

RESOLUTION No. 15-17

ROLL CALL

| VOTING | 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 B. GORDON <i>Council member</i> | X | |
| MIKE MENDENHALL <i>Council member</i> | X | |
| KEIR A. SCOUBES <i>Council member</i> | X | |

I MOVE this resolution be adopted: Council member Scoubes

I SECOND the foregoing motion: Council member Mendenhall

RESOLUTION No. 15-17

A RESOLUTION AMENDING THE SPANISH FORK CITY EMPLOYEE PERSONNEL POLICY CONCERNING GIFTS AND EXEMPT EMPLOYEES

WHEREAS, Spanish Fork City has adopted an employee personnel policy to govern the conduct and performance of its employees; and

WHEREAS, the Spanish Fork City council is authorized to make changes to the employee personnel policy; and

WHEREAS, it is necessary to review and make changes to the employee personnel policy from time to time in order to operate more efficiently and more fully comply with laws and regulations affecting the City; and

WHEREAS, staff has identified a more efficient way to fill assignments for extra shifts paid for by a third party; and

WHEREAS, the Fair Labor Standards Act allows an exempt employee to receive additional

compensation without losing their exempt status; and

WHEREAS, clarification of receipt of gifts, especially ceremonial gifts, will help employees avoid accidental violation of state ethics laws;

NOW THEREFORE, be it resolved by the Spanish Fork City Council as follows:

1. New section 1.20.35.075 is hereby adopted as follows:

1.20.35.075. Exempt Employees and Assignments with Funds From Outside Sources

From time to time, the City receives funding from outside sources to perform some task or assignment, such as an alcohol enforcement grant or the rental of a city facility that pays to also use city employees to complete some assignment. Where funds from some outside source are given to cover the City's personnel expenses and where such funds are sufficient to cover all related employee expenses, FLSA exempt employees shall be allowed to fill such shifts and receive additional compensation above their normal pay for a two-week pay period, subject to the following conditions:

- A. Other outside funding sources must be pre-approved by the Human Resource Director before any additional pay for Exempt Employees is approved. Under no circumstances will general fund money be used to fund additional hours.
- B. Exempt Employees will maintain their normal work schedule during the pay period. Exempt Employees will work any additional hours required to perform their normal duties (over 80 hours per pay period if necessary), and such hours will not be compensated in any way.
 - 1. Hours compensated by outside funding sources must be worked in addition to their regular duties, and only to the extent allowed by the demands of their regular position.
 - 2. The hours compensated by outside funding sources cannot be allowed to negatively impact the employee's availability to perform their primary duties.
- C. Exempt Employees will retain their FLSA exempt status, working in supervisory/administrative roles.
- D. All paid hours will be at the Exempt Employees normal (straight time) hourly pay rate. Overtime rates will not apply, and benefits will not be calculated on the additional earnings, with the exception of 401(k) contributions. The City's contribution will be reimbursed by the outside funding source.
- E. All qualified lower-ranked personnel will be given the first and second opportunity to work these hours before any Exempt Employees are offered the opportunity to work them. Exempt Employees shall be used as a last resort to fill a needed shift and must have the approval of the department director.
- F. Exempt Employees are not (and will not become) entitled to any particular number of hours compensated by outside funds, and they should not expect any amount of additional earnings to be paid on a regular basis.

2. Section 1.20.95.040 is hereby amended as follows:

1.20.95.040. Gifts.

- A. No officer or employee shall directly or indirectly solicit any gift or accept or receive any gift in which it could reasonably be inferred that the gift was intended to influence the employee, or could reasonably be expected to influence him/her in the performance of his/her official duties or was intended as a reward for any official action on the employees part. Examples of such gifts include, but may not be

limited to the form of money, services, loan, travel, entertainment, hospitality, promise, or any other form under any circumstances.

