

ORDINANCE No. 11-14

ROLL CALL

Vote	YES	NO
STEVE LEIFSON <i>Mayor (votes only in case of tie)</i>		
ROD DART <i>Council member</i>	X	
RICHARD M. DAVIS <i>Council member</i>	X	
BRANDON GORDON <i>Council member</i>	X	
MIKE MENDHALL <i>Council member</i>	X	
KEIR A. SCUBES <i>Council member</i>	X	

I MOVE this ordinance be adopted: Council member Gordon

I SECOND the foregoing motion: Council member Scoubes

ORDINANCE No. 11-14

AN ORDINANCE CREATING CHAPTER 68 OF TITLE 2 OF THE SPANISH FORK MUNICIPAL CODE ESTABLISHING A MUNICIPAL ETHICS COMMISSION AND PROVIDING FOR THE MEMBERSHIP THEREOF PURSUANT TO AN INTERLOCAL AGREEMENT

WHEREAS, the Utah State Legislature has enacted a State law establishing a Political Subdivision Ethics Commission to review complaints regarding the activities of certain elected and appointed officials; and

WHEREAS, the State law permits a municipality to establish its own ethics commission to address complaints of violations of the Municipal Officers' and Employees' Ethics Act; and

WHEREAS, in reviewing this option, the City has determined that it is in the best interest of its citizens to have its own commission as established by Interlocal Agreement, being under local control and more convenient, responsive, and accessible to the citizens; and

WHEREAS, pursuant to that determination, the City Council finds that it is in the best interest of the City and its citizens to establish an ethics commission.

NOW, THEREFORE, be it ordained and enacted as follows:

I.

Spanish Fork Municipal Code, Title 2, Chapter 68, entitled Municipal Ethics Commission, is hereby created as follows:

**TITLE 2 – ADMINISTRATION OF GOVERNMENT
Chapter 68 - MUNICIPAL ETHICS COMMISSION**

- 2.68.010 Purpose.
- 2.68.020 Definitions.
- 2.68.030 Municipal Officers' and Employees' Ethics Act.
- 2.68.040 City Attorney Advisory Opinions.
- 2.68.050 Municipal Ethics Commission.
- 2.68.060 Filing of Ethics Complaints with Commission.
- 2.68.070 Privacy.
- 2.68.080 Initial Review.
- 2.68.090 Consideration of Complaint after Acceptance.
- 2.68.100 Contempt Powers.
- 2.68.110 Request by Elected or Appointed Official for Legal Representation.
- 2.68.120 Determination by Commission.
- 2.68.130 Action by City Council.
- 2.68.140 Knowingly Filing of False Complaint.
- 2.68.150 Annual Commission Report.

2.68.010 Purpose.

The purpose of this Chapter is to create an independent means of investigating and making recommendations concerning alleged violations of the Municipal Officers' and Employees' Ethics Act. It also seeks to increase public confidence by assuring that governmental actions are taken ethically.

2.68.020 Definitions.

As used in this Chapter, the following terms shall have these meanings:

- 1) "Commission" means the Municipal Ethics Commission formed pursuant to Section 2.68.050.
- 2) "Elected officials" includes only the Mayor and members of the City Council.
- 3) "Appointed official" means the City Manager.

2.68.030 Municipal Officers' and Employees' Ethics Act

Elected and appointed officials of the City are required to comply with the Municipal Officers' and Employees' Ethics Act (Utah Code §10-3-1301 *et seq.* as amended), which is incorporated herein by reference.

2.68.040 City Attorney Advisory Opinions.

1. Elected and appointed officials of the City may request of the City Attorney an advisory opinion concerning the application of the Municipal Officers' and Employees' Ethics Act. The City Attorney shall accept and process these advisory opinion requests. The City Attorney shall render a written opinion to the Mayor, City Council, and to the City Manager within 45 days of receiving such a request. All advisory opinions shall be available for public review, but may be in such form and with such deletions as may be necessary to prevent the disclosure of the identity of the persons involved or to protect personal privacy interests.
2. An advisory opinion rendered by the City Attorney, until amended or revoked by the City Attorney, shall be a defense in any action brought by a complainant against the elected or appointed official and shall be binding on the City in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith upon it, unless material facts were omitted or misstated by the person requesting the opinion.

