

ORDINANCE 2021 - 15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS, AMENDING CHAPTER 2, "ADMINISTRATION", AND ADDING ARTICLE VI, "ETHICS" OF THE CODE OF ORDINANCES OF THE CITY OF COMMERCE AND ADOPTING GENERAL STANDARDS OF ETHICS; CONFLICTS OF INTEREST AND RELATED DISCLOSURES; GIFTS AND HONORARIUMS; ADOPTING RELATED DEFINITIONS AND ASSOCIATED INTERPRETATION OF SUCH TERMS; ETHICS TRAINING; ADOPTION OF A POLICY FOR ELECTED AND APPOINTED OFFICIALS FOR THE CITY OF COMMERCE, TEXAS; AND PROVIDING FOR A SAVINGS, SERVEABILITY, AND REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Commerce is a representative democracy and those who are elected or appointed to serve others as representatives accept a public trust that requires them to faithfully and diligently fulfill their public responsibilities; and

WHEREAS, the City Council of the City of Commerce recognizes that those individuals who serve as public servants must adhere to a higher ethical standard of conduct since the activities of government should benefit the community as a whole and should never benefit the individual interest of public decision makers; and

WHEREAS, to ensure the public's trust, the City of Commerce, Texas (the "City") had previously adopted regulations related to the standards of conduct and ethics for elected officials in July of 2015 but the Texas State Legislature has since substantially amended those regulations; and

WHEREAS, the City of Commerce Ethics Policy for City Council, Boards, Commissions and Committees of the city of Commerce is intended to encourage awareness of ethical issues among members of City Council, boards, commissions, and committees of the City of Commerce; and

WHEREAS, it is a priority of the City Council to preserve substantive provisions of the City's ethics regulations to ensure that they are not in conflict with state law and in order to update regulations as set forth in current Texas State Law; and

WHEREAS, the City of Commerce Ethics Policy for City Council, Boards, Commissions, and Committees of the City of Commerce provides guidance for the potential resolution of ethical dilemmas that may be encountered by its officials.

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

SECTION 1. The attached ETHICS POLICY for Elected and Appointed Officials is adopted and shall apply to all elected and appointed officials of the City of Commerce including the City Council and members of City appointed Boards, Commissions and Committees..

SECTION 2 PENALTY. Any person whether or not a City official, who knowingly violates any portion of this Code of Ethics is subject to a fine not to exceed five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

SECTION 3. SAVINGS AND REPEALING CLAUSE. This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such Ordinance on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 4. SEVERABILITY. If any section, subsection, clause, phrase or provision of this Ordinance, or any application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or any application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and publication of its Caption as required by law and Charter.

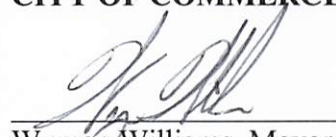
PASSED AND APPROVED on its **FIRST READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 20th day of April 2021.

PASSED AND APPROVED on its **SECOND READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 18th day of May 2021.

ATTEST:

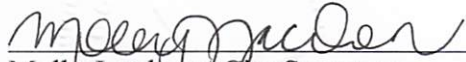
CITY OF COMMERCE, TEXAS

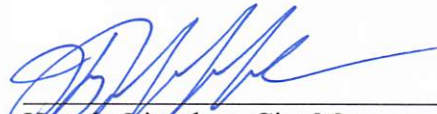

Molly Jacobsen, City Secretary
(Seal)


Wyman Williams, Mayor

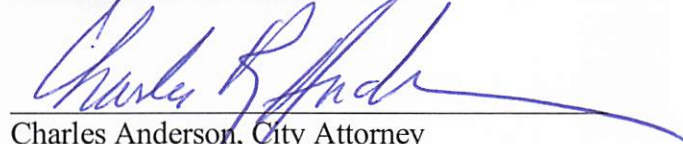
ATTEST:

CITY OF COMMERCE, TEXAS


Molly Jacobsen, City Secretary
(Seal)


Howdy Lisenbee, City Manager

APPROVED AS TO FORM:


Charles Anderson, City Attorney

I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a Resolution, and that the same has not been repealed and is in full force and effect.

(seal)


Molly Jacobsen, City of Commerce, Texas

ETHICS POLICY



CITY OF COMMERCE CITY COUNCIL, BOARDS, COMMISSIONS & COMMITTEES

Chapter 2- "Administration" Article VI- "Ethics"

Divison 1. – GENERALLY

Sec. 1.1. – Policy and purposes.

