

ORDINANCE NO. 11,072

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AMENDING CHAPTER 2 "ADMINISTRATION," ARTICLE IV "BOARDS AND COMMISSIONS" OF THE CODE OF ORDINANCES OF THE CITY OF BAYTOWN, TEXAS, BY ADDING A NEW DIVISION TO BE NUMBERED AND ENTITLED DIVISION 14 "ETHICS COMMISSION" TO ESTABLISH AN ETHICS COMMISSION FOR THE CITY OF BAYTOWN; AMENDING CHAPTER 2 "ADMINISTRATION" BY ADDING A NEW ARTICLE TO BE NUMBERED AND ENTITLED ARTICLE VIII "CODE OF ETHICS" TO ESTABLISH STANDARDS OF CONDUCT APPLICABLE TO OFFICERS, BOARD MEMBERS AND CERTAIN EMPLOYEES OF THE CITY AND TO ESTABLISH PROCEDURES FOR HEARING VIOLATIONS OF THE STANDARDS SO ADOPTED; PROVIDING A REPEALING CLAUSE; CONTAINING A SAVINGS CLAUSE; PRESCRIBING PENALTIES FOR VIOLATIONS OF THE STANDARDS; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE THEREOF.

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WHEREAS, the City Council of the City of Baytown deems it necessary and advisable to adopt a code of ethics applicable to the conduct of officers board members, and certain employees of the city while acting in their official capacities in representing the City of Baytown.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS:

Section 1: That Chapter 2 "Administration," Article IV "Boards and Commissions" of the Code of Ordinances of the City of Baytown, Texas, is hereby amended to add a new division to be numbered and entitled Division 14 "Ethics Commission," which division shall read as follows:

**CHAPTER 2. ADMINISTRATION**

**ARTICLE IV. BOARDS AND COMMISSIONS**

**DIVISION 14. ETHICS COMMISSION**

**Sec. 2-589. Created; purpose.**

There is created an advisory board which shall assist and advise the city council and/or the city manager on matters pertaining to the city's code of ethics contained in chapter 2, article VIII of this code. The commission shall be known as the Ethics Commission and shall have no rule-making, judicial authority, but shall be solely advisory in nature.

**Sec. 2-590. Composition; term.**

- (a) The ethics commission shall consist of five members who will be appointed by the city council from the membership of the Bay Area Ministerial Alliance and serve without compensation.
- (b) The terms of the persons appointed as members of the ethics commission shall be as follows:

- (1) Of the initial five members appointed by the city council, three shall be appointed to serve two-year terms, and two shall be appointed to serve three-year terms. Subsequent terms of these members shall be for three years.
  - (2) Appointments to vacancies shall be for the unexpired term of the position to which the appointment is made.
  - (3) Members shall serve until their successors have been appointed.
  - (4) No member shall serve for more than five consecutive years or be appointed for more than two full terms.
- (c) The city council may remove members of the ethics commission for cause, as found by the city council, on a written charge after a public hearing. A vacancy on the board shall be filled by the city council for the unexpired term.

**Sec. 2-591. Officers.**

The ethics commission shall elect a chairperson, vice-chairperson, and secretary at the first meeting of each year.

**Sec. 2-592. Legal consultation.**

The city attorney shall furnish the ethics commission legal assistance necessary in carrying out its functions, unless outside council is obtained in accordance with article VIII of this chapter.

**Sec. 2-593. Rules of procedure.**

- (a) The ethics commission is hereby to establish its own parliamentary procedure, provided that such shall not be in conflict with the laws applicable to the board or this division.
- (b) A quorum shall consist of a majority of the entire membership of the commission, and any issue to be voted on shall be resolved by a majority of the commission. The chairperson shall be entitled to vote upon any question, but shall have no veto power.
- (c) All meetings shall be subject to the state open meetings act and shall be held at the call of the presiding officer and at other times as determined by the commission. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses.
- (d) The commission shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The commission shall keep records of its examinations and other official actions. The minutes and records shall be filed in the office of the city clerk and are public records.

**Sec. 2-594. Powers and duties.**

The commission shall have those powers and duties specified in article VIII of this chapter.

