

Midway City Council
23 June 2020
Regular Meeting

Resolution 2020-21 /
Statement of Ethical Behavior



RESOLUTION 2020-21

A RESOLUTION OF THE MIDWAY CITY COUNCIL AMENDING THE MIDWAY CITY POLICIES AND PROCEDURES TO INCLUDE A STATEMENT OF ETHICAL BEHAVIOR.

WHEREAS, the Midway City Council wants to insure the honest, ethical, and efficient operation of the City; and

WHEREAS, the City Council wants to reduce the risk of fraud and abuse; and

WHEREAS, the City Council finds that adopting a statement of ethical behavior will further these goals.

NOW THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The attached Statement of Ethical Behavior is adopted and added to the Midway City Policies and Procedures:

PASSED AND ADOPTED by the Midway City Council on the day of 2020.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT



STATEMENT OF ETHICAL BEHAVIOR

I will abide by the Utah Public Officer and Employee Ethics Act (Utah Code 67-16) and the ethics provisions of the Midway City Municipal Code including their restrictions on the disclosure of confidential information, gifts, compensation, loans, conflicts of interest, etc.

I will not violate the nepotism laws of the State of Utah (Utah Code 52-3).

I will not misuse public resources or property (Utah Code 76-8-4, Midway City Resolution 2019-20).

I understand that I will be held accountable for unethical behavior with consequences as established by federal, state, and local laws.

Name: _____ Office/Position: _____

Signature: _____ Date: _____

Note: Annually each elected official and employee of Midway City shall sign a statement of ethical behavior.

Our vision for the City of Midway is to be a place where citizens, businesses and civic leaders are partners in building a city that is family-oriented, aesthetically pleasing, safe, walkable and visitor friendly. A community that proudly enhances its small town Swiss character and natural environment, as well as remaining fiscally responsible.

Chapter 16

Utah Public Officers' and Employees' Ethics Act

67-16-1 Short title.

This chapter is known as the "Utah Public Officers' and Employees' Ethics Act."

Amended by Chapter 147, 1989 General Session

67-16-2 Purpose of chapter.

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests. In this manner the Legislature intends to promote the public interest and strengthen the faith and confidence of the people of Utah in the integrity of their government. It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.

Amended by Chapter 147, 1989 General Session

67-16-3 Definitions.

As used in this chapter:

- (1) "Agency" means:
 - (a) any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions; or
 - (b) an association as defined in Section 53G-7-1101.
- (2) "Agency head" means the chief executive or administrative officer of any agency.
- (3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.
- (4) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- (5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.
- (6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable provision of law.
- (7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:
 - (a) any decision, determination, finding, ruling, or order; and
 - (b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.
- (8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.

- (9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation, for an aggregate of less than 800 hours during any period of 365 days. "Legislative employee" does not include legislators.
- (10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.
- (11) "Political subdivision" means a district, school district, or any other political subdivision of the state that is not an agency, but does not include a municipality or a county.
- (12)
 - (a) "Public employee" means a person who is not a public officer who is employed on a full-time, part-time, or contract basis by:
 - (i) the state;
 - (ii) a political subdivision of the state; or
 - (iii) an association as defined in Section 53G-7-1101.
 - (b) "Public employee" does not include legislators or legislative employees.
- (13)
 - (a) "Public officer" means an elected or appointed officer:
 - (i)
 - (A) of the state;
 - (B) of a political subdivision of the state; or
 - (C) an association as defined in Section 53G-7-1101; and
 - (ii) who occupies a policymaking post.
 - (b) "Public officer" does not include legislators or legislative employees.
- (14) "State" means the state of Utah.
- (15) "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

Amended by Chapter 415, 2018 General Session

67-16-4 Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment that would impair independence of judgment or ethical performance -- Exception.

- (1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator to:
 - (a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;
 - (b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;
 - (c) use or attempt to use his official position to:
 - (i) further substantially the officer's or employee's personal economic interest; or
 - (ii) secure special privileges or exemptions for himself or others;
 - (d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

- (e) accept other employment that he might expect would interfere with the ethical performance of his public duties.
- (2)
 - (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.
 - (b) The conduct referred to in Subsection (2)(a) is subject to Section 53E-3-512.
- (3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 415, 2018 General Session

67-16-5 Accepting gift, compensation, or loan -- When prohibited.

