

Midway City Council
18 June 2019
Regular Meeting

Resolution 2019-20 /
Incidental Personal Use of
Public Property



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 day of 2018.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT