

**ORDINANCE NO. 2002-05**

**AN ORDINANCE OF THE CITY OF BURNET, TEXAS, ESTABLISHING A BOARD OF ETHICS; PROVIDING AN ETHICS POLICY; DEFINING CERTAIN TERMS; PROVIDING FOR STANDARDS OF CONDUCT; PROVIDING FOR CERTAIN FINANCIAL DISCLOSURES; PROVIDING FOR DISPOSITION OF ALLEGED VIOLATIONS; AMENDING THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE AND SAVINGS CLAUSE; AND PROVIDING FOR RELATED MATTERS.**

**Whereas**, the conduct of the public business should be accomplished by city officials that have no personal financial interest in such business clearly separate from that of the general public;

**Whereas**, it is important that city officials be provided with a process and procedure to give notice and to then refrain from participation in any specific business of the City in which such official has a personal financial interest different from that of the general public;

**Whereas**, the employees of the City are responsible and answerable to the city manager, the city manager shall exercise his or her judgment and discretion in applying the terms and provisions of this ordinance to the employees of the City;

**Whereas**, a reasonable ethics ordinance with disclosure requirements will provide a basis for continuing public confidence in the conduct of the business and affairs of the City;

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

**Section 1. Policy.** It is the policy of the City that the proper operation of democratic government requires that city officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all city officials and is adopted.

This code has four purposes: (1) to encourage high ethical standards in official conduct by city

(b) "Business Entity". Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.

(c) "Business Dealings". Any activity involving the exchange of economic benefits.

(d) "Candidate". Every person who declares for or files for any office of the City to be filled by election.

(e) "City Official" or "Officer". The mayor, every member of the City Council, the city manager, the city attorney and each member of the planning and zoning commission.

(f) "Compensation". Any economic benefit received in return for labor, services, property, or investment.

(g) "Economic Benefit". 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.

(h) "Family Member". The spouse, parent or child, and the parents of a spouse, of the city official.

(i) "Gift". A favor, hospitality, or economic benefit other than compensation, but which does not include campaign contributions reported as required by state law, gifts received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an inter vivos or testamentary trust established by a spouse or ancestor.

(j) "Identification". For a natural person, the person's name, street address, city and state; for any entity other than a natural person, the name, address, city and state of the entity's principal location or place of business, the type or nature of the entity, the date on which it came into existence, the state of incorporation, if any, the names of the partners or trustees, if any.

(k) "Income". Economic benefit received.

(l) "Intentionally". A person acts intentionally, or with intent, with respect to the nature

interest has a market value of \$2,500.00 or more.

### **Section 3. Standards of Conduct.**

(a) Gifts.

(i) No city official shall intentionally or knowingly solicit or accept any contribution, gift, or economic benefit with actual or constructive knowledge that same is:

(i) offered or given with intent to influence the judgment or discretion of such official; or

(ii) given in consideration of the favorable exercise of such official's judgment or discretion in the past.

(ii) To avoid the appearance and risk of impropriety, city officials shall not solicit or accept any gift, personal favor or benefit from any person doing business with, seeking to do business with, or being regulated by the City; and shall not take any action on behalf of any person or business entity from which he or she has received a prohibited gift, or in which he or she has a substantial interest. Except in the sole interest of the public and the performance of the duties of their position, city officials shall not take any action that he or she knows might reasonably tend to influence any other city official to not properly perform their official duty, nor shall any city official grant any improper favor, service or thing of value to any person.

(iii) As used in this Ordinance the word "Gift" means a favor, hospitality, economic benefit, product or item having a value of \$25.00, or more. A "Gift" does not include campaign contributions reported as required by state law, money, items, or benefits received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an inter vivos or testamentary trust established by a spouse or ancestor.

