

AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN, TEXAS, BY ADOPTING ARTICLE VI, ETHICS; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the City Council had various discussions about adopting an ethics ordinance, to whom it would apply, what sanctions would be in place and the type of board to administer the ordinance; and

WHEREAS, the City Council gave staff direction to draft an ordinance for consideration;
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

SECTION I. That Chapter 2, Article VI is hereby adopted as follows:

Article VI. ETHICS

DIVISION 1. IN GENERAL

Sec. 2-150. Purpose.

It is the policy of the City Council of the City of Killeen to hold its city officials to the highest standards of ethical conduct. The proper operation of municipal government requires that:

- (1) city officials be independent, impartial and responsible to the people of the city;
- (2) governmental decisions and policy be made using the proper procedures of the governmental structure;
- (3) no city official shall have any financial interest, direct or indirect, engage in any business, transaction or professional activity, or incur any obligation of any nature that is in conflict with the proper discharge of the city official's duties in the public interest; and
- (4) public office not be used for personal gain.

Sec. 2-151. Definitions.

When used in this article, the following words, terms or phrases shall have the meanings ascribed

to them in this section, except where the context clearly indicates a different meaning.

Board, commission or committee shall mean all boards, commissions or committees appointed by the City Council.

Business entity shall mean a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust or any other entity recognized by law.

City official shall mean an elected or appointed official, and shall include:

- (1) The Mayor;
- (2) City Councilmembers;
- (3) The City Manager;
- (4) The City Auditor; and
- (5) Members of all boards, commissions and committees appointed by the City Council, except the Youth Advisory Commission.

Confidential information shall mean any information to which a city official has access in the person's official capacity which may not be disclosed to the public pursuant state or federal law, and which is not otherwise a matter of public knowledge.

Property shall mean real estate, intellectual property, personal items, equipment, goods, crops, livestock, or an equitable right to income from real estate, personal items, equipment, goods, crops or livestock.

Relative shall mean a family member related to a city official within the first degree of affinity (marriage) or consanguinity (blood or adoption).

Sec. 2-152. Applicability.

Except as otherwise provided, this article shall apply to all city officials listed in section 2-151.

Secs. 2-153 – 2-154. – Reserved.

DIVISION 2. STANDARDS OF CONDUCT

Sec. 2-155. Financial disclosures.

- (a) A city official shall file with the city secretary a disclosure statement that discloses any real property owned within the Killeen city limits or extraterritorial jurisdiction by the city official or a relative of the official within the first degree of consanguinity or affinity, and specify any financial interest in a business entity located within Killeen, or any financial interest in any business entity that may have dealings with the city. The disclosure shall be

filed within thirty (30) days of election or appointment, and within thirty (30) days of any circumstance causing the contents of a previously filed disclosure statement to change.

- (b) Disclosures filed pursuant to this section are public records that are available in accordance with the Texas Public Information Act.

Sec. 2-156. Representation of others.

- (a) No city official shall represent for compensation any person, group, or entity before the City Council or any board, commission or committee of the city.
- (b) For purposes of this section, compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.

Sec. 2-157. Disclosure of confidential information.

- (a) A city official shall not use the city official's position to obtain official information about any person or entity for any purpose other than the performance of official duties.
- (b) A city official shall not knowingly, intentionally or recklessly disclose any confidential information gained by reason of the city official's position, unless the information is no longer confidential by law or information is disclosed to the appropriate authorities to report illegal or unethical conduct.

Sec. 2-158. Misuse of city resources.

A city official shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies for private or political purposes, except:

- (1) As otherwise allowed by city policy; or
- (2) According to the terms that those resources are generally available to the public.

Sec. 2-159. Abuse of position/interference.

- (a) No city official shall use the city official's title or position to:
 - (1) Secure special privileges or benefits of the city official or another;
 - (2) Grant any special consideration, treatment, or advantage to any resident, individual, organization, business or group beyond that which is normally available to every other resident, individual, organization, business or group;
 - (3) Assert the prestige of the city official's position for the purpose of advancing or harming private interests;

- (4) State or imply that the city official is able to influence city action or any basis other than the merits; or
- (5) State or imply to another governmental body that the city official is acting as a representative of the city or the city council without first having been authorized by the city council to make such representation.

(b) No city official shall:

- (1) Use the city official's position to harass or discriminate against any person based upon ethnicity, race, gender, sexual orientation, marital status, parental status, disability or religion; or
- (2) in any manner interfere with any criminal or administrative investigation alleging the violation of any provision of this article, the Charter, another ordinance, administrative policy, or order, including but not limited to seeking to persuade or coerce a city employee or others to withhold their cooperation in such investigation.

