

ORDINANCE NO. 2005-R

AN ORDINANCE ESTABLISHING AN ETHICS ORDINANCE; PROVIDING DEFINITIONS; PROVIDING A POLICY AND PURPOSE; DEFINING UNETHICAL ACTIVITY; REQUIRING DISCLOSURE OF INTEREST; PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; ADOPTING THE STATE STATUTE; PROVIDING FOR A CUMULATIVE LEGAL EFFECT; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Cockrell Hill finds it to be in the best interest of the public health and general welfare to require public officials, officers and employees of the City to be independent, impartial and responsible only to the people of the City; and

WHEREAS, the City Council has determined that no City officer, official, or employee should have any interest, direct or indirect, nor engage in any business transaction or professional activity nor incur any obligation of any nature which is in conflict with the proper discharge of his or her duties in the public interest; and

WHEREAS, the City Council has determined that it is in the best interest and welfare of the City of Cockrell Hill to preserve the integrity and nonpartisan nature of City government by adopting an ethics ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COCKRELL HILL:

Section 1. Incorporation of Recitals. The above recitals are hereby found to be true and correct and incorporated herein for all purposes.

Section 2. This Ordinance shall hereinafter be referenced as the Cockrell Hill Ethics Ordinance and shall read as follows:

“CODE OF ETHICS

DEFINITIONS

For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them.

Compensation - Any economic benefit received in return for services, property or investment.

Discretionary Authority - The power to exercise any judgment in a decision or action.

Economic Benefit - Economic benefit refers to any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Employee - Any person employed by the City, including those individuals employed on a part-time or seasonal basis, but such term shall not be extended to apply to any independent contractor.

Entity - A sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Gift - Gift means a favor, hospitality or economic benefit, other than compensation.

Officer or Official - Any member of the City Council, including the Mayor, and any appointive member of a board, commission, authority or committee set up by ordinance, the charter, state law or otherwise on a temporary or permanent basis, but not members of a board, commission, authority or committee which functions only in an advisory or study capacity and which has no discretionary, governmental, quasi-judicial or administrative authority.

Relative - A relative means any person related to an officer, official or employee within the prohibited degree by consanguinity or affinity, as set forth under Texas Government Code §§ 573.023 – 573.025, and shall include a spouse, father, mother, son, daughter, brother or sister.

Remote Interest - An interest of a person or entity, including an official, who or which would be affected in the same way as the general public. The interest of a council member in the property tax rate, general City fees, City utility charges or a comprehensive zoning ordinance or other similar decision is a remote interest to the extent that the council member is affected in common with the general public.

Substantial Interest - An interest in another person or an entity if: (a) the interest is ownership of ten percent (10%) or more of the voting stock, shares or equity of the entity or ownership of five thousand dollars (\$5,000.00) or more of the equity or market value of the entity; (b) funds received by the person from the other person or entity either during the previous twelve months or the previous calendar year equaled or exceeded five thousand dollars (\$5,000.00) in salary, bonuses, commissions or professional fees or twenty thousand dollars (\$20,000.00) in payment for goods, products or non-professional services, or ten percent (10%) of the person's gross income during that period, whichever is less; (c) the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity, other than a corporate entity owned or created by the City Council; or (d) the person is a creditor, debtor or guarantor of the other person or entity in an amount of five thousand dollars (\$5,000.00) or more.

Substantial Interest in Real Property - An interest in real property which is an equitable or legal ownership with a market value of five thousand dollars (\$5,000.00) or more.

Substantial Interest in Partnerships, Professional Corporations and Other Entities - If a City officer, official or employee is a member of a partnership or professional corporation, or conducts business through another entity, a substantial interest of the partnership, professional corporation or entity shall be deemed to be a substantial interest of the City officer, official or employee if: (a) the partnership or professional corporation has fewer than twenty (20) partners or shareholders; (b) regardless of the number of partners or shareholders, the officer, official or employee has an equity interest, share of draw equal to or greater than five percent (5%) of the capital or revenues of the partnership, professional corporation or other entity; or (c) with regard to the partnership, professional corporation or other entity's substantial interest in a particular client, the officer, official or employee has personally acted within the preceding twenty-four (24) months in a professional or fiduciary capacity for that client.