(iv) The following factors are considered in evaluating whether a gift is prohibited:

(A) The value of the gift, or gifts, does not exceed \$25.00, or \$200.00 during any twelve (12) consecutive calendar months;

(B) Any pre-existing relationship between the donor and donee;

- (D) Any item received by a city official and donated to a charitable organization or presented to the City within one (1) business day from the date of receipt; any item(s) other than money the value of which does not exceed \$25.00 or \$200.00 during any twelve (12) consecutive calendar months.
  - (E) Pens, pencils, calendars, T-shirts, caps and similar items containing logos, slogans, company names or other marketing material and commonly given out for advertising purposes.
- (b) General Provisions.
- (i) No city official shall intentionally or knowingly disclose any confidential or privileged information gained by reason of said official's position. No city official shall use any such confidential information for the pecuniary gain of said official, or others.
  - (ii) No city official shall intentionally or knowingly use his or her official position or City owned facilities, equipment, or supplies for the pecuniary gain or advantage of such official or persons other than the public at large, or use City owned vehicles, printing facilities, postage facilities or long distance telephone service for personal reasons, pecuniary gain or advantage, or in any political campaign.
  - (iii) No city official shall intentionally or knowingly appear before the body of which the official is a member while representing himself, or any other person, group, association, interest, or business entity. This subsection shall not be applicable in instances where the city official is a member of, serves on the board, or serves in an office of, a group, association or other entity by reason of having appointed to serve in such position by the City Council.
  - (iv) No city official shall intentionally or knowingly represent directly or indirectly any private person, group, or interest other than himself/herself or a family member before any department, agency, commission or board of the City for pay or profit.
  - (v) No city official shall vote on or participate in any decision making process if the official has a direct financial interest in the outcome of the matter under consideration. No city official shall vote on or participate in any decision making process on any matter concerning real property or a business entity if the official has a substantial interest in the business entity or real property.

verbally and in writing, the nature and extent of such interest to the body on which the official serves prior to any discussion or determination of the matter to be considered or immediately upon discovery of the conflict of interest. The official or member shall publicly abstain and not participate in the discussion of any such matter, and the following statement of disclosure shall be completed by the official and filed in the official minutes of the body:

### AFFIDAVIT OF CONFLICT OF INTEREST

THE STATE OF TEXAS §

COUNTY OF BURNET §

I, \_\_\_\_\_ as a member of the Burnet City Council make this affidavit and hereby on oath state the following: I, and/or a person or persons related to me in the first degree by either affinity or consanguinity, have a substantial interest in a business entity that would be peculiarly affected by a vote or decision of the Burnet City Council, as those terms are defined in Chapter 171 of the Local Government Code.

Date of Meeting: \_\_\_\_\_ Agenda Item Number: \_\_\_\_\_

The Business Entity is : \_\_\_\_\_

\_\_\_\_\_ have a substantial interest in this business entity for the following  
(Insert "I" or the name of other persons)

reasons: (check all which are applicable)

- Ownership of 10% or more of the voting stock or shares of the business entity.
- Ownership of 10% or \$15,000 or more of the fair market value of the business entity.
- Funds received from the business entity exceed 10% of my gross income for the previous year.
- Real property is involved and I have an equitable or legal ownership with a fair market value of at least \$2,500.
- Other \_\_\_\_\_.

Upon the filing of this affidavit with the Official Record Keeper of the City, I affirm that I will abstain from voting on any decision involving this business entity and from any further participation on this matter whatsoever .

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Official

(ii) the term "substantial interest" shall include only the interests of the city official, and the spouse and minor children of the city official; and

(iii) the annual financial disclosure statement shall not include the assets or property of any person other than those of the city official and the spouse and minor children of the city official.

(b) A newly employed or appointed city official shall file a sworn financial disclosure statement with the city secretary within thirty (30) days from the date the position with the city is assumed. Said statement shall reflect the financial situation as of date of employment or appointment and for the previous twelve (12) months.

(c) Each candidate shall file a sworn financial disclosure statement with the city secretary within fifteen (15) days of filing for office, reflecting the financial situation of the candidate as of December 31 of the year previous to the election date.

(d) Each person required to file a financial disclosure statement shall do so on a form supplied by the City which shall include the following information:

(i) The person's name, residence address, business address, telephone number, name of all family members and all names under which the person or family member does business.

(ii) Identification by street address, and legal description of all real property located within the city or its extraterritorial jurisdiction in which the person has a substantial interest.

(iii) Identification of each business entity owning property or doing business within the City or its extraterritorial jurisdiction in which the person has a substantial interest.

