

**ORDINANCE NO. 2012 - 1**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS  
AMENDING CHAPTER 1, ADDING NEW ARTICLE 1.15, ESTABLISHING A  
CODE OF ETHICS, PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING  
AN EFFECTIVE DATE.**

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**WHEREAS**, the City Council of the City of Bastrop acknowledges that the local government is a representative democracy and those who are elected or appointed to serve others as representatives accept a public trust that requires them to fulfill their public responsibilities faithfully and diligently, while adhering to the highest standard of ethical conduct, and

**WHEREAS**, in recognition of the above stated premise the City Council, appointed a Task Force to evaluate and determine whether a formal Code of Ethics would be meritorious, and if so, to make a recommendation to the Council as to the provisions of such a Code, and

**WHEREAS**, the Honorable Chris Duggan, Gilbert Solis, The Reverend R.D. Smith, The Reverend Lisa Hines, Linda Seale, LPC and Corporal Wuthipong Tantaksinanukij, were asked by the City Council and, accordingly, agreed to serve as members of the City's Ethics Task Force (with member Solis subsequently resigning for personal reasons, effective May 19, 2011), and

**WHEREAS**, as charged by the City Council, the Ethics Task Force reviewed and evaluated the potential need for the establishment of a Code of Ethics, for the City of Bastrop, and

**WHEREAS**, on or about May 19, 2011, the Ethics Task Force, through City Manager Michael H. Talbot, reported to the Council the following:

*“The Task Force believes that because the City’s governing body is elected by the citizens of Bastrop to serve and represent the public, they have accepted a public trust and responsibility to:*

- promote the highest standard of ethical conduct in all the City’s affairs;*
- promote transparency in all governmental actions;*
- act to enhance the public confidence and trust in the conduct of public servants and representatives;*
- establish a standard of conduct to adequately govern the activities of the City’s Officials and representatives;*
- adopt rules and regulations that ensure that public servants must adhere to a standard of conduct that emphasizes that the governmental officials and representatives should benefit the community as a whole and should not specially benefit the individual interests of public decision makers, their business cohorts, friends or relatives;*
- adopt rules and regulations that provide that governmental officials and representatives must at all times act to avoid even the appearance of impropriety in all their dealings; and*
- adopt rules and regulations that provide for an equitable process for complaint and evaluation, as well as to provide for disciplinary measures for violations of the ethical standards approved by the Council.*

*Accordingly, the Task Force applauds the Council’s willingness and decision to appoint the Ethics Task Force and charge the Task Force with the responsibility of developing a recommendation to the Council concerning an Ethics Standard and Code for the City. In response to its charge by the Council, the Task Force has begun its work to study, evaluate and develop its proposal to the Council.”*

**WHEREAS**, on November 8, 2011 at the completion of its work, the Ethics Task Force presented the City Council with its recommended Ethics Ordinance, as set forth below, and the Council held a joint workshop with the members of the Ethics Task Force, which was open to the public, for discussion of the proposed Ethics Ordinance between the members of the Task Force, the City Council and City staff, and

**WHEREAS**, upon study and consideration of the proposed Ethics Ordinance provided to the Council by the Ethics Task Force, the City Council agrees that the adoption of these standards and regulations would benefit the City by enhancing the Communities trust and confidence in the public officials and appointees.

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

**Part 1:** The Following Article 1.15., shall be added to Chapter 1, of the City's Code of Ordinances:

**Article 1.15.001. *et seq.* BASTROP CODE OF ETHICS**

**(a/k/a the Ethics Ordinance)**

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**Sec. 1.15.100 Definitions:**

1. *“Board, Body, Commission, and Task Force”* includes any group of individuals assigned, appointed, or serving the City at the Council's request or direction, or any group otherwise convened by the City to assist with City business.
2. *“Business Entity”* means a sole proprietorship, partnership, limited partnership, firm, corporation, limited liability company, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.
3. *“City Official”* means: (a) every member of the City Council including the Mayor, the City Manager, the Executive Director of the Economic Development Corporation, the City Attorney, the City Secretary, all City Department Directors, the Police Chief, the Fire Chief, the Fire Marshall, and includes persons acting in the capacity of the aforementioned City Officials, whether appointed, or Employed; (b) Members of all Boards, Commissions, Task Forces, and other Bodies created by the City Council pursuant to federal or State law or City Charter or ordinance, including entities that may be only advisory in nature whose members are appointed by City Council action or whose members are designated in the by-laws or organizational papers of the entity to serve on behalf of the City; (c) all Board Members of any entity who are appointed by the City Council to such Board membership, and (d) any other individual identified by the City Council, local or State law to be a City Official, if any.
4. *“Clear and Convincing Evidence”* means the measure or degree of proof that produces in the mind of the Commissioners a firm belief as to the truth of the facts or allegations sought to be established.
5. *“Confidential Government Information”* includes all information held by the City that is not available to the public under the Texas Public Information Act and any information obtained or acquired from participation in a meeting that was closed to the public pursuant to the Texas Open

Meetings Act, unless disclosure is otherwise required or permitted under State law, a ruling by the Texas Attorney General, or an order of a court with jurisdiction over the matter.

