

ORDINANCE NUMBER 2012 – 19

AN ORDINANCE BY THE TOWN COUNCIL OF THE TOWN OF LAGUNA VISTA, TEXAS, ESTABLISHING AN ETHICS POLICY; PROVIDING STANDARDS OF CONDUCT; ESTABLISHING A BOARD OF ETHICS; ESTABLISHING THE JURISDICTION AND POWERS OF THE BOARD OF ETHICS; ESTABLISHING PROCEDURES FOR FILING COMPLAINTS AND THE DISPOSITION OF COMPLAINTS, PROVIDING FOR FINES AND PENALTIES; PROVIDING FOR AN EFFECTIVE DATE, AND PROVIDING FOR RELATED MATTERS.

WHEREAS, Section 11.01 (b) of the Home Rule Charter requires the establishment of a Board of Ethics; and

WHEREAS, the Town Council of Laguna Vista deems it in the public interest to adopt an ethics ordinance to provide standards of conduct, to establish a Board of Ethics, to declare the jurisdiction and powers of said Board, to establish procedures for complaints, to provide fines and penalties for violation of this ordinance, to provide for an effective date, and to provide for related matters; and

WHEREAS, the members of the Board of Ethics shall be appointed pursuant to the appointment procedures as set forth in Ordinance No. 2011-43 of the Town of Laguna Vista.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAGUNA VISTA, TEXAS:

ARTICLE I. DECLARATION OF POLICY.

SECTION 1. STATEMENT OF PURPOSE AND PRINCIPLES OF CONDUCT.

(a) Purpose. It is hereby declared to be the policy of the Town of Laguna Vista to foster the proper operation of democratic government by requiring that:

- (1) Town officials be independent, impartial, and responsible only to the residents of the Town;
- (2) governmental decisions and policy be made using the proper procedures of the governmental structure;
- (3) no Town official have any financial interest, direct or indirect, nor engage in any business, transaction, or professional activity nor incur any obligation of any nature that is in conflict with the proper discharge of his or her duties in the public interest;
- (4) public office not be used for personal gain; and
- (5) the Town Council at all times be maintained as a nonpartisan body.

(b) Principles of conduct.

(1) The Town Council further believes that an elected or appointed official of the Town assumes a public trust and should recognize the importance of maintaining high ethical standards. An elected or appointed official should:

(A) Conduct himself or herself and operate with integrity and in a manner that merits the trust and support of the public.

(B) Uphold all applicable laws and regulations to protect and/or enhance the Town's ability to accomplish its mission.

(C) Treat others with respect.

(D) Be a responsible steward of taxpayer resources.

(E) Take no actions that could benefit the Town official personally at the unwarranted expense of the Town, avoiding even the appearance of a conflict of interest, and exercising prudence and good judgment at all times.

(F) Carefully consider the public perception of personal and professional actions and the effect such actions could have, positively or negatively, on the Town's reputation within and beyond the local community.

(G) Strive for personal and professional growth to improve effectiveness as an elected or appointed official.

(c) To implement the policy and principles set forth in this section, the Town Council has determined that it is advisable to enact this Code of Ethics for all Town officials, whether elected or appointed, paid or unpaid, advisory or administrative, to serve not only as a guide for official conduct, but also as a basis for discipline for those who refuse to abide by its terms.

(d) This section is a statement of purpose and principles only. Nothing in this section may be used to create a cause of action or complaint against an official under this ordinance.

SECTION 2. DEFINITIONS.

In this ordinance, the following words and phrases have the meanings ascribed to them in this section, unless the context requires otherwise:

- (1) **ACCEPT.** A person “accepts” an offer of employment or a business opportunity when the person enters into a legally binding contract or forms any informal understanding with one or more persons that the parties expect to be carried out.
- (2) **AFFECT PARTICULARLY AN ECONOMIC INTEREST or AFFECT PARTICULARLY A SUBSTANTIAL ECONOMIC INTEREST.** An action is likely to “affect particularly an economic interest” or “affect particularly a substantial economic interest,” whichever is applicable, if it is likely to have an effect on the particular interest that is distinguishable from its effect on members of the public in general or on a substantial segment of the public.
- (3) **AFFILIATED.** Business entities are “affiliated” if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent business entity.
- (4) **AFFINITY.** Relationship by “affinity” (by marriage) is defined in Sections 573.024 and 573.025 of the Texas Government Code, as amended.
- (5) **BEFORE THE TOWN.** Representation or appearance “before the Town” means before:
 - (A) the Town Council;
 - (B) a board, commission, or committee of the Town; or,
 - (C) a Town official.
- (6) **BENEFIT** means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.
- (7) **BUSINESS ENTITY** means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law, except that the term does not include a governmental entity.
- (8) **TOWN** means the Town of Laguna Vista, Texas.
- (9) **TOWN COUNCIL MEMBER or MEMBER OF THE TOWN COUNCIL** means any member of the Laguna Vista Town Council, including the Mayor.

(10) CLIENT. The term “client” means:

(A) any person or entity having a specialized and highly personalized professional business relationship with a Town official, but excluding a simple or ordinary business or vendor relationship, or

(B) if the official does not personally represent the client but conducts business as a member of a primary partnership or professional corporation or conducts business through another entity, a client of the partnership, professional corporation, or entity is deemed to be a client of the official if:

(i) the partnership, professional corporation, or entity derived two percent or more of its annual gross income within the preceding 12 months from the client; and

(ii) the Town official knows of the client’s relationship.

(11) CODE OF ETHICS or ETHICS CODE means this ordinance.

