



COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members
FROM: Neil Lindberg, Legal Director
DATE: October 10, 2013
RE: Constable Ordinance

PROJECT TIMELINE:

Briefing: September 24, 2013
Set Date: October 1, 2013
Public Hearing: Oct. 15, 2013
Potential Action: Oct. 15, 2013

ISSUE AT-A-GLANCE

The attached ordinance establishes a process and standards for appointing city constables. Constables have the primary duty of delivering legal documents (“serving process”), but have no law enforcement responsibilities. They also have a role in the Justice Court related to court security.

City constables could be appointed under state law (Utah Code 17-25a-1 to 17-25a-4) which authorizes their appointment by counties and cities of the first and second class. The draft ordinance is essentially identical to the state law except that it clarifies separation of powers appointment questions that could arise if there was no ordinance (who has authority to appoint certain members of a constable nominating commission).

Adoption of the draft ordinance will give the City, and city residents, an additional option for service of process required by Justice Court cases and other legal matters, including court security.

ADDITIONAL & BACKGROUND INFORMATION

Service of Process

Legal complaints, summonses, and subpoenas may be served by any person 18 years of age or older at the time of service who is not a party to the action or by a party's attorney. Process also may be served by a peace officer, a sheriff or deputy sheriff, a constable or deputy constable, a state investigator, and a licensed private investigator. See Utah Code 78B-8-302.

Few cities appoint constables but instead use the services of others, including county appointed constables, entry level police officers, and process server companies. The State of Utah has a contract with Bringhurst Process Service.

Constable Powers and Duties

A Salt Lake City appointed constable would be required to attend the city justice court if required by contract or court order to do so. A constable must also execute, serve, and return all process directed or



delivered to the constable by a city justice court judge or any other competent authority. A constable may serve process throughout the state. See Utah Code 17-25-1.

Under Utah Code 53-13-105, a constable is a “special function officer” who is “a sworn and certified peace officer performing specialized investigations, service of legal process, security functions, or specialized ordinance, rule, or regulatory functions.” Special function officers include an array of special agents and investigators, including but not limited to state military police, port-of-entry agents, school district security officers and criminal tax investigators. See Utah Code 53-13-105 for the complete list.

Constable Appointment Process

State law requires a constable to be nominated by a nominating commission, consisting of a city council member, a judge, the city attorney, the chief of police (or their designees) and a private citizen. Recommended nominees must be appointed or rejected by the City Council.

The proposed ordinance fills a state law created “separation of powers gap” by providing the judge and private citizen commission members be appointed by the Mayor with the advice and consent of the City Council.

The state law requires that a constable must:

- be certified by the Peace Officers Standards and Training division of the Utah Department of Public Safety,
- avoid all **conflicts of interest**, and
- maintain a public office where the constable can be contacted by the public or the courts.

A constable is appointed for a term of four years, subject to reappointment, and may appoint deputies, with the approval of the City Council. **A constable’s legal authority may be** withdrawn by the Council, for cause.

See Utah Code 17-25a-1 to 17-25a-4 for more details.

ATTACHMENTS

- Draft ordinance
- Utah Code 17-25-1 to 17-25-6 (Powers and Duties of Constables)
- Utah Code 17-25a-1 to 17-25a-4 (Appointment and Authority of Constables)
- Utah Code 53-13-105 (Special Function Officers)
- Utah Code 78B-8-302 (Process Servers)

SALT LAKE CITY ORDINANCE
No. ___ of 2013

(Enacting Chapter 2.85 pertaining to constables)

AN ORDINANCE ENACTING CHAPTER 2.85, *SALT LAKE CITY CODE*,
PERTAINING TO THE NOMINATION, APPOINTMENT, AND AUTHORITY OF
CONSTABLES.

WHEREAS, it is proposed that Chapter 2.85, *Salt Lake City Code*, be enacted pertaining
to the nomination, appointment, and authority of constables; and

WHEREAS, the City Council finds adoption of this ordinance reasonably furthers the
health, safety, and general welfare of the citizens of Salt Lake City.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Chapter 2.85, *Salt Lake City Code*, is enacted to read as follows:

Chapter 2.85
CONSTABLES

2.85.010: NOMINATION; APPOINTMENT; AUTHORITY:

A. The city council shall determine whether to appoint constables. If the city
council decides to appoint constables, they shall be nominated and appointed under this
chapter, consistent with the provisions of sections 17-25a-1 to 17-25a-4 of the Utah
Code, or its successor.