(iv) Identification of each person or business entity, other than a bank or a savings and loan association, to whom the person or family member owed a debt of Ten Thousand Dollars (\$10,000) or more during the reporting period, but excluding debts owed to persons related within the second degree of consanguinity or affinity and loans to a political campaign which were reported as required by law; if repaid during the reporting period the date of repayment shall be stated.

(v) Identification of each source of income amounting to ten percent (10%) or more of the person's or family member's gross annual income as defined by the United States

Please fill in all blanks. If a requested item does not apply, write "N/A".

Name: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Telephone (work) \_\_\_\_\_; (home) \_\_\_\_\_

Name of Spouse: \_\_\_\_\_

Name(s) of all dependent minor children:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Names in under which you, your spouse, and/or your dependent minor children do business: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

A. Identify by street address and legal description separately, all real property located within the City of Burnet or its extraterritorial jurisdiction in which you have a substantial interest. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Attach separate page if necessary]

B. Identify each business entity owning property or doing business within the City of Burnet or its extraterritorial jurisdiction in which you have a substantial interest. Include name, address of principal place of business, state of incorporation (if applicable), names of partners, board members, directors, trustees, etc. of each such separate business. Do not include any company or entity listed on a national stock exchange, unless you own more than one percent (1%) of the outstanding stock, shares or units of such company.

\_\_\_\_\_

\_\_\_\_\_

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[Attach separate page if necessary]

E. Identify the source and value of each gift of more than one hundred fifty dollars (\$150.00) in value received by you or your spouse or your dependent minor children. Also list the address of such source. Do not list gifts from family members related to you within the second degree, or campaign contributions reported by you. \_\_\_\_\_

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[Attach separate page if necessary]

By: \_\_\_\_\_

*Signature*

Name: \_\_\_\_\_

*Type or Print*

STATE OF TEXAS        §

COUNTY OF BURNET    §

BEFORE ME, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_, as affiant, known to me, and after being duly sworn by me, stated on his/her oath that the foregoing and annexed Financial Disclosure Statement is within the knowledge of affiant and is true and correct.

\_\_\_\_\_  
Notary Public-State of Texas

(f) The city secretary shall maintain all financial disclosure statements required to be filed herein as public records and shall retain them for a period of three (3) years after which the statements shall be returned to the person filing them or shall be destroyed.

or more members.

(h) The Board shall render advisory opinions on potential conflicts of interest or violations of this Section at the request of a city official or member of a City board or commission. Such advisory opinion shall be rendered within a reasonable time, but in no event later than thirty (30) days after a request therefore is received by the Board.

(i) It shall be a defense to the prosecution of or proceedings on an alleged violation of this Ordinance that the person accused previously requested an advisory opinion of the Board and acted on such opinion in good faith, unless material facts were omitted or misstated by the person requesting the opinion. Such advisory opinion shall also be binding on the Board in any subsequent charges concerning the person requesting the opinion.

(j) Independent legal counsel shall be utilized to advise the Board and participate in hearings. The City Council shall designate and retain independent counsel who shall be a duly licensed attorney in the State of Texas.

## **Section 7. Investigations and Complaints.**

(a) Investigation by Board. The Board may in its discretion hear information and witnesses in a public meeting, or direct the independent legal counsel, to investigate any potential violation of this Ordinance known to the Board. The Board shall investigate any potential violation of this Ordinance upon a request by the City Council. No complaint shall be required prior to the Board conducting an investigation under this subsection.

If the Board undertakes to investigate any a potential violation of this Ordinance, within seven (7) days of the Board's vote to investigate the possible violation, the Board shall draft a written notice referencing the provision(s) of this Ordinance applicable to the investigation and shall file a copy with the city secretary, and provide a copy to the city attorney, the independent counsel, and the person whose actions are being investigated. If a Board investigation results in a complaint being filed, not later than ten (10) days after the filing of the complaint is approved by a majority vote of the Board, the Board shall notify in writing the person complained against of the date for a preliminary hearing.

(b) Sworn Complaint Required. Only upon a sworn complaint by a person, or by the Board, being filed with the city secretary's office, shall the Board consider specific violations of this Ordinance that are alleged to have been committed by city officials and candidates.

(c) Complaint to Specify Charges. A sworn complaint based on personal knowledge alleging a violation(s) of this Ordinance shall specify the provision(s) of this Ordinance alleged

(b) Preliminary Hearing. As soon as reasonably possible, but in no event more than sixty (60) days after receiving a complaint, the Board shall conduct a preliminary hearing.