(12) CONFIDENTIAL GOVERNMENT INFORMATION means and includes:

(A) all information held by the Town that is not available to the public under the Texas Public Information Act;

(B) any information from a meeting closed to the public pursuant to the Texas Open Meetings Act; and

(C) any information protected by attorney-client, attorney work product, or other applicable legal privilege available to the Town or Town official.

(13) CONSANGUINITY. Relationship by “consanguinity” (by blood) is defined in Sections 573.022 and 573.023 of the Texas Government Code, as amended.

(14) DISCRETIONARY CONTRACT means any contract other than one required by law to be awarded on a competitive bid basis.

(15) DOMESTIC PARTNER means an individual who, on a continuous basis, lives in the same household and shares the common resources of life in a close, personal, intimate, committed relationship with a Town official. A domestic partner may be of the same or opposite gender as the official and is not married to or related by blood to the official.

(16) ECONOMIC INTEREST means and includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights, having more than de minimis value. Exceptions are as follows:

(A) Service by a Town official as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official an economic interest in the property of the organization.

(B) If a Town official's primary source of employment is with a governmental entity other than the Town, such employment by the governmental entity does not create for that Town official an economic interest in the property or contracts of the governmental entity.

(C) Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund.

(17) *EX PARTE* COMMUNICATION means any communication not made in a written document filed with the Board of Ethics and not made orally during a hearing, but does not include a communication made pursuant to an inquiry duly authorized by the Board of Ethics.

(18) *FORMER TOWN OFFICIAL* means a person whose official duties as a Town official are terminated on or after January 1, 2010.

(19) *GIFT* means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.

(20) *INDIRECT OWNERSHIP*. A person has "indirect ownership" of an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

(21) *KNOWINGLY* or *WITH KNOWLEDGE*. A person acts "knowingly" or "with knowledge" with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts "knowingly" or "with knowledge" with respect to a result of his or her conduct when the person is aware that the conduct is reasonably certain to cause the result.

(22) *OFFICIAL* or *TOWN OFFICIAL* means and includes the following persons:

(A) Town Council members.

(B) Municipal Judge.

(C) Town Manager.

(D) Town Attorney.

(E) City Secretary.

(F) Members of any board, commission, or committee created by the Town Council pursuant to city ordinance or federal or state law.

(23) OFFICIAL ACTION means and includes:

(A) any affirmative act (including the making of a formal or informal recommendation) that is within the scope of an official's duties; and

(B) any failure to act, if the official is under a duty to act.

(24) OFFICIAL INFORMATION means includes information gathered pursuant to the power or authority of city government.

(25) PARTNER means and includes any partner in a general partnership, limited partnership, or joint venture.

(26) PERSONALLY PARTICIPATED. The requirement of having "personally participated" in a matter is met only if the individual in fact exercised discretion relating to the matter. The fact that the person had responsibility for a matter does not by itself establish that the person "personally participated" in the matter.

(27) REPRESENTATION encompasses every form of communication or personal appearance in which a person, not acting in performance of official duties, formally or informally serves as an advocate for private interests. Lobbying and service as an expert witness, even on an informal basis, are forms of representation. "Representation" does not include appearance as a fact witness in litigation or other official proceedings.

(28) SOLICITATION. "Solicitation" of subsequent employment or a subsequent business opportunity includes any form of proposal or negotiation relating to employment or a business opportunity.

(29) SUBSTANTIAL ECONOMIC INTEREST.

(A) A person has a "substantial economic interest" in a business entity if:

(i) the person owns 10 percent or more of the voting stock, shares, or other ownership interest in the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(ii) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(B) A person has a "substantial economic interest" in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(C) For purposes of determining a "substantial economic interest," ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund.

ARTICLE II. PRESENT TOWN OFFICIALS.

SECTION 3. IMPROPER ECONOMIC BENEFIT.

(a) Economic interests affected. To avoid the appearance and risk of impropriety, a Town official shall not engage in any official action that he or she knows is likely to affect particularly the economic interests of:

- (1) the official;
- (2) a client;
- (3) the official's outside employer;
- (4) a business entity in which the official knowingly holds an economic interest;
- (5) a business entity that the official knows is an affiliated business or partner of a business entity in which he or she holds an economic interest;
- (6) a business entity for which the Town official serves as an officer or director or in any other policymaking position; or
- (7) a person or business entity:

(A) from whom, within the past 12 months, the official, directly or indirectly, has:

- (i) solicited an offer of employment;
- (ii) received and not rejected an offer of employment; or
- (iii) accepted an offer of employment; or

(B) with whom the official, directly or indirectly, is engaged in negotiations pertaining to a business opportunity.

(b) Substantial economic interests affected. To avoid the appearance and risk of impropriety, a Town official shall not take any official action that he or she knows is likely to affect particularly the substantial economic interests of:

(1) the official's parent, child, spouse, or other family member within the first degree of consanguinity or affinity;

(2) the official's domestic partner;

(3) an outside employer of the official's parent, child, spouse, or other family member within the first degree of consanguinity or affinity, or domestic partner, but only if the official knows the family member or domestic partner has a substantial economic interest in the outside employer;

(4) a business entity in which the official knows that a substantial economic interest is held by his or her:

(A) parent, child, spouse, or other family member within the first degree of consanguinity or affinity; or

(B) domestic partner;

(5) a business entity that the official knows is an affiliated business or partner of a business entity in which a substantial economic interest is held by his or her:

(A) parent, child, spouse, or other family member within the first degree of consanguinity or affinity; or

(B) domestic partner; or

(6) a person or business entity:

(A) from whom, within the past 12 months, the official's spouse or domestic partner, directly or indirectly, has:

(i) solicited an offer of employment;

(ii) received and not rejected an offer of employment; or

(iii) accepted an offer of employment; or

(B) with whom the official's spouse or domestic partner, directly or indirectly, is engaged in negotiations pertaining to a business opportunity.