B. To nominate a constable, the city council shall establish a nominating
commission.

1. The nominating commission shall consist of one member of the city
council, one judge, the city attorney, the chief of police, or their designees, and
one private citizen.

a. Appointment of a city council member to the nominating
commission shall be made by the city council.

b. Appointment of a judge and a private citizen to the nominating
commission shall be made by the mayor with the advice and consent of
the city council.

2. The nominating commission shall review each applicant's credentials and recommend, by majority vote, to the city council the nominees it finds most qualified.

C. The city council shall either appoint or reject any nominee.

D. The authority of a constable may be withdrawn by the city council for cause, including if the constable's peace officer certification is suspended or revoked under Section 53-6-211, Utah Code, or its successor.

2.85.020: CONSTABLE QUALIFICATIONS; DUTIES:

A. To qualify as a constable, a person shall be certified as a special function peace officer in the state.

B. A constable shall:

1. Avoid all conflicts of interest; and

2. Maintain a public office and be accessible to the public and to the court during the hours the court is open.

2.85.030: CONSTABLE TERM; AUTHORITY; DEPUTIES:

A. Constables shall be appointed for a term of four years and may serve more than one term if reappointed as provided in this chapter.

B. 1. Constables serving process outside Salt Lake County shall contact the sheriff's office or police department of the jurisdiction prior to serving executions or seizing any property.

2. A constable or deputy constable shall notify the agency of jurisdiction by contacting the sheriff's office or police department of the jurisdiction before serving a warrant of arrest.

C. The city council, upon receiving a recommendation from the mayor, may authorize the appointed constable to employ and deputize persons who are certified as special function peace officers to function as deputy constables.

D. The city council, upon receiving a recommendation from the mayor, may withdraw the authority of a constable. In such case, the authority of all deputy constables is also withdrawn.

E. If the authority of a constable or deputy constable is withdrawn; notification of the Peace Officer Standards and Training Division of the Department of Public Safety shall be made pursuant to Section 53-6-209, Utah Code, or its successor.

2.85.040: RATES RECOVERABLE; EXCEPTION:

A. The rates recoverable through court action for service of process by a constable are, when applicable, governed by Sections 17-22-2.5, 17-25-3, or 17-25-5, Utah Code, or their successors.

B. Constable fees that exceed the amounts in Section 17-22-2.5, Utah Code, or its successor, are recoverable in court:

1. By the constable only if the constable has received prior approval for the increased fee from the party requesting the service; and

2. By a prevailing party as a cost of the action only if the court finds the service and increased fee are justifiable.

SECTION 2. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this __ day of _____, 2013.

CHAIRPERSON

ATTEST:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER

(SEAL)

Bill No. _____ of 2013.

Published: _____

<p>APPROVED AS TO FORM</p> <p>Date: _____</p>
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Chapter 2.85 (clean 09-20-13).docx

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CONSTABLES

2.85.010: NOMINATION; APPOINTMENT; AUTHORITY:

A. The city council shall determine whether to appoint constables. If the city council decides to appoint constables, they shall be nominated and appointed under this chapter, consistent with the provisions of sections 17-25a-1 to 17-25a-4 of the Utah Code, or its successor.

B. To nominate a constable, the city council shall establish a nominating commission.

1. The nominating commission shall consist of one member of the city council, one judge, the city attorney, the chief of police, or their designees, and one private citizen.

a. Appointment of a city council member to the nominating commission shall be made by the city council.

b. Appointment of a judge and a private citizen to the nominating commission shall be made by the mayor with the advice and consent of the city council.

33 2. The nominating commission shall review each applicant's credentials
34 and recommend, by majority vote, to the city council the nominees it finds most
35 qualified.

36 C. The city council shall either appoint or reject any nominee.

37 D. The authority of a constable may be withdrawn by the city council for cause,
38 including if the constable's peace officer certification is suspended or revoked under
39 Section 53-6-211, Utah Code, or its successor.

40 **2.85.020: CONSTABLE QUALIFICATIONS; DUTIES:**

41 A. To qualify as a constable, a person shall be certified as a special function peace
42 officer in the state.

43 B. A constable shall:

44 1. Avoid all conflicts of interest; and

45 2. Maintain a public office and be accessible to the public and to the court
46 during the hours the court is open.

47 **2.85.030: CONSTABLE TERM; AUTHORITY; DEPUTIES:**

48 A. Constables shall be appointed for a term of four years and may serve more than
49 one term if reappointed as provided in this chapter.

