

ORDINANCE NO. 1088

AN ORDINANCE ESTABLISHING A TOWN OF LITTLE ELM CODE OF ETHICS ORDINANCE FOR ELECTED AND APPOINTED OFFICIALS AND TOWN EMPLOYEES; PROVIDING DEFINITIONS; PROVIDING A POLICY AND PURPOSE; DEFINING UNETHICAL ACTIVITY; REQUIRING DISCLOSURE OF INTEREST; PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; ADOPTING THE STATE'S CONFLICT OF INTEREST STATUTE; PROVIDING FOR A CUMULATIVE LEGAL EFFECT; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Little Elm, Texas ("Town Council"), has determined that it in the best interest of the Town of Little Elm, Texas ("Town"), to require all public officials, officers and employees of the Town, and all members of Town-appointed boards, commissions and committees, to be independent, impartial and responsible only to the people of the Town; and

WHEREAS, the Town Council has determined that no Town officer, official or employee, including all members of boards, commissions and committees, should have any interest, direct or indirect, nor engage in any business transaction or professional activity, nor incur any obligation of any nature, which is in conflict with the proper discharge of his or her duties in the public interest; and

WHEREAS, the Town Council has determined that it is in the best interest and welfare of the Town to preserve the integrity and nonpartisan nature of Town government by adopting an code of ethics ordinance, which code of ethics shall be codified in the Town's Code of Ordinances and provide as follows.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, THAT:

Section 1. Incorporation of Recitals. The above recitals are hereby found to be true and correct and incorporated herein for all purposes.

Section 2. This Ordinance shall hereinafter be referenced as the Little Elm Code of Ethics Ordinance and shall read as follows:

"CODE OF ETHICS"

Section 1. DEFINITIONS

For the purposes of this Ordinance, the following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

Compensation - Any economic benefit received in return for services, property or investment.

Discretionary Authority - The power to exercise any judgment in a decision or action.

Economic Benefit - Economic benefit refers to any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Employee - Any person employed by the Town, including those individuals employed on a part-time or seasonal basis, but such term shall not be extended to apply to any independent contractor.

Entity - A sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Gift - Gift means a favor, hospitality or economic benefit, other than compensation.

Officer or Official - Any member of the Town Council and any Town-appointive member of a board, commission, authority or committee set up by ordinance, Town Charter, state law, or otherwise on a temporary or permanent basis, including all members of a board, commission, authority or committee which functions only in an advisory or study capacity and which has no discretionary, governmental, quasi-judicial or administrative authority.

Relative - A relative means any person related to an officer, official or employee within the first degree by consanguinity or affinity and shall include a spouse, father, mother, son, daughter, brother or sister.

Remote Interest - An interest of a person or entity, including an official, who or which would be affected in the same way as the general public. By way of example, the interest of a council member in the property tax rate, general Town fees, Town utility charges or a comprehensive zoning ordinance or other similar decision is a remote interest to the extent that the council member is affected in common with the general public.

Substantial Interest - An interest in another person or an entity if:

- (a) The interest is ownership of ten percent (10%) or more of the voting stock, shares or equity of the entity of ownership of five thousand dollars (\$5,000.00) or more of the equity or market value of the entity;
- (b) Funds received by the person from the other person or entity either during the previous twelve months or the previous calendar year equaled or exceeded five thousand dollars (\$5,000.00) in salary, bonuses, commissions or professional fees or twenty thousand dollars (\$20,000.00) in payment for goods, products or non-professional services, or ten percent (10%) of the person's gross income during that period, whichever is less;
- (c) The person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity, other than a corporate entity owned or created by the Town Council; or
- (d) The person is a creditor, debtor or guarantor of the other person or entity in an amount of five thousand dollars (\$5,000.00) or more.

Substantial Interest in Real Property - An interest in real property which is an equitable or legal ownership with a market value of five thousand dollars (\$5,000.00) or more.

Substantial Interest in Partnerships, Professional Corporations and Other Entities - If a Town officer, official or employee is a member of a partnership or professional corporation, or conducts business through another entity, a substantial interest of the partnership, professional corporation or entity shall be deemed to be a substantial interest of the Town officer, official or employee if:

- (a) The partnership or professional corporation has fewer than twenty (20) partners or shareholders;
- (b) Regardless of the number of partners or shareholders, the officer, official or employee has an equity interest, share of draw equal to or greater than five percent (5%) of the capital or revenues of the partnership, professional corporation or other entity; or
- (c) With regard to the partnership, professional corporation or other entity's substantial interest in a particular client, the officer, official or employee has personally acted within the preceding twenty-four (24) months in a professional or fiduciary capacity for that client.

