

POLITICAL COMMUNICATIONS RESPONSIBILITY UPDATES ACT OF 2019

Version 1.0; Dated 8/19/2019 10:19 PM

**POLITICAL COMMUNICATIONS RESPONSIBILITY TECHNOLOGY UPDATES
ACT OF 2019**

Draft – Version 1.0; Dated 8/19/2019 10:19 PM

PREAMBLE

WHEREAS, resident voters of Salt Lake City must have confidence in the integrity of municipal election process by which their public servants are elected in order for their municipal government to have political legitimacy and authority;

WHEREAS, the resident voters of Salt Lake City desire to be fully informed prior to exercising their right of suffrage in municipal elections;

WHEREAS, to be fully-informed, voters need when consuming political advertisements related to the election of its public officers to have such advertisements truthfully and clearly labeled as to whom is paying for an advertisement and whether a candidate supported by an advertisement authorized the advertisement;

WHEREAS, as resident voters age over years of age, their ability to distinguish contrasts decreases as compared to younger aged resident voters (Br. J. Ophthalmol. 1985 Jan;69(1):51-6);

WHEREAS, in 2017, approximately 27% of Salt Lake City adult residents were over the age of 50 years (2017 American Community Survey, U.S. Census Bureau);

WHEREAS, the resident voters of Salt Lake City desire to have as a minimum baseline the same voter protections and right-to-be-informed in municipal elections as provided to all Utah voters under State law with respect to the election of State public officers;

WHEREAS, the State of Utah has elected additional voter protections in Utah Code Ann. § 20A-11-901 (effective 5-14-2019), *Political advertisements -- Requirement that ads designate responsibility and authorization -- Report to lieutenant governor -- Unauthorized use of*

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endorsements, and those State voter protections are not provided for in Salt Lake City's current municipal election laws;

WHEREAS, as technology changes, political advertisers and independent expenditure committees evolve the means and methods to reduce the provision of information to voters regarding as to whom is paying for a political advertisement and whether a candidate supported by an advertisement authorized that advertisement;

WHEREAS, as such technological and advertisement means and methods evolve, it is desirable for the voters of Salt Lake City to periodically reexamine the adequacy of its municipal election campaign finance and municipal political communication responsibility ordinances, and to enhance those laws as needed in response to changes in technology and advertising methods;

WHEREAS, pursuant to Utah Code Ann. § 10-3-208 (as amended 2019), *Campaign finance disclosure in municipal election*, the State of Utah has authorized municipalities, including Salt Lake City, to adopt ordinances regarding municipal elections and municipal election campaign finance;

NOW THEREFORE,

SALT LAKE CITY REV. ORD. 2.46.060, *RESPONSIBILITY FOR POLITICAL COMMUNICATIONS REQUIRED*, SHALL BE AMENDED AS FOLLOWS:

2.46.60: RESPONSIBILITY FOR POLITICAL COMMUNICATIONS REQUIRED.

(a) Every advertisement or communication made for a political purpose which is broadcast or published by means of television, radio, newspaper, billboards, direct mailings, automatic telephone equipment, paid telephonists, leaflets, fliers, posters, bumper stickers or other printed

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matter shall contain a disclosure of the name of the personal campaign committee or political committee or independent expenditure committee responsible for its broadcast or publication.

[Commentary Note: The following paragraphs (b) to (f) extend state voter protection policies in Utah Code Ann. § 20A-11-901(1) (effective May 14, 2019) that applies to elections for state offices to municipal elected offices.]

(b) Any advertisement or communication described in subsection (a) supporting a candidate, shall in addition to the declaration required by subsection (a) will also state whether the advertisement is authorized or not authorized by any candidate that the communication purports to support.