(a) General policy statement. The purpose of this article is to foster an environment of integrity for those that serve the City of Commerce and its citizens. The city council enacted this article in order to increase public confidence in our municipal government. It is the policy of the city that all city officials shall conduct themselves in a manner that assures the public that we are faithful stewards of the public trust. City officials have a responsibility to the citizens to administer and enforce the City Charter and city ordinances in an ethical manner. To ensure and enhance public confidence in our municipal government, each city official must strive not only to maintain technical compliance with the principles of conduct set forth in this article, but to aspire daily to carry out their duties objectively, fairly, and lawfully. Furthermore, this article was enacted to ensure that decision makers provide responsible stewardship of city resources and assets.

It is not the purpose of this article to provide a mechanism to defame, harass or abuse their political opponents, or publicize personal grudges. Rather, this article is intended to provide a framework within which to encourage ethical behavior and enforce basic standards of conduct while providing due process that protects the rights of the complainant and the respondent in the event that an issue related to Ethics Compliance does arise.

(b) Appearance of impropriety. Public service is a public trust. All city officials are stewards of the public trust. They have a responsibility to the citizens of the city to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each city official must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.

(c) *Prospective.* This article shall apply prospectively and shall not sustain any complaints based on acts or omissions alleged to have taken place prior to May 18, 2021.

(d) This code of ethics has five purposes:

- (1) To encourage ethical conduct on the part of city officials;
- (2) To encourage public service with the city;
- (3) To establish standards for ethical conduct for city officials by defining and prohibiting conduct that is incompatible with the interests of the city;
- (4) To require disclosure by city officials of their economic interests that may conflict with the interests of the city; and
- (5) To serve as a basis for penalizing those who fail to abide by its terms.

(e) This section is intended only to set forth the policy and purposes for adoption of the Commerce Code of Ethics; it shall not be cited, used, or considered by a citizen as the basis of an ethics complaint filed against any officer or employee of the city.

Sec. 2.1. – Definitions.

In this article:

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value. Benefit includes a pecuniary gain or pecuniary advantage to any other person in whose welfare the beneficiary has a direct and substantial interest. Such “other person” includes all persons related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code

Business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law, including a nonprofit organization or governmental entity.

Economic interest includes a legal or equitable interest in real property, personal property, or intangible property, or a contractual right. Service by a city official or employee as an officer, director, advisor, or other active participant in a nonprofit educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in the securities or other assets unless the person in question participates in the management of the fund.

Immediate family means the spouse, children, brothers, sisters and parents of an officer or employee.

Officer or official means the mayor or any member of the city council and any appointive member of a city board, commission or committee established by ordinance, charter or state law on a permanent basis, and members of temporary boards and commissions.

Sec. 2.2. – Prohibition against involvement in actions affecting economic interests.

(a) *General rule.* It is unlawful for a city official to take any official action that he or she knows is likely to:

(1) Affect an economic interest of:

- a. The official ;
- b. His or her immediate family member;
- c. A member of his or her household;
- d. An outside employer of the official or of his or her immediate family member;
- e. A business entity in which the official or his or her immediate family member holds an economic interest;
- f. A business entity for which the city official serves as an officer or director or in any other policy making position;
- g. A person or business entity from whom the official, or his or her immediate family member, has solicited, received and not rejected, or accepted any benefit or an offer of employment within the past twenty-four months; or
- h. A person, business entity, or association from whom the official has received a campaign contribution in an amount exceeding \$500.00. This provision does not apply to campaign contributions received prior to May 1, 2021. This provision does not apply in circumstances where four or more council members would be prohibited from voting on a matter.

(2) Confer a benefit on the official, or deprive the official of a benefit, where the effect of the action on the official is distinguishable from the effect of the action on members of the public in general or a substantial segment of the public.

(b) *Meaning of "affect".*

(1) In subsection (a)(1) above, an action is likely to affect an official's or employee's economic interest if it meets all of the following:

- a. The action is likely to have an effect on that interest, either positive or negative, that is distinguishable from its effect on members of the public in general or a substantial segment of the public.
- b. The effect of the action on that interest is direct, and not secondary or indirect. However, the action need not be the only producing cause of the effect in order for the effect to be direct.
- c. The effect on the interest must be more than insignificant or de minimis in nature or value.

(2) In determining whether a person, entity or property is or was affected by a vote or decision, it will not be necessary to prove the actual existence or occurrence of an economic effect or consequence if the effect or consequence would be reasonably expected to exist or occur.