2.68.050 Municipal Ethics Commission.

1. The City, along with other Utah County cities, establishes a Municipal Ethics Commission pursuant to Utah Code §10-3-1311 and Utah Code §11-13-101 *et seq.* The Commission shall be a three (3) person commission as provided for in an Interlocal Agreement between the participating municipalities. Upon receiving a complaint the membership of the Commission shall be determined by random selection from the pool of eligible participating municipalities.
2. The City Attorney's Office shall provide the Commission such administrative or other support as requested by the Commission.

2.68.060 Filing of Ethics Complaints with Commission.

1. A complaint may only be filed with the Commission under the following conditions:
 - a. The complaint must be against an elected or appointed official of the City who is currently serving in their elected or appointed position. The complaint must allege a violation of the Municipal Officers' and Employees' Ethics Act;
 - b. The complaint must be filed with the City Recorder;
 - c. The complaint must be made by either:
 - i. two or more registered voters who reside within the boundaries of the City; or
 - ii. two or more registered voters who pay a fee or tax to the City; or
 - iii. one or more registered voters who reside within the boundaries of the City plus one or more registered voters who pay a fee or tax to the City;
 - d. The complaint must be based upon direct evidence or sworn statements by one or more people with actual knowledge of the facts and circumstances supporting the alleged ethics violation;
 - e. The complaint may not be filed during the sixty (60) calendar days immediately preceding a municipal primary election, if the accused elected or appointed official is a candidate in the primary election;

- f. The complaint may not be filed during the sixty (60) calendar days immediately preceding a municipal general election in which the accused elected or appointed official is a candidate, unless the accused elected or appointed official is unopposed in the election;
 - g. The complaint must be in writing and contain:
 - i. the name and position of the elected or appointed official alleged to be in violation;
 - ii. the name, address, and telephone number of each individual who is filing the complaint;
 - iii. a description of each alleged violation of the Municipal Officers' and Employees' Ethics Act, including a reference to the section of the Act alleged to have been violated;
 - iv. with reasonable specificity, evidence supporting each allegation, which shall be provided by copies of official records, documentary evidence, or affidavits that include the required information;
 - v. a list of witnesses that a complainant wishes to have called or interviewed, including for each witness: the name, address, and, if available, one or more telephone numbers of the witness; a brief summary of the testimony to be provided by the witness; a specific description of any documents or evidence a complainant desires the witness to produce;
 - vi. a statement that each complainant:
 - 1. has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
 - 2. believes that the complaint is submitted in good faith and not for any improper purpose such as harassing the named elected or appointed official, causing unwarranted harm to the accused elected or appointed official's reputation, or causing unnecessary expenditure of public funds; and
 - 3. believes the allegations contained in the complaint to be true and accurate.
 - vii. a statement with the signature of each complainant.
2. Upon receipt of any ethics complaint, the City Recorder shall select the commission using the procedures set forth in the Interlocal Agreement, inform the city attorneys from the selected cities of their selection, then immediately refer the complaint to the commission. The City Recorder shall not notify or inform any other person of the filing of the complaint.
 3. A person filing a complaint under this Chapter is not entitled to reimbursement for attorney fees or costs incurred, regardless of the outcome of the proceedings.
 4. An administrative fee of \$50 must be filed with the complaint. The \$50 filing fee must be paid to the city where the complaint is filed. After the selected commission elects a chairperson, the \$50 administrative fee will be paid to the chairperson's city to defray the costs of administering the complaint.

2.68.070 Privacy.

1. Once an ethics complaint has been filed with the City Recorder, neither the City Recorder, the Commission, nor any City employee may disclose the existence of the complaint, any response to the complaint, or any information concerning the alleged ethics violation that is the subject of the complaint, unless otherwise provided in this Chapter.
2. Nothing in the restrictions above may be construed to hinder or prevent a person or the City Attorney from disclosing the facts or allegations about potential criminal violations to a law enforcement authority.