(c) Recusal and disclosure. A Town official whose conduct or action on a matter would violate Subsection (a) or (b) must recuse himself or herself. A Town official with knowledge of a conflict of interest shall:

(1) immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and

(2) promptly file with the City Secretary a written statement disclosing the conflict on a form provided by the City Secretary, before the Town Council, board, committee or commission takes action on the matter.

(d) Additional recusal and disclosure requirements. In addition to the requirements of Subsection (c):

(1) the Municipal Judge shall promptly bring his or her conflict to the attention of the City Manager;

(2) the City Manager shall promptly bring his or her conflict to the attention of the Town Council;

(3) a board, commission, or committee member shall promptly disclose his or her conflict to the board chair or the presiding chair of the board, commission or committee of which he or she is a member and shall not be present during any discussion or voting on the matter; and

(5) a Town Council member shall promptly disclose his or her conflict to the Town Council and shall not be present during any discussion or voting on the matter.

SECTION 4. UNFAIR ADVANCEMENT OF PRIVATE INTERESTS.

(a) General Rule. A Town official may not use his or her official position to unfairly advance or impede personal interests by granting or securing, or by attempting to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to every other person or organization.

(b) Special Rules. The following special rules apply in addition to the general rule set forth in Subsection (a):

(1) Acquisition of interest in impending matters. A Town official shall not acquire an interest in any matter if the official knows that the interest will be affected by impending official action of the Town.

(2) Acquisition of interest in decided matter. A Town official shall not acquire an interest in any matter affected by an official action of the Town for a period of one year after the date of the official action.

(3) Reciprocal favors. A Town official may not enter into an agreement or understanding with any other person that official action by the official will be rewarded or reciprocated by the other person.

(4) Appointment or employment of relatives.

(A) A Town official shall not appoint, or take any action to influence the appointment of, his or her domestic partner or any relative within the third degree of consanguinity or affinity, to the Board of Ethics.

(B) A Town Council Member shall not appoint any fellow Town Council member's domestic partner or relative, within the third degree of consanguinity or affinity, to the Board of Ethics.

(C) A Town official shall not appoint or employ, or take any action to influence the appointment or employment of, his or her domestic partner or any relative who may be related by the third degree of consanguinity or of affinity, to any position of employment within the Town.

(5) Supervision of relatives. No official shall be permitted to be the immediate supervisor of his or her domestic partner or of any relative within the second degree of consanguinity or affinity.

(c) Recusal and disclosure. A Town official whose conduct would violate Subsection (b)(4) of this section shall adhere to the recusal and disclosure requirements in Sections 3(c) and (d) of this ordinance.

SECTION 5. GIFTS.

(a) General rule. A Town official shall not solicit, accept, or agree to accept any gift or benefit that:

(1) reasonably appears to influence or reward official conduct; or

(2) the official knows is intended to influence or reward the discharge of official duties.

(b) Gifts over \$250. Any Town official required to file a financial disclosure statement under Section 18 of this ordinance shall report any gift over \$250 in the financial disclosure statement.

(c) Special applications. Subsections (a)(1) and (a)(2) do not include:

(1) reimbursement of reasonable expenses for travel authorized in accordance with Town policies;

- (2) a public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion;
- (3) a loan from a lending institution made in its regular course of business on the same terms generally available to the public;
- (4) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or,
- (5) admission to an event in which the Town official is participating in connection with official duties.

(d) Campaign contribution exception. The general rule stated in Subsection (a) does not apply to a campaign contribution received and reported in compliance with the Texas Election Code.

SECTION 6. CONFIDENTIAL INFORMATION.

(a) Improper access. A Town official shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities.

(b) Improper disclosure or use. A Town official shall not intentionally or knowingly disclose any confidential government information gained by reason of the official's position. This rule does not prohibit:

- (1) any disclosure that is no longer confidential government information;
- (2) the confidential reporting of illegal or unethical conduct to authorities designated by law; or
- (3) any disclosure, not otherwise prohibited by law, in furtherance of public safety.

SECTION 7. REPRESENTATION OF PRIVATE INTERESTS.

(a) Representation by a member of a board, commission, or other committee. A Town official who is a member of a board, commission, or committee of the Town shall not represent any person, group, or entity:

- (1) before that board, commission, or committee; or
- (2) unless the board, commission, or committee of which the Town official is a member is only advisory in nature:
 - (A) before Town staff having responsibility for making recommendations to, or taking any action on behalf of, that board, commission, or committee; or,

(B) before a board, commission, or other committee that has appellate jurisdiction over the board, commission, or committee of which the Town official is a member, if any issue relates to the official's duties.

(b) Representation before the Town Council.

(1) General Rule. A Town official shall not represent for compensation any person, group, or entity (other than himself or herself or his or her spouse, minor children, or domestic partner) before the Town Council. For purposes of this subsection, "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.

(2) Exceptions. The rule stated in Subsection (b)(1) does not prohibit:

(A) a person who is classified as a Town official only because he or she is an appointed member of a board, commission, or other Town body from representing for compensation a person, group, or entity before the Town Council unless such representation is a violation of Subsection (a) of this section.

(3) Prestige of office and improper influence. In connection with the representation of private interests before the Town, a Town official shall not:

(A) assert the prestige of the Town official's position for the purpose of advancing private interests; or

(B) state or imply that he or she is able to influence Town Council, board, commission or committee action on any basis other than the merits.

(c) Representation in litigation adverse to the Town.

