

ARTICLE VI. CODE OF ETHICS¹

DIVISION 1. GENERALLY

Sec. 2-176. Policy.

It is hereby declared to be the policy of the city that the proper operation of democratic government requires that local public officials, appointees, and employees be independent, impartial and responsible only to the people of the city; that no officer, employee or member of any standing committee or board shall permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity to conflict with the proper discharge of his or her duties in the public interest; that public office not be used for personal gain. To implement such a policy, the city council deems it advisable to enact a code of ethics for all officials and employees of the city as a guide, the overriding interest being that officers, appointees and employees of the city shall at all times strive to avoid even the appearance of impropriety.

(Code 1976, § 2-81; Code 1996, § 2-176; Ord. No. 96-15, 9-3-1996; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-177. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appointee means any appointed member of a board, commission, or committee set up by ordinance, charter, state law or otherwise, on a temporary or permanent basis. Municipal court judges, including substitute judges, are considered appointees.

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

City council means the legislative and governing body of the city consisting of the mayor and councilmembers.

Employee means any person employed by the city, including those individuals on a part time basis, but shall not mean any independent contractor hired by the city.

Local public official means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, who exercises responsibilities beyond those that are advisory in nature. This includes members of the Seabrook Planning and Zoning Commission, Board of Adjustment and Economic Development Corporation.

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

¹State law reference(s)—Conflicts of interest, V.T.C.A., Local Government Code § 171.001 et seq.; disclosure of conflicts of interest, V.T.C.A., Local Government Code § 176.001 et seq.

Substantial interest means the degree of interest defined in V.T.C.A., Local Government Code § 171.002, entitled "Substantial interest or business entity, except as provided to the contrary under the Seabrook City Charter."

(Code 1976, § 2-82; Code 1996, § 2-177; Ord. No. 96-15, 9-3-1996; Ord. No. 2008-16, § 2, 8-5-2008)

Secs. 2-178—2-205. Reserved.

DIVISION 2. ETHICS REVIEW COMMISSION

Sec. 2-206. Creation; duties and powers generally.

There shall be created an ethics review commission. It shall have the duty and power to make recommendations to the city council regarding the appropriate disposition of allegations of violations of this article by local public officials and appointees of the city.

(Code 1976, § 2-83; Code 1996, § 2-206; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-207. Members; composition; terms; removal; vacancies.

- (a) The ethics review commission shall consist of five regular members and up to two alternate members who shall vote in the absence of regular members.
- (b) The mayor and members of the city council shall nominate a member to the commission. The nominations shall be confirmed by a majority vote of the entire city council.
- (c) Commission members shall be appointed to two-year staggered terms with the terms of two members to expire October 31 of even numbered years with successive two-year terms, and the terms of three members to expire October 31 of odd numbered years with successive two-year terms. Alternate members shall also be appointed to two-year terms with the term of one alternate member expiring October 31 of even numbered years and the term of the other alternate member expiring October 31 of odd-numbered years.
- (d) All members shall be residents of the city. No member shall hold any city elected or appointed office or be a candidate for any such office.
- (e) Members of the commission may be removed by a majority of the city council for a violation of this article or as otherwise determined by city council. In considering a complaint filed with the city secretary against a member of the commission, the council may follow the procedures set forth in section 2-236 regarding the disposition of alleged violations of this article.
- (f) All vacancies shall be filled for the unexpired terms. A member shall hold office until his or her successor has been appointed by the city council, and shall continue to hold office after his or her successor has been appointed by the city council for the limited purpose of the disposition of all complaints filed during that member's term, unless determined otherwise by city council. No member may participate in a decision regarding a complaint initiated prior to the expiration of the previous member's term, but new members shall assume the duties of office with respect to all complaints initiated after the previous member's term. A commission member shall recuse himself or herself from complaints involving the member of council who nominated him.

(Code 1976, § 2-83(1); Code 1996, § 2-207; Ord. No. 2008-16, § 2, 8-5-2008; Ord. No. 2012-11, § 1, 5-1-2012; Ord. No. 2013-04, § 1, 3-5-2013)

Sec. 2-208. Chairperson; quorum.

The commission shall elect a chairperson and a vice-chairperson to one-year terms. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position. Three members of the commission shall constitute a quorum for routine items. Four or more members of the commission shall constitute a quorum for all ethics complaint hearings or related matters. No action of the commission concerning any ethics complaint shall be of any force or effect unless it is adopted by the favorable votes of four or more of the members.

