee or official of the Town who purchases goods or services in violation of the procedures set forth in this chapter may be subject to penalties up to and including possible termination or removal from office.

F. Waiver: The Town Council shall have the right to waive any or all of the requirements of this chapter ~~shall it deem it deems~~ necessary or in the best interests of the Town. Waiver shall be deemed to have occurred either implicitly or explicitly through action of the Town Council in public meeting whether taken before or after the expenditure has occurred. (Ord. 2019-04, 6-12-2019)

1-9-13: SURPLUS PROPERTY:

A. Authority: The Town may, from time to time, dispose of real and/or personal property that it has previously acquired for Town use. Such property may include, but not be limited to, property which no longer functions properly, is dilapidated, requires frequent or costly maintenance or repairs, is outmoded or outdated, and/or is no longer needed or desired for Town use.

B. Notifications: Whenever Town property meets conditions outlined in subsection A of this section, the department Director having control of such property shall notify the Town Manager. The Town Manager shall notify other Town departments of the availability of such property and if requested, shall transfer such property to the department requesting the property. If the property is not requested by any department, the property may be disposed of in accordance with this section.

C. Property Permitted for Disposal: When necessary, the Town Manager, or the Town Manager's designee, shall prepare and present to the Town Council a listing of all Town owned property to be declared surplus. After the Town Council has declared by resolution the property to be surplus, the Town may, at its option and discretion, proceed to sell or exchange the property by offering the same for sale or exchange to the public, to one or more specific persons or governmental, educational, religious, public, or private entities.

D. Declaration Of Surplus Required: No Town owned property, except such items as are consumed in their use for official Town business, may be disposed of or released to ownership unless such property is first declared surplus by the Town Council and then disposed or released in accordance with subsection E of this section.

~~—D. Sale Of Property Permitted: When necessary, the Town Manager shall prepare and present to the Town Council a listing of all Town owned property to be declared surplus. After the Town Council has declared by resolution the property to be surplus, the Town may, at its option and discretion, proceed to sell or exchange the property by offering the same for sale or exchange to the public, to one or more specific persons or governmental, educational, religious, public or private entities.~~

E. ~~Sale Of Property~~ Disposal Requirements: Except as provided for in this section, any proposed sale or exchange shall be:

1. Open to public bidding or offer, or by sealed bid or offer;
2. On terms that are deemed by the Town Council to be in the best interests of the Town, including, but not limited to, terms that are financially advantageous to the Town and its residents; and
3. Consistent with any criteria established by the Town Council for such sale and/or exchange.

F. ~~Sale Property Disposal~~ To Specific Persons Or Entities: In the case of a proposed sale and/or exchange that is limited solely to a sale and/or exchange with one or more specific

persons or governmental, educational, religious, or public or private entities, such proposed sale and/or exchange need not be open to public bidding or offer. However, the Town Council shall, by resolution, condition the declaration of surplus property on the consummation closing of the proposed sale and/or exchange of property; limit the proposed sale and/or exchange of property to the identified one or more ~~of such identified~~ persons or governmental, corporate, educational, religious, or public entities; require that such sale and/or exchange be on terms that are fair and equitable to the Town; and require that the sale and/or exchange be in furtherance of a significant public interest, and determine and identify therein what that significant public interest is or may be.

G. Unsold Property: If the surplus item is subjected to sale by bidding, offer or sealed bid, and remains unsold, the Town Manager may sell the surplus item to any person for such price as the Town Manager deems appropriate or may dispose of the item as the Town Manager shall direct.

