

ORDINANCE NO. 2011-

AN ORDINANCE AMENDING ARTICLE II, DIVISION 2 OF THE CODE OF ORDINANCES OF THE CITY OF LEAGUE CITY, TEXAS ENTITLED "ADMINISTRATION – CODE OF ETHICS," CONTAINING REVISIONS RELATED TO THE FOREGOING SUBJECT; AND PROVIDING FOR SEVERABILITY

WHEREAS, on December 9, 2009, the City Council of the City of League City, Texas approved Ordinance No. 2009-43 whereby Chapter 2, Article II of the Code of Ordinances of the City of League City was amended in order to provide for an ethics policy governing all City officials; and

WHEREAS, pursuant to Section 2-36 of the Code of Ordinances, the City Council has appointed an Ethics Review Board, which board has convened meetings to consider possible revisions to the Code of Ethics and to make such recommendations to City Council; and

WHEREAS, as a result of their meetings, the Ethics Review Board has approved the presentation of its recommendations to City Council in the form of revisions to Sections 2-33, 2-34, 2-38 and 2-40 of the Code of Ordinances as provided below in order to further expand the scope of the Code of Ethics and to define the categorization of complaints to be considered by the board; and

WHEREAS, the City Council has considered the recommendations of the Ethics Review Board and further deems it to be in the public interest that the recommendation provided by the board be implemented; and

WHEREAS, given these considerations, the City Council of the City of League City, Texas hereby finds and determines that the public welfare of its citizens requires the adoption of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS AS FOLLOWS:

Section 1. The findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Sections 2-33, 2-34, 2-38 and 2-40 of the Code of Ordinances of the City of League City, Texas are hereby amended to be read as follows:

**ARTICLE II. CITY COUNCIL**

**DIVISION 2. CODE OF ETHICS**

**PART I. RULES OF ETHICAL CONDUCT**

**Sec. 2-33. Statement of Purpose and Principles.**

(a) General. It is the policy of the Mayor and City Council of the City of League City to hold its elected officials and the appointed officials and employees to the highest standards of ethical conduct. The city council believes that it has a responsibility to make every reasonable effort to assure the citizens of League City that their elected and appointed officials and city employees will always place the public's interest above their own. To that end, the city council has concluded that current state laws regulating the

conduct of local public officials should be supplemented by adopting additional regulations for the city's elected and appointed officials and city employees and that city staff should be directed to provide, at least once a calendar year, educational programs to the city's elected and appointed officials and city employees on their legal and ethical obligations under state and local law, including, particularly, their obligation to avoid conflicts of interest.

(b) Ethical Values. It is the official policy of the city that:

(1) City officials shall be independent, impartial, and responsible to the citizens of the city;

(2) City officials shall not have a financial interest, and shall not engage in any business, transaction, or professional activity, or incur any obligation, that conflicts with the proper discharge of their duties for the city in the public interest.

(3) The principles of personal conduct and ethical behavior that should guide the behavior of city officials include:

- (A) A commitment to the public welfare;
- (B) Respect for the value and dignity of all individuals;
- (C) Accountability to the citizens of the city;
- (D) Truthfulness; and
- (E) Fairness.

(4) Under such principles of conduct and ethical behavior, city officials should:

- (A) Conduct themselves with integrity and in a manner that merits the trust and support of the public;
- (B) Be responsible stewards of the taxpayers' resources; and
- (C) Take no official actions that would result in personal benefit in conflict with the best interests of the city.

(5) To implement the purpose and principles set out in this policy, the city council has determined that it is advisable to enact rules of ethical conduct to govern city officials. It is the purpose and intent of city council to assure a fair opportunity for all of the city's citizens to participate in government, to adopt standards of disclosure and transparency in government, and to promote public trust in government.

(c) Purpose and effect. The statements of purpose and principles that introduce this policy are for guidance only. They are not intended to create binding obligations, to serve as a basis for disciplinary action, or to create any private cause of action. The rules of ethical conduct that follow are intended not only to serve as a guide for official conduct, but also as a basis for discipline of city officials who do not abide by them.

## **Sec. 2-34. Rules of Ethical Conduct.**

(a) Definitions.

In this article:

*Administrative board* means any board, commission, or other organized body:

(1) That has, by law, final decision-making authority on matters within its jurisdiction and that is either: (a) established under the City Charter or by city ordinance, or (b) whose members are appointed or confirmed by the city council; or,

(2) Created as a non-profit economic development corporation by the city council under the authority of the City Charter or any other authority.

*Advisory board* means a board, commission, or other organized body other than an administrative board, that was created by an act of the city council whose members are appointed or confirmed by the city council and are charged with making recommendations to the city council on matters within its jurisdiction.

*City official* means the mayor, a member of the city council, an administrative board member, or an advisory board member and, in applicable circumstances, any employee of the city.

