

CITY OF PEKIN

ORDINANCE NO. 3004-21/22

**AMENDING THE CITY CODE TO CREATE
CHAPTER 2, ARTICLE VIII,
REGARDING THE CITY'S**

ETHICS ORDINANCE

PASSED BY THE CITY COUNCIL
OF THE CITY OF PEKIN
THE 9TH DAY OF AUGUST 2021

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE CITY
COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY,
ILLINOIS, THIS 9TH DAY OF AUGUST 2021

Ordinance No. 3004-21/22
Amending the City Code to Create Chapter 2, Article VIII
Regarding the City's Ethics Ordinance

WHEREAS, the Illinois General Assembly has enacted the State Officials and Employees Ethics Act (Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003; Public Act 100-0554, effective November 16, 2017; and Public Act 101-0221, effective August 9, 2019), which is a comprehensive revision of State statutes regulating ethical conduct, political activities, sexual harassment, and the solicitation and acceptance of gifts by State officials and employees; and

WHEREAS, the Act requires all units of local government and school districts, within six months after the effective date of Public Act 93-615, to adopt ordinances or resolutions regulating the political activities of, and the solicitation and acceptance of gifts by, the officers and employees of such units "in a manner no less restrictive" than the provisions of the Act; and

WHEREAS, the Act further requires all units of local government and school districts, within 60 days after the effective date of Public Act 100-0554, to adopt ordinances or resolutions establishing a policy prohibiting sexual harassment; and

WHEREAS, the City Council adopted Ordinance No. 2377 on May 10, 2004, adopting the State Gift Ban Act, which has been replaced in its entirety by the Act; and

WHEREAS, the City adopted a Code of Conduct for Elected Officials in 2011; and

WHEREAS, the City now desires to update and codify its Ethics Ordinance to comply with Public Act 93-615, Public Act 93-617, Public Act 100-0554, and Public Act 101-0221, as well as to update the Code of Conduct for elected and appointed officials and employees of the City of Pekin.

WHEREAS, the City Council finds it is appropriate for the purposes of fostering good local government and in the best interest of its citizens to amend the City Code to prohibit certain political activities and to prohibit the solicitation and acceptance of certain gifts by its officers and employees in the manner provided by the Act, as well as repealing the prior reference to the repealed State Gift Ban Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The findings and recitations set forth above are adopted and found to be true and correct.

SECTION 2: Chapter 2 of the Pekin City Code is hereby amended by the addition of a new Article VIII as follows:

ARTICLE VIII. - GOVERNMENTAL ETHICS

Sec. 2-8-1. -Definitions.

For purposes of this ordinance, the following terms shall be given these definitions:

"Campaign for elective office" means any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual to any federal, State, or local public office or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors,

but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.

"Candidate" means a person who has filed nominating papers or petitions for nomination or election to an elected office, or who has been appointed to fill a vacancy in nomination, and who remains eligible for placement on the ballot at a regular election, as defined in section 1-3 of the Election Code (10 ILCS 5/1-3).

"Collective bargaining" has the same meaning as that term is defined in Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3).

"Compensated time" means, with respect to an employee, any time worked by or credited to the employee that counts toward any minimum work time requirement imposed as a condition of his or her employment, but for purposes of this Article, does not include any designated holidays, vacation periods, personal time, compensatory time off or any period when the employee is on a leave of absence. With respect to officers or employees whose hours are not fixed, "compensated time" includes any period of time when the officer is on premises under the control of the employer and any other time when the officer or employee is executing his or her official duties, regardless of location.

"Compensatory time off" means authorized time off earned by or awarded to an employee to compensate in whole or in part for time worked in excess of the minimum work time required of that employee as a condition of his or her employment.

"Contribution" has the same meaning as that term is defined in section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).

"Employee" means a person employed by the City of Pekin, whether on a fulltime or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, but does not include an independent contractor.

"Employer" means the City of Pekin.

"Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.

"Leave of absence" means any period during which an employee does not receive (i) compensation for employment, (ii) service credit towards pension benefits, and (iii) health insurance benefits paid for by the employer.

"Officer" means a person who holds, by election or appointment, an office created by statute or ordinance, regardless of whether the officer is compensated for service in his or her official capacity.

"Political activity" means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.