- (1) As used in this section, "economic benefit tantamount to a gift" includes:
 - (a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and
 - (b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.
- (2) Except as provided in Subsection (4), it is an offense for a public officer or public employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - (a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
 - (b) that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for official action taken; or
 - (c) if the public officer or public employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.
- (3) Subsection (2) does not apply to:
 - (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
 - (b) an award publicly presented in recognition of public services;
 - (c) any bona fide loan made in the ordinary course of business; or
 - (d) a political campaign contribution.
- (4) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

67-16-5.3 Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.

- (1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator to demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.

- (2)
- (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
- (i) expressly required by statute, ordinance, or agency rule;
 - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - (iii) made voluntarily by the applicant; or
 - (iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.
- (b) If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:
- (i) identify that a donation has been made;
 - (ii) describe the donation;
 - (iii) certify, in writing, that the donation was voluntary; and
 - (iv) place that information in its files.
- (3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

67-16-5.6 Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.

- (1) Except as provided in Subsection (3), it is an offense for any person to donate or offer to donate personal property, money, or services to any agency on the condition that the agency or any other agency approve any application or request for a permit, approval, or other authorization.
- (2)
- (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
- (i) otherwise expressly required by statute, ordinance, or agency rule;
 - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - (iii) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action; or
 - (iv) made without condition.
- (b) The person making the donation of property, funds, or services shall include with the donation a signed written statement certifying that the donation is made without condition.
- (c) The agency receiving the donation shall place the signed written statement in its files.
- (3) This section does not apply to a person who engages in conduct that constitutes a violation of this section to the extent that the person is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

67-16-6 Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.

- (1) Except as provided in Subsection (5), it is an offense for a public officer or public employee to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:
 - (a) the head of the officer or employee's own agency;
 - (b) the agency head of the agency with which the transaction is being conducted; and
 - (c) the state attorney general.
- (2) The statement shall contain:
 - (a) the name and address of the public officer or public employee involved;
 - (b) the name of the public officer's or public employee's agency;
 - (c) the name and address of the person or business entity being or to be assisted; and
 - (d) a brief description of:
 - (i) the transaction as to which service is rendered or is to be rendered; and
 - (ii) the nature of the service performed or to be performed.
- (3) The statement required to be filed under Subsection (1) shall be filed within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.
- (4) The statement is public information and shall be available for examination by the public.
- (5) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

67-16-7 Disclosure of substantial interest in regulated business -- Exceptions.

- (1) Except as provided in Subsection (5), a public officer or public employee who is an officer, director, agent, employee, or owner of a substantial interest in any business entity that is subject to the regulation of the agency by which the public officer or public employee is employed shall disclose any position held in the entity and the precise nature and value of the public officer's or public employee's interest in the entity:
 - (a) upon first becoming a public officer or public employee;
 - (b) whenever the public officer's or public employee's position in the business entity changes significantly; and
 - (c) if the value of the public officer's or public employee's interest in the entity increases significantly.
- (2) The disclosure required under Subsection (1) shall be made in a sworn statement filed with:
 - (a) for a public officer or a public employee of the state, the attorney general;
 - (b) for a public officer or a public employee of a political subdivision, the chief governing body of the political subdivision;
 - (c) the head of the agency with which the public officer or public employee is affiliated; and
 - (d) for a public employee, the public employee's immediate supervisor.
- (3)
 - (a) This section does not apply to instances where the total value of the substantial interest does not exceed \$2,000.
 - (b) A life insurance policy or an annuity is not required to be considered in determining the value of a substantial interest under this section.
- (4) A disclosure made under this section is a public record and a person with whom a disclosure is filed under Subsection (2) shall make the disclosure available for public inspection.

- (5) A public officer is not required to file a disclosure under this section if the public officer files a disclosure under Section 20A-11-1604.

Amended by Chapter 59, 2018 General Session

67-16-8 Participation in transaction involving business as to which public officer or employee has interest -- Exceptions.

- (1) A public officer or public employee may not, in the public officer's or public employee's official capacity, participate in, or receive compensation as a result of, a transaction between the state or a state agency and a business entity of which the public officer or public employee is an officer, director, agent, employee, or owner of a substantial interest, unless the public officer or public employee has disclosed the public officer's or public employee's relationship to the business entity in accordance with Section 67-16-7 or 20A-11-1604.
- (2) A concession contract between an agency, political subdivision, or the state and a certified professional golf association member who is a public employee or officer does not violate the provisions of Subsection (1) or Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act.