*Ethics panel* means the body charged with reviewing and acting on complaints and requests for declaratory relief filed under this article.

(b) Covered officials.

The rules of ethical conduct contained in this Division 2 apply generally to city officials and in certain defined circumstances to candidates for city council and former city officials.

(c) Conflicts of interest, generally.

(1) A city official shall abstain from participation in discussion of and any vote on a matter, and shall file an affidavit stating the nature and extent of his or her interest in a matter, if action on the matter by the body on which the city official serves will have a special economic effect that is distinguishable from its effect on the public on any of the following:

- (A) The city official;
- (B) The city official's outside employer or client;
- (C) The city official's spouse, parent, or child; or
- (D) A public or private business entity for which the city official, or his or her spouse, parent, or child serves as a director, general partner, or officer, or in any other policy making position.

(2) A city official shall abstain from participation in, discussion of, and any vote on a matter involving a person if, within the 12 months preceding the date of the vote, the city official has filed a conflicts disclosure statement under Chapter 176 of the Local Government Code relating to that person.

(3) A city official shall abstain from participation in, discussion of, and any vote on a matter involving a business entity if:

- (A) The city official has a substantial interest in another business entity that has had one or more business transactions with the business entity involved in the matter to be voted on;
- (B) The business transaction or transactions occurred within the 12 months immediately preceding the date of the matter to be voted on; and

(C) The business transaction or transactions resulted in a payment or payments totaling more than \$10,000.00.

(4) A city official required to abstain from voting under the preceding paragraph (c) must file an affidavit stating the nature and extent of the interest in the business entity. For purposes of the preceding paragraph (c), a "business entity" and "substantial interest in business entity" have the meanings respectively provided for in V.T.C.A., Local Government Code, § 171.001(2) and § 171.002(a), as amended.

(5) Affidavits of conflict of interest filed pursuant to the requirements of this section or state law shall be filed with the city secretary before any vote on the matter and as soon as possible after the city official becomes aware of the need to file the affidavit.

(6) A city official who is required to abstain from participation in a matter under this section or under state law shall leave the room where the meeting is held during any discussion of, and vote on, the matter.

(7) The abstention of a city official, pursuant to the requirements of this section or state law, shall be recorded in the minutes or audio recording of the meeting of the respective body on which he or she serves.

(d) Council member prohibited from doing business with the city.

(1) Except as provided below, no council member shall have a financial interest in any significant contract or transaction involving the sale or lease of goods, real estate, or services, or the lending of credit, to the city.

(2) For the purposes of this section, the ownership by a council member or his or her spouse, parent or child of the stock or instruments of debt of a publicly traded company does not give the council member a financial interest in any contracts or transactions that company has with the city, provided that the value of the interest held is less than five percent of the value of the company.

(3) For the purpose of this section, a contract or transaction is significant only if the total payments made by the city pursuant to the contract or transaction exceed \$1,000.00 in the aggregate.

(4) This section does not apply to the city's acquisition by eminent domain proceedings of an interest in land owned by a council member.

(e) Disclosure of certain gifts to city officials.

(1) Except as provided below, a city official who receives as a guest, a gift of food, lodging, transportation, or entertainment that reasonably appears to exceed \$500.00 in value shall file with the city secretary within 30 calendar days after receiving the gift a written disclosure statement containing the following information:

- (A) A description of the gift of food, lodging, transportation, or entertainment that was received;
- (B) The date or dates on which the gift was received;
- (C) The name of the host who paid for, or provided, the gift; and

(D) A statement that the aggregate value of the gift is believed to exceed the sum of \$500.00.

(2) The requirements of subsection (e)(1), above, do not apply to a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the status of the recipient as a city official.

(3) This section does not apply to any gift that is required to be and is reported under any other state law, including a required election campaign filing.

(f) Appearance on behalf of private interests of others.

(1) A member of the city council shall not appear before the city council or any administrative board or advisory board for the purpose of representing the interests of another person or entity. However, a member of the city council may, to the extent otherwise permitted by law, appear before any such body to represent the member's own interests or the interests of the member's spouse or minor children.

(2) A city official including advisory board members who are not members of the city council shall not appear before the body on which he or she serves for the purpose of representing the interests of another person or entity, and shall not appear before any other body for the purpose of representing the interests of another person or entity in connection with an appeal from a decision of the body on which the city official or advisory board member serves. However, the city official or advisory board member may, to the extent otherwise permitted by law, appear before any such body to represent the city official's own interests or the interests of the city official's spouse or minor children.

(g) Misuse and disclosure of confidential information.

(1) It is a violation of this ethics code for a city official to violate V.T.C.A., Penal Code, § 39.06 (Misuse of Official Information), as amended.