H. Fund Credited: Monetary proceeds from the sale or other disposition of items pursuant to this section shall be credited to the department having control of the surplus property. (Ord. 2019-04, 6-12-2019)

CHAPTER 10
RECORDS ACCESS AND MANAGEMENT
SECTION:

1-10-1: Adoption Of State Standards

1-10-2: Fees

1-10-3: Retention

1-10-4: Appeals; Chief Administrative Officer

1-10-1: ADOPTION OF STATE STANDARDS:

Except as otherwise provided in this chapter, the town does hereby adopt all relevant provisions of the government records access and management act (GRAMA), Utah Code Annotated section 63G-2-101 et seq., as the same may be amended from time to time. Town records shall be classified and managed pursuant to the standards set out in the act. (Ord. 2014-04, 4-9-2014)

Commented [VC21]: Utah Appellate use of Utah Code in sentences is that you leave out annotated and do not capitalize section. I have made this change throughout.

1-10-2: FEES:

The town shall establish by resolution reasonable fees for the cost of duplicating requested records. (2001 Code)

1-10-3: RETENTION:

Retention of town records shall be in accordance with the municipal general schedule, as it may be amended from time to time, as prepared by the Utah department of administrative services, division of archives, and record service (state archives); however, the town reserves the right to maintain any or all of its records beyond the time limits set out in the municipal general schedule. (Ord. 2014-04, 4-9-2014)

1-10-4: APPEALS; CHIEF ADMINISTRATIVE OFFICER:

The town will follow the appeals process as outlined in GRAMA. The town manager or manager's designee will serve as the chief administrative officer referred to in any section of GRAMA. (Ord. 2014-04, 4-9-2014)

CHAPTER 11

EQUAL EMPLOYMENT

SECTION:

1-11-1: Purpose And Findings

1-11-2: Administration

1-11-3: No Private Right Of Action; No Special Rights

1-11-4: Severability

1-11-5: Definitions

1-11-6: Applicability

1-11-7: Unlawful Employment Practices

1-11-8: Unlawful Action

1-11-9: Procedures For Filing Complaints

1-11-10: Investigation

1-11-11: Conciliation

1-11-12: Disposition Of A Complaint

1-11-13: Offenses And Penalties

1-11-1: PURPOSE AND FINDINGS:

~~Every individual in the town has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of the town by preventing all of the town's citizens from contributing to or fully participating in the cultural, spiritual, social, and commercial life of the community, which is essential to the vitality of the town. In accordance with applicable law, the Town of Springdale prohibits discrimination and harassment based on a person's~~
The Utah antidiscrimination act, Utah code section 34A-5-101 et seq., addresses employment related discrimination based on race, color, sex, pregnancy, childbirth or pregnancy related conditions, religion, national origin, age (if 40 years of age or older), and disability, ~~sexual orientation, or gender identity, but does not address discrimination based on sexual orientation or gender identity.~~

~~Utah law has only recently addressed the prohibition of discriminatory employment practices based on a person's sexual orientation or gender identity and~~ The town has found that discrimination in employment on the basis of sexual orientation and gender identity must be addressed. The denial or deprivation of employment rights because of an individual's sexual orientation or gender identity is detrimental to the health, safety, and welfare of the town's citizens and damages the town's economic well being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in employment within the town ~~Town~~ against individuals

Commented [VC22]: Chapters 11 and 12 were removed. These dealt with Anti-Discrimination against "sexual orientation" and "gender identity" because at that time the state of Utah did not protect these classifications. This created an avenue for these protections. Now, Utah Code section 34A-5-106 and 57-21-5. Discrimination in the workplace and in housing are protected for these classes under the 2016 updates to the legislative code. This would give persons discriminated against an avenue with the Labor or Housing Commissions, which is a better avenue than with the Town. These were removed for that purpose.