50 B. 1. Constables serving process outside Salt Lake County shall contact the
51 sheriff's office or police department of the jurisdiction prior to serving executions
52 or seizing any property.

53 2. A constable or deputy constable shall notify the agency of jurisdiction
54 by contacting the sheriff's office or police department of the jurisdiction before
55 servicing a warrant of arrest.

56 C. The city council, upon receiving a recommendation from the mayor, may
57 authorize the appointed constable to employ and deputize persons who are certified as
58 special function peace officers to function as deputy constables.

59 D. The city council, upon receiving a recommendation from the mayor, may
60 withdraw the authority of a constable. In such case, the authority of all deputy constables
61 is also withdrawn.

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63 the Peace Officer Standards and Training Division of the Department of Public Safety
64 shall be made pursuant to Section 53-6-209, Utah Code, or its successor.

65 **2.85.040: RATES RECOVERABLE; EXCEPTION:**

66 A. The rates recoverable through court action for service of process by a constable
67 are, when applicable, governed by Sections 17-22-2.5, 17-25-3, or 17-25-5, Utah Code,
68 or their successors.

69 B. Constable fees that exceed the amounts in Section 17-22-2.5, Utah Code, or its
70 successor, are recoverable in court:

71 1. By the constable only if the constable has received prior approval for
72 the increased fee from the party requesting the service; and

73 2. By a prevailing party as a cost of the action only if the court finds the
74 service and increased fee are justifiable.

75 SECTION 2. This ordinance shall become effective on the date of its first publication.

76 Passed by the City Council of Salt Lake City, Utah this __ day of _____, 2013.

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CHAIRPERSON

80 ATTEST:

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83 CITY RECORDER

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85 Transmitted to Mayor on _____.

86 Mayor's Action: _____ Approved. _____ Vetoed.

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MAYOR

DISCUSSION DRAFT – LEGISLATIVE
SEPTEMBER 20, 2013

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93 CITY RECORDER

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97 (SEAL)

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99 Bill No. _____ of 2013.

100 Published: _____

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102 Chapter 2.85 (legislative 09-20-13).docx

17-25-1. General powers and duties.

- (1) Every constable shall:
 - (a) attend the justice courts within his city or county when required by contract or court order; and
 - (b) execute, serve, and return all process directed or delivered to him by a judge of the justice court serving the city or county, or by any competent authority within the limits of this section.
- (2) Any constable may serve any process throughout the state.

17-25-2. Fees for constables -- Civil.

- (1) Constables may for their own use collect as compensation in civil matters the same fees as those specified for sheriffs in Section 17-22-2.5.
- (2) Constable fees that exceed the amounts in Section 17-22-2.5 are recoverable:
 - (a) by the constable only if he has received prior approval for the increased fee from the party requesting the service; and
 - (b) by prevailing party as a cost of the action only if the court finds the service and increased fee are justifiable.

17-25-3. Fees for constables -- Criminal.

- (1) (a) In criminal matters constables shall be paid for each copy of a summons, subpoena, notice, court order, or other criminal paper, except a warrant of arrest;
 - (i) \$5 for each defendant served; and
 - (ii) mileage of \$1 per mile for each mile necessarily traveled in going only, to be computed from either the courthouse, or when transmitted by mail, from the post office where received.
- (b) If more than one trip is necessary to serve, or diligently attempt to serve, service of process, mileage charges for more than two trips may be collected only if the party requesting the service of process has approved the additional mileage charges.
- (c) Each charge shall be individually documented on the affidavit of return of service.
- (2) Lower charges may be established by contract for services under this section.
- (3) If a constable serves process in a county other than the county where the process originated, travel expenses may not exceed the fee that would be charged if served by the sheriff of that county.
- (4) (a) For each mile traveled for the purpose of serving, or to diligently attempt service of, a warrant of arrest, both in going to and returning from defendant's address, a fee of \$1 may be charged.
 - (b) If more than one trip is necessary to serve, or diligently attempt to serve, a warrant of arrest, no more than two additional mileage charges may be collected.
 - (c) Each charge shall be individually documented on the affidavit of return of service.
- (5) For arresting each prisoner and bringing him into court, or otherwise satisfying a warrant, a fee of \$15 may be charged.

17-25-4. Constables' fees in criminal cases -- Procedure.