(i) The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of this Ordinance has occurred. The person filing a complaint, or the independent counsel in cases considered upon the Board's own initiative, shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation as stated in the written complaint. Statements, other than those made by the independent counsel on information and belief, at a preliminary hearing shall be under oath, but there shall be no cross-examination or requests for persons or evidence issued for the hearing. Members of the Board may question the complainant, the independent counsel for the Board, or the city official named in the complaint, as may the independent counsel.

(ii) The city official named in the complaint shall have the opportunity to respond, but is not required to attend or make any statement. The official may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation. If the official agrees that a violation has occurred, he may so state and the Board may consider the appropriate sanction.

(iii) The complainant and the city official named in the complaint shall have the right to employ and to be represented by legal counsel.

(iv) At the conclusion of the preliminary hearing, the Board shall decide whether a final hearing should be held. If the Board determines there are reasonable grounds to believe that a violation of this Ordinance has occurred, it shall schedule a final hearing. If the Board does not determine that there are reasonable grounds to believe that a violation of this Ordinance has occurred, the complaint shall be automatically dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.

(v) The Board, at any time during the preliminary hearing, may also dismiss a complaint if the complaint does not allege conduct which would be a violation of this Ordinance. Before a complaint is dismissed for failure to allege a violation, the complainant shall be permitted one opportunity, within ten (10) days of such preliminary hearing, to revise and resubmit the complaint.

(vi) The complainant, the independent counsel, and the city official named in the complaint may ask the Board at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.

## **Section 9. Disposition and Sanctions.**

(a) **Violation Found.** If the Board determines that a violation of this Ordinance has occurred, it shall proceed directly to determination of the appropriate sanction(s). A violation of this Ordinance shall not be subject to criminal penalties under the City Code, except for the two instances specifically provided for in this Ordinance. The Board may receive additional testimony or statements before considering sanctions, but is not required to do so. If the city official or candidate named in the complaint acted in reliance upon a written opinion of the city attorney, the Board shall consider that fact.

(b) **Possible Sanctions.** If the Board determines that a violation has occurred, it may impose or recommend the following sanctions:

(i) A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the official's conduct complained of was made in reliance on a written opinion of the city attorney. A letter of notification shall be directed to the official complained against, with a copy to the complainant and to the city secretary.

(ii) A letter of admonition shall be the appropriate sanction in those cases in which the Board finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification. The Board may admonish any official covered by this Section.

(iii) A reprimand shall be the appropriate sanction when the Board finds that a violation has been committed intentionally or through disregard of this Section. The Board may reprimand any official covered by this Section. A reprimand directed to a city official or board or commission member shall also be sent to the City Council and city secretary, and published in the official newspaper.

(iv) A letter of censure shall be the appropriate sanction when the Board finds that a serious or repeated violation(s) of this Ordinance has been committed intentionally or through culpable disregard of this Ordinance by a city official. A letter of censure directed to a city official shall be transmitted to the city secretary, published in the official newspaper of the City and shall be sent to the City Council.

**Section 10. City Manager.** Sections 3 and 4 of this Ordinance may be reasonably applied by

also recommend other action(s) that should be taken.

**Section 12. Penalties.** Any person who shall violate Section 8(c)(iii) or Section 11 of this Ordinance shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

**Section 13. Code of Ordinances.** The Code of Ordinances of the City is hereby amended to include the terms and provisions of this Ordinance. All ordinances, parts of ordinances and the Code of Ordinances in conflict herewith are hereby amended to the extent of such conflict only. If a provision of this Ordinance and any other ordinance shall conflict, the terms of this Ordinance shall govern and control and the other ordinance or Code provision shall be read and construed in a manner consistent with the intent and provisions of this Ordinance.

**Section 14. Severability.** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Section 15. Effective Date.** This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code, and it is accordingly so ordained.

**Section 16. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on this the \_\_\_\_ day of \_\_\_\_\_ 2002.

**Attest:**

**The City of Burnet, Texas**

\_\_\_\_\_  
Joyce Laudenschlager, City Secretary

\_\_\_\_\_  
Dennis Kincheloe, Mayor