(c) Any advertisement or communication described in subsection (a) supporting a candidate, shall in addition to the declaration required by subsection (b) will also state the, telephone number, and either the permanent business street address or the World Wide Web address of the person who paid for the communication, provided further, that a mailing address or post office box may not be substituted for a permanent business street address and that if the World Wide Web address is specified, then the Web page at that World Wide Web address shall clearly and prominently state the permanent business address of the person who paid for the communication;

[Commentary Note: The core readability performance standard of this ordinance is that text subtend must 15 arcminutes of a degree (or 0.25 degrees) depending on the distance between the viewer and the billboard or printed matter. This corresponds to a 20/60 visual acuity line on a Snellen visual acuity eye chart. This 15 arcminute standard can be adjusted by the Salt Lake Council based on further consideration of this proposed ordinance. The typical 20/20 visual acuity test corresponds to text subtending 5 arcminutes of a degrees (or 0.0833 degrees).

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Various online calculators can be used to explore the printed text size that corresponds to 15 arcminutes at various distances. Two recommended calculators are:

<http://elvers.us/perception/visualAngle/> and <https://www.thesignchef.com/letter-sizing-calculator>.]

(d) Any declaration required by subsections (a), (b), or (c) shall be made in a typeface of sufficient size and color contrast with the background to be readable at the maximum intended reading distance by a person with a visual acuity of 20/60 as defined by a standard Snellen visual acuity chart or a standard Tumbling E visual acuity chart, the visual acuity easily read by persons over the age of 65 years, that is text should subtend 15 arcminutes of a degree, depending on the physical context of the message, including but not limited to the following specific contexts,

(1) Postcards mailed to any persons located within the limits of Salt Lake City: The maximum intended reading distance shall be 24 inches;

(2) Lawn signs with an area four by eight feet or larger erected within the limits of Salt Lake City: The maximum intended reading distance shall be 25 feet;

(3) Billboards placed next to a roadway, highway or freeway within the limits of Salt Lake City: The maximum intended reading distance shall be measured with respect to the billboard's orientation to the traffic lanes with respect to which it can be viewed and shall be measured at a 30 degree horizontal angle but in three dimensions to the farthest lane of traffic from the billboard, provided further, in order to assure sufficient time for drivers in motion to safely read, perceive and to understand the statement(s) of responsibility to be communicated, the minimum time that a statement(s) of responsibility shall be displayed is 15 seconds; and,

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[Commentary Note: The following subparagraphs (4) to (6) are adapted from 11 C.F.R. §

110.11(c)(4) as amended 2019.]

(4) TV, radio or other broadcast media ads transmitted to any persons within the limits of

Salt Lake City:

(i) A communication transmitted through radio or television or through any broadcast, cable, or satellite transmission, must include statements required by subsections (a) and (b), but not (c), spoken clearly; and

(ii) A communication transmitted through television, or through any broadcast, cable, or satellite transmission, must include the audio statement required by paragraph (d)(4)(i) of this section. That statement must be conveyed by an unobscured full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the communication. To be clearly readable, the statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical picture height;

(B) The statement must be visible for a period of at least four (4) seconds; and,

(C) The statement must appear with a reasonable degree of color contrast between the background and the statement(s) of responsibility required by

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paragraph (a) and (b) above, but not paragraph (c). A statement(s) satisfies the color contrast requirement of this paragraph (d)(4)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement(s) is no less than the color contrast between the background and the largest type size used in the communication.

(5) Internet digital media communication transmitted to any persons located within the limits of Salt Lake City: A communication transmitted through radio or television or through any broadcast, cable, or satellite transmission, must include statements required by paragraphs (a), (b) and (c).

(i) A communication transmitted by internet digital media communication, must also include a similar statement that must appear in clearly readable writing at the end of the communication. To be clearly readable, the statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical picture height;

(B) The statement must be visible for a period of at least four (4) seconds; and,

(C) The statement must appear with a reasonable degree of color contrast between the background and the statement(s) of responsibility required by paragraphs (a), (b) and (c). A statement(s) satisfies the color contrast requirement of this paragraph (d)(5)(i)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the

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statement(s) is no less than the color contrast between the background and the largest type size used in the communication.