Accounts against the county filed by constables for services in criminal cases shall be certified as correct by the county attorney or district attorney and shall be presented to the auditor. The county legislative body may reject such bills in all causes or proceedings in which

the county attorney or district attorney has not in writing authorized the issuance of the warrant of arrest.

17-25-5. Contracts for constable services.

(1) The governing body of a municipality or county where a justice court exists may contract with a constable to provide services in criminal cases for the contracting governmental entity by a method and for an amount mutually agreed upon.

(2) (a) A contract between a governing body and a constable, including a contract described in Subsection (1), may not exceed four years.

(b) A contract described in Subsection (2)(a) may be renewed or extended for a period not to exceed four years.

17-25-6. Identification of constables -- Uniform requirements.

(1) While performing a duty described in Section 17-25-1, a constable shall prominently display a badge or other visible form of credentials and identification identifying:

- (a) a person as a constable;
- (b) the person's name; and
- (c) the county or municipality for which the constable is appointed.

(2) If a constable serves process, the constable shall:

- (a) verbally communicate to the person being served that the constable is a constable;

and

(b) print on the first page of each document served:

- (i) the constable's name and identification as a constable;
- (ii) the county or municipality for which the constable is appointed; and
- (iii) a business phone number for the constable.

(3) If a constable wears a uniform, the uniform shall be clearly marked with the word "constable" on the uniform shirt and, if applicable, the jacket.

17-25a-1. Constables -- Nomination -- Appointment -- Authority.

(1) (a) The legislative governing bodies of counties and cities of the first or second class shall determine whether to appoint constables. If a county or city of the first or second class decides to appoint constables, they shall be nominated and appointed under this chapter.

(b) However, a constable holding office on April 23, 1990, may complete his term. Any subsequent terms he may serve shall be in accordance with this chapter.

(2) To nominate a constable, the county or city of the first or second class shall establish a nominating commission.

(a) The county nominating commission shall consist of one member of the county legislative governing body, one judge, the county attorney, the district attorney, the sheriff of the county, or their designees, and one private citizen.

(b) The city nominating commission shall consist of one member of the city legislative governing body, one judge, the city attorney, the chief of police, or their designees, and one private citizen.

(c) The nominating commission shall review each applicant's credentials and recommend to the legislative governing body of the county or city the nominees it finds most qualified by majority vote.

(3) The county or city legislative governing body shall either appoint or reject any nominee.

(4) The authority of a constable may be withdrawn by the county or city legislative governing body for cause, including if the constable's peace officer certification is suspended or revoked under Section 53-6-211.

Amended by Chapter 38, 1993 General Session

Amended by Chapter 234, 1993 General Session

17-25a-2. Constable -- Qualifications -- Duties.

(1) To qualify as a constable, a person shall be certified as a special function peace officer in the state.

(2) A constable shall:

(a) avoid all conflicts of interest; and

(b) maintain a public office and be accessible to the public and to the court during the hours the court is open.

Enacted by Chapter 44, 1990 General Session

17-25a-3. County and city constables -- Terms -- Authority -- Deputies.

(1) Constables appointed by a county or city are appointed for terms of four years and may serve more than one term if reappointed by the appointing body.

(2) (a) Constables serving process outside the county in which they are appointed shall contact the sheriff's office or police department of the jurisdiction prior to serving executions or seizing any property.

(b) A constable or deputy constable shall notify the agency of jurisdiction by contacting the sheriff's office or police department of jurisdiction before serving a warrant of arrest.

(3) The appointed constable may, upon approval of the appointing county or city, employ and deputize persons who are certified as special function peace officers to function as

deputy constables.

(4) If the county or city appointing body withdraws the authority of a constable, the authority of all deputy constables is also withdrawn.

(5) If the authority of a constable or deputy constable is withdrawn, notification of the Peace Officer Standards and Training Division of the Department of Public Safety shall be made pursuant to Section 53-6-209.

Amended by Chapter 48, 2012 General Session

17-25a-4. Rates recoverable -- Exception.

(1) The rates recoverable through court action for service of process by a constable are governed by Section 17-22-2.5, 17-25-3, or 17-25-5 when applicable.

(2) Constable fees that exceed the amounts in Section 17-22-2.5 are recoverable in court:

(a) by the constable only if he has received prior approval for the increased fee from the party requesting the service; and

(b) by a prevailing party as a cost of the action only if the court finds the service and increased fee are justifiable.

Amended by Chapter 46, 2001 General Session

53-13-105. Special function officer.