Commented [VC23]: This was updated in 2016 - see UCA 34A-5-106

Commented [VC24R23]: I wonder if Chapters 11 and 12 should be revised in a more generalized reading now that the laws have changed. Possibly removing much of this duplicative language to state code.

based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose. (Ord. 2012-03, 4-11-2012)

1-11-2: ADMINISTRATION:

The mayor is responsible for administering and implementing this chapter. (Ord. 2012-03, 4-11-2012)

1-11-3: NO PRIVATE RIGHT OF ACTION; NO SPECIAL RIGHTS:

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights or privileges which would not be available to all individuals because every individual has a sexual orientation and a gender identity. (Ord. 2012-03, 4-11-2012)

1-11-4: SEVERABILITY:

If any section, sentence, paragraph, term, definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect. (Ord. 2012-03, 4-11-2012)

1-11-5: DEFINITIONS:

Solely for the purposes of this chapter, the following definitions apply:

ADMINISTRATOR: The person designated by the mayor to receive, investigate, and conciliate complaints under this chapter and includes the administrator's designated representatives.

COMPLAINANT: A person, including the administrator, who files a complaint under this chapter.

CONCILIATION: The attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the complainant, the respondent, and the administrator.

CONCILIATION AGREEMENT: A written agreement setting forth the resolution of issues by conciliation under this chapter.

DISCRIMINATION: Any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity. The terms "discriminate", "discrimination" and "discriminatory" do not include segregation by gender or gender identity, in the

reservation, rental or assignment of employee housing, lodging or quarters intended to be occupied by individuals of the same gender, sharing sleeping, living, or bathroom facilities.

EMPLOYEE: Any individual applying with or employed by an employer. The term does not include an elected official.

EMPLOYER: As defined in Utah Code Annotated section 34A-5-102(1)(h) (as amended).

EMPLOYMENT AGENCY: As defined in Utah Code Annotated section 34A-5-102(1)(i) (as amended).

GENDER IDENTITY: A person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of an individual with or without regard to the person's sex at birth.

LABOR ORGANIZATION: Any organization that exists for the purpose in whole or in part of collective dealing with employers concerning grievances, terms, or conditions of employment; or other mutual aid or protection in connection with employment.

MAYOR: The duly elected or appointed and qualified mayor of the town of Springdale.

OTHERWISE QUALIFIED: A person who possesses as many of the following, required by an employer for any particular job, job classification, or position:

- A. Education;
- B. Training;
- C. Ability;
- D. Moral character;
- E. Integrity;
- F. Disposition to work;
- G. Adherence to reasonable rules and regulations; and
- H. Other job related qualifications required by an employer.

PERSON: One or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers, and the town.

RELIGIOUS ORGANIZATION: A religious corporation, association, educational institution, society, trust, or leader, when acting in that capacity, or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association, society, trust or corporation sole.

RESPONDENT: A person identified in a complaint as having committed an unlawful practice under this chapter.

SEXUAL ORIENTATION: A person's actual or perceived orientation as heterosexual, homosexual, or bisexual.

TOWN: The town of Springdale, Utah.

TOWN ATTORNEY: The town's duly appointed attorney.

UNLAWFUL PRACTICE: A discriminatory act or practice relating to employment that is prohibited under this chapter. (Ord. 2012-03, 4-11-2012)

1-11-6: APPLICABILITY:

This chapter does not apply to:

- A. A religious organization as defined by this chapter.

Commented [VC25]: UCA 34A-5-102

—B. An expressive association whose employment of a person protected by this chapter would significantly burden the association's rights of expressive association under *Boy Scouts Of America v. Dale*, 530 U.S. 640 (2000).

—C. The United States government, any of its departments, agencies, instrumentalities, or any corporation wholly owned by it; the state of Utah or any of its departments, agencies, political subdivisions except for the town Town. (Ord. 2012-03, 4-11-2012)

1-11-7: UNLAWFUL EMPLOYMENT PRACTICES:

—A. Employers: An employer may not refuse to hire, promote, discharge, demote, or terminate any person, and may not retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified because of a person's sexual orientation or gender identity.

—B. Employment Agencies: An employment agency may not refuse to list and properly classify for employment, or refuse to refer a person for employment, in a known available job for which the person is otherwise qualified because of a person's sexual orientation or gender identity.

—C. Labor Organizations: A labor organization may not exclude any person otherwise qualified from full membership rights in the labor organization, expel a person from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization's members in full employment of work opportunity, or representation, because of a person's sexual orientation or gender identity.