(c) *Recusal and disclosure.* A city official or employee whose conduct would otherwise

violate subsection(a), or a state conflict of interest law, if he or she took an action must abstain from participation in the action in accordance with the following:

- (1) Immediately refrain from further participation in the matter, including communications with any Officials likely to consider the matter, such as any department, agency, commission or board of the city, from the time he or she discovers or reasonably should have discovered the matter triggering the recusal and until a decision regarding the matter has been made by the council, board or commission having final approval authority.
- (2) Promptly file a form for disclosing the nature and extent of the interest triggering the recusal with the city clerk, if the person is an official, or with the person's supervisor, if the person is an employee;
- (3) Publicly disclose the interest triggering the recusal immediately after the agenda item has been called up for discussion or action, if the person is a member of a city board, commission, or city council, and leave the room while the board, commission, or city council is discussing or voting on the matter.

Sec. 2.3 – Standards of conduct.

(a) *Standards for immediate family members.* It is unlawful for an immediate family member to intentionally or knowingly:

- (1) Solicit, accept or agree to accept from another person any benefit that the member's relative, who is a city officer, is prohibited from soliciting, accepting or agreeing to accept under state law;
- (2) Misuse any official information obtained from the member's relative, who is a city officer, to which the relative has access by virtue of the relative's office and that has not been made public, in a manner prohibited as to the relative under state law; or
- (3) Misuse, as defined in V.T.C.A., Penal Code § 39.01, any city property, services, personnel or any other thing of value belonging to the city that has come into the Official's custody or possession by virtue of the office of the member's relative who is a city officer.

(b) *Representation and appearance at meetings.* No city officer shall knowingly:

- (1) Appear before the body of which the officer or employee is a member, as a representative for any private person, including the officer or employee or any immediate family member, or any group or interest;
- (2) Represent, directly or indirectly, any private person, including the officer or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party;
- (3) Accept other employment or engage in outside activities incompatible with the full and proper discharge of city duties or that might impair independent judgment in the performance of city duties; or
- (4) Make a false statement of material fact at a public meeting.

This subsection shall not be construed to deprive an officer of the right to due process under the law, including the right to represent himself/herself in a court proceeding or to represent himself/herself regarding an owner occupied homestead.

- (c) *Representation by council members.* No city council member shall knowingly represent any private person, including the city council member or any immediate family member, or any group or interest in any matter before any department, agency, commission or board of the city, except that city council members may represent their interests in their owner-occupied homesteads before a board, agency, commission or department of the City other than the City Council.
- (d) *Representation in municipal court.* In any action or proceeding in the municipal court which is instituted by a city officer in the course of official duties:
 - (1) No city council member shall knowingly represent any private person other than himself or herself. If a city council member elects to have a trial in municipal court, the city council, without the participation of the affected city council member, will appoint a special judge to preside over the trial.
 - (2) No city officer shall knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.
- (e) *Representation in land use and development matters.* A member of the Planning and Zoning Commission/Board of Adjustments shall not knowingly represent the member or any other person, group or interest in any matter before the Planning & Zoning Commission and/or the Board of Adjustments involving land use or development, and a member of the Planning & Zoning Commission and/or the Board of Adjustments shall not knowingly represent the member or any other person, group or interest in any matter before the Planning & Zoning Commission and/or the Board of Adjustments involving land use or development. This subsection does not apply to members representing their interests in their owner- occupied homesteads.
- (f) *Prohibited use of city position.* A city official shall not use his or her position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person(including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official who represents to a person that the official may provide an advantage or impediment to the person based on the official's or employee's office or position violates this rule.

Sec. 2.4 – Contracts with city; eligibility for appointment or election to office.

- (a) No member of the city council shall have a financial interest in the sale to the city of any land, materials, supplies or service, outside of the person's position with the city without full disclosure of the same prior to the purchase.. Any violation of this subsection with the actual or constructive knowledge of the city council member shall render the contract voidable by the city council.
- (b) In subsection (a) of this section and in subsection 2.4(c), the term "sale to the city" includes a sale to city-sponsored entities and organizations subject to substantial control by the city in one or more of the following respects:

- (1) All or a majority of the governing body of the entity or organization is appointed by the city council;
 - (2) The city provides more than one-half of the operating funds of the entity or organization;
 - (3) The city has approval authority over purchasing decisions made by the entity or organization;
 - (4) The city has approval authority over bonds or other indebtedness issued by the entity or organization; or
 - (5) The city has approval authority over the budget of the organization.
- (c) This section does not apply to acquisition of property by the city as a result of eminent domain proceedings or the threat of eminent domain proceedings.

Sec. 2.5. – Restrictions on former employees.

- (a) No former city employee shall, for a period of two years from the date of leaving city employment, knowingly:
- (1) Appear at a meeting of a board or commission staffed by members of the department of which the employee was a member, as a representative for any private person, including the employee or any immediate family member, or any group or interest.
 - (2) Represent, directly or indirectly, any private person, including the former employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party.