(1) (a) "Special function officer" means a sworn and certified peace officer performing specialized investigations, service of legal process, security functions, or specialized ordinance, rule, or regulatory functions.

(b) "Special function officer" includes:

- (i) state military police;
- (ii) constables;
- (iii) port-of-entry agents as defined in Section 72-1-102;
- (iv) authorized employees or agents of the Department of Transportation assigned to administer and enforce the provisions of Title 72, Chapter 9, Motor Carrier Safety Act;
- (v) school district security officers;
- (vi) Utah State Hospital security officers designated pursuant to Section 62A-15-603;
- (vii) Utah State Developmental Center security officers designated pursuant to Subsection 62A-5-206(9);
- (viii) fire arson investigators for any political subdivision of the state;
- (ix) ordinance enforcement officers employed by municipalities or counties may be special function officers;
- (x) employees of the Department of Natural Resources who have been designated to conduct supplemental enforcement functions as a collateral duty;
- (xi) railroad special agents deputized by a county sheriff under Section 17-30-2, or appointed pursuant to Section 56-1-21.5;
- (xii) auxiliary officers, as described by Section 53-13-112;
- (xiii) special agents, process servers, and investigators employed by city attorneys;
- (xiv) criminal tax investigators designated under Section 59-1-206; and
- (xv) all other persons designated by statute as having special function officer authority or limited peace officer authority.

(2) (a) A special function officer may exercise that spectrum of peace officer authority that has been designated by statute to the employing agency, and only while on duty, and not for the purpose of general law enforcement.

(b) If the special function officer is charged with security functions respecting facilities or property, the powers may be exercised only in connection with acts occurring on the property where the officer is employed or when required for the protection of the employer's interest, property, or employees.

(c) A special function officer may carry firearms only while on duty, and only if authorized and under conditions specified by the officer's employer or chief administrator.

(3) (a) A special function officer may not exercise the authority of a peace officer until:

- (i) the officer has satisfactorily completed an approved basic training program for special function officers as provided under Subsection (4); and
- (ii) the chief law enforcement officer or administrator has certified this fact to the director of the division.

(b) City and county constables and their deputies shall certify their completion of

training to the legislative governing body of the city or county they serve.

(4) (a) The agency that the special function officer serves may establish and maintain a basic special function course and in-service training programs as approved by the director of the division with the advice and consent of the council.

(b) The in-service training shall consist of no fewer than 40 hours per year and may be conducted by the agency's own staff or by other agencies.

Amended by Chapter 8, 2002 Special Session 5

78B-8-302. Process servers.

(1) Complaints, summonses, and subpoenas may be served by any person 18 years of age or older at the time of service, and who is not a party to the action or a party's attorney.

(2) Except as provided in Subsection (5), the following persons may serve all process issued by the courts of this state:

(a) a peace officer employed by any political subdivision of the state acting within the scope and jurisdiction of the peace officer's employment;

(b) a sheriff or appointed deputy sheriff employed by any county of the state;

(c) a constable, or the constable's deputy, serving in compliance with applicable law;

(d) an investigator employed by the state and authorized by law to serve civil process; and

(e) a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act.

(3) Private investigators licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act may not arrest anyone pursuant to a bench warrant. While serving process, a private investigator shall:

(a) have on the investigator's person a visible form of credentials and identification identifying:

(i) the person by name;

(ii) the person as a licensed private investigator; and

(iii) the name and address of the agency employing the investigator or, if the investigator is self-employed, the address of the investigator's place of business;

(b) verbally communicate to the person being served that the investigator is acting as a process server; and

(c) print on the first page of each document served:

(i) the investigator's name and identification as a private investigator; and

(ii) the address and phone number for the investigator's place of business.

(4) Any service under this section where the use of force is authorized on the face of the document, a breach of the peace is imminent, or likely under the totality of the circumstances may only be served by:

(a) a law enforcement officer, as defined in Section 53-13-103; or

(b) a constable, as defined in Subsection 53-13-105(1)(b)(ii).

(5) The following persons may not serve process issued by the courts:

(a) a person convicted of a felony violation of an offense listed in Subsection 77-41-102(16); or

(b) a person who is a respondent in a proceeding described in Title 78B, Chapter 7, Protective Orders, in which a court has granted the petitioner a protective order.

(6) A person serving process shall:

(a) legibly document the date and time of service;

(b) legibly print the person's name and address on the return of service; and

(c) sign the return of service in substantial compliance with Section 78B-5-705.

Amended by Chapter 352, 2013 General Session