3. Nothing in this Section may be construed to hinder or prevent the named elected or appointed official from preparing a defense to a complaint, including contacting witnesses or taking other actions in preparation for review by the Commission.
4. Nothing in this Section may be construed to hinder or prevent any person from disclosing public records.
5. If any employee or official of the City publicly discloses any private information, appropriate disciplinary action may be taken against such individual.
6. If a complainant publicly discloses any private records or information obtained from private records, the Commission may summarily dismiss the complaint without prejudice.
7. All records, that are not public records, received by or generated by or for the Commission are private and not subject to disclosure or release, except for the Commission's summary findings and recommendation to the City Council or any document that is classified as public in accordance with Utah Code §63G-2-301.

2.68.080 Initial Review.

1. Within twenty (20) business days after receipt of an ethics complaint, the Commission shall examine the complaint to determine if it is in compliance with the filing requirements of this Chapter.
2. If the Commission determines that the complaint does not comply with the filing requirements of this Chapter, the Commission shall return the complaint to the first complainant named on the complaint with a statement detailing the reason(s) for non-compliance. At the same time, the Commission shall notify the City Manager, Mayor, City Council, and the City Attorney that a complaint filed against an unidentified elected or appointed official has been returned for non-compliance with this Chapter and the fact that a complaint was filed and returned shall be kept confidential as to any others. If a complaint is returned by the Commission, the complainants may file another complaint if the new complaint independently meets the filing requirements of this Chapter.
3. If the Commission determines that the complaint complies with the filing requirements of this Chapter, the Commission shall:
 - a. Accept the complaint;
 - b. Promptly forward the complaint to the elected or appointed official who is named in the complaint, together with directions for providing a response to the Commission;
 - c. If appropriate, request assistance from the Office of the City Attorney; and
 - d. Notify the complainants, the named elected or appointed official, the City Recorder, and the employees in the Office of the City Attorney of the privacy requirements of this Article.
4. At its discretion, the Commission may determine whether the subject of the complaint should be investigated by a law enforcement agency.
5. If the Commission learns that the subject of the complaint is under criminal investigation, the Commission may suspend its review of the complaint pending the resolution of the criminal investigation.
6. The named elected or appointed official shall have the right to present an answer to the complaint. The answer may contain statements, arguments, and evidence. The answer must be filed within ten (10) business days from the date the complaint was forwarded to the elected or appointed official.
7. The Commission shall dismiss an ethics complaint if:
 - a. The named elected or appointed official resigns or is removed from office;
 - b. The named elected or appointed official is charged with a criminal violation of the Municipal Officers' and Employees' Ethics Act where the facts and allegations presented

- in the ethics complaint assert substantially similar facts and allegations as those asserted in the criminal charges; or
- c. The allegations in the complaint, if assumed to be true, do not state a violation of the Municipal Officer's and Employees' Ethics Act.

2.68.090 Consideration of Complaint after Acceptance.

1. After acceptance of a complaint, the Commission has the discretion to:
 - a. Conduct a confidential, independent administrative investigation of the complaint;
 - b. Refer the matter to an independent non-criminal investigator for fact finding and investigation and consider the confidential report of the investigator;
 - c. Conduct a hearing in accordance with Subsection (2) of this Section; or
 - d. Any combination of the above.
2. If the Commission uses a hearing to review the complaint, the Commission shall:
 - a. Assure that the hearing includes opening arguments, presentation of evidence, witnesses and rebuttal, consideration of motions, and closing arguments;
 - b. Close the hearing to the public;
 - c. Allow the complainants and the named elected or appointed official to retain legal representation, at their discretion; and
 - d. Provide administrative subpoenas pursuant to its subpoena powers.
3. For any hearing the Commission must provide a notice to the first named complainant and the named elected or appointed official at least five (5) business days prior to the hearing.
4. The Commission shall determine whether the subject matter of the complaint was previously the subject of a filing, public disclosure, or a City Attorney ethics advisory opinion. The Commission shall take into consideration efforts by the named elected or appointed official to seek legal direction regarding the subject matter of the complaint and any good faith efforts by the named elected or appointed official in response to legal advice received.
5. The Commission shall ensure that a record of any Commission meeting or hearing is made, which shall include:
 - a. Official summaries or minutes taken during the meeting or hearing;
 - b. Copies of all documents or other items admitted into evidence or considered by the Commission;
 - c. Copies of a document or written order or ruling issued by the Commission;
 - d. Any other information the Commission deems relevant to the findings and recommendation; and
 - e. The Commission has the discretion to make an Audio recording. If an audio recording is made, it shall also be kept as part of the record.
 - f. The record shall be kept for the length of time required by the retention schedule prepared by the State Archivist.