(1) Officials (other than board, committee and commission members). A Town official, other than a person who is classified as an official only because he or she is an appointed member of a board, commission, or other Town body, shall not represent any person, group, or entity (other than himself or herself or his or her spouse, minor children, or domestic partner) in any litigation to which the Town is a party, if the interests of that person, group, or entity are adverse to the interests of the Town.

(2) Board, committee and commission members. A person who is classified as a Town official only because he or she is an appointed member of a board, commission, or other committee shall not represent any person, group, or entity (other than himself or herself or his or her spouse, minor children, or domestic partner) in any litigation to which the Town is a party, if the interests of that person, group, or entity are adverse to the interests of the Town and the matter is substantially related to the official's duties to the Town.

(3) Affiliates of officials. Subject to applicable professional ethical standards, the restrictions stated in Subsections (c)(1) and (c)(2) do not apply to representation by a partner or other affiliate of a Town official so long as the Town official does not participate in any manner whatsoever in the partner's or affiliate's representation.

(d) Representation in municipal court. No member of the Town Council may engage in the practice of law in or before the Municipal Court of the Town.

SECTION 8. CONFLICTING OUTSIDE EMPLOYMENT.

(a) General rule. A Town official shall not:

(1) solicit, accept, or engage in concurrent outside employment that could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties; or

(2) personally provide services for compensation, directly or indirectly, to a person or organization that is requesting an approval, investigation, or determination from the Town body or department of which the official is a member.

(b) Exception. The restriction in Subsection (a) does not apply to outside employment of a Town official if the employment is the official's primary source of income.

(c) Other rules. The general rule stated in Subsection (a) of this section applies in addition to all other rules relating to outside employment of Town officials including requirements for obtaining prior approval of outside employment as applicable.

SECTION 9. PUBLIC PROPERTY AND RESOURCES.

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

(1) pursuant to duly adopted Town policies; or

(2) to the extent and according to the terms that those resources are generally available to the public.

SECTION 10. POLITICAL ACTIVITY.

(a) Influencing subordinates. A Town official shall not, directly or indirectly, induce or attempt to induce any Town employee to:

(1) participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue; or

(2) refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this subsection.

(b) Paid campaigning. A Town official shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot, if the official participated in, or provided advice relating to, the exercise of discretionary authority by a Town body that contributed to the development of the ballot item. "Anything of value" does not include a meal or other item of nominal value the Town official receives in return for providing information on an item pending on the ballot.

(c) Official vehicles. A Town official shall not display or fail to remove campaign materials on any Town vehicle under his or her control.

(d) Charter provisions. A Town official shall comply with the provisions governing political activity set forth in Sections 11.02 and 11.03 of the Laguna Vista Home Rule Charter.

SECTION 11. PARTICIPATION IN ETHICS VIOLATIONS.

No person shall intentionally or knowingly induce, attempt to induce, conspire with, aid or assist, or attempt to aid or assist another person to engage in conduct violative of this ordinance.

SECTION 12. PROHIBITED INTERESTS IN CONTRACTS.

(a) Charter restrictions relating to financial interests in Town contracts. A Town official shall comply with the restrictions on financial interests in Town contracts as set forth in the Laguna Vista Home Rule Charter.

(b) Additional restrictions relating to Town contracts. An official may not, while in the service of the Town, either individually or as the officer or principal of a private business entity:

(1) submit a bid or proposal, on behalf of the official or on behalf of a private business entity, to make any contract with the Town, whether or not the contract is required by state law to be competitively bid; or

(2) negotiate or enter into any contract with the Town, on behalf of the official or on behalf of a private business entity, whether or not the contract is required by state law to be competitively bid.

(c) Exceptions. The restrictions contained in Subsections (a) and (b) of this section do not apply to a member of:

(1) a board that functions only in an advisory or study capacity and that does not have the power to make findings as to the rights of specific parties; or

(2) a board of a nonprofit development corporation that acts as an instrumentality of the Town.

ARTICLE III. FORMER TOWN OFFICIALS.

SECTION 13. CONTINUING CONFIDENTIALITY.

A former Town official shall not use or disclose confidential government information acquired during service as a Town official. This rule does not prohibit:

- (1) any disclosure of information that is no longer confidential government information;
- (2) the confidential reporting of illegal or unethical conduct to appropriate law enforcement authorities; or
- (3) any disclosure, not otherwise prohibited by law, in furtherance of public safety.

SECTION 14. SUBSEQUENT REPRESENTATION.

(a) Representation by a former Town Council member or former board, commission or committee member. A person who was a member of the Town Council, a board, commission, or another committee shall not represent any person, group, or entity (other than himself or herself or his or her spouse, minor children, or domestic partner) for a period of one year after the termination of his or her official duties:

- (1) before the Town Council or that board, commission, or committee of which the person was a member;
- (2) unless the board, commission, or committee of which the former Town official was a member is only advisory in nature:

(A) before Town staff having responsibility for making recommendations to, or taking any action on behalf of, the Town Council or that board, commission, or committee; or,

(B) before a board, commission, or other Town committee that has appellate jurisdiction over the board, commission, or body of which the former Town official was a member, if any issue relates to his or her former duties.

(b) Representation before the Town Council. A former Town official shall not represent for compensation any person, group, or entity (other than himself or herself or his or her spouse, minor children, or domestic partner) before the Town Council for a period of one year after termination of his or her official duties. This subsection does not apply to a person

who was classified as a Town official only because he or she was an appointed member of a board, commission, or committee. For purposes of this subsection, "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.