Section 2. POLICY AND PURPOSE

(a) It is hereby declared to be the policy of the Town that the proper operation of democratic government requires that:

(1) Town officers, officials and employees, including all members of Town-appointed boards, commissions and committees, be independent, impartial and responsible only to the people of the Town;

(2) Governmental decisions and policies be made using the proper procedures of the governmental structure;

(3) No Town officer, official or employee, including all members of Town-appointed boards, commissions and committees, have any interest, direct or indirect, nor engage in any business transaction or professional activity nor incur any obligation of any nature which is in conflict with the proper discharge of his or her duties in the public interest;

(4) Public office not be used for personal gain;

(5) The Town Council be maintained as a nonpartisan body; and

(6) Town officers, officials and employees fully comply with any federal and state statutes, laws and regulations, as amended, concerning conflicts of interest.

(b) In furtherance of this policy, the Town Council has hereby determined that it is advisable to enact this Code of Ethics for all Town officers, officials and employees, whether elected or appointed, advisory or administrative, including all members of Town-appointed boards, commissions and committees, to serve not only as a guide for official conduct of the Town's elected and appointed public servants, but also as a basis for discipline for those who refuse to abide by its terms and provisions.

Section 3. UNETHICAL ACTIVITY

No officer, official or employee of the Town, including all members of Town-appointed boards, commissions and committees, shall:

(a) Accept any gift or economic benefit of more than fifty dollars (\$50.00) in value from any person or entity which gift or economic benefit might reasonably tend to influence such officer, official or employee in the discharge of official duties, or grant in the discharge of official duties any improper gift, economic benefit, service or thing of value; however, the provisions of this subsection shall not apply to any political contribution made pursuant to the Texas Election Code.

(b) Use his or her official position to solicit or secure special privileges or exemptions for himself/herself or others.

(c) Directly or indirectly disclose or use any information gained solely by reason of his or her official position for his or her own personal gain or benefit or for the private interest of others.

(d) Transact any business on behalf of the Town in his or her official capacity with any business entity of which he or she is an officer, agent or member or in which he or she owns a substantial interest. If such a circumstance should arise, then in the case of an officer or official, he or she shall make known such interest and abstain from voting on the matter, or in the case of an employee, he or she shall turn the matter over to the employee's supervisor for reassignment, state the reasons for doing so and have nothing further to do with the matter involved.

(e) Engage in any outside activities which will conflict with his or her assigned duties in the Town, or which his or her employment with the Town will give him or her an advantage over others engaged in a similar business, vocation or activity.

(f) Engage in outside activities incompatible with the full and proper discharge of his or her duties and responsibilities with the Town, or which might impair his or her independent judgment in the performance of his or her public duties.

(g) Receive any fee or compensation for his or her services as an officer, official or employee of the Town from any source other than the Town, except as may otherwise be provided by law. This shall not prohibit an officer, official or employee from performing the same or other services that he or she performs for the Town for a private organization if there is no conflict with his or her Town duties and responsibilities.

(h) Represent, directly or indirectly, or appear on behalf of the private interests of others before any agency, board, commission, authority or committee of the Town, or accept any retainer or compensation that is contingent upon a specific action being taken by the Town or any of its agencies, boards, commissions, authorities or committees, unless such officer, official or employee of the Town has made full disclosure of such representation, retainer or compensation. For purposes of this section, the term "full disclosure" shall mean:

- a. The filing of an affidavit with the Town Secretary describing such representation, retainer or compensation;
- b. Disclosure, either orally or in writing, to the other members of the Town agency, board, commission, authority or committee;
- c. Refraining from any other discussion of the matter with other members of the Town agency, board, commission, authority or committee; and
- d. Refraining from voting on or participating in the consideration of such matter by the town agency, board, commission, authority or committee.