Amended by Chapter 59, 2018 General Session

67-16-9 Conflict of interests prohibited.

No public officer or public employee shall have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.

Enacted by Chapter 128, 1969 General Session

67-16-10 Inducing others to violate chapter.

No person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this chapter.

Amended by Chapter 147, 1989 General Session

67-16-11 Applicability of provisions.

- (1) As used in this section, "government position" means the position of a legislator, public officer, or public employee.
- (2) The provisions of this chapter:
- (a) apply to all public officers and public employees; and
 - (b) do not apply to a conflict of interest that exists between two or more government positions held by the same individual, unless the conflict of interest is also due to a personal interest of the individual that is not shared by the general public.

Amended by Chapter 360, 2016 General Session

67-16-12 Penalties for violation -- Removal from office or dismissal from employment.

In addition to any penalty contained in any other provision of law:

- (1) any public officer or public employee who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be dismissed from employment or removed from office as provided by law, rule, or policy within the agency; and

- (2) any public officer, public employee, or person who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be punished as follows:
- (a) as a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
 - (b) as a felony of the third degree if:
 - (i) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
 - (ii) the public officer or public employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
 - (c) as a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or
 - (d) as a class B misdemeanor if the value of the compensation or assistance was \$100 or less.

Amended by Chapter 108, 2000 General Session

67-16-14 Unethical transactions -- Duty to dismiss officer or employee -- Right to rescind or void contract.

If any transaction is entered into in violation of Section 67-16-6, 67-16-7, or 67-16-8, the state, political subdivision, or agency involved:

- (1) shall dismiss the public officer or public employee who knowingly and intentionally violates this chapter from employment or office as provided by law; and
- (2) may rescind or void any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that the state, political subdivision, or agency has received.

Amended by Chapter 147, 1989 General Session

67-16-15 Complaint -- Political Subdivisions Ethics Review Commission.

A person may file a complaint for an alleged violation of this chapter by a political subdivision officer or employee in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission.

Amended by Chapter 461, 2018 General Session

Chapter 3

Prohibiting Employment of Relatives

52-3-1 Employment of relatives and household members prohibited -- Exceptions.

(1) As used in this chapter:

- (a) "Appointee" means an employee whose salary, wages, pay, or compensation is paid from public funds.
- (b) "Chief administrative officer" means the person who has ultimate responsibility for the operation of the department or agency of the state or a political subdivision.
- (c) "Household member" means a person who resides in the same residence as the public officer.
- (d) "Public officer" means a person who holds a position that is compensated by public funds.
- (e) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, uncle, aunt, nephew, niece, grandson, granddaughter, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(2)

- (a) A public officer may not employ, appoint, or vote for or recommend the appointment of an appointee when the appointee will be directly supervised by a relative or household member, unless:
 - (i) the appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of the appointee's compliance with civil service or merit system laws or regulations;
 - (ii) the appointee will be compensated from funds designated for vocational training;
 - (iii) the appointee will be employed for a period of 12 weeks or less;
 - (iv) the appointee is a volunteer as defined by the employing entity; or
 - (v) the chief administrative officer determines that the appointee is the only or best person available, qualified, or eligible for the position.
- (b) A public officer may not directly supervise an appointee who is a relative or household member of the public officer, unless:
 - (i) the appointee was appointed or employed before the public officer assumed the public officer's supervisory position, if the appointee's appointment did not violate the provisions of this chapter in effect at the time of the appointee's appointment;
 - (ii) the appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of the appointee's compliance with civil service or merit system laws or regulations;
 - (iii) the appointee will be compensated from funds designated for vocational training;
 - (iv) the appointee will be employed for a period of 12 weeks or less;
 - (v) the appointee is a volunteer as defined by the employing entity;
 - (vi) the appointee is the only person available, qualified, or eligible for the position; or
 - (vii) the chief administrative officer determines that the public officer is the only individual available or best qualified to perform supervisory functions for the appointee.
- (c) When a public officer supervises a relative or household member under Subsection (2)(b):
 - (i) the public officer shall immediately submit a complete written disclosure of the public officer's relationship with the relative or household member:
 - (A) for a public officer subject to the requirements of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, in the same manner the public officer is required to make a disclosure under Section 67-16-7;