(c) Representation in litigation adverse to the Town. A former Town official shall not, absent consent from the Town, represent any person, group, or entity (other than himself or herself or his or her spouse, minor children, or domestic partner) in any litigation to which the Town is a party, if the interests of that person, group, or entity are adverse to the interests of the Town and the matter is one in which the former Town official personally participated prior to termination of his or her official duties or is a matter substantially related to such a matter.

(d) Statement or implication of inappropriate influence. In connection with the representation of private interests, a former Town official shall not state or imply that he or she is able to influence Town Council action on any basis other than the merits.

SECTION 15. DISCRETIONARY CONTRACTS.

(a) Impermissible interest in discretionary contract or sale. Within one year after the termination of official duties, a former city official shall not have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies, or service. Any violation of this subsection, with knowledge, express or implied, of the person or corporation contracting with the city will render the contract involved voidable by the Town Council. This subsection applies only to contracts or sales made on a discretionary basis and not to contracts or sales made on a competitive bid basis.

(b) Additional restrictions. A former Town official may not, within one year after leaving the service or employment of the Town, either individually or as the officer or principal of a private business entity:

(1) submit a proposal, on behalf of the official or on behalf of a private business entity, to enter into any contract with the Town that is not required by state law to be competitively bid; or

(2) negotiate or enter into any contract with the Town that is not required by state law to be competitively bid.

(c) Prior participation in negotiation or award of contract and disclosure requirements. A former Town official may not, within one year after the termination of official duties, perform work on a compensated basis relating to a discretionary contract, if he or she personally participated in the negotiation or awarding of the contract.

(d) Exceptions. The prohibitions of Subsections (a), (b), and (c) do not apply to:

(1) a contract for the personal services of a former Town official;

(2) a member of a board, commission, or committee that is only advisory in nature;
or

(3) the provision of goods, facilities, or services by the Town to a former Town official pursuant to duly adopted Town policies and on non-negotiable terms generally available to the public.

ARTICLE IV. FINANCIAL DISCLOSURE.

SECTION 16. FINANCIAL DISCLOSURE REPORT

(a) No Town official shall be required to file a complete, sworn financial disclosure report with the Town and/or the Board of Ethics unless a complaint that pertains directly to Section 3 of this ordinance has been filed against that Town official and the Board of Ethics has requested such disclosure report.

(b) In the event a Town official is required to file a financial disclosure report, it shall be filed with the City Secretary and shall contain the following information as may be pertinent depending on the nature of the complaint that has been filed:

(1) Name of the reporting party.

(2) Name of each family member of the reporting party.

(3) Names under which the reporting party and his or her family members do business.

(4) Names of the employers of the reporting party and his or her family members.

(5) Identification of each source of income amounting to more than \$1,000 received in the preceding twelve months by the reporting party or a family member.

(6) Identification of each business entity (including self employment in the form of a sole proprietorship under a personal or assumed name) in which the reporting party or a family member has an investment of more than \$1,000 at the fair market value at the time of the financial disclosure report, which investment must be described in the financial disclosure report.

(7) Identification of each nonprofit entity or business entity in which the reporting party or a family member is a partner, manager, director, officer, or board member, or serves in any other policymaking position.

(8) Identification of any business entity that the reporting party knows is a partner, parent, or subsidiary business entity of a business entity owned, operated, or managed by the reporting party or a family member.

(9) Identification of any person or business entity from whom, within the previous twelve months, the reporting party or his or her spouse or domestic partner, directly or indirectly, has:

- (i) received and not rejected an offer of employment; or
- (ii) accepted an offer of employment that is binding or expected by the parties to be carried out.

(10) Identification (by street address, legal, or lot-and-block description) of all real property located within the State of Texas in which the reporting party or a family member has a leasehold interest; a contractual right to purchase; or a fee interest as owner, beneficial owner, partnership owner, joint owner with an individual or corporation, or owner of more than 25 percent of a corporation that has title to the real property. The following property is not required to be disclosed:

- (i) Property used as a personal residence of a peace officer.
- (ii) Property over which the reporting party has no decision power concerning acquisitions or sales.
- (iii) Property held through a real estate investment trust, mutual fund, or similar entity, unless the reporting party or a family member participates in the management of the trust, fund, or entity.

(11) Identification of persons or entities to whom the reporting party or a family member owes an unsecured debt of more than \$5,000, but not including debts for:

- (i) money borrowed from a relative within the second degree of consanguinity or affinity; or,
- (ii) revolving charge accounts.

(12) Identification of all persons or entities who owe the reporting party or a family member an unsecured debt of more than \$5,000, but not including debts owed by relative within the second degree of consanguinity or affinity.

(13) Identification of the source of each gift or accumulation of gifts from one source of more than \$250 in estimated fair market value received by the reporting party or a family member, or received by a person for the use or benefit of the reporting party or a family member, within the preceding twelve months and the estimated fair market value of each gift. This requirement does not include:

- (i) a gift received from a relative within the second degree of consanguinity or affinity, if given on account of kinship, or from a domestic partner, if given on account of personal relationship;

(ii) a gift received by will, by intestate succession, or as distribution from an inter vivos or testamentary trust established by a spouse, domestic partner, or ancestor;

(iii) gifts received among and between fellow Town officials;

(iv) a lawful campaign or officeholder contribution reported as required by Chapter 254 of the Texas Election Code; and

(v) admission to an event in which the reporting party is participating in connection with official duties.

SECTION 17. TRAVEL REPORTING REQUIREMENTS.

(a) Any person listed in Subsection (d) of this section who, in connection with his or her official duties, accepts a trip or excursion to a location greater than 50 miles from the Town and that involves the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Secretary before embarking on the trip (time permitting), or not more than seven days after the trip is concluded, a disclosure statement identifying:

(1) the name of the sponsor of the trip or excursion;

(2) the name of the person or entity paying for the trip or excursion, if different from the sponsor;

(3) the places to be visited; and,

(4) the purpose and dates of the travel.