- (i) Use the prestige of his or her position on behalf of any political party or engage in any political activity which does not maintain the nonpartisan policy of the Town, except as provided by Texas Local Government Code, Chapter 180.001. Provided however, that all employees are encouraged to register and vote as they may choose in all local, state and national elections.
- (j) Knowingly perform or refuse to perform any act in order to deliberately hinder the execution and implementation of any Town ordinances, rules or regulations or the achievement of official Town programs;
- (k) Have a substantial interest, direct or indirect, in any contract with the Town or a substantial interest, direct or indirect, in the sale of the Town of any land, rights or interest in any land, materials, supplies or service;
- (l) Participate in a vote or decision on any matter in which the officer or official has a direct or indirect substantial interest or in which a relative of the officer or official has a direct or indirect substantial interest;
- (m) Grant any special consideration, treatment or advantage to any individual, business organization or group beyond that which is normally available to every other individual, business organization or group. This shall not prevent the granting of fringe benefits to Town employees as an element of their employment or as an added incentive to the securing or retention of employees;
- (n) Knowingly disclose information deemed confidential by law; or
- (o) Participate in any vote or decision relative to any amendment to the Town's comprehensive master plan or any change in the zoning classification of property if the officer, official, employee or a relative of the officer, official or employee has any interest in any property within 200 feet of the property which is the subject of the amendment to the Town's comprehensive master plan or on which the change in zoning classification is proposed. Further, any officer, official or employee who has any such interest in property shall be legally disqualified from participating in any vote or decision relative to the comprehensive master plan amendment or change in zoning classification.

Section 4. DISCLOSURE OF INTEREST

Any officer, official or employee of the Town, including all members of Town-appointed boards, commissions and committees, who has a prohibited or substantial interest in any matter pending before the Town shall disclose such interest to other members of the Town Council, committee, commission or board of which he or she is a member, and shall refrain from further discussion of the matter; shall not be physically present when the subject is discussed in open or executive session; and shall not vote on or participate further in any such matter.

Section 5. PENALTY

- (a) Any Town officer, official or employee, including all members of Town-appointed boards, commissions and committees, knowingly violating any provision of this Code of Ethics shall be

guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in 1.10 of Chapter 1 of the Town of Little Elm Code of Ordinances.

(b) The penalty prescribed herein shall not limit the power of the Town Council to discipline its members pursuant to applicable provisions of the Town Charter, this Ordinance, state statutes or other laws defining and prohibiting conflicts of interest.

(c) The penalty prescribed herein shall not limit the power of the Town Manager to discipline those employees under the Town Manager's supervision pursuant to applicable provisions of the Town Charter, this Ordinance, the adopted personnel policies of the Town, state statutes or other laws defining and prohibiting conflicts of interest.

Section 6. ADOPTION OF STATE STATUTE

Chapter 171 of the Texas Local Government Code, as amended, being the statute which regulates conflicts of interest of officers of municipalities in the State of Texas, it is hereby adopted and made a part of this Code of Ethics for all purposes, with the proviso that in case of a conflict between the provisions of this Code of Ethics and Chapter 171 of the Texas Local Government Code, the more restrictive provision shall govern.

Section 7. CUMULATIVE LEGAL EFFECT

In its legal effect, this Ordinance is cumulative of all provisions of the Town Charter, the Town of Little Elm Code of Ordinances or federal and state statutes, laws or regulations defining and prohibiting conflicts of interest."

Section 3. Penalty Provisions.

Any person, firm or corporation violating this Ordinance, or any portion thereof, shall, upon conviction, be guilty of a misdemeanor and shall be fined not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00) for each violation; each day that such violation continues shall be considered a separate offense and punishable accordingly.

Section 4. Repeal of Conflicting Ordinances.

This Ordinance, upon its enactment and effective date, shall repeal all conflicting ordinances relative to conflicts of interest.

Section 5. Severability.

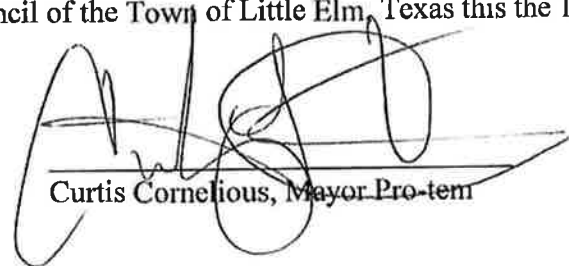
If any word, section, article, phrase, paragraph, sentence, clause or portion of this ordinance or application thereto to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect for any reason, the validity of the remaining portion of this ordinance; and the Town Council hereby declares it would have passed

such portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. Effective Date.

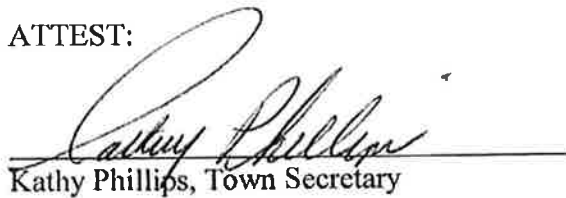
This Ordinance shall be effective on February 1, 2012 and with publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas this the 15th day of November, 2011.



Curtis Cornelious, Mayor Pro-tem

ATTEST:



Kathy Phillips, Town Secretary

APPROVED AS TO FORM:



Robert F. Brown, Town Attorney