(Code 1976, § 2-83(2); Code 1996, § 2-208; Ord. No. 2008-16, § 2, 8-5-2008; Ord. No. 2012-11, § 2, 5-1-2012; Ord. No. 2013-04, § 1, 3-5-2013)

Sec. 2-209. Meetings.

The commission shall have meetings as may be necessary to fulfill its responsibilities. The chairperson or any three members of the commission may call a meeting, in compliance with the Open Meetings Act, provided that reasonable notice is given to each member and to any person who requests notice of such meetings.

(Code 1976, § 2-83(3); Code 1996, § 2-209; Ord. No. 2008-16, § 2, 8-5-2008; Ord. No. 2013-04, § 1, 3-5-2013; Ord. No. 2013-24, § 1, 11-19-2013; Ord. No. 2016-13, § 1, 4-19-2016)

Secs. 2-210—2-230. Reserved.

DIVISION 3. CONFLICTS OF INTEREST

Sec. 2-231. Standards of conduct—Local public officials, appointees and employees.

- (a) Pursuant to the city Charter, section 11.09, no local public official, appointee, or employee shall have a financial interest, direct or indirect, (including any interest by reason of ownership of stock in any corporation or other entity) in any contract with the city, or be financially interested, directly or indirectly, in the sale by the city of any land, or rights or interest in any land, materials, supplies, or services, except on behalf of the city as a local public official, appointee or employee. The financial interest contemplated under this subsection means that the local public official, appointee, or employee receives an actual financial benefit from the transaction with the city. An actual financial benefit from the transaction shall not include a financial benefit received through ownership in a corporation or other entity transacting with the city where the ownership interest is less than one percent of the total capital stock of the corporation.
- (b) It shall be a violation of this section for a local public official, appointee or employee to engage in any of the conduct prohibited under the city Charter, section 11.29.
- (c) No local public official, appointee, or employee shall accept or solicit any gift or favor that might reasonably tend to influence him or her in the discharge of his or her official duties. The acceptance of a gift or benefit, the value of which is \$50.00 or less, and for which the acceptance of the gift is not a violation of V.T.C.A., Penal Code § 36.01 et seq., shall not be a violation of this subsection.
- (d) It shall be a violation of this section for an appointee to represent that he/she has authority to bind the city, by contract or otherwise, unless expressly authorized by appropriate action of the city council or Charter.

(Code 1976, § 2-84; Code 1996, § 2-231; Ord. No. 96-15, 9-3-1996; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-232. Same—Additional for local public officers.

- (a) If a local public official has a substantial interest in a business entity or in real estate, and a matter involving the business entity or real estate, is pending before such official or the body of which the official is a member, the official shall not vote on, attempt to influence or otherwise participate in the consideration of the matter, and shall file an affidavit with the city secretary prior to the meeting at which the matter is scheduled, stating the nature and extent of the interest, if:
- (1) In the case of an interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public, or
 - (2) In the case of an interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

If the local public official is required to file and does file an affidavit under this article, that official shall not be required to abstain from further participation in the matter requiring such affidavit, if a majority of the members of the city entity of which the local public official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interest on the same official action. Upon introduction of the agenda items, the councilmember with the conflict of interest should announce that he or she has a conflict of interest and will not participate in discussion or consideration of the agenda item. It is not necessary that the councilmember leave the meeting room. The city council must take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the council has a substantial interest, and the affected councilmember must abstain from that separate vote. The councilmember who has complied in abstaining in such vote under procedures set forth in this subsection may vote on a final budget only after the matter in which he or she is concerned has been resolved.

- (b) The portion of the state statutes that regulates conflicts of interest by local public officials of municipalities is V.T.C.A., Local Government Code § 171.001 et seq. It is hereby adopted as the standard of conduct for local public officials under the city code of ethics, except in the case of conflict, wherein the stricter provision shall be deemed to control.

(Code 1976, §§ 2-66, 2-85; Code 1996, § 2-232; Ord. No. 96-15, 9-3-1996; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-233. Conflict of interest concerning ownership, employment by or membership in any business entity.

Local public officials and appointees shall recuse themselves from discussion and voting in all matters involving any item on an agenda that may benefit any business entity to which the local public official or appointee has a substantial interest as defined herein or by city Charter.

