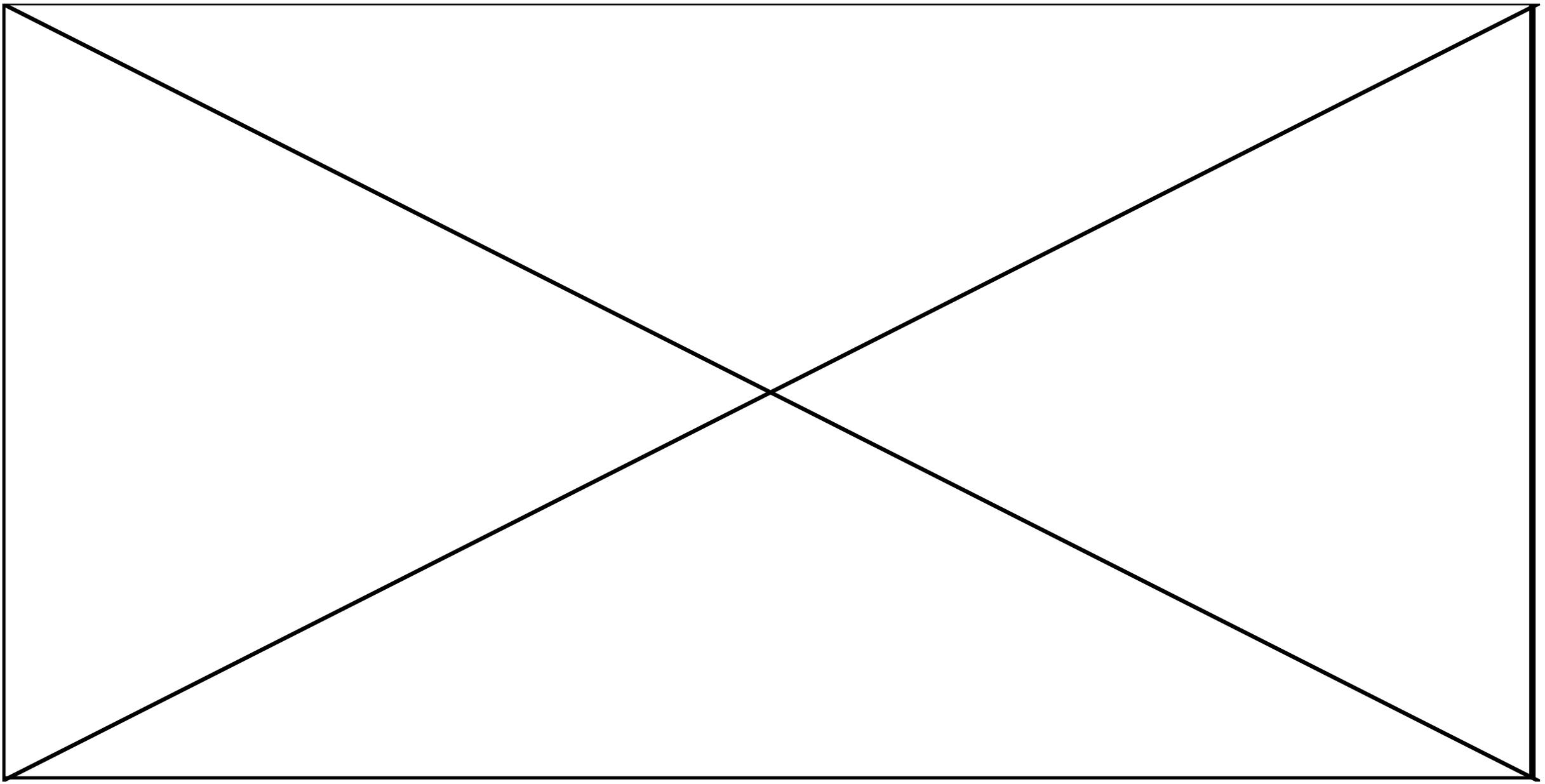


POLICIES, RESOLUTIONS & ORDINANCES

A PRIMER

David L. Thomas
Chief Civil Deputy
Summit County





COUNTIES AND CITIES ARE BUREAUCRACIES

We govern bureaucracies through policies, procedures, bylaws, rules, resolutions and ordinances