—D. Training Programs: An employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on the job training programs, instruction, training, or retraining programs may not deny to, or withhold from, any qualified person the right to be admitted to, or participate in, any apprenticeship training program, on the job training program, or other occupational instruction, training, or retraining program because of a person's sexual orientation or gender identity.

—E. Notices And Advertisements: Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for security reasons, an employer, employment agency, or labor organization may not print, circulate, or cause to be printed or circulated, any statement, advertisement, or publication, use any form of application for employment or membership, or make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification, or discrimination because of a person's sexual orientation or gender identity. Provided, however, that nothing in this paragraph prohibits expression of a limitation, specification, or discrimination because of gender, on the basis that the employee is required to live in employee housing and employee housing is available only for a particular gender.

It is unlawful for a joint labor-management committee controlling apprenticeship or other training or retraining (including on the job training programs) to print, or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the

joint labor management committee that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity.

Nothing in this chapter prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination based on sexual orientation or gender identity when sexual orientation or gender identity is a bona fide occupational qualification for employment.

—F. No Preferential Treatment: Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any person because of the person's sexual orientation or gender identity on account of any imbalance that may exist with respect to the total number or percentage of persons of any sexual orientation or gender identity employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that sexual orientation or gender identity available in the town's available workforce. (Ord. 2012-03, 4-11-2012)

1-11-8: UNLAWFUL ACTION:

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for challenging an unlawful practice, for filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter. (Ord. 2012-03, 4-11-2012)

1-11-9: PROCEDURES FOR FILING COMPLAINTS:

—A. Any person who claims to have been injured by an unlawful employment practice subject to the Town's jurisdiction under this chapter may file a complaint with the administrator. A complaint may also be filed by the administrator if the administrator has reasonable cause to believe that a person has committed an unlawful employment practice. A complaint must be filed within one hundred twenty (120) calendar days after an alleged unlawful employment practice has occurred.

—B. A complaint must be in writing on a form approved by the administrator, made under oath or affirmation, and contain the following information:

- 1. Complainant's name, address, and signature;
- 2. The date the alleged unlawful employment practice occurred;
- 3. A statement of the facts upon which the allegation of an unlawful employment practice are based; and
- 4. Respondent's name and address.

—C. Within ten (10) working days after the receipt of a complaint, the administrator shall:

- 1. Provide the respondent named in the complaint written notice that a complaint alleging the commission of an unlawful employment practice has been filed against the respondent;
- 2. Furnish a copy of the complaint to the respondent; and

—3. Advise the respondent of the respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within fifteen (15) days after mailing of notice of the complaint.

—D. Not later than the fifteenth day after mailing of the notice and copy of the complaint, a respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:

—1. Respondent's name, address, telephone number, and signature of the respondent or the respondent's attorney, if any; and

—2. A concise statement of facts in response to the allegations in the complaint, including facts of any defense, exemption, or exception. (Ord. 2012-03, 4-11-2012)

1-11-10: INVESTIGATION:

—A. Initial Review: Upon the filing of a complaint, the administrator shall commence an initial review to determine the facts behind the complaint and whether there is reasonable cause to believe the respondent committed an unlawful employment practice. If after the initial review of the allegations of the complaint, the administrator determines that the complaint does not come within the scope of this chapter then no investigation shall commence, the complaint shall be dismissed, and notification shall be given to the complainant and respondent that no further action will be taken. If the administrator determines that there is reasonable cause to believe the respondent committed an unlawful employment practice then an investigation shall commence.

—B. Investigation: In connection with any investigation of a complaint filed under this chapter, the administrator may seek the voluntary cooperation of any person to:

—1. Obtain access to premises, records, documents, individuals, and any other possible source of information;

—2. Examine, record, and copy necessary materials;

—3. Take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation; and

—4. Seek a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents as provided by law.