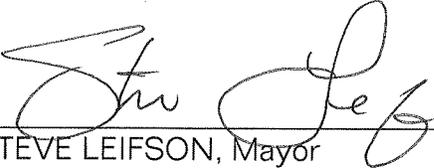
- B. The purpose of this policy is to assist officials and employees of Spanish Fork City with the acceptance and disposition of gifts given to them by someone other than the City such that they do not violate the provisions of the Utah Municipal Officers' and Employees' Ethics Act, Utah Code Ann. §10-3-1302 et. seq. This is not applicable to gifts and awards Spanish Fork City may grant to its own officials and employees.
- C. Officials and employees are sometimes given ceremonial memorabilia, mementos, or souvenir gifts in situations where it would be inappropriate or even offensive to decline the gift. Examples include a memento gift given by a sister-city representative in commemoration of an official visit or other important occasion; a souvenir pen given as part of the execution of an important agreement; and other similar acknowledgments and gifts distributed for various reasons at similar activities or events. Officials and employees should use the following guidelines and procedures in accepting and disposing of such gifts:
1. Upon receipt of ceremonial gifts, officials and employees may appropriately display the gifts, but are reminded that gifts to Spanish Fork City are property of the City and should be retained by the City at the conclusion of the official or employee's term of service.
 2. Sometimes ceremonial gifts are personal in nature and are intended to be given to the individual and not the City. Spanish Fork City permits officials and employees to accept ceremonial gifts, however, all personal gifts, including ceremonial gifts to an official or employee should be disclosed on an appropriate disclosure form consistent with established policies and procedures. Officials and employees are reminded that personal gifts made or accepted in violation of the Utah Municipal Officers and Employee's Act, Utah Code Ann. §10-3-1301 et seq. are prohibited and may subject a violator to civil and/or criminal sanctions.
 3. In determining whether a ceremonial gift is being given to Spanish Fork City (and is therefore the property of the City), or is given as a personal gift to an official or employee, the intent of the party making the gift is usually decisive. If the intent of the party is unknown, or if the matter is otherwise ambiguous, additional factors should be considered, including:
 - a. The nature of the gift itself – whether the item is personal or impersonal in nature;
 - b. The monetary value of the gift may indicate whether the gift is intended for the City or an individual. The more expensive the gift, the more likely the gift should be considered to be a gift to, and the property of, Spanish Fork City. In contrast, an inexpensive, incidental gift with individualized connotations may more likely be considered a personal gift to an individual; and
 - c. Gifts with notable historical significance should be considered to be property of the City so long as the City recognizes its historical value, even where the giver and/or recipient might consider the gift personal in nature.
 4. Where a personal gift is historical in nature, it is suggested that the recipient official or employee allow the City to retain and display the gift so long as the City recognizes and values its historical importance. If the City ever ceases to recognize a personal gift as of historical value, the City should relinquish the gift to the official or employee to whom it was given. An important factor in deciding whether a gift should be considered the City's property or an official or employee's personal property is whether the official or employee receiving the gift declared the gift on a disclosure form at the time the gift was made.
 5. Ceremonial gifts that are the property of Spanish Fork City shall be inventoried by the City and identified as property of Spanish Fork City in the records of the City and discretely on the gift itself. Ceremonial gifts that may be the property of an official or employee, but are in the possession of Spanish Fork City because of their historical significance shall be identified as such in the records of the City and discretely on the gift itself. The City Recorder shall annually provide a copy of the list to the Mayor for review and disposition of items consistent with this policy.
- D. Officials and employees are urged to use care in receiving and disposing of all gifts because public confidence in the integrity of its public servants is indispensable to our government. An official or employee may always defer personal acceptance of a gift in favor of ownership by the City and may be

wise to do so if there is any ambiguity regarding the matter. Where ambiguity exists, the Mayor may make a final decision regarding the matter that shall be final and binding on all parties. The City generally advises officers and employees to adhere to the guidelines in Utah Code Ann. §10-3-1304 as far as the value of gifts is concerned. However, gifts greater in value than \$50.00 may be accepted if they are occasional and do not have the intent to influence the decision making of the recipient. Likewise, the City also cautions that gifts with a value less than \$50.00 are inappropriate and illegal if they are given with the intent to influence the decision making of the recipient.

3. Section 1.20.95.040(B - D) is renumbered Section 1.20.95.045 (A - C)

This resolution is effective immediately.

DATED this 17th day of November, 2015.



STEVE LEIFSON, Mayor

Attest:



KENT R. CLARK, City Recorder