Section 2: That Chapter 2 "Administration" of the Code of Ordinances of the City of Baytown, Texas, is hereby amended to add a new article to be numbered and entitled Article VIII "Code of Ethics," which article shall read as follows:

**CHAPTER 2. ADMINISTRATION**

**ARTICLE VIII. CODE OF ETHICS**

**DIVISION 1. IN GENERAL.**

**Sec. 2-801. Legislative findings.**

It is found and declared that accepting a position as a public official carries with it the acceptance of trust that the official will work to further the public interest. Maintaining that public trust is critical to the continued operation of good government. In addition, public decision-making should be open and accessible to the public at large. To preserve this public trust, there are five principles to which public officials should adhere:

- (1) A city official should represent and work towards the public interest and not towards private/personal interests:
- (2) A city official should accept and maintain the public trust (i.e., must preserve and enhance the public's confidence in their public officials):
- (3) A city official should exercise leadership, particularly in the form of consistently demonstrating behavior that reflects the public trust:
- (4) A city official should recognize the proper role of all government bodies and the relationships between the various government bodies; and
- (5) A city official should always demonstrate respect for others and for other positions.

**Sec. 2-802. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City board* shall mean the city council or a board, commission, task force, committee or subcommittee of the city, whether elected, appointed, paid or unpaid. The term includes both advisory and non-advisory board, commission, task force, committee or subcommittee of the city.

*City official or official* means the mayor, a member of the city council, a member of a city board, the municipal court judge, associate municipal court judges, the city manager, deputy city manager, assistant city manager, city clerk, deputy city clerk, city attorney, assistant city attorneys, all department directors and assistant department directors or equivalent positions, whether such person is salaried, hired or elected. The term shall not include a city employee subject to V.T.C.A., Local Government Code §§143.001.

*Ethics commission* means that commission established in article IV, division 14 of this chapter.

## DIVISION 2. STANDARDS

### Sec. 2-803. Standards of conduct.

No city official shall:

- (1) violate V.T.C.A., Local Government Code §171.003;
- (2) violate V.T.C.A., Local Government Code §212.017;
- (3) represent any person, other than himself or the city, before the city board on which the city official sits or over which the city official has appointment or budgetary powers;
- (4) disclose or use, in an unofficial capacity, confidential information acquired in the course of official duties;
- (5) while acting in his official capacity, grant or influence the granting of any special consideration, advantage or favor to any person beyond that which is:
  - a. the general practice to grant or make available to the public at large;
  - b. the general practice in assisting other governmental entities;
  - c. the general practice in aiding or promoting the economic development of the city:  
or
  - d. authorized through a variance, special exception, or other similar exception provided for in this code or by law;
- (6) violate V.T.C.A., Penal Code §36.07;
- (7) violate V.T.C.A., Penal Code §36.08;
- (8) make use of staff, vehicles, equipment, materials or property of the City except in the course of his official duties or as duly authorized by the proper city official;
- (9) participate in the appointment, vote for appointment, or discussion of a person to a city board if such person is related to the city official in the first degree by consanguinity or affinity, as determined under V.T.C.A., Government Code ch. 573;
- (10) use his position, directly or indirectly, to effect the city employment status of a person related to the city official in the first degree by consanguinity or affinity as determined under V.T.C.A., Government Code ch. 573;
- (11) receive a pecuniary gain in any sale or lease to the City of any real estate when the interest in real property from which the pecuniary gain is received was obtained under cir-

cumstances which would lead a reasonable person to expect that the City intended to purchase, condemn or lease said real estate; or

- (12) misrepresent facts or the source of facts or recommendations brought before the city council, any board or community or to any other person while acting in his official capacity.

**Sec. 2-804. Ex-parte communications.**

In any judicial or quasi-judicial matter before a city board or in the award of a contract by a city board, a city official sitting on such board shall not, outside of that city board meeting, communicate with or accept a communication from a person, who is a party to the matter being considered or who represents such person, regarding such matter. If such communication should occur, this section will not be deemed violated if the city official discloses such communication at an open meeting of the city board on which he is a member prior to its consideration of the matter.

**DIVISION 3. PROCESS**

**Sec. 2-805. Reporting of ethics violations.**

Any person who believes that a violation of any portion of the article has occurred may file a complaint with the ethics commission, after which the ethics commission shall proceed as provided in section 2-806. However, nothing in this article shall be construed to prevent complainants from instituting direct legal action through the appropriate administrative or judicial means. Furthermore, no complaint shall be accepted or processed if the alleged violation occurred more than four years prior to the filing of the complaint.

**Sec. 2-806. Processing ethics violations.**

- (a) The ethics commission shall have the primary responsibility for investigations under this article. The ethics commission may

- (1) ask the city attorney, or

- (2) after obtaining the prior written consent of city council, employ or appoint any qualified attorney at the city's expense

to investigate any apparent violation of this article and to recommend appropriate action. At the direction of the ethics commission, the attorney shall have the power to prosecute any action on behalf of the city with prior approval of the city council.