(b) The City Manager shall, within 10 working days after the trip is concluded, file with the City Secretary any information listed in Subsection (a) that has been filed with the City Manager's office by affected subordinates of the City Manager.

(c) Nothing in this section authorizes personnel reporting to the City Manager to violate policies and procedures established by the City Manager regarding travel request authorizations.

(d) The following persons are required to report under this section:

(1) Town Council members.

(2) City Manager, Town Attorney, and City Secretary.

(3) Municipal Judge.

(4) Members of boards, commissions and committees.

(5) Department Heads, including the Library Director, Police Chief, Fire Chief, and Public Works Director.

SECTION 18. ITEMS RECEIVED ON BEHALF OF THE TOWN.

A Town official who accepts on behalf of the Town any item by way of gift or loan valued over \$250 shall, within 30 days after the acceptance of the gift or loan, report that fact and deliver the item to the City Secretary, who shall have the item appropriately inventoried as Town property.

SECTION 19. VIOLATION OF REPORTING REQUIREMENTS.

Failure to timely file a report required under this section is a violation of this ordinance, as is the filing of a report with incorrect, misleading, or incomplete information.

ARTICLE V. BOARD OF ETHICS.

SECTION 20. BOARD OF ETHICS - CREATION; COMPOSITION, TERMS, AND QUALIFICATIONS.

(a) Creation and composition. There is hereby created the Board of Ethics to be composed of 5 members appointed by the Town Council by majority vote of a quorum.

(b) Terms of office. The initial members shall serve terms as follows: two (2) Board members shall serve an initial term of one year, and three (3) Board members shall serve an initial term of two years. After the initial terms, all terms shall be for two years. At their first meeting, the initial members of the Board of Ethics shall conduct a lottery to determine which term each one will serve. Vacancies on the Board shall be filled in the same manner that original appointments are made and shall be filled for the unexpired term of the member whose place has become vacant. Members of the Board of Ethics shall be eligible for reappointment to serve successive terms. Members of the Board of Ethics may be removed with or without cause by vote of five sevenths of the members of the Town Council.

(c) Qualifications. Each member of the Board of Ethics shall meet the eligibility requirements as specifically provided by Section 2.02 of the Home Rule Charter for serving as member of the Town Council. Additionally, no member of the Board of Ethics may be:

- (1) a Town official or the spouse or domestic partner of a Town official;
- (2) a Town employee or the spouse or domestic partner of a Town employee;
- (3) an elected public official;
- (4) a candidate for elected public office;

(5) a person who, for compensation, represents the private interests of others before the Town Council;

(6) a paid campaign worker or a political consultant of a current Town Council member; or

(7) a person who is related by any degree by affinity or consanguinity to a current Town official.

SECTION 21. JURISDICTION AND POWERS.

(a) Jurisdiction. The Board of Ethics shall have jurisdiction to review, investigate and make advisory opinions concerning any alleged violation of this ordinance or of Article XI of the Charter by any person subject to its provisions, including but not limited to current Town officials, former Town officials, and persons doing business with the Town. Any complaint alleging violation of this ordinance or of Article XI of the Charter must be filed within one year after the date of the alleged violation. Such jurisdiction, however, shall be limited and NOT include the power to investigate generally the decisions of the Town Council or of other boards, commissions and bodies of the Town except for, and upon a complaint alleging, violation of this ordinance or of Article XI of the Home Rule Charter.

(b) Termination of Town official's duties. The termination of a Town official's duties does not affect the jurisdiction of the Board of Ethics with respect to alleged violations occurring during the term of that person's service as a Town official.

(c) Powers. The Board of Ethics shall be in advisory in nature and shall have only the power:

(1) To investigate an alleged violation of this ordinance.

(2) To investigate an alleged violation of any of the prohibitions listed in Section 11.02(a) of the Home Rule Charter.

(3) To request from the City Manager through the Town Council the assistance of such staff as is necessary to carry out the duties of the Board of Ethics.

(4) To review, index, maintain on file, and dispose of sworn complaints filed pursuant to this ordinance.

(5) Such other powers as are specifically granted in this ordinance or in Article XI of the Laguna Vista Home Rule Charter.

SECTION 22. COMPLAINTS.

(a) Filing. Any resident of the Town or any person doing business or attempting to do business with the Town (other than a member of the Board of Ethics) who believes there has been a violation of this ordinance or of Article XI of the Charter may file with the City

Secretary a sworn complaint, under the penalty of perjury, alleging violation of this ordinance or of Article XI of the Home Rule Charter. The complaint must:

- (1) identify the person or persons who allegedly committed the violation;
- (2) be filed within one year of the date on which the alleged violation occurred;
- (3) provide a statement of the facts on which the complaint is based;
- (4) to the extent possible, identify the ordinance or Charter provision or provisions allegedly violated; and
- (5) identify specific sources of evidence, if any, that the complainant wants considered by the Board of Ethics.

(b) Confidentiality. No Town official shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties. All papers and communications relating to a complaint must be treated as confidential to the extent allowed by law.

(c) Notification. The City Secretary shall promptly forward a copy of a complaint to the Chair of the Board of Ethics, to the Town Attorney, and to the person charged in the complaint. The person charged in the complaint shall have the opportunity to submit a sworn statement, together with such other information he or she feels is relevant, within twenty (20) days of receipt of a copy of the complaint.

(d) Summary dismissal.