"Political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code (10 ILCS 5/9-3), but only with regard to those activities that require filing with the State Board of Elections or a county clerk

"Prohibited political activity" means:

- (1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
- (2) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
- (4) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (6) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.
- (7) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
- (8) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
- (9) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
- (10) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes.
- (11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
- (12) Campaigning for any elective office or for or against any referendum question.
- (13) Managing or working on a campaign for elective office or for or against any referendum question.
- (14) Serving as a delegate, alternate, or proxy to a political party convention.
- (15) Participating in any recount or challenge to the outcome of any election.

"Prohibited source" means any person or entity who:

- (1) Is seeking official action (i) by an officer or (ii) by an employee, or by the officer or other employee directing that employee;
- (2) Does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or other employee directing that employee;

- (3) Conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or other employee directing that employee; or
- (4) Has interests that may be substantially affected by the performance or non-performance of the official duties of the officer or employee

"Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when:

- (1) Submission to such conduct is made a term or condition of an individual's employment, either explicitly or implicitly; or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

"Sexual misconduct" means any conduct or behavior which may constitute sexual harassment that includes, but is not limited to:

- (a) Verbal Harassment: sexual innuendos; suggestive comments; insults, humor, or jokes about sex, anatomy or gender-specific traits; sexual propositions or threats; repeated requests for dates; or, statements of a sexual nature about other employees, even outside of their presence.
- (b) Non-verbal Harassment: suggestive or insulting sounds (whistling); leering; obscene gestures; sexually suggestive bodily gestures; "catcalls," "smacking" or "kissing" noises.
- (c) Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- (d) Physical Harassment: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- (e) Textual/Electronic Harassment: "sexting" (electronically sending messages with sexual content, including pictures or video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (email/text/picture/video messages, intranet/online postings, blogs, instant messages and posts on social network websites, like Facebook and Twitter).

Sec. 2-8-2. - Prohibited employment activities.

- (a) No elected or appointed official, officer or employee shall intentionally violate the City's Code of Ethics and Conduct.
- (b) No elected or appointed official, officer or employee shall intentionally misrepresent hours worked for compensated time or be party to any scheme involving such misrepresented hours.
- (c) No elected or appointed official, officer or employee shall intentionally leave sensitive city property, equipment or vehicles unattended or unprotected.
- (d) No elected or appointed official, officer or employee shall be a reference or advocate for a friend, acquaintance, another family member, or a contractor seeking employment, bid award, or funding from the City.

Sec. 2-8-3. - Prohibited political activities.

- (a) No officer or employee shall intentionally perform any prohibited political activity during any compensated time, as defined herein. No officer or employee shall intentionally use any property or resources of the City of Pekin in connection with any prohibited political activity.
- (b) At no time shall any officer or employee intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off).
- (c) No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.
- (d) Nothing in this Section prohibits activities that are permissible for an officer or employee to engage in as part of his or her official duties, or activities that are undertaken by an officer or employee on a voluntary basis which are not prohibited by this Article.
- (e) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by federal funds and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

Sec. 2-8-4. - Gift ban.

- (a) Except as permitted by this Section, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as "recipients"), shall intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance. No prohibited source shall intentionally offer or make a gift that violates this Section.
- (b) The prohibitions in subsection (a) are not applicable to the following:
 - (1) Opportunities, benefits, and services that are available on the same conditions as for the general public.
 - (2) Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value.
 - (3) Any (i) contribution that is lawfully made under the Election Code or (ii) activities associated with a fundraising event in support of a political organization or candidate.
 - (4) Educational materials and missions.
 - (5) Travel expenses for a meeting to discuss business.

- (6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.
- (7) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees, or their spouses or immediate family members.
- (8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.
- (9) Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.
- (10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intragovernmental gift" means any gift given to an officer or employee from another officer or employee, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.
- (11) Bequests, inheritances, and other transfers at death.
- (12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

- (c) An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this Section if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

Sec. 2-8-5. Prohibited sexual harassment activities and conduct.

- (a) It is unlawful to harass a person because of that person's sex. Sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from sexual harassment. Sexual harassment or misconduct is unacceptable which affects individuals of all genders and sexual orientations.
- (b) It is a policy of the City of Pekin to prohibit sexual harassment or misconduct of any person by any municipal official, municipal agent, municipal employee, municipal agency or municipal office on the basis of sex or gender. All municipal officials, municipal agents, municipal employees and municipal agencies or municipal offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.
- (c) The City shall adopt and maintain a sexual harassment policy including (i) how an individual can report an allegation of sexual harassment, (ii) a prohibition on retaliation for reporting sexual harassment allegations, and (iii) the consequences of a violation of the prohibition on sexual harassment and the consequences of knowingly making a false report.