Secs. 2-160 – 2-165. – Reserved.

DIVISION 3. ETHICS REVIEW BOARD

Sec. 2-166. Ethics Review Board Created.

There is hereby created an Ethics Review Board, which shall have the powers and duties prescribed by this article.

Sec. 2-167. Composition.

- (a) The Ethics Review Board shall consist of eight (8) members. The Mayor and each city councilmember shall nominate one (1) member of the board, and each nominee shall be confirmed by a majority of the City Council.
- (b) At its first meeting, the members of the Ethics Review Board shall elect a chair. Thereafter, a chair shall be selected annually in October and as vacancies occur. The chair shall not count towards a quorum and shall only vote in the event of a tie. The chair shall perform other duties as described in this article.

Sec. 2-168. Qualifications.

Members of the Ethics Review Board shall be residents of the City of Killeen and be of good moral character. No member of the board may be:

- (1) A city official or a city employee;
- (2) A candidate for Mayor or the City Council;

- (3) A campaign manager of an elected official;
- (4) A member of any other city board, commission or committee;
- (5) Separated from the city as an elected official or employee within the previous twelve (12) months;
- (6) A relative of a city official;
- (7) Convicted of a felony or other crime of moral turpitude.

Sec. 2-169. Scope of Authority.

The authority of the Ethics Review Board shall be limited to enforcement of this article.

Sec. 2-170. Complaints.

- (a) Any person who believes that there has been a violation of this article may file a sworn complaint with the city secretary.
- (b) A complaint filed under this section must be in writing and must state on its face an allegation that, if true, constitutes a violation of this article. The complaint must contain:
 - (1) the name of the complainant;
 - (2) the mailing address, email address and telephone number of the complainant;
 - (3) the name of the city official(s) about which the complaint is filed;
 - (4) the alleged nature of the violation(s), including the specific provision of this article alleged to have been violated;
 - (5) a detailed statement of facts supporting the allegation, including dates or a time period of violations;
 - (6) any documents or other material the complainant possesses that are relevant to the complaint; and
 - (7) an affidavit stating that the information in the complaint is true and correct and that is sworn before a notary public or other person authorized to administer oaths under penalty of perjury.
- (c) To be accepted, a complaint must be brought within six (6) months of the complainant becoming aware of the alleged violation. In no event will a complaint be accepted more than two (2) years after the date of the alleged violation.
- (d) The city secretary will verify that the complaint complies with the requirements of this section, other than the content of alleged violation. If a complaint does not meet the requirements of this section, the city secretary will notify the complainant in writing. Complainant's failure to make any corrections needed to meet the requirements within five (5) business days shall cause the complaint to be considered withdrawn.

Sec. 2-171. Complaint Assessment.

- (a) The city secretary shall refer all complaints to the chair of the Ethics Review Board within five (5) business days of receipt.
- (b) The chair of the Ethics Review Board shall assign the complaint to a committee of three (3) members for a preliminary assessment within five (5) business days of the city secretary's complaint referral.
- (c) The committee shall review the complaint and determine whether the complaint is actionable, baseless or frivolous within five (5) business days of being assigned the complaint.
- (d) Actionable complaints shall be returned to the chair for listing on an agenda for a public hearing to be held no more than forty-five (45) days from the date the complaint was received. Baseless complaints and frivolous complaints shall be dismissed.
- (e) Written notification of the committee's determination shall be filed with the city secretary and sent to the chair, complainant, the accused, and the city attorney within two (2) business days.
- (f) Determination of a committee may be appealed to the Ethics Review Board by either the complainant or the accused, as applicable. An appeal shall be perfected by filing a written notice of appeal with the city secretary within ten (10) business days of the date the written notification is placed in the mail for delivery.

Sec. 2-172. Meetings.

- (a) Meetings of the Ethics Review Board shall be called upon request of the chair, three members, or the city secretary.
- (b) The quorum necessary to conduct meetings of the Ethics Review Board shall be four (4).
- (c) Hearings shall be scheduled by the city secretary upon the filing of:
 - (1) A committee determination that a complaint is an actionable complaint; or
 - (2) An appeal challenging a committee's dismissal of a complaint as a baseless or frivolous complaint.
- (d) The purposes of the hearing(s) shall be solely to determine whether:
 - (1) A violation of this article occurred, and if so to assess the appropriate sanction;
 - (2) A complaint was erroneously dismissed as a baseless or frivolous complaint by a committee; and/or
 - (3) A complaint is a frivolous complaint.
- (e) The Ethics Review Board shall adopt rules of procedure governing how to conduct hearings

on actionable complaints. Such procedural rules are subject to confirmation or modification by the City Council.