2.68.100 Contempt powers.

1. The Commission may hold a person in contempt if the person:
 - a. Refuses to answer a question, without legal justification, after being directed by the Commission to answer; or
 - b. Fails to comply with a subpoena issued by the Commission.
2. Upon finding a person in contempt, the Commission shall report the person to the Fourth District Court and request a warrant of attachment or order to show cause, as provided in Utah Code §78B-6-313.

2.68.110 Request by Elected or Appointed Official for Legal Representation.

1. The named elected or appointed official may request that the City provide legal counsel to defend the official if the complaint arises from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority.
2. The City is obligated to provide legal counsel, upon request, if the Council finds that the allegations in the complaint arise from an act or omission during the performance of official duties, within the scope of employment, or under the color of authority. If no request for legal counsel is made prior to the filing of an answer to the complaint, the City has no obligation to provide legal counsel, but has the discretion to provide part or all of the cost of legal counsel despite the late request.

2.68.120 Determination by Commission.

1. After review of the complaint, the Commission shall determine whether there is clear and convincing evidence supporting a violation of the Municipal Officers' and Employees' Act by the named elected or appointed official. If there are multiple alleged violations, the Commission shall separately determine whether clear and convincing evidence supports each alleged violation. The determination shall be by majority vote of the Commission.
2. If the Commission determines that no allegations in the complaint were proved, the Commission shall:
 - a. Issue an order that the complaint is dismissed because no allegations in the complaint were found to have been proven;
 - b. Provide notice of the determination of no violation by an unidentified elected or appointed official at a regular public meeting of the City Council; and
 - c. Provide written notice of the determination to the named elected or appointed official and the first named complainant on the complaint.
3. If the Commission determines that one or more of the allegations in the complaint were proved, the Commission shall:
 - a. Prepare written summary findings:
 - i. Listing the name of each complainant and the name of the elected or appointed official;
 - ii. For each allegation that was proven:
 1. Provide the reference to the Municipal Officers' and Employees' Act;
 2. Summarize the evidence supporting a violation by clear and convincing evidence;
 3. Make factual findings; and
 - iii. Recommend appropriate action to the City Council.
 - b. Notify the named elected or appointed official and the first complainant on the complaint of the written summary findings and recommendation for the City Council; and
 - c. Report the summary findings and recommendation to the City Council in a regular meeting of the City Council.
4. If the Commission finds a violation of the Municipal Officers' and Employees' Ethics Act, the Commission may recommend to the City Council any appropriate action or remedy, including but not limited to censure, reprimand, additional ethics training, or removal from office. The Commission's recommendation may depend on the severity of the violation, the elected or appointed official's intent, any history or pattern of abuse by the named elected or appointed official, and any economic or other benefit received by the named elected or appointed official.

2.68.130 Action by City Council.

1. Upon receipt of any finding of violation of the Municipal Officers' and Employees' Ethics Act and recommendation by the Commission, the City Council shall review the recommendation and take action at its discretion.
2. The elected or appointed official referred for a violation may not participate in the City Council's deliberation or cast a vote as the City Council decides whether to take action and what action to take.

2.68.140 Knowingly Filing of False Complaint.

Any person who files a complaint against an elected or appointed official pursuant to this Chapter, knowing that such complaint is frivolous, malicious, false, or otherwise without merit, shall be guilty of a class B misdemeanor.

2.68.150 Annual Commission report.

1. If there has been any activity by the Commission during the previous year involving an elected or appointed official of the City, the Commission shall prepare a summary report that contains:
 - a. A general description of the activities of the Commission during the past year;
 - b. The number of ethics complaints filed with the Commission;
 - c. The number of ethics complaints dismissed; and
 - d. An executive summary of each complaint where the Commission found a violation of the Municipal Officers' and Employees' Ethics Act or other applicable local ordinance.
2. The annual report of the Commission shall be filed with the Recorder and shall be a public record.

II.

This ordinance shall be effective twenty days after passage and publication.

DATED this ~~6th~~
20 day of May, 2014.


STEVE LEIFSON, Mayor

Attest:


KENT R. CLARK, City Recorder