THE GUARD RAILS – WHAT WE CAN AND CANNOT DO

- “That the King can do no wrong, is a necessary and fundamental principle of the English Constitution.” -- Blackstone
- Utah is not a Dillon’s Rule state (Hutchinson v. State, 624 P.2d 1116 (Utah 1980) (“The rule requiring strict construction of the powers delegated by the Legislature to counties and municipalities is a rule which is archaic, unrealistic, and unresponsive to the current needs of both state and local governments and effectively nullifies the legislative grant of general police powers to the counties.”)



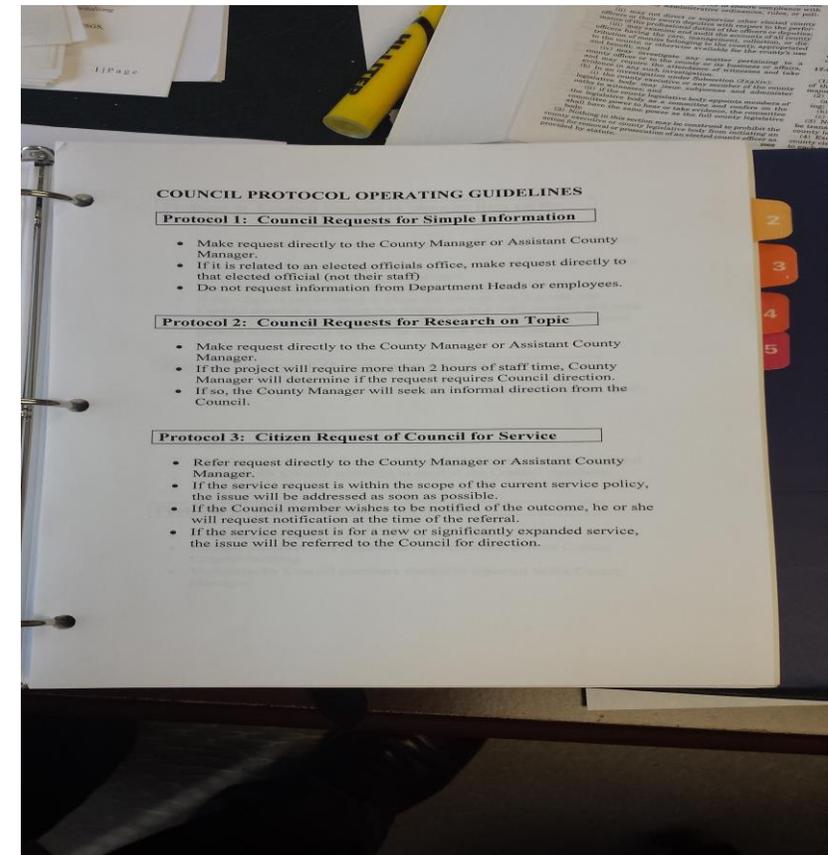
- UCA §17-50-302 (“a county may . . . provide a service, exercise a power or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute.”)
- “Legislative and rule drafting is not simply just another form of legal drafting. It is by far the most difficult because of the complexities of the problems it addresses, the vagaries of process by which its product is adopted, the unknown nature of its audience, and the permanency of its product. The importance of legislation and rules can hardly be overemphasized. They control virtually every aspect of modern day life.” Martineau, Drafting Legislation and Rules in Plain English 5 (1991)

WHAT ARE BYLAWS?

Bylaws: rules established by a body to regulate itself (Council, Commission, Board)

No Mommy, see pa! (NOMOMECPA)

- **Name** of body
- **Object** (mission statement of the body)
- **Members** (how appointed or elected)
- **Officers** (designation thereof: Chair, Vice Chair, Secretary)
- **Meetings** (how they are to be conducted and when)
- **Executive Board**
- **Committees** (standing or ad hoc)
- **Parliamentary Authority** (Robert's Rules of Order or establish your own procedures – see UCA §17-53-207)
- **Amendment** (2/3 vote)



WHY DO WE NEED POLICIES AND PROCEDURES?

