

ORDINANCE NO. 3116-15

ETHICS POLICY ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BALCH SPRINGS, TEXAS AMENDING SECTION 2-46, "ETHICS" IN ARTICLE II, CHAPTER 2; REVISING AND SETTING FORTH AN ETHICS POLICY; ESTABLISHING PROCEDURES FOR RESOLUTION OF COMPLAINTS; AND PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Balch Springs, enacted the Ethics Ordinance codified at Sec. 2-46 of the Balch Springs Code of Ordinances in acknowledgment that municipal government 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 Balch Springs has determined that it is in the best interest of the City to amend its Ethics Policy in order to make the procedure for resolving ethics complaints more effective;

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

SECTION 1: Section 2-46 of the Code of Ordinances of the City of Balch Springs, entitled "ETHICS" and contained in Article II, Chapter 2, is hereby amended to read provide as follows:

Sec. 2-46. - Ethics.

(a) Title; purpose.

(1) Popular name. This section shall hereinafter be referenced as the city's "Ethics Policy."

(2) Purpose. It is the policy of the city that all municipal officers and employees shall conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, impartiality, and devotion to the best interest of the city and the public trust which the city representatives hold. To this end and to expressly ensure its accomplishment, the city council establishes this code of governmental ethics to serve as a guide for official conduct of the city's public servants and as a basis for discipline for those who violate its terms.

(b) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and phrases which are not defined in this section but are defined in other ordinances or Code provisions of the city shall be given the meanings set forth in those provisions.

Business entity. A sole proprietorship, firm, partnership, corporation, firm, holding company, receivership, trust, joint-stock company, enterprise, franchise, association, organization, or any other entity recognized by law and organized for profit.

City. The City of the Balch Springs, an incorporated municipality located in Dallas County, Texas, its agents and employees.

Employee. Any person employed or working for the city full-time or part-time, or for the purposes of this section only, any independent contractor.

Immediate family. The spouse, children, siblings, and parents of an officer (official) or an employee, and the children, siblings, and parents of the spouse of the officer (official) or employee. These relationships are established by either consanguinity (blood) or affinity (adoption).

Officer. The mayor or any member of the city council, and any appointed member of a city commission, board or committee.

Substantial interest. A substantial interest shall have the same meaning as V.T.C.A., Local Government Code § 171.002.

Volunteer. Any unpaid person acting in an official capacity on behalf of the city who is not an officer

(c) Ethics complaints; procedures.

(1) Ethics complaints. Any complaint regarding alleged violation of any provision of this section by any city employee or officer, including a member of the City Council, shall be submitted in writing to the city secretary, city manager or mayor. The complaint must be notarized and include the address and phone number of the complainant. The complaint must specify grounds for the allegation of a violation of this section in plain and intelligible language and must cite specific details of the alleged violation.

(2) Any such complaint shall be handled and administered in the same manner as a grievance filed under Sec. 6.00.05 of the *City of Balch Springs Personnel Handbook and Policy Manual*, as amended, with the following exceptions:

A. In the event that the complaint is against a member of the City Council, then in lieu of the procedures provided in Sec. 6.00.05, a majority of the City Council, excluding the member against whom the complaint is filed and, if the complaint is by a Council member, the complainant, shall appoint one of the following to investigate the complaint and make recommendations to the City Council:

(i) A committee of citizens, not to exceed five in number, none of whom are related to the Council Member against whom the complaint is filed within the second degree of consanguinity or affinity;

(ii) The City Attorney or another attorney;

(iii) The Chief of Police or the head of another law enforcement agency; or

(iv) An objective third party having particular training or credentials related to the nature of the complaint.

B. In the event that the complaint is against a majority of the members of the City Council, then in lieu of the procedures provided in Sec. 6.00.05, the City Manager shall appoint one of the persons or groups described in Subsection A, above, to investigate the complaint and make recommendations to those members of the City Council against whom no complaint has been filed. In the event the complaint includes the City Manager, the City Secretary shall make the appointment. In the event the complaint includes the City Secretary, the responsibility for making the appointment shall devolve upon the next person in the chain of command after the City Manager, according to the City's organizational chart, and shall so continue down the chain of command to a person who is neither complainant nor the subject of the complaint.

C. A majority of the City Council against whom the complaint has not been filed shall take appropriate action, based on the recommendations of the person or group described in Subsection A, above, which may include censure, recommendation for recall, or other appropriate action within the power of the City Council to administer.

D. Nothing herein shall be interpreted to limit the power of the mayor, city council, or city manager to discipline employees under their supervision pursuant to applicable city policies, or to limit the power of the city council to discipline its own members or members of appointed boards or commissions for violations of the Charter or other city policies or regulations.

(d) Standards of conduct.

(1) Officers or employees.