Failure to comply with this section shall be cause for forfeiture of the elected or appointed position with the resultant vacancy on the council, board, commission or committee.

(Code 1996, § 2-233; Ord. No. 2003-05, § 1, 6-3-2003; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-234. Compliance; procedures.

Any local public official shall adhere to the following procedures regarding conflicts of interest.

- (1) *Filing of affidavit.* Any person required to file a conflict of interest affidavit, as set forth in this division, shall file same with the city secretary prior to any meeting at which the subject matter of the conflict is

an agenda item. If it is determined by the presiding officer that a required conflict of interest affidavit has not been filed, and the meeting at which the subject matter of the conflict has been convened, a temporary recess may be taken to afford the affected person a reasonable opportunity to do so. If the person fails or refuses to file the required affidavit, he or she shall be disqualified from further participation at such meeting.

- (2) *Removal from proceedings.* Any person declaring the existence of a conflict of interest shall immediately remove himself or herself from the table, dais, or other seating place of the council, board, commission or committee, as applicable, prior to and during any deliberation or voting on the matter that is the subject of the conflict. For the purposes thereof, removal shall mean the physical act of moving one's person to the public seating area of the applicable meeting place. Notwithstanding the foregoing, if a majority of the members of the council, board, commission or committee are required to file conflict of interest affidavits, participation by all members shall be permitted as set forth in section 2-232.

(Ord. No. 2005-03, § 1, 2-15-2005; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-235. Reserved.

Editor's note(s)—Ordinance No. 96-15, adopted Sept. 3, 1996, repealed former §§ 2-233—2-235 in their entirety.

Formerly, said sections pertained to disclosure of real property interests, contracts with the city and affidavits, and appearance by past officers or employees and derived from §§ 2-86—2-88 of the 1976 Code.

Ordinance No. 2003-05, adopted June 3, 2003, added a new § 2-233 to read as herein set out. Ordinance No. 2005-03, adopted Feb. 15, 2005, added a new § 2-234 to read as herein set out.

State law reference(s)—Similar provisions, V.T.C.A., Local Government Code § 176.001 et seq.

Sec. 2-236. Procedures regarding complaints.

- (a) *Employees.* In the case of any employee of the city, disciplinary action and appeals therefrom shall be in conformance with procedures established by the city Charter and personnel rules and regulations.
- (b) *Local public officials and appointees.* Procedures for local public officials and appointees shall be as follows:
- (1) *Complaints.* Complaints shall be lodged as follows:
- a. All complaints or allegations of a violation of this code of ethics shall be made in writing, sworn to before a notary public and filed of record with the city secretary. Such complaint shall describe in detail the act complained of and the specific sections of this code of ethics alleged to have been violated.
 - b. Any complaint alleging a violation of this article by an appointee of the city or local public official must be filed with the city secretary within 90 days from the commission of the action alleged as a violation.
 - c. Not later than three working days after the city secretary receives a sworn complaint, the city secretary shall acknowledge the receipt of the complaint to the complainant, and provide a copy of the complaint to the city attorney, the commission and the person complained against. Not later than ten working days after receipt of a complaint, the commission shall notify in writing the person who made the complaint and the person complained against of a date for a preliminary hearing. If the commission does not hold a preliminary hearing within 20 working days of receipt of the complaint, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him or her the appropriate notification.

