

ORDINANCE NO. 16,155

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AMENDING CHAPTER 2 "ADMINISTRATION," ARTICLE VIII "CODE OF ETHICS," OF THE CODE OF ORDINANCES OF THE CITY OF BAYTOWN, TEXAS; CONTAINING A SAVINGS CLAUSE; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE THEREOF.

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

Section 1: That Chapter 2 "Administration," Article VIII "Code of Ethics," of the Code of Ordinances of the City of Baytown, Texas, is hereby amended to 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. The following list conveys the city council's expectations for city officials. These expectations are aspirational, and shall not serve as the basis for a complaint.

- (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, which has regulatory authority or decision-making authority that is more than merely advisory.

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*City official or official* means the mayor, a member of the city council, a member of a city board, the city manager, the municipal court judge, and associate municipal court judges.

*Ethics Board* means that board established in Article IV, Division 14 of this chapter.

## **DIVISION 2. STANDARDS**

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

No city official shall:

- (1) Engage in conduct that would violate V.T.C.A., Local Government Code § 171.003;
- (2) Engage in conduct that would 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, or engage in conduct that would violate Texas Penal Code § 39.06;
- (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) Engage in conduct that would violate V.T.C.A., Penal Code § 36.07;
- (7) Engage in conduct that would 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, or engage in conduct that would violate V.T.C.A., Penal Code § 39.02(a)(2);
- (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 affect 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 circumstances which would lead a reasonable person to expect that the city intended to purchase, condemn or lease said real estate;
- (12) Remain in office contrary to Sec. 13 of the Charter of the City of Baytown; or

- (13) Fail to respond to a request for information or documentation by the Ethics Board or the investigating attorney acting on behalf of the Ethics Board, when the requested information is relevant to the ongoing investigation.

**2-804. Regulations applicable to former city officials.**

- (1) A former city official shall not use or disclose confidential government information acquired during the member's service with the city. A former city official 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 the city council may be employed by the city as the City Manager, Assistant City Manager or Department Director within twelve (12) months following the end of the former member's most recent term of office.

**Sec. 2-805. Ex-parte communications.**

In any 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. 2-806. Reporting of ethics violations.**

Any person who believes that a violation of any portion of Section 2-803 Standards of Conduct has occurred may file a written complaint through the City Clerk's Office. However, nothing in this article shall be construed to prevent complainants from instituting direct legal action through the appropriate administrative or judicial means.

- (a) *Form.* Any person who believes that a violation of the standards of conduct set forth in Section 2-803 has occurred may file a written complaint with the Ethics Board by submission of such complaint, on the designated form provided by the city, to the City Clerk's Office. The complaint must specify each subsection alleged to have been violated and must be sworn to before a notary public.
- (b) *Limitations period.* A complaint must be filed by the later of three-hundred, sixty-five (365) days after the date the violation is alleged to have occurred or forty-five (45) days after the alleged violation became known or reasonably should have been known.

- (c) *Acceptance of complaint.* Within five (5) business days of receiving a complaint, the City Clerk shall determine if a complaint is administratively complete. A complaint is administratively complete if all sections of the form have been filled in as instructed on the form.
  - (1) If a complaint is administratively complete, the City Clerk will send notice of the acceptance of the complaint within five (5) business days of receipt of the complaint to the Ethics Board, complainant, city official, and the city attorney.
  - (2) If a complaint is not administratively complete, the City Clerk will send notice that the complaint is not administratively complete to the complainant, within five (5) business days of the determination.
- (d) *Certain complaints filed near an election.* Complaints filed within one-hundred, twenty (120) business days of an election against a city official who is a candidate for re-election, will be processed from the day after the votes are canvassed and a winner is declared.
- (e) *Confidentiality.* A complaint that has been submitted to the city is deemed confidential until the time the complaint is either dismissed or scheduled for a determination hearing, unless otherwise required by law. A city official or employee may not reveal information relating to the filing or processing of a complaint, except as required for the performance of the official's or employee's official duties, or as required by law.
- (f) *Retaliation prohibited.* A city official shall not intimidate or discourage any person from filing an ethics complaint or from testifying at a hearing before the Ethics Board.
- (g) *Other relief.* Nothing in this article shall be construed to prevent complainants from instituting direct legal action through the appropriate administrative or judicial means.
- (h) *Legal consultation.* The city attorney, after analyzing potential conflicts of interest, shall provide legal counsel to the City Council and the Ethics Board through the complaint process and the determination. In the event that a conflict of interest prevents the city attorney from representing the City Council, the City Council will be notified of the conflict and may request alternate counsel. In the event that a conflict of interest prevents the city attorney from representing the Ethics Board, the Ethics Board will be notified of the conflict and may request the City Council, in its sole discretion, appoint alternate counsel.