No officer or employee of the City shall intentionally or knowingly:

- A. Accept, or agree to accept any gift, favor, or service valued over \$50.00 that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- B. Accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of his or her official position;
- C. Accept other employment or compensation or engage in any outside activity that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties or which are incompatible with the full and proper discharge of city duties;
- D. Make personal investments that could reasonably be expected to create a conflict between the officer's or employee's private interest and the public interest;
- E. Accept or agree to accept any benefit over \$50.00 for having exercised the officer's or employee's official power or performed the officer's or employee's official duties in favor of another person;
- F. Accept or agree to accept compensation in exchange for appearing before the city council or any city commission, board, or committee, of which the officer or employee is a member, as a representative for any private person, including the officer or employee, any immediate family member, or any group. This section does not prohibit an officer or employee from voting when that officer or employee undertakes pro bono representation; or
- G. Solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties of that officer or employee.
- H. These standards shall not be construed to deprive an officer or employee of the right to due process under the law, including the right to represent himself or herself in an administrative or court proceeding.

(2) Immediate family.

No immediate family member of an officer, employee, or volunteer shall intentionally or knowingly:

- A. Accept or agree to accept from another person any benefit that the member's relative, who is a city officer, employee, or volunteer, is prohibited from soliciting, accepting, or agreeing to accept under this section;
 - B. Misuse any official information obtained from the member's relative, who is a city officer, employee, or volunteer, to which the relative has access by virtue of the relative's office or employment and that has not been made public, in a manner prohibited to the relative under state law; or
 - C. Misuse, as defined in V.T.C.A., Penal Code, § 39.01, of any city property, services, personnel, or any other thing of value belonging to the city that has come into the member's custody or possession by virtue of the office or employment of the member's relative, who is a city officer or employee.
 - D. No city council member shall intentionally or knowingly represent any private person, including the city council member or any immediate family member, or any group or interest before any department, agency, commission, or board of the city, except that a city council member may represent his or her interests in regards to any private property owned by the city council member before a board, agency, commission, or department of the city other than the city council.
 - E. In any action or proceeding in the municipal court which is instituted by an officer or employee in the course of official duties:
 - F. No city council member shall intentionally or knowingly represent any private person other than herself or himself including any immediate family member or any group, or interest. 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; and
 - G. No officer or employee shall intentionally or knowingly represent, directly or indirectly, any private person, other than the officer or employee or any immediate family member, 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) The standards of conduct stated in subsection (e)(1)a. of this section shall not apply to:

- A. A fee prescribed by law to be received by an officer or employee or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as an officer or employee of the City;
- B. A gift or other benefit conferred on account of kinship or a personal, professional or business relationship independent of the official status of the recipient; or
- C. A benefit to an officer or employee who is required to file a financial disclosure statement, or a report under V.T.C.A., Election Code title 15, that is derived from a function in honor or appreciation of the recipient if:
 - i. The benefit and the source of any benefit in excess of \$50.00 is reported in the statement; and
 - ii. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are non-reimbursable by the state or political subdivision.
 - iii. The benefit is a political contribution as defined by V.T.C.A., Election Code title. 15;
 - iv. The benefit is an item with a value of less than \$50.00, excluding cash or a negotiable instrument as described by Section 3.104, Business and Commerce Code;
 - v. The benefit is an item issued by a governmental entity that allows the use of property or facilities owned, leased or operated by the governmental entity; or
 - vi. The benefit is food, lodging, transportation or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(e) Conflict of interest. Conflicts of interest shall be governed by the provisions set out in V.T.C.A., Local Government Code Ch. 171.

(f) Financial disclosure. Disclosure of certain relationships and financial disclosure shall be governed by the provisions set out in V.T.C.A., Local Government Code Ch. 176.

(g) Conflicts. This section shall not be construed to require or allow any act which is prohibited by any other ordinance or Code provision. Any prohibitions described in this section are in addition to those provided by state law.

SECTION 2. SEVERABILITY Should any article, section, part, paragraph, sentence, phrase, clause, or word of this ordinance, or any appendix thereof, for any reason be held

illegal, inoperative, or invalid or if any exception to or limitation upon any general provisions herein continue to be held unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 3. REPEALER All provisions of the ordinances of the City of Balch Springs in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Balch Springs, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 4. OPEN MEETING It is officially found, determined and declared that the meeting at which this ordinance is adopted was opened to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this ordinance, was given as required by Texas Government Code Chapter 551.

SECTION 5. EFFECTIVE DATE This ordinance shall become effective five days after publication as required by law.

PASSED AND APPROVED AT BALCH SPRINGS, TEXAS, THIS 14TH DAY OF SEPTEMBER, 2015.

CITY OF BALCH SPRINGS, TEXAS

Carrie J. Marshall, Mayor

ATTEST:

Cindy Gross, City Secretary