- (B) for a public officer subject to the requirements of Title 17, Chapter 16a, County Officers and Employees Disclosure Act, in the same manner the public officer is required to make a disclosure under Section 17-16a-6; and
- (C) for a public officer subject to the requirements of Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act, in the same manner the public officer is required to make a disclosure under Section 10-3-1306; and
- (ii) the public officer may not evaluate the job performance of or recommend salary increases for the relative or household member.
- (d) A disclosure submitted under this Subsection (2) is public, and the person or entity with which the public officer files the disclosure shall make the disclosure available for public inspection.
- (3) An appointee may not accept or retain employment if accepting or retaining employment will place the appointee under the direct supervision of a relative or household member unless:
 - (a) the relative or household member was appointed or employed before the appointee assumed the appointee's position, if the appointment of the relative or household member did not violate the provisions of this chapter in effect at the time of the appointment;
 - (b) the appointee was or is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of the appointee's compliance with civil service or merit system laws or regulations;
 - (c) the appointee is the only person available, qualified, or eligible for the position;
 - (d) the appointee is compensated from funds designated for vocational training;
 - (e) the appointee is employed for a period of 12 weeks or less;
 - (f) the appointee is a volunteer as defined by the employing entity; or
 - (g) the chief administrative officer determines that the appointee's relative or household member is the only individual available or qualified to supervise the appointee.

Amended by Chapter 118, 2018 General Session

52-3-2 Each day of violation a separate offense.

Each day a relative or household member remains unlawfully in office in violation of this chapter is a separate offense.

Amended by Chapter 118, 2018 General Session

52-3-3 Penalty.

Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

52-3-4 Exceptions in towns and rural areas.

- (1) In a town, as defined in Section 10-1-104, this chapter shall not apply to the employment of uncles, aunts, nephews, nieces, or cousins.
- (2) This chapter shall not apply to the employment of a relative if:
 - (a) fewer than 3,000 people live within 40 miles of the primary place of employment, measured over all weather public roads;
 - (b) the job opening has had reasonable public notice; and
 - (c) the relative is the best qualified candidate for the position.

- (3) In any proceeding challenging the hiring of a relative under the exception in Subsection (2), the employer has the burden of establishing each of the criteria provided in Subsections (2)(a) through (c).

Amended by Chapter 13, 1998 General Session

Part 4

Offenses Against Public Property

76-8-402 Misusing public money or public property.

- (1) As used in this section, "authorized personal use" means:
- (a) the use of public property, for a personal matter, by a public servant if:
 - (i) the public servant is authorized to use or possess the public property to fulfill the public servant's duties as a public servant;
 - (ii) the primary purpose of the public servant using or possessing the public property is to fulfill the public servant's duties as a public servant;
 - (iii) at the time the public servant uses the public property for a personal matter, a written policy of the public servant's public entity is in effect that authorizes the public servant to use or possess the public property for personal use in addition to the primary purpose of fulfilling the public servant's duties as a public servant; and
 - (iv) the public servant uses and possesses the public property in a lawful manner and in accordance with the policy described in Subsection (1)(a)(iii); or
 - (b) incidental or de minimus use of public property for a personal matter by a public servant, if:
 - (i) the value provided to the public servant's public entity by the public servant's use or possession of the public property for a public purpose substantially outweighs the personal benefit received by the employee from the incidental use of the public property for a personal matter; and
 - (ii) the incidental or de minimus use of the public property for a personal matter is not prohibited by law or by the public servant's public entity.
- (2) It is unlawful for a public servant to knowingly:
- (a) appropriate public money to the public servant's own use or benefit or to the use or benefit of another without authority of law;
 - (b) loan or transfer public money without authority of law;
 - (c) fail to keep public money in the public servant's possession until disbursed by authority of law;
 - (d) deposit public money in a bank or with another person in violation of the written policy of the public servant's public entity or the requirements of law;
 - (e) keep a false account or make a false entry or erasure in an account of, or relating to, public money;
 - (f) fraudulently alter, falsify, conceal, or destroy an account described in Subsection (2)(e);
 - (g) refuse or omit to pay over, on demand, any public money in the public servant's custody or control, upon the presentation of a draft, order, or warrant drawn upon the public money by competent authority;
 - (h) omit to transfer public money when the transfer is required by law;
 - (i) omit or refuse to pay over, to any officer or person authorized by law to receive public money, public money received by the public servant under any duty imposed on the public servant by law;
 - (j) damage or dispose of public property in violation of the written policy of the public servant's public entity or the requirements of law;
 - (k) obtain or exercise unauthorized control of public property with the intent to deprive the owner of possession of the public property;
 - (l) obtain or exercise unauthorized control of public property with the intent to temporarily appropriate, possess, use, or deprive the owner of possession of the public property;