(2) A city official shall not disclose to the public any information that is deemed confidential under any federal, state, local law, or council rules.

(h) Restrictions on political activity and political contributions.

(1) No city official or candidate for city council shall meet with any employee or group of employees of the city for political campaign purposes while such employees are on duty unless part of an approved city council activity.

(2) No city official shall, directly or indirectly, coerce or attempt to coerce any city employee to:

(A) Participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue; or

(B) Refrain from engaging in any lawful political activity.

(3) The following actions by city officials are not prohibited by this section:

- (A) The making of a general statement encouraging another person to vote in an election;
- (B) A solicitation of contributions or other support that is directed to the general public or to an association or organization; and
- (C) The acceptance of a campaign contribution from a city employee.

(4) No city official shall use, request, or permit the use of city facilities, personnel, equipment, or supplies for the creation or distribution of materials to be used in a political campaign or for any other purpose in support of a political campaign. However, meeting rooms and other city facilities that are made available for use by the public may be used for political purposes by city officials under the same terms and conditions as they are made available for other public uses.

(i) Regulations applicable to former city officials.

(1) A former member of city council shall not use or disclose confidential government information acquired during the member's service on the city council. A former member of city council is not prohibited from disclosing information if:

- (A) The information is no longer confidential;
- (B) The information involves reports of illegal or unethical conduct and is disclosed to a law enforcement agency; or
- (C) The disclosure is necessary to further public safety and is not otherwise prohibited by law.

(2) No former member of city council shall have a financial interest in a significant contract with the city, within the meaning of section (d)(3) of this chapter within 13 months following the expiration of the former member's most recent term of office.

(j) Officials required to comply with both state and local law.

Where a city official's conduct is regulated by a provision of this article and a similar provision of state law, and it is possible to comply with the requirements of both, a city official shall comply with both.

(k) City attorney's opinions.

The city attorney is authorized and directed to issue to any city official, upon reasonable request, formal written opinions regarding the applicability of the provisions of this article or Texas law to an action the city official, a former city official, or a candidate for city council is considering taking in the future.

(l) Education.

The city shall provide training and educational materials to city officials on their ethical obligations under state law and this article. Such training shall include at least one formal classroom session in each calendar year. All city officials shall attend the formal training session offered by the city or equivalent training sessions conducted by the Texas Municipal League or similar organizations. The city also shall prepare and distribute brochures and other written materials on the subject to each city official at the time of his or her election or appointment to office.

## **Sec. 2-38. Complaints.**

(a) Filing. Any person (including a member of the Ethics Review Board or its staff, acting personally or on behalf of the Board) who believes that there has been a violation of the Ethics Code may file a sworn complaint with the City Secretary.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the Ethics Review Board, is subject to criminal prosecution for perjury or civil liability for the tort of abuse of process.

(b) Form. A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

- (1) the name of the complainant;
- (2) the street or mailing address and the telephone number of the complainant;
- (3) the name of each person complained about;
- (4) the position or title of each person complained about;
- (5) the nature of the alleged violation, including, if possible, the specific provision of the code of ethics alleged to have been violated;
- (6) statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
- (7) all documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

The complaint must state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the Board.

(c) Frivolous Complaint.

(1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

(2) By a vote of at least two-thirds of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant is a frivolous complaint or, alternatively, may assign the complaint to an Ethics Panel for further proceedings consistent with this section.

(3) In deciding if a complaint is frivolous, the Board or Ethics Panel will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

A. the timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

B. the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Board;

C. the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

D. if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

E. any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

F. any evidence of the complainant's motives in filing the complaint.

(4) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:

A. an explanation of why the complaint appears to be frivolous; and

B. the date, time, and place of the hearing to be held under this section.

(5) Before making a determination that a sworn complaint is a frivolous complaint, the Board or Ethics Panel shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.

(6) By a record vote of at least two-thirds of those present after the hearing under subsection (5) of this section, the Board or Ethics Panel may determine that a complainant filed a frivolous complaint and may recommend sanctions against that complainant.

(d) Sanctions for filing frivolous complaints.

(1) Before imposing a sanction for filing a frivolous complaint, the Board shall consider the following factors:

A. the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

B. the sanction necessary to deter future violations; and

C. any other matters that justice may require.

(2) The Board may impose the following sanctions:

A. a civil penalty of not more than \$500.

B. imposition of attorneys' fees incurred by the respondent of the frivolous complaint;

C. any other sanction permitted by law.

(3) The Board may notify the appropriate regulatory or supervisory agency for their appropriate action. This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.

(e) Confidentiality. No city official or employee shall reveal information relating to the filing or processing of a complaint except as required for the performance of official duties. *Ex parte* communications by members of the Ethics Review Board are prohibited by Section 2-40(d). All papers relating to a pending complaint are confidential.