- (c) During all stages of any investigation or proceeding conducted under this subsection, the city official whose activities are under investigation shall be entitled to be represented by counsel.

- (d) If the ethics commission finds that there is probable cause to believe that a violation of this article has occurred, the ethics commission shall schedule a hearing to consider the matter further.

- (e) The city official under investigation or his representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. to bring witnesses. to establish all pertinent facts and circumstances and question or to refute any testimony or evidence.
- (f) If the ethics commission finds merit to the reported violation of this article. the ethics commission will within five days after the hearing report its findings and recommendation for disposition to:
  - 1. the city council for complaints alleged against the city manager, municipal court judge, associate municipal court judge, or a city official who is not an employee of the city or
  - 2. the city manager for complaints alleged against another city official who is an employee of the city and not referenced in subsection (f)1 of this section.Such report must be in writing and signed by all participating members of the ethics commission. who voted with the majority.
- (g) After receiving the report, the city council or the city manager, as appropriate, shall review the same and take appropriate action consistent with section 2-807 and/or the personnel rules and procedures.

**Sec. 2-807. Penalties.**

- (a) Except where otherwise provided by law, it is not the intent of this article that violations of this article be subject to criminal penalties.
- (b) The ethics commission may recommend the following to the city council or the city manager, as appropriate:
  - 1. A letter of notification to the city official advising him of the steps to be taken to avoid further violations if the ethics commission finds that the violation is clearly unintentional:
  - 2. A letter of admonition to the city official if the ethics commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification:
  - 3. A letter of reprimand if the ethics commission finds that a violation has been committed intentionally or through disregard of this article:
  - 4. Removal or suspension from office if the ethics commission finds that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by a city official: or
  - 5. A letter of censure or a recommendation to recall if the ethics commission finds that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an elected city official.
- (c) Any sanction recommended by the ethics commission shall be directed to:

1. the city council if the city official is a city manager, municipal court judge, associate municipal court judge, or another city official who is not an employee of the city or
  2. the city manager if the city official is an employee of the city and not referenced in subsection (c)(1) of this section.
- (d) Any document referenced in subsection (b) of this section issued by
1. the city manager shall be placed in the public official's personnel file, or
  2. the city council regarding the city manager or the municipal court judge shall be placed in the applicable personnel file.
- (e) Any contract or transaction which was the subject of an official act or action of a city board in which there was a violation of this article, shall be voidable at the option of the city council unless otherwise deemed void by law.

### **DIVISION 3. EDUCATION**

#### **Sec. 2-808. Distribution of and training in the code of ethics.**

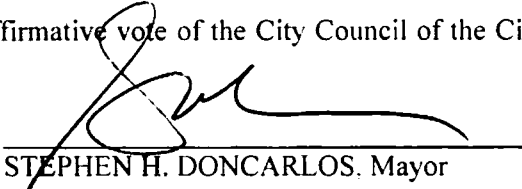
- (a) Within thirty (30) days after entering upon the duties of his position, every new city official shall be furnished a written copy of this article. The failure of any city official to receive a copy of this article shall have no effect on that city official's duty to comply with this article or on the enforcement of the provisions of this article. This article shall be posted on the city's webpage.
- (b) The city attorney, in consultation with the ethics commission, shall develop educational materials and conduct educational programs on this article for city officials. Such materials and programs shall be designed to maximize understanding of the obligations imposed by this article.
- (c) The city manager and department of human resources shall enact an administrative directive requiring that all departments provide their employees with training on this article and/or employees' ethical obligations at least once every other calendar year.
- (d) The city attorney shall notify department directors regarding any significant amendments to this article within ten days of adoption. Department directors shall disseminate the information to their employees, who are city officials under this article.

Section 3: All 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 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.

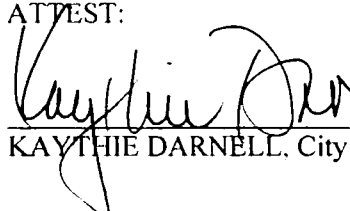
Section 4: If any provisions, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.


Section 5: This ordinance shall take effect from and after ten (10) days from its passage by the City Council. The City Clerk is hereby directed to give notice hereof by causing the caption of this ordinance to be published in the official newspaper of the City of Baytown at least twice within ten (10) days after passage of this ordinance.

INTRODUCED, READ and PASSED by the affirmative vote of the City Council of the City of Baytown this the 26<sup>th</sup> day of February, 2009.

  
STEPHEN H. DONCARLOS, Mayor

ATTEST:

  
KAYTHIE DARNELL, City Clerk



APPROVED AS TO FORM:

  
IGNACIO RAMIREZ, SR., City Attorney