- (m) appropriate public property to the public servant's own use or benefit or to the use or benefit of another without authority of law;
 - (n) loan or transfer public property without authority of law; or
 - (o) fail to keep public property in the public servant's possession until returned to the property owner, or disposed of or relinquished, in accordance with the written policy of the public servant's public entity and the requirements of law.
- (3) Except as provided in Subsection (4), a violation of Subsections (2)(a) through (i) is a felony of the third degree.
- (4) A violation of Subsections (2)(a) through (i) is a felony of the second degree if:
- (a) the value of the public money exceeds \$5,000;
 - (b) the amount of the false account exceeds \$5,000;
 - (c) the amount falsely entered exceeds \$5,000;
 - (d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or
 - (e) the amount falsely erased, fraudulently concealed, destroyed, or falsified in the account exceeds \$5,000.
- (5) A violation of Subsection (2)(j) is:
- (a) a class B misdemeanor, if the cost to repair or replace the public property is less than \$500;
 - (b) a class A misdemeanor, if the cost to repair or replace the public property is \$500 or more, but less than \$1,500;
 - (c) a felony of the third degree, if the cost to repair or replace the public property is \$1,500 or more, but less than \$5,000; or
 - (d) a felony of the second degree, if the cost to repair or replace the public property is \$5,000 or more.
- (6) A violation of Subsection (2)(k), (m), (n), or (o) is:
- (a) a class B misdemeanor, if the value of the public property is less than \$500;
 - (b) a class A misdemeanor, if the value of the public property is \$500 or more, but less than \$1,500;
 - (c) a felony of the third degree, if the value of the public property is \$1,500 or more, but less than \$5,000; or
 - (d) a felony of the second degree, if the value of the public property is \$5,000 or more.
- (7) A violation of Subsection (2)(l) is:
- (a) a class C misdemeanor, if the value of the public property is less than \$500;
 - (b) a class B misdemeanor, if the value of the public property is \$500 or more, but less than \$1,500;
 - (c) a class A misdemeanor, if the value of the public property is \$1,500 or more, but less than \$5,000; or
 - (d) a felony of the third degree, if the value of the public property is \$5,000 or more.
- (8) In addition to the penalty described in Subsections (3) through (7), a public officer who is convicted of a felony violation of Subsection (2):
- (a) is subject to the penalties described in Section 76-8-404; and
 - (b) may not disburse public funds or access public accounts.
- (9)
- (a) A public servant is not guilty of a violation of Subsections (2)(j) through (o) for authorized personal use of public property.
- (10) It is not a defense to a violation of Subsection (2) that:
- (a) subsequent to the violation, a public entity modifies or adopts a policy or law, or takes other action, to retroactively authorize, approve, or ratify the conduct that constitutes a violation; or

- (b) a written policy of the public servant's public entity permits private use of the public property if it is proven, beyond a reasonable doubt, that the public servant did not comply with the written policy.

Amended by Chapter 61, 2020 General Session

76-8-403 Failure to keep and pay over public money.

Except as otherwise provided in Subsection 76-8-402(4), a person who receives, safekeeps, transfers, or disburses public money who neglects or fails to keep and pay over the money in the manner prescribed by law is guilty of a felony of the third degree.

Amended by Chapter 61, 2020 General Session

76-8-404 Making profit from or misusing public money or public property -- Disqualification from office -- Criminal penalty.

A public officer, regardless of whether the public officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public money, who makes a profit from or out of public money or public property, or who uses public money or public property in a manner or for a purpose not authorized by law and is convicted of a felony under Section 76-8-402 is, in addition to the punishment provided by law, disqualified from holding public office.

Amended by Chapter 61, 2020 General Session

76-8-405 Failure to pay over fine, forfeiture, or fee.

Every public officer who receives any fine, forfeiture, or fee and refuses or neglects to pay it over within the time prescribed by law is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-406 Obstructing collection of revenue.

Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-407 Refusing to give tax assessment information, or giving false information.

Every person who unlawfully refuses, upon demand, to give to any county assessor or deputy county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name, or fraudulently refuses to give his true name when demanded by the assessor in the discharge of his official duties, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-408 Giving false tax receipt or failing to give receipt.

Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment for any tax or license of any kind, or who receives payment for the tax or license without delivering the receipt prescribed by law, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-409 Refusing to give tax assessor or tax or license collector list of, or denying access to, employees.