- **Policies and Procedures**: A deliberate system of principles which guide internal decision-making within an organization. Policy differs from law. While law can compel or prohibit behaviors of individuals or entities outside of an organization, policy merely guides internal actions within the organization.
- Policies are typically promulgated through official written documents. Policy documents often come with the endorsement of the executive within an organization to legitimize the policy and demonstrate that it is considered in force. Such documents often have standard formats that are particular to the organization issuing the policy.



MODEL FORMAT - POLICIES

- A **purpose statement**, outlining why the organization is issuing the policy, and what its desired effect or outcome of the policy should be.
- An **applicability and scope** statement, describing who the policy affects and which actions are impacted by the policy. The applicability and scope may expressly exclude certain people, organizations, or actions from the policy requirements. Applicability and scope is used to focus the policy on only the desired targets, and avoid unintended consequences where possible.
- An **effective date** which indicates when the policy comes into force. Retroactive policies are rare.
- A **responsibilities** section, indicating which parties and organizations are responsible for carrying out individual policy statements. Many policies may require the establishment of some ongoing function or action. For example, a personnel policy might specify that a human resources office be responsible for ongoing recruitments. Responsibilities often include identification of any relevant oversight and/or governance structures, like internal audit.
- **Policy statements** indicating the specific regulations, requirements, or modifications to organizational behavior that the policy is creating. Policy statements are extremely diverse depending on the organization and intent, and may take almost any form.
- **Definitions**, providing clear and unambiguous definitions for terms and concepts found in the policy document.

WHAT IS A RESOLUTION?

Resolution: A formal expression of the opinion, intention or decision by motion and vote of an official body.

Types:

- Formal (Written)
- Informal (Oral) *also called “minute orders”
- “Be it resolved . . .“ (but its not actually required)

Actions:

- Agreements (Franchise, MOU, Interlocal agreement, lease, REPC)
- Deeds and Easements
- Administrative decisions (Findings & Conclusions)
- Budget
- Bonding (Parameters Resolution)
- Condemnation



WHAT IS AN ORDINANCE?

- **Ordinance:** A rule adopted by the legislative body that has the force and effect of a law and
 - which generally regulates the conduct of persons or use of property, and
 - usually relates to a matter of a uniform general and permanent nature, and
 - the violation of which may be enforced administratively or judicially.
- “The purpose of legislation is to impose a burden or confer a benefit, not to be merely descriptive.” Martineau at 65.
- **Three General Rules:**
 - Ordinance must be reasonable
 - Ordinance must not discriminate
 - Ordinance must not delegate legislative authority to an enforcing official



IS THERE A GUIDE TO ORDINANCE WRITING?

Rulewriting Manual for Utah Rulewriters

Kenneth A. Hansen, Division of Administrative Rules

Nancy Lancaster
Publications Editor

Chris Fawcett
Editor

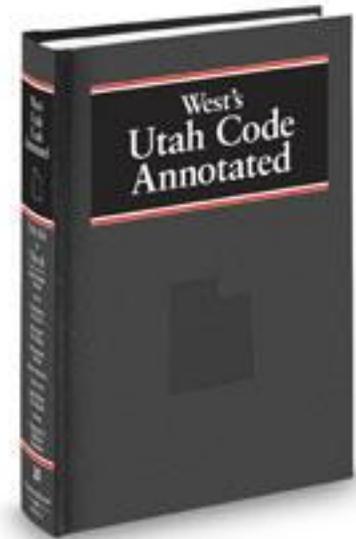
Michael Broschinsky
Administrative Code Editor

Rulewriting Manual for Utah Rulewriters (12th Edition)

<http://www.rules.utah.gov/agencyresources/manual-rulewriter.pdf>

- Write in “plain English”
- Simplicity is key (short sentences – 25 words or less, not run-on)
- Consistency (don’t change the meaning of words – laws are boring, not great literature)
- Clarity (use the “active” voice – “the planning commission shall adopt rules,” rather than “rules shall be adopted”)
- Avoid the plural
- Avoid Nominalization (avoid making nouns out of verbs – “the administrator shall consider the application,” rather than “the administrator shall give consideration to the application.”)
- Avoid pronouns (repeat the noun)
- Beware of the “comma” (its placement can change the meaning of a sentence)
- Do not use Acronyms (spell it out)

WHAT IS REQUIRED IN AN ORDINANCE?