**Sec. 2-807. Processing and investigating a complaint.**

- (a) *Preliminary meeting and standard of conduct determination.* Within ten (10) business days of the Ethics Board receiving notice of an administratively complete complaint from the City Clerk, the Ethics Board shall advise the city official in writing, that a complaint has been filed, his or her right to file a response to the complaint, and his or her right to representation as defined in Section 2-807(e)(2), *Right to Representation*. The Ethics Board shall hold a preliminary meeting to determine whether the complaint alleges a violation of Section 2-803, Standards of conduct. The Ethics Board shall have the primary responsibility for investigations under this article and may, if necessary and agreed to by a majority of the Ethics Board, request the assistance of external legal counsel through city council.

- (b) *Evidence.* At the preliminary meeting, the Ethics Board may direct staff to summon city officials, city employees, and city records, and may require the production of evidence for the determination hearing. Evidence may include exculpatory and mitigating information, as well as records, including statements of the parties, witnesses, and physical evidence. The Ethics Board may receive and consider testimony of the complainant, the city official, and other relevant witnesses. Only evidence or testimony directly related to the specific alleged violation of a standard of conduct set forth in Sec. 2-803, Standards of conduct, shall be considered relevant to the determination hearing.
- (c) *Action following preliminary meeting.* At the conclusion of the preliminary meeting, the Ethics Board shall take one of the following actions:
- (1) Dismiss the complaint;
  - (2) Set a date to hold a determination hearing; or
  - (3) Refer the complaint to another agency.
- (d) *Dismissal.* In determining whether to dismiss a complaint, the Ethics Board shall adhere to the following:
- (1) *Standards of conduct.* The Ethics Board shall dismiss a complaint if it determines that the complaint does not allege a violation of Section 2-803. A written complaint that fails to allege a specific violation of the standards of conduct set forth in this article shall be dismissed.
  - (2) *Frivolous complaints.* The Ethics Board shall dismiss a complaint that it determines to be frivolous. In determining whether a complaint is frivolous, the Ethics Board shall consider the following factors:
    - a. Whether the complaint is made in bad faith;
    - b. Whether the complaint is brought for the purpose of harassment;
    - c. Whether the complaint has no basis in fact or law;
    - d. The timing of the complaint with respect to when the facts supporting the alleged violation become known or should have become known to the complainant, and with respect to the date of any pending election in which the city official is a candidate or is involved with a candidacy, if any;
    - e. The nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the Ethics Board;
    - f. The existence and nature of any relationship between the city official and the complainant before the complaint was filed;
    - g. If the city official is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the city official;
    - h. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

- i. Any evidence of the complainant's motives in filing the complaint.
  - (3) *Ex parte communications.* The Ethics Board may dismiss a complaint if the complainant engages in *ex parte* communication with a member of the Ethics Board or City Council. For purposes of this subsection, an "ex parte communication" is a communication between an Ethics Board or City Council member and the complainant, or between an Ethics Board or City Council member and the accused, regarding the subject matter of the complaint, outside of a properly called meeting of the Ethics Board or City Council.
  - (4) *Refusal to cooperate.* The Ethics Board may dismiss a complaint if it determines that the complainant refuses to cooperate in the investigation or refuses to provide requested information to the Ethics Board or to the investigating attorney in a timely manner. Information submitted within three (3) business days after the date on which the information was requested shall be considered timely.
  - (5) *Time limitation.* The Ethics Board shall dismiss a complaint that has been filed after the later of three-hundred, sixty-five (365) days from the date on which the alleged conduct occurred or forty-five (45) days from the date on which the complainant knew or should have known about the alleged conduct.
  - (6) *Existing litigation.* The Ethics Board shall dismiss a complaint based on alleged conduct that serves as the basis for a complaint that, on or before the date on which the complaint is filed with the Ethics Board, has been submitted to a court, law enforcement, the district attorney's office, the Texas Ethics Commission, or another applicable state entity.
- (e) *Determination hearing.* If the Board decides to proceed with a determination hearing, the determination hearing shall be conducted on or within thirty (30) business days of the preliminary meeting.
- (1) *Postponement.* The Ethics Board may postpone a determination hearing for the following reasons:
    - a. Upon request from either the complainant or city official, for an extension not to exceed ten business days, if approved by the chairperson or vice-chairperson, as applicable;
    - b. After receiving a complaint, but before the determination hearing, the alleged conduct that serves as the basis for the complaint serves as the basis for a complaint that has been filed with a court, law enforcement, the district attorney's office, the Texas Ethics Commission, or another applicable state entity; or
    - c. After receiving a complaint, but before the determination hearing, the city official becomes a candidate in a city election, in which instance, consideration of the complaint will be addressed after the votes are canvassed and a winner is declared in the election.
  - (2) *Right to representation.* At the determination hearing, the complainant or the city official under investigation may be represented by a person, including an attorney, of the complainant's or city official's selection at the complainant's or city official's own cost.