Every person who, when requested by the assessor or collector of taxes or license fees, refuses to give to the assessor or collector the name and residence of each person in his employ, or to give the assessor or collector access to the building or place of employment, is guilty of a class B misdemeanor.

Amended by Chapter 5, 1991 General Session

76-8-410 Doing business without license.

Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law, or by any county, city, or town ordinance, without taking out the license required by law or ordinance is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-411 Trafficking in warrants.

No state, county, city, town, or district officer shall, either directly or indirectly, contract for or purchase any warrant or order issued by the state, county, city, town, or district of which he is an officer, at any discount whatever upon the sum due on the warrant or order, and, if any state, county, city, town, or district officer shall so contract for or purchase any such order or warrant on a discount, he is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-412 Stealing, destroying or mutilating public records by custodian.

Every officer having the custody of any record, map, or book, or of any paper or proceedings of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering, falsifying, removing, or secreting the whole or any part thereof, or who permits any other person so to do, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-413 Stealing, destroying or mutilating public records by one not custodian.

Every person, not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section is guilty of a class A misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-414 Recording false or forged instruments.

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed or

registered or recorded under any law of this state or of the United States, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-415 Damaging or removing monuments of official surveys.

Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States or state survey is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-416 Taking toll or maintaining road, bridge, or ferry without authority -- Refusal to pay lawful toll.

Any person who demands or receives compensation for the use of any bridge or ferry, or who sets up or keeps any road, bridge, or ferry, or constructed ford, for the purpose of receiving remuneration for its use without authority of law; and any person who refuses to pay on demand the compensation or fee authorized to be collected for use of a licensed toll road, bridge, ferry, or constructed ford after having used it is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-417 Tampering with official notice or proclamation.

Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notice, set up at any place in this state by authority of any law of the United States or of this state, or by order of any court or of any public officer, before the expiration of the time for which the same was to remain set up, is guilty of an infraction.

Enacted by Chapter 196, 1973 General Session

76-8-418 Damaging jails.

A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement, including a detention, shelter, or secure confinement facility for juveniles, is guilty of a felony of the third degree.

Amended by Chapter 13, 2005 General Session

76-8-419 Damaging highways or bridges.

- (1) Every person who intentionally, knowingly, or recklessly digs up, removes, displaces, breaks, or otherwise damages or destroys any public highway, or any private way laid out by authority of law, or any bridge upon the highway or private way is guilty of a class A misdemeanor.
- (2) If the violation of this section constitutes an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit the prosecution and sentencing for the offense subject to a greater penalty.

Amended by Chapter 166, 2002 General Session

76-8-420 Removing or damaging road signs.

Every person who intentionally or knowingly removes or injures any milepost or milestone or guidepost or any inscription on them, erected upon any highway, is guilty of a class B misdemeanor.

Amended by Chapter 229, 2007 General Session



RESOLUTION 2019-20

A RESOLUTION ADOPTING AN ACCEPTABLE USE POLICY FOR INCIDENTAL USE OF CITY PROPERTY FOR PERSONAL USE, AND RELATED MATTERS.

WHEREAS, on or about March 25, 2019 Governor Herbert signed HB 163, which, in part, amends portions of Section 11-57-101 *et seq.* and Section 76-8-402 of the Utah Code; and

WHEREAS, the amendments set forth in HB 163 come into effect on July 1, 2019; and

WHEREAS, the provisions of HB 163 appear to make unauthorized use of any City property for personal use a third-degree felony if the value is less than \$5,000, and a second-degree felony if the value is more than \$5,000. Therefore, the amendments seem to provide that if a City elected official, an appointed official, a consultant, independent contractor, or employee of the City, (collectively, Public Servant) uses Public Property (as defined in §76-8-101 of the new Code amendment) for personal use or use of another, even if done inadvertently, they may meet the elements of having committed a felony under Utah Code 76-8-402; and

WHEREAS, under Utah Code Title 76, a third-degree felony is punishable by a term of imprisonment of not more than five years and a fine of \$5,000; and

WHEREAS, Utah Code 76-8-402 provides that use of Public Property by a Public Servant for personal use is considered an "authorized personal use" if it meets several criteria; and

WHEREAS, one of the requirements is that there be a written policy adopted by the City that authorizes the Public Servant to use or possess the Public Property for personal use; and

WHEREAS, the City Council believes that HB 163 as currently drafted may make it so Public Servants who are performing their duties in good faith may unwittingly be committing felonies; and

WHEREAS, the City Council desires to adopt a policy that will ensure Public Servants are not at risk of unwittingly committing felonies in their use of Public Property while ensuring Public Servants are using City Public Property in a responsible manner.