- (1) Within 45 days after receipt of a complaint, either the Chair or Vice Chair, selected on a rotational basis, and two Board of Ethics members, selected by lot by the City Secretary, shall make a preliminary finding, after consulting with the Town Attorney, as to whether or not the complaint states a claim under this ordinance and is supported by just cause. "Just cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this ordinance.
- (2) If the preliminary finding is that the complaint does not state a claim under this ordinance or is not supported by just cause, based upon the statements and evidence submitted, the complaint must be dismissed. A determination that a complaint be dismissed shall be made upon the affirmative vote of at least two of the three preliminary panel members. Written notice of the dismissal must be sent to the person who made the complaint and to the person about whom the complaint was made, stating the basis or reasons for dismissal.

SECTION 23. HEARING PROCEDURES.

(a) Evidentiary hearing. If a complaint is not summarily dismissed under Section 25(e), it will be scheduled for hearing before the Board of Ethics. Not less than 10 days before the hearing, the Board of Ethics shall, by certified mail or personal service, give written notice of the date and time of hearing to the person who made the complaint and to the person about whom the complaint was made. The notice must state the specific provision or provisions of this ordinance or the Charter alleged to have been violated, as determined by the preliminary panel.

(b) Notice of charges. Before the Board of Ethics may find that a violation of a particular provision of this ordinance or the Charter occurred, the person charged in the complaint must have notice that compliance with that provision is at issue and shall be given an opportunity to respond. Notice is conclusively established if:

(1) the person charged in the complaint is provided a copy of the complaint alleging that the provision was violated and is afforded an opportunity to respond in writing within ten (10) days, or

(2) the Board of Ethics or the Town Attorney provides the person charged in the complaint with written notice of the alleged violation of this ordinance or the Charter and informs the person charged of the 10-day period within which he or she may respond in writing to the charge.

(c) Ex Parte communications. It is a violation of this ordinance for:

(1) the complainant, the person charged in the complaint, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in any *ex parte* communication about the subject matter of a complaint with a member of the Board of Ethics; or

(2) a member of the Board of Ethics to:

(A) knowingly entertain an *ex parte* communication prohibited by Subsection (c)(1); or

(B) knowingly communicate, directly or indirectly, with any person, other than a member of the Board of Ethics, or its legal counsel, about any issue of fact or law relating to the complaint.

SECTION 24. HEARING RULES.

(a) Hearings on complaints. The rules contained in this section apply to all hearings of the Board of Ethics on complaints not summarily dismissed under Section 25(e).

(b) General rules. A determination that a violation of this ordinance has occurred can be made only upon an affirmative vote of at least four-fifths (4/5) of the entire Board of Ethics

membership, otherwise the complaint must be dismissed. A finding that a violation occurred must be supported by clear and convincing evidence. "Clear and convincing evidence" means that measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established.

(c) Procedural rules. All members of the Board of Ethics must be present at a hearing on a complaint. All witnesses must be sworn, and the members of the Board of Ethics or the Town Attorney shall conduct the questioning of witnesses. The Board of Ethics is not bound by the rules of evidence and may establish time limits and other rules relating to the participation of any person in the hearing, subject to Subsections (d) and (e) of this section. The Board of Ethics shall have the power to issue subpoenas compelling the attendance of witnesses and the production of documents.

(d) Rights of the person charged. The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or another advisor.

(e) Rights of the complainant. The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except to represent the complainant while testifying. The complainant may not present or cross-examine witnesses, except with the permission of the Board of Ethics.

SECTION 25. DISPOSITION OF COMPLAINT.

(a) Written decision. The Board of Ethics shall make all reasonable efforts to issue a written decision within 10 days after the hearing on the matter. The Board of Ethics shall state its findings in the written decision. The written decision must either:

- (1) dismiss the complaint, with the grounds for dismissal set forth in the decision; or
- (2) find that there has been violation of this ordinance or Article XI of the Charter and identify in the decision the particular provision or provisions violated.

(b) Notification. Copies of the findings and decision must be forwarded to the complainant, the person charged in the complaint, and the Town attorney. A copy of the findings and decision must also be forwarded to the City Secretary, who shall make it available to the public as authorized by law.

(c) Similar charges barred. If the complaint is dismissed because the evidence failed to establish a violation of this ordinance or of Article XI of the Charter, the Board of Ethics shall not entertain any other similar complaint based on substantially the same evidence.

**SECTION 26. REFERRAL OF MATTER FOR APPROPRIATE ACTION;
RECOMMENDATION OF SANCTIONS.**

(a) If the Board of Ethics, with advice and consent of the Town Attorney, determines that a violation of this ordinance or of Article XI of the Charter has occurred, it shall refer its decision and recommendations to the Town Council for action, if any.

(b) When referring a matter under Subsection (a), the Board of Ethics may recommend sanctions as follows:

(1) Letter of notification. A letter of notification may be recommended when the Board of Ethics finds that a violation of this ordinance or the Charter was clearly unintentional or when the action or conduct found to have been a violation of this ordinance was performed by the official in reliance on a public written opinion of the Town Attorney. A letter of notification must advise the official to whom the letter is directed of any steps to be taken to avoid future violations.

(2) Letter of admonition. A letter of admonition may be recommended when the Board of Ethics finds that the violation of this ordinance or the Charter was minor and/or may have been unintentional, but where the circumstances call for a more substantial response than a letter of notification.

(3) Reprimand. A reprimand may be recommended when the Board of Ethics finds that a violation of this ordinance or the Charter was committed intentionally or through disregard of this ordinance.

(4) Removal or suspension from office. Removal from office or suspension from office may be recommended when the Board of Ethics finds that a serious or repeated violation of this ordinance or the Charter was committed intentionally or through culpable disregard of this ordinance or the Charter. The Board of Ethics may include the length of any suspension in its recommendation.