- (f) All witness testimony provided to the Ethics Review Board shall be under oath. The chair shall have the power to administer oaths.
- (g) Because the burden of showing that a violation of this article occurred is placed on the complainant, it is the complainant that has the obligation to put forth evidence, including testimony, supporting the complaint. The complainant is required to appear and testify at the hearing. A complainant's failure to appear or testify at a hearing shall be grounds for dismissal of a complaint.
- (h) All meetings and hearings of the Ethics Review Board shall be conducted pursuant to the Texas Open Meetings Act. The Ethics Review Board may convene in executive session as allowed by the act. All final action of the Ethics Review Board shall take place in open session.
- (i) If a complaint alleges facts that are involved in a criminal investigation pending with a law enforcement agency or a criminal proceeding before a grand jury or the courts, the Ethics Review Board may, when a majority of its members deem appropriate, postpone any hearing or appeal concerning the complaint until after the criminal investigation or criminal proceedings are terminated.

Sec. 2-173. Dismissal.

- (a) If the Ethics Review Board determines at the conclusion of a hearing by simple majority vote of its members that a complaint should be dismissed, it may do so upon finding:
 - (1) The complaint is a baseless complaint or frivolous complaint;
 - (2) The alleged violation did not occur;
 - (3) The accused reasonably relied in good faith upon an advisory opinion, as provided in this article; or
 - (4) The complainant failed to appear or testify at the hearing.

Secs. 2-174 – 2-175. – Reserved.

DIVISION 4. ENFORCEMENT

Sec. 2-176. Sanctions.

- (a) If the Ethics Review Board determines at the conclusion of a hearing that a violation has occurred, it may within ten (10) business days impose or recommend any of the following sanctions:

- (1) *Letter of notification.* If the violation is clearly unintentional, or when the accuser's action was made in reliance on a written opinion of the City Attorney. A letter of notification shall advise the accused of any steps to be taken to avoid future violations.
- (2) *Letter of admonition.* If the Ethics Review Board finds that the violation is minor and may have been unintentional but calls for a more substantial response than a letter of notifications.
- (3) *Letter of reprimand.* If the Ethics Review Board finds that the violation:
 - (A) Was minor and was committed knowingly, intentionally or in disregard of this article; or
 - (B) Was serious and may have been unintentional.
- (4) *Recommendation of suspension.* If the Ethics Review Board finds that a violation by an employee or a member of a board, commission or committee:
 - (A) Was serious and that was committed knowingly, intentionally or in disregard of this article or a state conflict of interest law; or
 - (B) Was minor but similar to a previous violation by the person, and was committed knowingly, intentionally or in disregard of this article.
- (5) *Recommendation of censure.* If the Ethics Review Board finds that a violation by an elected official was serious or a repeated violation that has been committed knowingly or intentionally.
- (b) The final authority to impose a suspension rests with the City Council regarding employees or board, commission and committee members.
- (c) Notice of all sanctions imposed by the Ethics Review Board shall be transmitted to the accused, complainant, city secretary, city attorney, and City Council. Recommendations of suspension or censure shall be placed on a City Council agenda for consideration.

Sec. 2-177. Frivolous Complaints.

- (1) If the Ethics Review Board determines at the conclusion of a hearing by a vote of two-thirds ($\frac{2}{3}$) of its members that a complaint was frivolous, the board may prohibit the complainant from filing a complaint with the board for a period of time up to one year after the date the frivolous determination was made.
- (2) In making a determination on frivolity, the Ethics Review Board shall consider the following factors:
 - (a) The timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the accused is a candidate or is involved with a candidacy, if any;

- (b) The nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed;
- (c) The existence and nature of any relationship between the accused and the complainant before the complaint was filed;
- (d) If the accused is a candidate, the existence and nature of any relationship between the complainant and any candidate or group opposing the accused;
- (e) Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
- (f) Any evidence of the complainant's motives in filing the complaint.

Sec. 2-178. Reconsideration by City Council.

The complainant or accused may request the City Council to consider a final decision of the Ethics Review Board. A request for reconsideration must be filed with the city secretary within five (5) business days of receiving the final decision of the Ethics Review Board. The city secretary shall provide a copy of the request for reconsideration to the non-filing party (complainant or accused). A public hearing before the City Council shall be scheduled no later than thirty (30) days after the request for reconsideration is received by the city secretary.

SECTION III: That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of the ordinance are hereby repealed to the extent of such conflict.

SECTION IV: That should any section or part of any section or paragraph of the ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION V: That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION VI: That this ordinance shall be effective immediately upon passage.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 28th day of September, 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED

Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

APPROVED AS TO FORM

Traci S. Briggs, CITY ATTORNEY