NOW, THEREFORE, the City Council of Midway City hereby adopts the following Resolution, providing a policy regarding the use of City property by City officials, agents, employees, consultants, or independent contractors for personal use, as follows:

MIDWAY CITY PERSONAL USE POLICY

SECTION 1: PURPOSE

It is the intent of Midway City to be responsible for the use of all tax dollars and all real and personal property acquired with tax dollars, and to establish policies regarding the personal use of City property by its officers, agents and employees, including real and personal property as defined in Utah Code §76-6-412 and below consistent with the provisions of Utah Code Ann. §11-57-101 *et seq.* and §76-8-402 *et seq.* (2019 amendments).

These policies are to serve as guidance to all employees, contractors and elected and appointed officials as to the appropriate use of Midway City property and to avoid unintentional violations of Utah Code §11-57-101 *et seq.* and §76-8-402 *et seq.* (2019 amendments).

SECTION 2: GENERAL PROVISIONS

- 2.1. GENERAL APPLICABILITY: This policy is applicable to all employees, appointees, elected officials and independent contractors using City property and equipment and includes the use of all personal and real property, as well as public money and public funds of Midway City. This Policy does not apply to the use of Public Property that is generally available for use by the public, including those persons who do not meet the definition of Public Servants, as long as the use is similar in nature to the use by the general public (i.e. City parks, streets, trails, buildings, etc.).
- 2.2 PRIVILEGE: Public Property owned, held, controlled or managed by Midway City remains the property of Midway City at all times and the privilege to use the Public Property may be limited or revoked at any time by the City Council or applicable department head. The authorizations contained within this Policy do not grant to any Employee, an inherent right to use Public Property nor does it grant any expectation of privacy in the personal use of the Public Property and no individual or Employee should have any expectation of privacy while using government resources at any time for any purpose.
- 2.2 DEFINITIONS: As used in this policy, the following definitions shall apply:
 - A. **“Employee”** means (i) a public officer; (ii) an appointed official, employee, consultant, or independent contractor of Midway City; or (iii) a person hired or paid by Midway City to perform a government function. An individual becomes an “Employee” under this policy upon election, appointment, contracting or other selection, regardless of whether the individual has begun to officially occupy the position.
 - B. **“Incidental Use” or “De Minimis Use”** means an occasional or infrequent personal use with little or no cost to the City and which, considering its value and the frequency with which it is used, is so small as to make accounting for it unreasonable or impractical. In determining

whether the use is de minimis, the frequency and the value shall always be considered.

- C. **“Personal Use”** means any use by an Employee, which is for the benefit of the Employee and not part of the Employee’s official duties, or other duties as may be assigned or authorized by the Employee’s department head or direct supervisor. Use of Public Property which is open and available to the general public is not considered Personal Use.
- D. **“Public Money” or “Public Funds”** means money, funds, or accounts, regardless of the source from which they are derived, that: (i) are owned, held or administered by Midway City; or (ii) are in the possession of another entity that performs a public function and is authorized to hold, spend, transfer, disburse, use or receive public money. It also includes money, funds, or accounts after the money, funds or accounts are transferred to an independent contractor and remain public funds or public money while in the possession of an independent contractor for the purpose of providing a program or service for or on behalf of Midway City.
- E. **“Public Officer”** means an elected official of the City or a person appointed to fulfill the remaining term of an elected official.
- F. **“Public Property”** includes real or personal property that is owned, held, or managed by Midway City including after the Public Property has been transferred to an independent contractor and remains Public Property while in the possession of an independent contractor who is providing a service or program for Midway City. Public Property includes electronic software as well as the hardware.

SECTION 3: POLICY

It is the policy of Midway City that all City-owned, held, controlled and managed personal and real property is for the beneficial use of the public and should at all times, be primarily used for the purpose of conducting City governmental functions consistent with the dictates of the Utah Code.

3.1 AUTHORIZED USE:

- A. The Incidental or De Minimis Personal Use of Public Property by Midway City Employees is hereby authorized by Midway City. To the extent more specific policies have been adopted for particular types of Public Property which have either less or more restrictive authorized uses, the more specific policies shall apply.
- B. Use of Public Property by authorized charitable organizations or on behalf of those organizations by Midway City Employees may be authorized and if so, shall not be considered Personal Use. Authorization for charitable

use shall be made by the City Council or the Employee's department head and should be in writing.