-
- (2) *Ex parte communications.* After a complaint has been filed and during the pendency of a complaint before the commission, a member of the commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the commission.
- (3) *Preliminary hearing.* Proceedings for preliminary hearings shall be as follows:
- a. At the preliminary hearing, members of the commission may question the complainant and the person named in the complaint. The respondent shall have the opportunity to respond, but he or she shall not be required to attend or make any statement. The complainant and the respondent named in the complaint shall have the right of representation by counsel.
 - b. At the conclusion of the preliminary hearing, the commission shall decide whether there are reasonable grounds to believe that a violation of this article has occurred, and if so it shall schedule a final hearing. If the commission does not determine that there are reasonable grounds to believe that a violation of this article has occurred, the complaint shall be automatically dismissed.
 - c. The complainant, legal counsel for the commission, and the respondent named in the complaint may ask the commission at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.
- (4) *Final hearing.* Final hearings shall be held as follows:
- a. The final hearing shall be held as expeditiously as possible following the determination by the commission that there are reasonable grounds to believe that a violation of this article has occurred. At the final hearing the complainant (which may be the commission) and the respondent shall have an opportunity to present witnesses and evidence.
 - b. If the commission determines that a violation has occurred, it shall state its findings in writing, shall identify the particular sections of this article which have been violated, and within 15 working days shall deliver a copy of the findings to the complainant, if any, the person named in the complaint, the city attorney and the city council. Along with its findings, the commission shall recommend prosecution or if appropriate, set forth requirements to be complied with in order that voluntary compliance may be had.
- (5) *Oaths and requests for information.* Oaths and requests for information shall be made as follows:
- a. If a complaint proceeds to a final hearing, the commission shall have the power to compel witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records, or other evidence needed for the performance of the commission's duties or exercise of its powers.
 - b. Statements made by all witnesses at hearings held by the commission shall be made under oath.
- (6) *Defenses.* It shall be a defense to a complaint if the conduct complained of was made in reliance on a public or written opinion of the city attorney. In such case, the commission may advise the respondent in writing of the steps to be taken to avoid possible future violations.
- (7) *Separate complaints.* A complaint shall name only one person as respondent. If more than one person is alleged to have committed the same offense, separate complaints shall be filed and considered by the commission.

(Code 1976, § 2-89; Code 1996, § 2-236; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-237. Action by the city council.

Upon receipt of the report of findings and recommendations from the ethics review commission, the eligible city councilmembers shall consider such report and shall determine what sanctions, if any, shall be imposed on the respondent in accordance with the following:

- (1) The failure of any city councilmember to comply with or who violates one or more of the standards of conduct in this article which apply to him or her shall constitute grounds for reprimand. Such reprimand shall require a two-thirds vote of the councilmembers; provided, however, that a councilmember who is the subject of the complaint under consideration shall not vote. Offenses committed in violation of the city Charter shall also be subject to additional penalties as set forth in the city Charter.
- (2) The failure of any other local public official (other than a city councilmember) or appointee to comply with or who violates one or more of the standards of conduct in this code of ethics shall constitute grounds for expulsion, reprimand or removal from office. Offenses committed in violation of the city Charter shall also be subject to additional penalties as set forth in the city Charter.
- (3) Notwithstanding anything herein to the contrary, the city council specifically reserves unto itself, the power to remove any appointee, with or without cause, in accordance with the Charter and law.

(Code 1976, § 2-90; Code 1996, § 2-237; Ord. No. 2008-16, § 2, 8-5-2008)

Sec. 2-238. Reserved.

Editor's note(s)—Ordinance No. 96-15, adopted Sept. 3, 1996, repealed § 2-238 in its entirety. Formerly, said section pertained to adoption of state statutes and derived from § 2-91 of the 1976 Code.

Sec. 2-239. Disclosure.

The city manager, economic development director, all members of the city's council, planning and zoning commission, board of adjustment, economic development corporations, and any and all other members of the economic development committees and subcommittees shall, within ten working days of election, appointment or membership, complete a disclosure statement listing all interests in real property located within the city limits or the extraterritorial jurisdiction of the city, whether owned outright or under a mortgage, leased, held in trust, or that are owned, leased, or held in trust by the employee's or committee member's spouse or dependent children. This list shall include the location (street address and/or legal description), size (general dimensions), and current use of the property. Additionally, each member or employee shall disclose any of his or her ownership of stock in any company under contract to the city, when such stock ownership comprises greater than one percent of such company's total capital stock. This section shall become effective for the current city manager, economic development director, and all current members of applicable city boards within 30 days of final approval of this section by the city council. All members and employees shall file an amended statement within 30 days of the acquisition of any additional real property interests or stock as defined above. In addition, all members, officials and employees, as referenced herein, shall review their filed disclosure statements at least once each year and after review, shall either file an amended statement with any changes or submit a written statement attesting that no changes have occurred since the last filing. This requirement shall apply during the term of any election, appointment or employment. Any willful violation of this section shall constitute malfeasance in office and any official or employee guilty thereof shall thereby forfeit the office or position.

(Code 1996, § 2-239; Ord. No. 2001-30, § 1, 12-18-2001; Ord. No. 2008-16, § 2, 8-5-2008; Ord. No. 2014-15, Art. 1, 7-1-2014)

Secs. 2-240—2-265. Reserved.