(6) Text messages to cellphones or internet digital text messages not otherwise prohibited by Salt Lake City Revised Ordinances 2.46.80: A communication transmitted by text messages to cellphones or internet digital text messages must also include a similar statement that must appear in clearly readable writing at the end of the communication, and must include statements required by subsections (a) and (b), but not (c), provided further, that the use of techniques to spoof, hide or obscure the true identity of the sender's true identity, telephone number, email address, or text message address, as the case may be, is prohibited.

[Commentary Note: The following subparagraph (e) and (f) adapts state policy in Utah Code Ann. § 20A-11-901(3) (effective May 14, 2019) that applies to elections for state offices to municipal elected offices. Subparagraph (f) adopts a more restrictive policy – that is requires statements of responsibility not required in Utah Code Ann. § 20A-11-901(3) (effective May 14, 2019) with respect to bumper stickers and lawn signs.]

(e) The requirements of subsections (b) and (c) do not apply to:

(1) campaign pins, buttons, and pens; or

(2) similar small items upon which the statement(s) or responsibility cannot be conveniently printed.

(f) The requirement of subsection (b), but not (c), apply to:

(1) bumper stickers; or

(2) lawn signs of four by eight feet, or smaller.

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EXISTING ORDINANCE SECTIONS 21.46.70 THROUGH 21.46.140 ARE HERBY
RENUMBERED TO SECTIONS 21.46.90 THROUGH 21.46.160.

[Commentary Note: The following new Section 21.26.70 adopts state policy in Utah Code Ann.
§ 20A-11-901(5) (effective May 14, 2019) that applies to elections for state offices and extends
that state policy to municipal elected offices. New Section 21.26.70 quotes and adopts § 901(5)
verbatim but adds the term “municipal”.]

SALT LAKE CITY REV. ORD. 2.46.070, *RESPONSIBILITY FOR REPRESENTATION
OF ENDORSEMENTS REQUIRED*, SHALL BE ADDED AS FOLLOWS:

2.26.70: RESPONSIBILITY FOR REPRESENTATION OF ENDORSEMENTS REQUIRED.

A person may not, in order to promote the success of any candidate for nomination or election to
any municipal public office, or in connection with any municipal question submitted to the
voters, include or cause to be included the name of any person as endorser or supporter in any
political advertisement, circular, poster, or publication without the express consent of that
person.

[Commentary Note: The following new Definitions and new Section 21.26.80 clarifies that state
law prohibiting robo-calling and robo-texting, Utah Code Ann. § 13-25a-103 (2004), *Prohibited
conduct for telephone solicitations -- Exceptions*, also applies to political communications related
to Salt Lake City residents regarding municipal elections.]

[Commentary Note: In Version 1.0, this anti-robot texting ordinance is not well-thought out. It
will need further work if pursued by the Salt Lake City Council. With respect to this section, this
is a first concept draft. – Kurt A. Fisher 8-19-2019.

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SALT LAKE CITY REV. ORD. 2.46.010, *DEFNITIONS*, SHALL BE AMENDED AS
FOLLOWS:

[The following four definitions are patterned after Utah Code Ann. § 13-25a-101 (2004).]

AUTOMATED TELEPHONE DIALING SYSTEM

An "Automated telephone dialing system" means equipment used to:

(i) store or produce telephone numbers;

(ii) call or text message a stored or produced number; and

(iii) connect the number called with a recorded message or artificial voice or bulk distributed
text message.

(b) "Automated telephone dialing system" does not include equipment used with a burglar
alarm system, voice messaging system, fire alarm system, or other system used in an emergency
involving the immediate health or safety of a person.

ESTABLISHED POLLITICAL RELATIONSHIP

(a) "Established political relationship" means a relationship that:

(i) is based on inquiry, application, purchase, or transaction regarding a Salt Lake City
resident's political affiliations;

(ii) is formed by a voluntary two-way communication between a person making a solicitation
and a person to whom a solicitation is made; and

(iii) has not been terminated by:

(A) an act by either party; or

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(B) the passage of 18 months since the most recent inquiry, application, purchase, transaction, or voluntary two-way communication.

TELEPHONE SOLICITATION

"Telephone Solicitation" means the initiation of a telephone call or message or text message that includes a political communication seeking to affect a Salt Lake City resident's vote in a municipal election.