C. The Personal Use of Public Property as authorized in this Section shall:

1. Not surpass nor disrupt the primary purpose of the Public Property in fulfilling the Employee's official duties;
2. Not incur any unauthorized additional costs to Midway City;
3. Be conducted, to the extent possible, during non-working hours or at times and in such manner which does not interfere with the conduct of regular business;
4. Be conducted only with or on Public Property which is in the Employee's possession because it is necessary to fulfill the Employee's official duties;
5. Be conducted in a manner which does not compromise the integrity of Public Property, including software and systems; and
6. Be conducted consistent with all other Midway City policies and in a manner which is compliant with all local, state and federal laws.

D. The personal use of Public Funds or Public Moneys is absolutely prohibited and no authorization for personal use of Public Funds or Public Moneys is hereby granted.

3.2 AUTHORIZING AUTHORITY:

- A. The City Council shall be the primary source of any authorization required under this Policy, with each department head being responsible for authorizations as set forth below. By adoption of this Policy, the City Council has authorized the Personal Use indicated in this Policy.
- B. Each department head, including elected officials, shall be responsible for determining what Public Property is required by each of their employees, appointees and contractors in order to perform their assigned duties.
- C. Each department head may authorize greater specific personal use of Public Property for their Employees if the value provided to Midway City substantially outweighs the personal benefit received by the Employee. However, inasmuch as such authorization may result in a taxable fringe benefit attributed to the employee, department heads shall obtain the express written consent of the City Council prior to the authorization and shall thereafter report every specific authorization in writing back to the City Council or designee.

3.3 PROHIBITIONS:

- A. No Employee shall use the Public Property, Public Funds or Public Monies of Midway City in a manner or with the intent to obtain or derive a profit therefrom.
 - B. No Employee shall use Public Property, Public Funds or Public Monies in violation of federal, state or local laws.
- 3.4 INADVERTENT PERSONAL USE: Employees who may inadvertently and unintentionally use Public Property, Public Funds or Public Moneys in a manner not consistent with the authorizations in this Policy shall upon discovery:
- A. Immediately report the inadvertent use to the City Auditor, their department head; or immediate supervisor; and
 - B. Shall, within 14 days, repay any costs that may have been incurred; and/or
 - C. Take all necessary steps to ensure that Midway City is not injured by the inadvertent personal use.

SECTION 4 PENALTIES

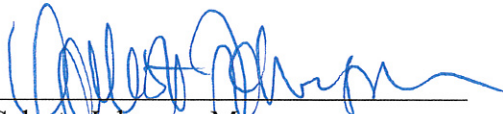
Violations of this policy may subject the violating Employee to disciplinary action under Midway City Personnel Policies, criminal prosecution under the provisions of Utah Code Ann. §76-8-402 or §76-8-404; cancellation of contracts; and/or disqualification from or removal from office.

This MIDWAY CITY PERSONAL USE POLICY constitutes a “written policy of the Public Servant’s entity” for purposes of Utah Code 76-8-402 *et seq.* (2019 amendments).

This Resolution shall be effective immediately upon passage. A copy of this Resolution shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

PASSED AND ADOPTED by the Midway City Council on the 18th day of June 2019.

MIDWAY CITY



Celeste Johnson, Mayor

ATTEST:



Brad Wilson, Recorder





Certificate of Passage, Posting and Publication

I certify that on 18 June 2019 the Midway City Council adopted:

Resolution 2019-20 A Resolution Adopting an Acceptable
Use Policy for Incidental Use of City Property for Personal
Use, and Related Matters

I certify that a full, true, and correct copy of the resolution was posted on 26 June 2019 at the
following locations:

Midway City Office Building
7-Eleven (Midway)
Ridleys Convenience Store
Midway City Post Office

I further certify that a summary of the resolution was published in The Wasatch Wave on 26 June
2019.

A handwritten signature in blue ink, which appears to read "Becky Wood", is written over a horizontal line.

Becky Wood, Midway City Deputy Recorder

Dated 26 June 2019

MIDWAY CITY CORPORATION

75 North 100 West, P.O. Box 277
Midway, Utah 84049
Phone: 435-654-3223 Fax: 435-654-4120