Sec. 2-8-7. - Ethics advisor.

The Mayor, with the advice and consent of the City Council, shall designate an Ethics Advisor for the City of Pekin. The duties of the Ethics Advisor may be delegated to an officer or employee of the City of Pekin unless the position has been created as an office by the City of Pekin.

Section 2-8-20-2. The Ethics Advisor shall provide guidance to the officers and employees of the City of Pekin concerning the interpretation of and compliance with the provisions of this Ordinance and State ethics laws. The Ethics Advisor shall perform such other duties as may be delegated by the City Council.

Sec. 2-8-8. - Penalties

A person who intentionally violates any provision of this Article is subject to a fine in an amount of not less than \$250 and not more than \$750.

Section 3. Chapter 2, Article VI of the Pekin City Code is hereby amended by the addition of a new Division 3 as follows:

DIVISION 3. - ETHICS COMMISSION

Sec. 2-6-3-1. - Creation.

There is hereby created a commission to be known as the Ethics Commission of the City of Pekin. The Commission shall be comprised of three (3) members appointed by the Mayor with the advice and consent of the City Council. No person shall be appointed as a member of the Commission who is related, either by blood or by marriage, to any elected officer of the City of Pekin. The Ethics Advisor and City Manager shall be ex-officio members of the Ethics Commission with rights to participate in discussion but no rights to vote.

Sec. 2-6-3-2. - Terms; Chairperson.

- (a) At the first meeting of the Commission, the initial appointees shall draw lots to determine their initial terms. Two commissioners shall serve 2-year terms, and the one remaining commissioner shall serve a one-year term. Thereafter, all commissioners shall be appointed to 2- year terms. Commissioners may be reappointed to serve subsequent terms.
- (b) At the first meeting of the Commission, the commissioners shall choose a chairperson from their number. Meetings shall be held at the call of the chairperson or any 2 commissioners. A quorum shall consist two commissioners, and official action by the commission shall require the affirmative vote of two members.
- (c) The Commission shall meet as needed or necessary.

Sec. 2-6-3-3. - Removal.

The Mayor, with the advice and consent of the City Council, may remove a commissioner in case of incompetency, neglect of duty or malfeasance in office after service on the commissioner by certified mail, return receipt requested, of a copy of the written charges against the commissioner and after providing an opportunity to be heard in person or by counsel upon not less than 10 days' notice. Vacancies shall be filled in the same manner as original appointments.

Sec. 2-6-3-4. - Powers and duties.

The Commission shall have the following powers and duties:

- (1) To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.
- (2) Upon receipt of a signed, notarized, written complaint, to investigate, conduct hearings and deliberations, issue recommendations for disciplinary actions, impose fines in accordance with Section 30-1(c) of this Ordinance and, when applicable, refer violations of this Ordinance to the appropriate attorney for prosecution. The Commission shall, however, act only upon the receipt of a written complaint alleging a violation of this Ordinance and not upon its own prerogative.
- (3) To receive information from the public pertaining to its investigations and to require additional information and documents from persons who may have violated the provisions of this Ordinance.
- (4) To compel the attendance of witnesses and to compel the production of books and papers pertinent to an investigation. It is the obligation of all officers and employees of the City of Pekin to cooperate with the Commission during the course of its investigations. Failure or refusal to cooperate with requests by the Commission shall constitute grounds for discipline or discharge.
- (5) The powers and duties of the Commission are limited to matters clearly within the purview of this Ordinance.

Sec. 2-6-3-5. - Processing of Complaints.

- (1) Complaints alleging a violation of Chapter 2, Article VIII of the City Code shall be filed with the Ethics Commission; provided, however, that complaints by City employees of sexual harassment shall be

reported and investigated as provided in the City's employment policies.