(1) Except as otherwise provided by this section, all information relating to a sworn complaint known to or in the possession of the Board is confidential. The Board and its staff shall not communicate any information about a sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

(2) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or Ethics Review Board proceeding.

(3) Requests for information pertaining to complaints shall be responded to in compliance with the Texas Public Information Act or the Texas Open Meetings Act.

(f) Notification to the Ethics Review Board. A copy of a complaint shall be promptly forwarded by the City Secretary to the Ethics Compliance Officer and to the respondent(s), even if the complaint fails to meet the filing requirements of subsection (b) above. A complaint that is not sworn as required by subsection (b)(7) shall not be forwarded by the City Secretary to the Ethics Compliance Officer, but shall be returned to the complainant. The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:

(1) that, within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the City Secretary;

(2) that failure to file a response does not preclude the Ethics Review Board from adjudicating the complaint;

(3) that a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within seven (7) days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);

(4) that the complainant(s) or respondent(s) may request a hearing; and;

(5) that city officials and employees have a duty to cooperate with the Ethics Review Board, pursuant to Section 2-40(e).

Upon receipt, the City Secretary shall forward the response to the Ethics Compliance Officer and the compliance officer shall forward to the Ethics Review Board.

(g) Assistance. The City Secretary shall provide information to persons who inquire about the process for filing a complaint.

**Sec. 2-40. Ethics Panel.**

(a) Assignment to an Ethics Panel. A complaint received by the Ethics Review Board from the Ethics Compliance Officer shall be promptly assigned to an Ethics Panel consisting of three (3) or more members of the Board, who shall have full power to investigate and dispose of the complaint. A complaint shall be categorized by level prior to its assignment to an Ethics Panel as one of the following: Level 1 – complaints likely bearing the potential of criminal sanction, Level 2 – complaints not likely to bear potential criminal sanction and Level 3 – complaints subject to determination as a frivolous complaint. Each Ethics Panel shall be constituted according to procedures established by the Board. Any member of an assigned Ethics Panel who recuses himself or herself shall be replaced by another member of the Board according to established procedures if that is necessary to ensure that the Panel has at least three (3) members. The identity of the members of the Ethics Panel shall be revealed to the person charged in the complaint who, for good cause, may request the recusal of any member of the panel.

(b) Notice of Charges. The Ethics Panel shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. However, before the Ethics Panel may find a violation of a particular rule, the respondent must be on notice that compliance with that rule is in issue and must have an opportunity to respond. Notice is conclusively established: if the complaint alleged that the rule was violated; if compliance with the rule is raised by the a member of the Board or the Ethics Compliance Officer as a disputed issue at a hearing before the Ethics Panel; or if the Board or the Ethics Compliance Officer provides the respondent with written notice of the alleged violation and a fourteen (14) day period within which to respond in writing to the charge.

(c) Scheduling of a Hearing. Regardless of whether the complainant or the respondent requests a hearing, the Ethics Panel has discretion to decide whether to hold a hearing.

(d) *Ex Parte* Communications. It is a violation of this code:

(1) for the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in *ex parte* communication about the subject matter of a complaint with a member of the Ethics Panel, any other member of the Ethics Review Board, or any known witness to the complaint; or

(2) for a member of an Ethics Panel or any other member of the Ethics Review Board to:

(A) knowingly entertain an *ex parte* communication prohibited by Subsection (1) of this rule; or

(B) communicate directly or indirectly with any person, other than a member of the Ethics Review Board, its staff, or the Ethics Compliance Officer, about any issue of fact or law relating to the complaint.

(e) Duty to Cooperate. All city officials and employees shall cooperate with the Ethics Review Board and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this Subsection is a violation of this code of ethics.

(f) Extension of deadlines. A complainant or respondent who fails to meet a deadline to submit a filing with the Ethics Review Board may file a Request to Accept Late Filing. The complainant or respondent must include within the request a statement of good cause for the board to grant the request. The assigned panel may grant a request to accept a late filing for good cause.

(g) Timeliness of Notices or Submissions. When the Ethics Code requires a notice or other document to be submitted or otherwise given to a person or to the Ethics Review Board, the requirement is met in a timely fashion if the document is sent to the person or the board by first-class mail or certified mail addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a date within the time required to provide notice or to submit a document, unless another method of submission is expressly required.

(h) In the event a complaint has been categorized as a Level 1 complaint, the Ethics Panel may seek the assistance of the League City Police Department for investigative purposes.

END OF TEXT

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Section 3. That if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion of any provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4. All other ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of any such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

PASSED on first reading the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PASSED on second reading the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PASSED AND ADOPTED on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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TIMOTHY PAULISSEN  
Mayor

ATTEST:

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DIANA M. STAPP  
City Secretary