



# Sandy City Council Office

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## MEMORANDUM

May 18, 2026

To: City Council Members

CC: Dustin Fratto, Council Executive Director

From: Tracy Scott Cowdell, Legal Counsel

Subject: *Legal Review, Codifying Functions and Duties of the Division of Communications*

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### Introduction

The proposed ordinance establishing the Sandy City Division of Communications raises important questions about municipal authority, legislative oversight, executive administration, and the council-mayor form of government under Utah law. It addresses the Council's authority to create and define divisions, set reporting and coordination responsibilities, and require advice and consent for certain positions, while preserving the Mayor's executive authority. It is the opinion of legal counsel that the ordinance is legally supportable as structured. The ordinance establishes a framework for municipal communications, transparency, public engagement, and interbranch coordination, while preserving executive administration and operational control. It specifically states that nothing in its provisions limits or diminishes the Mayor's authority under Utah law.

These issues should be analyzed under the framework established by *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980), where the Utah Supreme Court rejected rigid Dillon's Rule analysis and recognized broader municipal authority unless there is direct conflict with state law, express statutory prohibition, or clear preemption. This is relevant because Utah law does not expressly prohibit the organizational structure proposed in the ordinance. The ordinance aligns with Sandy City's longstanding legislative practices, including previous enactments that establish divisional responsibilities and advice-and-consent provisions beyond those in state statute. It is therefore a lawful exercise of municipal legislative authority under Utah's council-mayor framework.

### Issues Presented

The proposed ordinance establishing the Sandy City Division of Communications raises several legal and structural questions regarding the council-mayor form of government under Utah law, including:

1. Whether the City Council possesses authority to create a Division of Communications and define its institutional functions and duties under Utah Code section 10-3b-203.
2. Whether the ordinance's delineation of communications responsibilities, reporting obligations, and coordination functions constitutes a lawful exercise of legislative organizational authority or an impermissible intrusion into executive administration.
3. Whether the proposed advice and consent provision applicable to the Director of Communications is permissible under Utah municipal law.
4. Whether the ordinance's provisions relating to official City communication channels, institutional communications standards, and communications coordination are consistent with constitutional and statutory limitations.
5. Whether the ordinance, taken as a whole, preserves the Mayor's executive authority within the council-mayor form of government established by Utah statute.

### **Statutory Authority to Create the Division**

Utah Code section 10-3b-203 grants the City Council authority to "divide the municipality's administrative services into departments, divisions, and bureaus" and to define their "functions and duties." This broad, organizational language reflects the fact that municipal government structure is fundamentally a legislative function.

The proposed ordinance fits within this authority. It establishes a Division of Communications, defines its role, identifies responsibilities for municipal communications, and sets reporting and coordination obligations. It does not transfer executive administration to the Council, but instead establishes structure and responsibilities for a communications division within the council-mayor form of government.

### **Municipal Authority Under *State v. Hutchinson***

Historically, municipal law in many jurisdictions was governed by a narrow interpretive doctrine known as Dillon's Rule. Under that framework, municipalities were often viewed as possessing only those powers expressly granted by the Legislature, with ambiguities construed narrowly against local governmental authority. That is no longer the governing framework in Utah. In *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980), the Utah Supreme Court expressly rejected rigid Dillon's Rule analysis as "archaic, unrealistic, and unresponsive to the current needs of both state and local governments." The Court further stated that it "expressly abandon[ed] the rule of strict construction of municipal and county powers insofar as it has heretofore had a basis in Utah law." *Hutchinson* fundamentally altered the analysis of municipal authority in Utah. The controlling inquiry is no longer whether the Legislature specifically authorized every municipal action in exact detail. Rather, the relevant question is whether the proposed municipal action directly conflicts with state law, is expressly prohibited, or is preempted by comprehensive state regulation.

The Court explained: "...ordinances are valid unless they conflict with superior law; do not rationally promote the public health, safety, morals and welfare; or are preempted by state policy or

otherwise attempt to regulate an area which by the nature of the subject matter itself requires uniform state regulation.” That framework is highly significant here. Nothing within Utah Code sections 10-3b-202 or 10-3b-203 expressly prohibits the proposed ordinance. Likewise, there is no indication that the Legislature intended to comprehensively preempt local governmental organizational structures regarding municipal divisions, communications functions, reporting obligations, or advice-and-consent provisions associated with legislatively created positions. Under *Hutchinson*, the absence of express statutory prohibition is important. Utah law now recognizes broader municipal flexibility, reasonably related to express statutory powers, unless there is a direct conflict or preemption.

### **Scope of the Council’s Authority to Define Functions and Duties**

The proposed ordinance lawfully defines the functions and duties of the Division of Communications without intruding into executive administration. Utah Code section 10-3b-203 authorizes the Council to define these functions and duties. The ordinance does so by identifying the Division’s communications responsibilities, reporting obligations, transparency functions, coordination expectations, and public communication duties.