POLICY AND PURPOSE

(a) It is hereby declared to be the policy of the City of Cockrell Hill that the proper operation of democratic government requires that:

(1) City officers, officials and employees be independent, impartial and responsible only to the people of the City;

(2) Governmental decisions and policies be made using the proper procedures of the governmental structure;

(3) No City officer, official or employee have any interest, direct or indirect, nor engage in any business transaction or professional activity nor incur any obligation of any nature which 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;

(5) The City Council be maintained as a nonpartisan body; and

(6) City officers, officials and employees fully comply with any federal and state statutes, laws and regulations, as amended, concerning conflicts of interest.

(7) City Council members comply with Resolution No. 1998-B, as amended, establishing the Code of Conduct for Council meetings.

(b) Principles of conduct.

(1) The city council further believes that an elected or appointed official of the city assumes a public trust and should recognize the importance of high ethical standards within the organization they lead or support. Essential values and ethical behaviors that an elected or appointed official should exemplify include the following:

(A) Commitment beyond self.

- (B) Obedience and commitment beyond the law.
- (C) Commitment to the public good.
- (D) Respect for the value and dignity of all individuals.
- (E) Accountability to the public.
- (F) Truthfulness.
- (G) Fairness.
- (H) Responsible application of resources.

(2) In keeping with the values set forth in Subsection (b) (1), and to assist in the fulfillment of responsibilities to the individuals and communities served, each elected or appointed official should subscribe to the following principles.

- (A) To conduct himself or herself and to operate with integrity and in a manner that merits the trust and support of the public.
- (B) To uphold all applicable laws and regulations, going beyond the letter of the law to protect and/or enhance the city's ability to accomplish its mission.
- (C) To treat others with respect, doing for and to others what the official would have done for and to him or her in similar circumstances.
- (D) To be a responsible steward of the taxpayer resources.
- (E) To take no actions that could benefit the official personally at the unwarranted expense of the city, avoiding even the appearance of a conflict of interest, and to exercise prudence and good judgment at all times.
- (F) To carefully consider the public perception of personal and professional actions and the effect such actions could have, positively or negatively, on the city's reputation both in the community and elsewhere.
- (G) To strive for personal and professional growth to improve effectiveness as an elected or appointed official.

(c) In furtherance of this policy, the City Council has hereby determined that it is advisable to enact this Code of Ethics for all City officers, officials and employees, whether elected or appointed, paid or unpaid, advisory or administrative, to serve not only as a guide for official conduct of the

City's public servants, but also as a basis for discipline for those who refuse to abide by its terms and provisions.

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

UNETHICAL ACTIVITY

No officer, official or employee of the City shall:

(a) Accept any gift or economic benefit of more than twenty dollars (\$20.00) in value from any person or entity which gift or economic benefit might reasonably tend to influence such officer, official or employee in the discharge of official duties, or grant in the discharge of official duties any improper gift, economic benefit, service or thing of value; however, the provisions of this subsection shall not apply to any political contribution made pursuant to the Texas Election Code.

(b) Use his or her official position to solicit or secure special privileges or exemptions for himself/herself or others.

(c) Directly or indirectly disclose or use any information gained solely by reason of his or her official position or employment for his or her own personal gain or benefit or for the private interest of others.

(d) Transact any business on behalf of the City in his or her official capacity with any business entity of which he or she is an officer, agent or member or in which he or she owns a substantial interest. In the event that such a circumstance should arise, then in the case of an officer or official, he or she shall make known such interest and abstain from voting on the matter, or in the case of an employee, he or she shall turn the matter over to his or her supervisor for reassignment, state the reasons for doing so and have nothing further to do with the matter involved.

(e) Engage in any outside activities which will conflict with his or her assigned duties in the employment of the City, or which his or her employment with the City will give him or her an advantage over other engaged in a similar business, vocation or activity.

(f) Accept other employment or engage in outside activities incompatible with the full and proper discharge of his or her duties and responsibilities with the City, or which might impair his or her independent judgment in the performance of his or her public duties.

(g) Receive any fee or compensation for his or her services as an officer, official or employee of the City from any source other than the City, except as may otherwise be provided by law. This shall not prohibit an officer, official or employee from performing the same or other services that he or she performs for the City for a private organization if there is no conflict with his or her City duties and responsibilities.