If the city official under investigation chooses representation by an attorney, the city council shall, in its sole discretion, determine whether the city will retain the attorney or whether the city official shall retain the attorney at the city official's own expense. This determination shall be made at the next regular meeting of the city council, or at a special meeting, following the conclusion of the preliminary meeting. In making a determination under this subsection, the city council shall consider whether the allegations and evidence presented at the preliminary meeting demonstrate a likelihood that, under traditional notions of official immunity and fairness, the city should bear the cost of the city official's representation. Further, at the conclusion of a proceeding under this Article, if:

- a. the city paid for all, or a portion of, the cost of the city official's representation and the city official is found to have violated any provision in Section 2-803, the city official shall, within a reasonable period of time, not to exceed three-hundred, sixty-five (365) days, reimburse the city for all costs associated with the representation; or
  - b. the city did not pay for all, or a portion of, the cost of the city official's representation and the city official is found to have not violated any provision in Section 2-803, the city shall reimburse the city official for all reasonable costs associated with the representation in accordance with state law regarding the payment of attorneys' fees. Such reimbursement shall be made no later than thirty (30) days after a request by the city official. Such request shall include itemized invoices, statements, or other billing documents, and proof of payment by the city official. It is intended by this subsection that the city official shall present the city with that same quantum of proof as would be of evidentiary value in a Texas court.
  - c. Prior to the city bearing the cost of a city official's representation, the city official must enter into a written agreement with the city promising to reimburse the city all costs of representation if the city official is found to have violated any provision in Section 2-803.
- (3) *Exhibits, witness lists, and rebuttal.* The complainant and city official must file their exhibits and witness lists with the city clerk at least ten (10) business days before the date of the determination hearing. The complainant or the city official under investigation, or that person's representative, shall have at least seven (7) business days to examine all documents and records to be used at the hearing before the date of the hearing. The complainant, official, or their representative, may use such records during the hearing and may bring witnesses and questions or refute any testimony or evidence.
- (4) *Presentation of evidence.* At the determination hearing:
- a. The city attorney or alternate counsel may provide legal advice to the Ethics Board;
  - b. The complainant or the complainant's representative shall present relevant evidence and testimony, including questioning and cross-examination of witnesses;
  - c. The city official or the city official's representative shall be entitled to present relevant evidence and testimony, including questioning and cross-examination of witnesses; and

- d. The Ethics Board may call and question the complainant, the city official, and witnesses.
- (f) *Findings and Recommendation.* At the conclusion of a determination hearing, the Ethics Board may recommend that the city council take one of the following actions, as appropriate:
- (1) Dismissal of the complaint;
  - (2) A letter of notification to the city official advising the official of the steps to be taken to avoid further violations if the Ethics Board finds that a violation was clearly unintentional;
  - (3) A letter of admonition to the city official if the Ethics Board finds that a violation was committed knowingly or that the city official failed to fully cooperate in the investigation;
  - (4) Referral for the city official to attend ethics training; or
  - (5) A letter of reprimand to the city official if the Ethics Board finds that a violation has been committed intentionally or through disregard of this article;
  - (6) A letter of censure, which shall be published by the city clerk in a newspaper of general circulation, if the Ethics Board finds that a serious or repeated violation of Section 2-803 of this article has been committed intentionally or through culpable disregard of Section 2-803 of this article by a city official;
  - (7) A city council vote on suspension or removal of an appointed city official if the Ethics Board finds that a major and serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an appointed city official; or
  - (8) A referral to appropriate authorities for a violation of a state law.
- (g) *Recommendation report.* The Ethics Board shall submit its findings and recommendation for disposition by the city council within ten (10) business days of the determination hearing. Such report must be in writing and signed by the presiding officer of the Ethics Board.
- (h) *Action by city council.* The city council shall consider and take action on the Ethics Board's recommendation report at the next regular meeting of the city council, or at a special meeting, following receipt of the recommendation report. The city council may follow the Ethics Board's recommendation, take an alternate course of action listed in this article, or take no action on the complaint. The city council is not bound by the findings or recommendation of the Ethics Board.
- (i) *Notice.* Notice of city council's action on a complaint shall be provided to the complainant and city official within ten (10) business days of the action.
- (j) *Record.* Any action taken by the city council regarding the city manager or the municipal court judge shall be placed in the applicable personnel file.
- (k) *Penalty.* 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 4. EDUCATION**

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

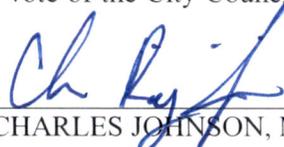
- (a) Within thirty (30) days after entering upon the duties of his position, every new city official shall be furnished a written copy of this article. The failure of any city official to receive a copy of this article shall have no effect on that city official's duty to comply with this article or 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 Board, shall develop educational materials and conduct educational programs on this article for city officials. Such materials and programs shall be designated to maximize understanding of the obligations imposed by this article.

Section 2: 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 3: If any provision, 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 set of circumstances; and to this end, all provisions of this ordinance are declared to be severable.

Section 4: 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 12<sup>th</sup> day of June, 2025.

  
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CHARLES JOHNSON, Mayor

ATTEST:

  
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ANGELA JACKSON, City Clerk



APPROVED AS TO FORM:

  
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SCOTT LEMON, City Attorney