—C. Grounds For Dismissal: The administrator may dismiss a complaint during or after the investigation and prior to referral to the town attorney if the administrator determines that:

—1. The complaint was not filed within the required time period;

—2. The location of the alleged unlawful employment practice is not within the town's jurisdiction;

—3. The employer does not employ a sufficient number of employees to meet jurisdictional requirements;

—4. The alleged unlawful employment practice is not a violation of this chapter;

—5. The complainant refuses to cooperate with the administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;

—6. The complainant cannot be located after the administrator has performed a reasonable search; or

—7. A conciliation agreement has been executed by the complainant and respondent. (Ord. 2012-03, 4-11-2012)

1-11-11: CONCILIATION:

—A. During the investigation, but subsequent to the mailing of the notice of the complaint to the respondent, the administrator shall, if the respondent appears to have committed an unlawful employment practice, attempt to conciliate the complaint. In conciliating a complaint the administrator shall try to achieve a just resolution and obtain assurances that the respondent will satisfactorily remedy any violation of the complainant's rights and take action to ensure the elimination of both present and future unlawful employment practices. A conciliation agreement may include: sensitivity training for the respondent and/or the respondent's employees; the respondent's agreement to adopt and pursue a policy of nondiscrimination in employment practices; and, the respondent's agreement to not engage in discriminatory practices in the future.

—B. A conciliation agreement executed under this section must be:

- 1. Prepared in writing under the direction of the administrator or his or her designee and adequately address a response to the alleged unlawful discrimination;
- 2. Approved as to form by the town attorney;
- 3. Signed by the administrator or his or her designee; and
- 4. Signed and verified by the respondent and the complainant.

—C. If a respondent voluntarily enters into a conciliation agreement, the administrator shall immediately dismiss the complaint. (Ord. 2012-03, 4-11-2012)

1-11-12: DISPOSITION OF A COMPLAINT:

—A. After completion of an investigation of a complaint, if the administrator determines that an unlawful employment practice has occurred and is unable to secure an acceptable conciliation agreement from the respondent, or obtain a response from the respondent within the time provided, then the administrator shall refer the case to the town attorney. The administrator shall refer the entire file to the town attorney who shall determine how to best pursue further action, if any, on the complaint.

—B. If the town attorney determines that cause exists to find that an unlawful employment practice occurred and the facts are sufficient to warrant the initiation of a complaint in justice court, then the town attorney shall provide written notification to the respondent and the complainant that an action to enforce this chapter may be initiated in justice court. If the town attorney determines that there is insufficient cause or evidence to warrant the initiation of an action in the justice court, the town attorney shall provide written notification to the respondent and the complainant and notify the administrator who shall then close the complaint. (Ord. 2012-03, 4-11-2012)

1-11-13: OFFENSES AND PENALTIES:

A person violates this chapter if the person engages in any action made unlawful by this chapter. Each occurrence of any unlawful action constitutes a separate offense. In accordance with Utah Code Annotated section 10-3-703 (as amended), each offense

committed under this chapter is punishable by a civil fine not to exceed one thousand dollars (\$1,000.00). (Ord. 2012-03, 4-11-2012)

CHAPTER 12

EQUAL HOUSING

SECTION:

1-12-1: Purpose And Findings

1-12-2: Administration

1-12-3: No Private Right Of Action; No Special Right

1-12-4: Severability

1-12-5: Definitions

1-12-6: Exemptions

1-12-7: Unlawful Housing Practices

1-12-8: Unlawful Action

1-12-9: General Provisions And Penalties

1-12-1: PURPOSE AND FINDINGS:

Every individual in the town has the right to seek housing. Discriminatory housing practices are detrimental because they impede the social and economic progress of the town by preventing all of the town's citizens from contributing to or fully participating in the cultural, spiritual, social, and commercial life of the community, which is essential to the vitality of the town.