This subsection shall not be construed to deprive a former employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.

- (b) In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties, no former city employee shall, for a period of two years from the date of leaving city employment, knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.
- (c) For a period of two years from the date of leaving employment, a former city employee shall not have any financial interest in the sale to the city of any land, materials, supplies or service, unless such sale is the result of competitive bidding, or is fully disclosed prior to the sale, or is made during or under threat of Eminent Domain. Any violation of this subsection with the actual or constructive knowledge of the former city employee shall render the contract voidable by the city manager or the city council. This subsection shall not apply to a former city employee whose employment was terminated as part of a reduction in force, who retired from the City with a pension, or to a former employee whose skills or experience are so unique that failure to contract with him or her would be a detriment to the city as determined by the city manager.

Sec. 2.6. – Confidential Information.

- (a) *Improper Access.* A City Official shall not use his or her position to secure Official Information about any person or entity for any purpose other than the performance of the Official's duly authorized responsibilities.
- (b) *Improper Disclosure or use.* A City Official shall not publicly disclose Confidential Government Information or use such information to further or impede anyone's personal interests.

This rule does not prohibit:

- (1) any disclosure or use that is authorized or required by law
- (2) the confidential reporting of illegal or unethical conduct to authorities designated by law to receive such information.

Sec. 2.7. – Public Property & Information.

A City Official shall not use, request, or permit the use of City Facilities, personnel, equipment, or supplies for private purposes (including political purposes), except

- (a) pursuant to duly adopted City policies
- (b) to the extent and according to the terms that those resources are lawfully available to the public.

Sec. 2.8. – Interactions with City Staff.

- (a) City Councilmember's and Board Member's interaction with the City Manager or staff must recognize the lack of authority in any individual Councilmember, Board Member or group of City Councilmembers or Board Members except when explicitly authorized by the City Manager, City Council or Board.
- (b) City Councilmembers and Board Members will not make public individual judgements of the performance of the City Manager, his or her staff, the City Attorney, the City Secretary, or the Municipal Judge except as authorized by City policy, ordinance or the City Charter.

Sec. 2.9. – Criminal penalty and discipline for violations.

- (a) A person who violates any provision of this article shall be punished, upon conviction thereof, as prescribed in the ordinance adopting or amending this policy..
- (b) This Policy and the penalties prescribed in the preceding subsection do not limit the power of the city manager to discipline employees under the city manager's supervision or the power of the city council to discipline its members for violations of this article or a state conflict of interest law, and do not create any kind of employment contract.

Sec. 2.10.—City Employees

Persons who are current City Employees shall be governed by the Personnel Policies of the City Manager in lieu of this Policy. A public purpose and aim of the Personnel Policies shall be to promote and insure public confidence in the integrity and efficiency

of the employees of the City.

Sec. 2.11.—Other Laws

Officials of the City, in connection with maintaining high standards and insuring the public trust, are expected to be mindful of and to follow state laws relating to standards of conduct for such officials. Failure to follow these laws may be grounds for removal of Board, Committee or Commission members, and, in addition to any criminal penalties imposed under state law, such all such Officials in violation of these laws, including Council Members, may be subject to censure or directed counseling, by the City Council. The state laws involved include, but are not limited to:

Texas Civil Statutes

1. Open Meetings Act (Tex. Govt. Code. Ann., Ch. 551)
2. Public Information Act/Open Records Act (Tex. Govt. Code, Ann. Ch. 552)
3. Conflict of Interest (Tex. Loc. Govt. Code, Ch. 171, Ch. 212)
4. Nepotism (Tex. Rev. Civ. Stat. Ann., arts. 5996a & 5996b)
5. Whistleblower Protection (Tex. Rev. Civ. Stat. Ann., art. 6552-16a)
6. Competitive Bidding and Procurement (Tex. Loc. Govt. Code, Ch. 252)

Texas State Penal Laws

1. Bribery (Tex. Penal Code, § 36.02)
2. Coercion of Public Servant or Voter (Tex. Penal Code, § 36.03)
3. Improper Influence (Tex. Penal Code § 36.04)
4. Tampering with a Witness (Tex. Penal Code § 36.04)
5. Retaliation (Tex. Penal Code § 36.06)
6. Gifts to Public Officials (Tex. Penal Code § 36.08)
7. Offering Gift to Public Servant (Tex. Penal Code § 36.09)
8. Abuse of Office (Chapter 39)
9. Official Misconduct (Tex. Penal Code § 39.01)
10. Official Oppression (Tex. Penal Code § 39.02)
11. Misuse of Official Information (Tex. Penal Code § 39.03)