TELEPHONE SOLICITOR

"Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation who makes or causes to be made an unsolicited telephone call, including calls made by use of an automated telephone dialing system, for the purpose of sending a political communication to a resident of Salt Lake City.

[The following section is patterned after Utah Code Ann. § 13-25a-103 (2004).]

SALT LAKE CITY REV. ORD. 2.46.080, *PROHIBITED CONDUCT FOR TELEPHONE SOLICITATIONS*, SHALL BE AMENDED AS FOLLOWS:

2.46.080: PROHIBITED CONDUCT FOR TRANSMISSION OF POLITICAL COMMUNICATIONS

(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of an automated telephone dialing system to make a telephone solicitation.

(2) A person may operate an automated telephone dialing system if a call is made:

(a) with the prior express consent of the person who is called agreeing to receive a telephone solicitation from a specific solicitor; or

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(b) to a person with whom the solicitor has an established political relationship.

(3) A person may not make a telephone solicitation to a residential telephone without prior express consent during any of the following times:

(a) before 8 a.m. or after 9 p.m. local time;

(b) on a Sunday; or

(c) on a legal holiday.

(4) Any telephone solicitor who makes an unsolicited telephone call or sends an unsolicited text message to a telephone number shall:

(a) identify the telephone solicitor;

(b) identify the business on whose behalf the telephone solicitor is soliciting;

(c) identify the purpose of the call promptly upon making contact by telephone with the person who is the object of the telephone solicitation;

(d) discontinue the solicitation if the person being solicited gives a negative response at any time during the telephone call; and

(e) hang up the phone, or in the case of an automated telephone dialing system operator, disconnect the automated telephone dialing system from the telephone line within 25 seconds of the termination of the call by the person being called.

(5) A telephone solicitor may not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing

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purposes and when the telephone solicitor's service or equipment is capable of allowing the display of the number.

RENUMBERED SALT LAKE CITY REV. ORD. 2.46.140, FORMER SECTION 2.46.120, *UNLAWFUL ACTS DESIGNATED; VIOLATION; PENALTY*, SHALL BE AMENDED AS FOLLOWS:

~~2.46.120~~2.46.140: UNLAWFUL ACTS DESIGNATED; VIOLATION; PENALTY:

A. It shall be an infraction, punishable as provided by title 1, chapter 1.12 of this code, or its successor: 1) for any person to fail to file when due any required campaign finance statement, verified financial statement, or report specified in this chapter or to knowingly or ~~wilfully~~ willfully falsify or omit any information required by any of the provisions of this chapter, or 2) for any candidate, either personally or through a personal campaign committee, to receive a contribution in violation of the limits set forth in subsections 2.46.050A and B of this chapter; or 3) for any personal campaign committee or independent expenditure committee to publish a political communication without complying with the responsibility requirements of subsection 2.46.060.

~~B(1)~~—The city recorder shall monitor compliance with this chapter, or its successor, and shall report any violations thereof to the mayor, the city council, and the city attorney.

(2) Safe harbor for failure to comply with subsection 2.46.060: The city recorder will attempt to resolve alleged violations of subsection 2.46.060 informally. If informally resolved, no liability under subsection (A) of this paragraph will accrue. If a personal campaign committee or independent expenditure committee refuses to resolve the matter by an informal conference and the city recorder deems it necessary to recommend to the city attorney to file a complaint seeking

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- 1 to impose an infraction penalty, then the city recorder shall first publish a public notice of an
- 2 “Intent to File Campaign Infraction in Thirty Days” so as to give private parties an opportunity to
- 3 file a private right of action provided for in subsection (D).
- 4 ~~€(D)~~. A private party in interest may bring a civil action in district court to enforce the
- 5 provisions of this chapter. In accordance with section 10-3-208, Utah Code Annotated, in such a
- 6 civil action, the court may award costs and attorney fees as to the prevailing party. (Ord. 24-05
- 7 § 6, 2005: Ord. 1-01 § 2, 2001: Ord. 77-98 § 1, 1998)
- 8 [END]