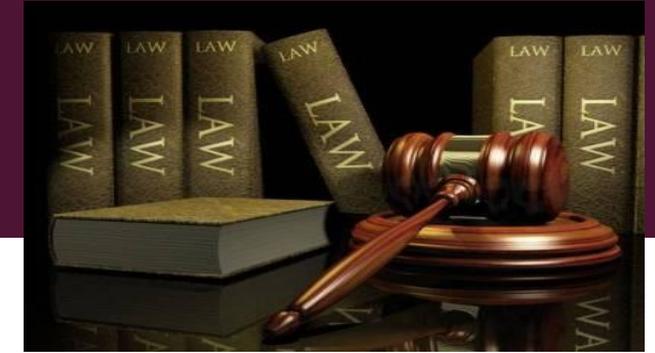
Statutory requirements (UCA §17-53-208)

- Open and Public Meetings Act applies (UCA Title 52, Chapter 4)
- Due process: public notice requirements (land use)
- Title or Caption (needs to inform the public) & Number (sequentially or by year)
- Preamble (legislative history, legal authority, intent or purpose)
- Enacting Clause (“be it ordained ...”)
- Severability Clause (but beware that in some cases, it should not be severable because it changes the intent)
- Signed by Chair and Attested by Clerk; Voting Record (County Clerk); Approved as to Form (County Attorney)
- Published
 - County Clerk role
 - Newspaper having general circulation and Utah Public Notice Website
- Effective Date: 15 days after publication (unless it is necessary for the immediate preservation of the peace, health or safety of the county and its residents – then upon publication)
- Equal Dignities Rule (Amendments)

MODEL FORMAT - ORDINANCES

- Purpose Statement
 - Construction of Legislative Intent (in addition to the preamble)
- Identify Who Must Comply
 - Actor or Activity
- Definitions (Capitalize defined terms)
 - Beware of conflicting definitions in other regulations (dwelling: land use ordinance v. criminal ordinance)
 - Beware of definitions which have the effect of substantive regulations (don't legislate in a definition)
 - Don't redefine common ordinary words that have a generally accepted meaning
- Describe How the Ordinance is to be Administered
 - Specify Roles:
 - Administrative Code Enforcement Program: Code Enforcement Officer
 - Who issues the permit or license:
 - Business License: County Clerk
 - Grading Permit: County Engineer
- Effective Date
 - Practice Tip: specify a specific date if possible (avoids confusion)
- Repealer (how does the new ordinance interface with existing ordinances)
- Teeth: Prohibition and Penalty Provisions
 - "It shall be unlawful to . . . other than as permitted by the terms of this regulation" Must always have a provision which prohibits the failure to follow the regulations.
 - Penalty for violation (civil and criminal) and appeals process

ROLE OF ATTORNEY



- Draft all ordinances and resolutions, or provide a legal format that others can use
- Beware of pre-emption (research the state or federal legislative history)
 - Conflict where federal or state law “occupies the field” and there is no room for local legislation, even “supplementary” local regulations
 - Conflict where federal or state law “preempts” subject matter by express terms, making additional, local requirements invalid
- A local ordinance can be stricter than a state or federal law - Hillsborough County, Fla. v. Automated Medical Laboratories, Inc., 471 U.S. 707 (1985)
- Power to legislate includes power to amend or repeal
 - Equal Dignities Rule
 - An unconstitutional amendment will leave ordinance in its original form
 - An existing ordinance might be implicitly repealed by a subsequent ordinance in conflict with the earlier one
- Motive of individual member of legislative body in passing ordinance is irrelevant to determination of validity, so long as body has power to enact legislation and the official is not motivated by unconstitutional concerns. Blunt an attack on motives by including a legislative history and purpose statement in the preamble.