- (h) Represent, directly or indirectly, or appear on behalf of the private interests of others before any agency, board, commission, authority or committee of the City, or accept any retainer or compensation that is contingent upon a specific action being taken by the City or any of its agencies, boards, commissions, authorities or committees.
- (i) Use the prestige of his or her position on behalf of any political party or engage in any political activity which does not maintain the nonpartisan policy of the City; provided, however, that all employees are encouraged to register and vote as they may choose in all local, state and national elections.
- (j) Knowingly perform or refuse to perform any act in order to deliberately hinder the execution and implementation of any City ordinances, rules or regulations or the achievement of official City programs;
- (k) Have a substantial interest, direct or indirect, in any contract with the City or a substantial interest, direct or indirect, in the sale of the City of any land, rights or interest in any land, materials, supplies or service;
- (l) Participate in a vote or decision on any matter in which the officer, official or employee has a direct or indirect substantial interest or in which a relative of the officer, official or employee has a direct or indirect substantial interest;
- (m) Grant any special consideration, treatment or advantage to any individual, business organization or group beyond that which is normally available to every other individual, business organization or group. This shall not prevent the granting of fringe benefits to City employees as an element of their employment or as an added incentive to the securing or retention of employees; or
- (n) Knowingly disclose information deemed confidential by law, to include the Texas Open Meetings Act and the Texas Public Information Act.
- (o) Participate in any vote or decision relative to a change in the zoning classification or land use designation of property if the officer, official, employee or a relative of the officer, official or employee has any interest in any property within two hundred feet (200') of the property on which the change in zoning classification is proposed. Further, any officer, official or employee who has any such interest in property shall be legally disqualified from participating in any vote or decision relative to the change in zoning classification or land use designation.
- (p) Make contact with city employees other than the City Secretary, unless specifically provided by Ordinance, and all City Council members shall adhere to the limitations set forth in Resolution 2005-__ regarding contact with city employees.
- (q) Utilize city supplies, equipment, vehicles or facilities for purposes other than the conduct of official city business, unless otherwise specifically authorized by the City Council or city policy.

DISCLOSURE OF INTEREST

Any officer or employee of the City who has a prohibited or substantial interest in any matter pending before the City, shall disclose such interest to other members of the City Council, committee, commission or board of which he or she is a member or, in the case of an employee, to a supervisor, and shall refrain from further discussion of the matter; shall not be physically present when the subject is discussed in open or executive session; and shall not vote on or participate further in any such matter.

PENALTY

- (a) Any City officer, official or employee knowingly violating any provision of this Code of Ethics shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in 10.99 of Chapter 1 of the City of Cockrell Hill Code of Ordinances.
- (b) The penalty prescribed herein shall not limit the power of the City Council to discipline its members pursuant to applicable provisions of this Code, state statutes or other laws defining and prohibiting conflicts of interest.
- (c) The penalty prescribed herein shall not limit the power of the Mayor to discipline those employees under the Mayor's supervision pursuant to applicable provisions of the City Charter, this Code, the adopted personnel policies of the City, state statutes or other laws defining and prohibiting conflicts of interest.

ADOPTION OF STATE STATUTE

Chapter 171 of the Texas Local Government Code, as amended, being the statute which regulates conflicts of interest of officers of municipalities in the State of Texas, it is hereby adopted and made a part of this Code of Ethics for all purposes, with the proviso that in case of a conflict between the provisions of this Code of Ethics and Chapter 171 of the Texas Local Government Code, the more restrictive provision shall govern.

CUMULATIVE LEGAL EFFECT

In its legal effect, this section is cumulative of all provisions of this Code or federal and state statutes, laws or regulations defining and prohibiting conflicts of interest.”

Section 3. Penalty Provisions.

Any person, firm or corporation violating this Ordinance, or any portion thereof, shall, upon conviction, be guilty of a misdemeanor and shall be fined not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00) for each violation; each day that such violation continues shall be considered a separate offense and punishable accordingly.

Section 4. Repeal of Conflicting Ordinances.

This Ordinance, upon its enactment and effective date, shall repeal all conflicting ordinances relative to conflicts of interest.

Section 5. Severability.

If any word, section, article, phrase, paragraph, sentence, clause or portion of this ordinance or application thereto to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect for any reason, the validity of the remaining portion of this ordinance; and the City Council hereby declares it would have passed such portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. Effective Date.

This ordinance shall become effective, and be in full force and effect, from and after the date of its passage, and it is accordingly so ordained.

PASSED AND APPROVED this _____ day of _____, 2005.

C. P. SLAYTON, Mayor
City of Cockrell Hill, Texas

ATTEST:

JOHN HUBBARD, City Secretary
City of Cockrell Hill, Texas

APPROVED AS TO FORM:

ROBERT F. BROWN, City Attorney
City of Cockrell Hill