Under applicable law, the Town prohibits housing discrimination based on The Utah fair housing act, Utah Code Annotated section 57-21-1 et seq., addresses housing related discrimination based on race, color, religion, sex, national origin, familial status, source of income, and disability, sexual orientation, or gender identity, but does not address discrimination based on sexual orientation or gender identity.

The town has found that discrimination in housing on the basis of sexual orientation and gender identity must be addressed. The denial or deprivation of access to housing because of an individual's sexual orientation or gender identity is detrimental to the health, safety, and welfare of the town's citizens and damages the town's economic well-being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in housing in the town against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose. (Ord. 2012-03, 4-11-2012)

1-12-2: ADMINISTRATION:

The mayor is responsible for administering and implementing this chapter. (Ord. 2012-03, 4-11-2012)

1-12-3: NO PRIVATE RIGHT OF ACTION; NO SPECIAL RIGHT:

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal

Commented [VC26]: This has changed. UCA 57-21-5

or state law. This chapter does not create any special rights or privileges which would not be available to all of the town's citizens, because every person has a sexual orientation and a gender identity. (Ord. 2012-03, 4-11-2012)

1-12-4: SEVERABILITY:

If any section, sentence, paragraph, term, definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect. (Ord. 2012-03, 4-11-2012)

1-12-5: DEFINITIONS:

Solely for the purposes of this chapter the following definitions apply:

ADMINISTRATOR: The person designated by the mayor to receive, investigate, and conciliate complaints under this chapter and includes the administrator's designated representatives.

COMPLAINANT: A person, including the administrator, who files a complaint under this chapter.

CONCILIATION: The attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the complainant, the respondent, and the administrator.

CONCILIATION AGREEMENT: A written agreement setting forth the resolution of issues by conciliation under this chapter.

DISCRIMINATION: Any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person or persons because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity. The terms "discriminate", "discrimination," and "discriminatory" do not include segregation by gender or gender identity, in the reservation, rental or assignment of housing, lodging or employee quarters intended to be occupied by individuals of the same gender, sharing sleeping, living, or bathroom facilities.

DWELLING: Any building or structure, or a portion of a building or structure, occupied as, or designed or intended for occupancy as, a residence of one or more persons inside the town and vacant land that is offered for sale or lease for the construction or location of a dwelling inside the town.

GENDER IDENTITY: A person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of a person with or without regard to the person's sex at birth.

MAYOR: The duly elected or appointed and qualified mayor of the town of Springdale.

PERSON: Includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies,

joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United States bankruptcy code, receivers, and fiduciaries.

REAL ESTATE BROKER OR SALESPERSON: A principal real estate broker, an associate real estate broker, or a real estate sales agent as those terms are defined in Utah Code Annotated section 61-2f-102 or any successor provision.

RELIGIOUS ORGANIZATION: A religious corporation, association, educational institution, society, trust, or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association, society, trust or corporation sole.

RENT: To lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

RESIDENTIAL REAL ESTATE RELATED TRANSACTION: The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or secured by residential real estate; or selling, brokering, or appraising residential real property inside the town.

RESPONDENT: A person identified in a complaint as having committed an unlawful housing practice under this chapter.

SEXUAL ORIENTATION: A person's actual or perceived orientation as heterosexual, homosexual, or bisexual.

TOWN: The town of Springdale, Utah.

TOWN ATTORNEY: The town's duly appointed attorney.

UNLAWFUL PRACTICE: A discriminatory act or practice relating to housing that is prohibited under this chapter. (Ord. 2012-03, 4-11-2012)

1-12-6: EXEMPTIONS:

This chapter does not apply to a temporary or permanent residence facility operated by a nonprofit organization, a charitable organization, or a person in conjunction with a religious organization, association, or society, including any dormitory operated by a public or private educational institution, if the discrimination is based on sexual orientation or gender identity for reasons of personal modesty or privacy or in the furtherance of a religious organization's sincerely held religious beliefs.