The ordinance does not direct day-to-day workflow, supervise employees, or prescribe operational personnel management. Rather, it establishes governmental structure and institutional accountability mechanisms associated with official municipal communications. This distinction is important in the Council-Mayor form of government. Defining institutional governmental responsibilities is fundamentally different from supervising executive operations. The ordinance operates within the former category. The ordinance also expressly provides that nothing contained therein shall be construed to limit or diminish the Mayor’s executive authority under Utah law. That language further reinforces the ordinance’s compatibility with the Council-Mayor structure established by statute.

### **Communications Coordination and Reporting Responsibilities**

The ordinance’s provisions regarding communications coordination and reporting are also legally supportable. Modern municipal communications directly implicate public transparency, dissemination of governmental information, legislative engagement, constituent interaction, public hearings, emergency coordination, and governmental accountability. Communications functions are therefore not merely internal administrative matters. They frequently involve institutional responsibilities affecting both branches of municipal government and the public at large. The ordinance’s coordination and reporting provisions reflect this institutional reality.

The revised ordinance frames communications coordination around standards, policy consistency, and institutional practices, not editorial control or censorship. It avoids granting prepublication editorial authority and distinguishes between official City channels and personal or campaign-related speech. The reporting obligations are tied to the Council’s statutory duty to review municipal administration and oversee institutional functions. Reporting requirements for official communications do not constitute improper operational control simply because they involve communication between executive and legislative branches.

## **Advice and Consent**

The proposed advice and consent provision for the Director of Communications is legally supportable under Utah law. Utah Code section 10-3b-202 requires advice and consent for certain positions, but does not limit this requirement to only those roles. The statute does not prohibit municipalities from adopting additional accountability mechanisms for legislatively created divisions with significant responsibilities.

Under the Hutchinson framework, the key question is whether the proposed structure conflicts with, is prohibited by, or is preempted by state law. Legal counsel finds it does not. The ordinance preserves executive appointment authority: the Mayor appoints the Director of Communications. The Council does not have the authority to appoint, remove, supervise, or exercise daily administrative control. Its role is limited to advice and consent.

This distinction is legally and structurally significant. Advice and consent is not executive administration, but a limited accountability mechanism for a position with substantial communications responsibilities affecting both government branches and the public. The institutional nature of the Communications Director role supports the proposed structure. Official communications directly impact transparency, legislative engagement, information dissemination, public hearings, constituent interaction, and accountability.

## **Historical Sandy City Practice**

The proposed ordinance is consistent with longstanding legislative practice in Sandy City. The Sandy City Code includes several provisions requiring advice and consent for positions beyond those identified in state statute. These longstanding enactments show that Sandy City has historically exercised organizational flexibility in structuring key governmental positions and functions.

These provisions were adopted over time by previous City Councils, Mayors, and City Attorneys under the same Utah statutory framework in place today. Experienced municipal attorneys, such as Wally Miller and Rob Wall, understood the implications of *State v. Hutchinson* and Utah municipal law. The continued operation of these provisions suggests that prior leadership recognized that Utah law allows reasonable local flexibility unless clearly prohibited or preempted.

Longstanding municipal ordinances carry substantial interpretive weight and are generally presumed lawful unless there is clear evidence of statutory conflict or preemption. The City's historical practice supports the legality of the proposed ordinance.

The Sandy City Administrative Code also includes detailed legislative descriptions of departmental and divisional functions, reporting obligations, and institutional duties. The proposed ordinance is consistent with this historical drafting approach and does not depart from prior municipal practice.

## **Preservation of Executive Authority**

The proposed ordinance preserves the Mayor's executive authority and avoids intruding into daily executive administration. It does not authorize the Council to direct employees, supervise workflow, control personnel decisions, or manage executive operations. Operational management remains with the executive branch. The ordinance instead establishes structure, reporting relationships,

communications responsibilities, and accountability standards for official municipal communications. The ordinance's express statement that nothing in it limits or diminishes the Mayor's authority is important. This provision confirms that the ordinance is intended to operate consistently with the executive authority established under Utah's council-mayor framework.

## **Conclusion**

The proposed ordinance is legally supportable under Utah law. Utah Code section 10-3b-203 grants the Council authority to structure municipal administrative services and define the functions and duties of divisions. The ordinance preserves executive appointment authority and daily administration, while establishing reasonable accountability mechanisms for official communications. Under the framework established by *State v. Hutchinson*, the key question is whether the ordinance conflicts with, is expressly prohibited by, or is preempted by state law. Legal counsel finds it does not. The ordinance is a lawful and reasonable exercise of municipal legislative authority, consistent with modern Utah law, Sandy City's longstanding practices, and the council-mayor form of government established by Utah statute.