- (2) Within 3 business days after the receipt of a complaint, the Commission shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her and a copy of the complaint. The Commission shall send by certified mail, return receipt requested, a confirmation of the receipt of the complaint to the complainant within 3 business days after receipt by the commission. The notices to the respondent and the complainant shall also advise them of the date, time, and place of the meeting to determine the sufficiency of the complaint and to establish whether probable cause exists to proceed.
- (3) Upon not less than 48 hours' public notice, the Commission shall meet to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of Chapter 2, Article VIII of this Code, to determine whether there is probable cause, based on the evidence presented by the complainant, to proceed. The meeting may be closed to the public to the extent authorized by the Open Meetings Act. The Commission shall issue notice to the complainant and the respondent of the Commission's ruling on the sufficiency of the complaint and, if necessary, on probable cause to proceed within 7 business days after receiving the complaint. If the complaint is deemed sufficient to allege a violation of Division IO of this Ordinance and there is a determination of probable cause, then the Commission's notice to the parties shall include a hearing date scheduled within 4 weeks after the complaint's receipt. Alternatively, the Commission may elect to notify in writing the attorney designated by the corporate authorities to prosecute such actions and request that the complaint be adjudicated judicially. If the complaint is deemed not sufficient to allege a violation or if there is no determination of probable cause, then the Commission shall send by certified mail, return receipt requested, a notice to the parties of the decision to dismiss the complaint, and that notice shall be made public. If the complaint is deemed sufficient to allege a violation of Division 5 of this Ordinance, then the Commission shall notify in writing the attorney designated by the corporate authorities to prosecute such actions and shall transmit to the attorney the complaint and all additional documents in the custody of the Commission concerning the alleged violation.
- (4) On the scheduled date and upon at least 48 hours' public notice of the meeting, the Commission shall conduct a hearing on the complaint and shall allow both parties the opportunity to present testimony and evidence. The hearing may be closed to the public only if authorized by the Open Meetings Act.
- (5) Within 30 days after the date the hearing or any recessed hearing is concluded, the Commission shall either (i) dismiss the complaint or (ii) issue a recommendation for discipline to the alleged violator and to the City Manager, or impose a fine upon the violator, or both. The particular findings in the case, any recommendation for discipline, and any fine imposed shall be a matter of public information.
- (6) If the hearing was closed to the public, the respondent may file a written demand for a public hearing on the complaint within 7 business days after the issuance of the recommendation for discipline or imposition of a fine, or both. The filing of the demand shall stay the enforcement of the recommendation or fine. Within 14 days after receiving the demand, the Commission shall conduct a public hearing on the complaint upon at least 48 hours' public notice of the hearing and allow both parties the opportunity to present testimony and evidence. Within 7 days thereafter, the Commission shall publicly issue a final recommendation to the alleged violator and to the officer having authority to discipline the officer or employee or impose a fine upon the violator, or both.
- (7) If a complaint is filed during the 60 days preceding the date of any election at which the respondent is a candidate, the Commission shall render its decision as required under subsection (e) within 7 days after

the complaint is filed, and during the 7 days preceding that election, the Commission shall render such decision before the date of that election, if possible.

(8) A complaint alleging the violation of this Act must be filed within one year after the alleged violation.

Section 4. This Ordinance is hereby ordered to be published in pamphlet form by the City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

Section 5. This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

Section 6. This Ordinance shall be in full force and effect from and after its passage, approval and ten day period of publication in the manner provided by law.

PASSED AND APPROVED at the regular meeting of the City Council of the City of Pekin, this 9th day of August, 2021; and upon roll call the vote was as follows:

AYES: Cloyd, Orrick, Abel, Hilst, Hohimer, Nutter and Luft

NAYS: None

ABSENT: None

ABSTAINING: None

APPROVED this 9th day of August, 2021

Frank C. Luft
Mayor

ATTEST:

Sue W. McMullan
City Clerk

CERTIFICATE

THE UNDERSIGNED CERTIFIES THAT SHE IS THE CITY CLERK FOR THE CITY OF PEKIN, ILLINOIS, AND THAT THE CITY COUNCIL AT A REGULARLY CONSTITUTED MEETING OF SAID CITY COUNCIL OF THE CITY OF PEKIN ON THE 9TH DAY OF AUGUST, 2021 ADOPTED ORDINANCE NO. 3004-21/22 A TRUE AND CORRECT COPY OF WHICH IS CONTAINED IN THIS PAMPHLET.

GIVEN UNDER MY HAND AND SEAL THIS 9th DAY OF August, 2021.

(SEAL)


SUE E. MCMILLAN
CITY CLERK