(5) Miscellaneous. The Board of Ethics may recommend referral to proper authorities for enforcement of any remedy or penalty authorized under Article VIII of this ordinance.

SECTION 27. PETITION FOR DECLARATORY RULING.

Any Town official against whom public allegations of ethics violations have been made in the media or elsewhere has the right to file a sworn statement with the City Secretary affirming his or her innocence, and requesting that the Board of Ethics to review the allegations, conduct any warranted investigation, and make known its findings.

SECTION 28. LEGAL COUNSEL.

(a) Town Attorney. The Town Attorney shall act as the legal counsel to the Board of Ethics. Additionally, the Town Attorney shall:

(1) upon request of the Town Council, issue advisory opinions to Town officials about the requirements imposed by this ordinance and other ethics laws; and

(2) upon request of the Town Council, train and educate all Town officials with respect to their ethical responsibilities.

(b) Outside legal counsel. An independent outside attorney, who does not otherwise represent the Town, may be appointed by the Town Council, at the recommendation of the Town Attorney, to serve as legal counsel to the Board of Ethics for a particular case whenever:

(1) a complaint is filed relating to:

(A) an alleged violation of this ordinance by a Town Council member; or

(B) an alleged violation of this ordinance by the Town Attorney.

(2) the Board of Ethics requests such an appointment; or

(3) the Town Attorney requests such an appointment for good cause shown.

SECTION 29. OPINIONS ISSUED BY THE TOWN ATTORNEY.

(a) Requests by Town officials. Upon request of the Town Council, the Town Attorney shall issue to a Town official an advisory opinion regarding whether his or her own proposed actions or conduct would violate this ordinance. The Town Attorney shall make all reasonable efforts to issue a written advisory opinion within 30 days after receipt of the request. The Town Attorney, for good cause shown, may decline to issue a written advisory opinion.

(b) Reliance. A person who reasonably and in good faith acts in accordance with a written advisory opinion issued by the Town Attorney may not be found to have violated this ordinance by engaging in conduct approved in the advisory opinion, if:

(1) the person requested the issuance of the opinion;

(2) the request for an opinion fairly and accurately disclosed all relevant facts necessary to render the opinion; and

(3) the person waives the attorney-client privilege with respect to the written advisory opinion.

(c) Pending Town Attorney opinions. Whenever an advisory opinion from the Town Attorney has been requested regarding the actions or conduct of an official, no action may be taken by the Board of Ethics regarding those particular actions or conduct until the Town Attorney issues the advisory opinion. Any time limits that the Board of Ethics is required to

follow in processing an ethics complaint regarding those particular actions or conduct will be extended to allow for the Town Attorney to issue the advisory opinion.

ARTICLE VI. ENFORCEMENT, CULPABLE MENTAL STATE, AND PENALTIES.

SECTION 30. GENERAL.

The remedies contained in this article are available whenever the Board of Ethics finds a violation or violations of this ordinance.

SECTION 31. CULPABLE MENTAL STATE.

To commit a violation under any provision of this ordinance, a person must have acted or failed to act knowingly or with knowledge.

SECTION 32. PENALTIES.

Any person who is knowingly violates any provision of this ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction thereof shall be fined in an amount not to exceed \$500.00. Each day that a violation occurs shall constitute a separate offense as a Class C misdemeanor.

SECTION 33. PROSECUTION FOR PERJURY.

Any person who knowingly files a false sworn statement under this ordinance is subject to criminal prosecution for perjury under the laws of the State of Texas.

SECTION 34. DISQUALIFICATION FROM CONTRACTING.

(a) Any person who has been found by the Board of Ethics to have intentionally or knowingly violated any provision of this chapter may be prohibited by the Town Council from entering into any contract with the Town for a period of two years.

(b) It is a violation of this section:

(1) for a person debarred from entering into a contract with the Town to enter or attempt to enter into a contract with the Town during the period of disqualification from contracting; or

(2) for a Town official to knowingly assist in a violation of Subsection (b)(1) of this section.

(c) Nothing in this section prohibits any person from receiving a Town service or benefit, or from using a Town facility, according to the same terms generally available to the public.

ARTICLE VII. ADMINISTRATIVE PROVISIONS.

SECTION 35. OTHER ETHICAL OBLIGATIONS.

(a) This ordinance is cumulative of and supplemental to all applicable provisions of the Laguna Vista Home Rule Charter, other Town ordinances, and state and federal laws and regulations.

Compliance with this section does not excuse or relieve any person from any obligation imposed by the Laguna Vista Home Rule Charter, other city ordinances, or state or federal laws or regulations.

SECTION 36. DISSEMINATION OF CODE OF ETHICS.

(a) The City Secretary shall provide a copy of this ordinance to every Town official. Within 30 days after entering upon the duties of his or her position, every new Town official must be furnished with a copy of this ordinance. Each Town official shall acknowledge, in writing, the receipt of a copy of this ordinance. Copies of this ordinance must be made readily available to the public.

(b) The failure of any person to receive a copy of this ordinance will have no effect on that person's duty to comply with this chapter or on the enforcement of the provisions of this chapter.

SECTION 37. EFFECTIVE DATE.

This ordinance shall be effective upon its passage and approval after its second reading.

FIRST READING - PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Laguna Vista, Texas at the special meeting on the 14th day of August 2012.

SECOND READING – PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Laguna Vista, Texas at the regular meeting on the 14th day of August 2012.

Susie Houston, Mayor

Attest:

Alma Deckard, City Secretary

Approved as to form:

Ricardo Morado, Town Attorney