

## CHAPTER 31. ELECTIONS

### **31-1-1. Purpose.**

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### **31-1-1. Purpose.**

The purpose of this Chapter is to create a hearing process to determine the validity of civil fines imposed by the Utah County Clerk/Auditor, under Utah Code Ann. § 20A-11-1201, *et seq.*, the “Political Activities of Public Entities Act” (hereinafter the “Act”).

### **31-1-2. Use of Public Email For a Political Purpose.**

Subject to statutory exceptions, under Utah Code Ann. § 20A-11-1205, a person may not send an email using the email of a public entity, for a political purpose or to advocate for or against a ballot proposition, as such terms are defined in the Act.

### **31-1-3. Penalties.**

If a violation of the Act occurs related to a local election in Utah County, the Act requires that the Utah County Clerk/Auditor impose a civil fine against the violator, as set forth in the Act (hereinafter the “Fine” or “Fines”).

### **31-1-4. Hearing.**

(a) There is hereby created a hearing process under which the Utah County Commission (hereinafter “Commission”) shall hear and decide the validity of Fines imposed by the Utah County Clerk/Auditor under Utah Code Ann. § 20A-11-1205 and the Act.

(b) Any person upon whom the Utah County Clerk/Auditor has imposed a Fine, desiring to challenge the validity of the Fine (hereinafter the “Applicant”), may request a hearing by delivering a signed written notice to the Utah County Attorney’s Office, Civil Division. The Utah County Attorney’s Office, Civil Division, will then inform the Commission that written notice has been received. This written notice must be delivered to the Utah County Attorney’s Office, Civil Division, within fifteen (15) calendar days from the date the Applicant received notice of the Fine. If written notice is not delivered within fifteen (15) calendar days, the Commission shall deny a hearing and the Fine shall remain in force. The written notice shall include: the Applicant’s name, address, and phone number; and the date notice of the Fine was received. If the written notice requirements are not met, the Commission shall deny a hearing and the Fine shall remain in force.

(c) If the Commission decides to deny a hearing, either because the fifteen (15) calendar day deadline is not met or because the written notice did not contain the required information, the Commission shall enter into the official minutes the specific reasons for denial and the names of those voting for and against the action.

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(d) If the fifteen (15) calendar day deadline and the written notice requirements are met, the Commission shall set a reasonable time for the hearing to take place, shall notify the Applicant of the date, time, and place of the hearing, and shall decide the same.

(e) The Commission may set procedures for conducting the hearing which may include: reasonable limits on the time in which each party may speak, deadlines for submitting documents, and other rules needed to conduct a fair and orderly hearing. Two of the three members of the Commission are needed to form a quorum. The Commission Chair shall conduct the hearing. The hearing shall be recorded. Minutes of the hearing shall indicate the vote of each member, and shall keep record of any official actions taken. These minutes, records, and recordings, along with the written notice, written statements, other facts bearing on the hearing, and the decision of the Commission, shall be public record. The decision of the Commission shall be based upon the facts and evidence presented. The Applicant or the Utah County Clerk/Auditor may appear at the hearing in person or by an agent authorized in writing, or attorney.

(f) The results of the hearing shall be consistent with the provisions of Act, and shall not waive or modify any of the terms or requirements thereof.

(g) The Utah County Clerk/Auditor has the burden of proving, by a preponderance of the evidence, that the Fine was valid.

(h) After a decision has been made, the decision of the Commission shall be recorded in the official minutes and a copy of the decision shall be mailed to the address supplied in the written notice delivered to the Utah County Attorney's Office, Civil Division. The decision of the Commission shall be deemed final at the time it is recorded in the official minutes.

### **31-1-5. Appeal of the Hearing.**

(a) The Applicant, or the Utah County Clerk/Auditor, may appeal the decision of the Commission by filing a petition with the 4th District Court for Utah County. Any such appeal shall be barred unless it is filed within twenty (20) calendar days of the date when the decision was recorded in the official minutes. The decision of the Commission shall not be set aside unless the decision of the Commission is found to be arbitrary, capricious, or illegal.

(b) The Commission shall transmit to the reviewing court the complete record of its proceedings, including the written notice, exhibits, minutes, findings, and any transcripts. The person filing the petition for review shall request from the County a verbatim transcript of the record and such person shall pay the reasonable transcription fees.

(c) The review by the District Court is limited to the record and the Court may not accept or consider evidence outside of the record unless it determines that such evidence was offered to the Commission and was improperly excluded. If there is no record, the Court may call witnesses and take evidence.

(d) The Court shall affirm the decision of the Commission if the decision is supported by substantial evidence in the record.

(e) No decision of the Commission shall be subject to rehearing by the Commission, except when remanded from a court of competent jurisdiction. (Ord. 2016-24, 9-6-16).