This chapter does not prohibit or restrict a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the sale, rental, or occupancy of dwellings it owns or operates for primarily noncommercial purposes to persons of the same religion, or from giving preference to such persons.

This chapter does not prohibit distinctions based on a person's inability or failure to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

This chapter does not apply to: a) the United States government, any of its departments or agencies, or any corporation wholly owned by it; or b) the government of the state of Utah or any of its departments, agencies, or political subdivisions, except for the town. (Ord. 2012-03, 4-11-2012)

1-12-7: UNLAWFUL HOUSING PRACTICES:

—A. Discriminatory Housing Practices: It is a discriminatory housing practice to do any of the following:

- 1. Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person because of the person's sexual orientation or gender identity;
- 2. Discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling because of the person's sexual orientation or gender identity;
- 3. Represent to any person that a dwelling is not available for inspection, sale, or rental when in fact the dwelling is available;
- 4. Make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on sexual orientation or gender identity, or expresses any intent to make any such preference, limitation, or discrimination; or
- 5. Induce or attempt to induce, for profit, any person to buy, sell or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular sexual orientation or gender identity.

—B. Discriminatory Housing Practice By Broker Or Salesperson: It is a discriminatory housing practice for a real estate broker or salesperson to do any of the following because of a person's sexual orientation or gender identity:

- 1. Discriminate against any person in making available a residential real estate transaction, or in the terms or conditions of the transaction, in the town, because of a person's sexual orientation or gender identity; or
- 2. Deny any person access to, or membership or participation in, any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings in the town or to discriminate against any person in the terms or conditions of access, membership, or participation in the organization, service, or facility in the town because of a person's sexual orientation or gender identity.

—C. Exceptions: This chapter does not apply to:

- 1. The sale or rental of any single-family dwelling if the owner:
 - a. Does not own an interest in or title to four (4) or more single-family dwellings held for lease or sale at one time located inside the town;
 - b. Has not sold two (2) or more single-family dwellings in the town in which the owner did not reside in the dwelling within the recent twenty-four (24) month period preceding the sale or rental of the dwelling; and
 - c. Does not use the services or facilities of any real estate broker, agent, or salesperson, or of any other person in the business of selling or renting dwellings, in connection with the sale or rental of the dwelling.

~~—2. The rental of a dwelling that is occupied or intended to be occupied by no more than four (4) families living independently of each other, when the owner actually maintains and occupies part of the dwelling as a residence.~~

~~—3. Nothing in this section prohibits conduct against a person because of the person's conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance under state or federal law. (Ord. 2012-03, 4-11-2012)~~

~~1-12-8: UNLAWFUL ACTION:~~

~~It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for challenging an unlawful practice, for filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter. (Ord. 2012-03, 4-11-2012)~~

~~1-12-9: GENERAL PROVISIONS AND PENALTIES:~~

~~—A. Administration: This chapter is administered as set forth in section 1-11-9 of this title.~~

~~—B. Adaptability: The administrator shall interpret and adapt this section so that it applies to unlawful housing discrimination, notwithstanding the adoption by reference of certain sections as specified in chapter 11 of this title relating to unlawful employment discrimination. In effect, the word "employment" and interpretation of other terms associated with employment situations is hereby replaced, for the purposes of this chapter, with "housing" and other associated housing terms for the purpose of interpreting this chapter in accordance with its purpose.~~

~~—C. Applicability: This chapter does not apply as specified in section 1-11-6 of this title or as outlined in this chapter.~~

~~—D. Procedure: All complaints shall be handled in accordance with section 1-11-9 of this title. Any investigation is governed by section 1-11-10 of this title. Conciliation is handled as set forth in section 1-11-11 of this title. The disposition of a complaint shall be made in accordance with section 1-11-12 of this title.~~

~~—E. Offenses And Penalties: The offense and penalty for each violation of this chapter is the same as provided in section 1-11-13 of this title. (Ord. 2012-03, 4-11-2012)~~