6. "*City Council*" means all members of the City's governing body, including the Mayor.
7. "*Degree of Affinity*" means relationship by affinity (marriage) as defined in Sections 573.024 and 573.025 of the Texas Government Code, or as amended. (See Attachment A)
8. "*Degree of Consanguinity*" means relationship by consanguinity (blood) as defined in Sections 573.022 and 573.023 of the Texas Government Code, or as amended. (See Attachment A)
9. "*De Minimis*" means a value or amount that is so small as to be entirely inconsequential.
10. "*Economic Interest*" 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. Unpaid service by a City Official or Employee 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 or Employee, an economic interest in the property of the organization. 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. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this Code if the Employee or City Official owns less than 10% of the voting stock or shares of the entity and the fair market value of the stock is less than \$15,000.
11. "*Employee*" is any person employed by the City whether under civil service regulation or not, including those individuals who work on a part-time basis, but such term shall not be extended to apply to any independent contractor or contractual consultant.

12. *"Knowingly"* means 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 he/she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he/she is aware that his or her conduct is reasonably certain to cause the result.
13. *"Intentionally"* means a person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.
14. *"Official Action"* includes:
  - (a) any affirmative act (including the making of a recommendation) within the scope of, or in violation of an City Official's or Employee's duties, and
  - (b) any failure to act if the City Official or Employee is under a duty to act and knows that inaction is likely to substantially affect an economic interest of the City Official or Employee.
15. *"Official Information"* includes information gathered or provided pursuant to the power or authority of City government.
16. *"Recklessly"* means a person acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the result of his or her conduct when he/she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
17. *"Representation"* encompasses all forms of communication and personal appearances in which a person, not acting in performance of official duties, formally serves as an advocate for private interests, regardless of whether the representation is compensated. Lobbying may be a form of



representation. Representation does not include appearance as a fact witness or expert witness in litigation or other official proceedings.

**Sec. 1.15.200. Current City Officials and Employees.**

**Sec. 1.15.201. Improper Economic Benefit.**

1. **General Rule.** A City Official or Employee shall not take any Official Action that he or she knows is likely to affect the Economic Interests of:
  - (a) the City Official or Employee;
  - (b) his or her parent, child, spouse, or other family member within the third degree of consanguinity or second degree of affinity;
  - (c) his or her outside client;
  - (d) a member of his or her household;
  - (e) the outside employer of the City Official or Employee, or of his or her parent, child, or spouse;
  - (f) a Business Entity in which the City Official or Employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) holds an Economic Interest;
  - (g) a Business Entity which the City Official or Employee knows is an affiliated business or partner of a Business Entity in which any of the persons listed in Subsection (a)(1) or (a)(2) holds an Economic Interest;
  - (h) a Business Entity or nonprofit entity for which the City Official or Employee serves as an officer or director or in any other policy making position; or
  - (i) a person or Business Entity:
    - (1) from whom, within the past twelve months, the City Official or Employee, or his or her spouse, child or parent, directly or indirectly has (i) solicited, (ii) received and not rejected, or (iii) accepted an offer of employment, whether compensated or not and regardless of the level of compensation ; or

(2) with whom the City Official or Employee, or his or her spouse, directly or indirectly is engaged, or within the past twelve months engaged, in negotiations pertaining to business opportunities.

2. **Recusal and Disclosure.**

- (a) A City Official or Employee whose conduct would otherwise violate Subsection 1., above, shall recuse himself or herself from any participation, discussion, vote, or action related to the matter. From the time that the conflict is, or should have been recognized, the City Official or Employee shall:
- (1) immediately refrain from further participation in the matter, including any and all discussions with any persons likely to consider or influence the matter; and
  - (2) promptly file with the City Secretary the appropriate form for disclosing the nature and extent of the conflict and the conduct prohibited; and
  - (3) if a supervised Employee, the Employee shall promptly bring the conflict to the attention of his or her Supervisor, who will then, if necessary, reassign responsibility for handling the matter to another person and promptly advise the City Manager of the conflict, in writing.
- (b) A Member of a Board, Body, Commission, or Task Force shall promptly disclose the conflict to other Members of the Board, Body, Commission or Task Force and shall not be present or otherwise participate in any manner during the Board's, Body's, Commission's, and/or Task Force's discussion of, or voting on, the matter.

3. **For Purposes of This Rule.**

- (a) An action is likely to affect an Economic Interest if it is likely to have an affect on that interest that is distinguishable from its affect on members of the public, in general, and
- (b) The term "client" includes business relationships of a highly personalized nature, but not ordinary business customer relationships.

**Sec. 1.15.202. Accountability of City Officials.**

All City Officials who serve on the City Council, a Board, Body, Commission, or Task Force shall either cast a vote on motions presented and subject to a vote, or:

- 1. shall file and disclose the nature and extent of a conflict presented which prohibits the City Official from voting, as set forth in Subsection (b) above, or
- 2. shall state for the record, with specificity, the reason that the City Official declines to vote on the matter.

**Sec. 1.15.203. Unfair Advancement of Private Interests.**

- 1. **General Rule.** A City Official or Employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt 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 other persons. A City Official or Employee violates this rule if he/she represents to a person that he or she may and/or will attempt to provide any advantage to that person, based on the City Official's or Employee's position on the governing body or with the entity.
- 2. **Special Rules.** The following special rules apply in addition to the general rule noted above:
  - (a) **Acquisition of Interest in Impending Matters.** A City Official or Employee shall not acquire an interest in any contract, transaction, business opportunity, decision, or other matter, if the City Official or

Employee knows, or has reason to know, that the City Official's or Employee's interest will be directly or indirectly affected by impending official action by the City.

(b) **Reciprocal Favors.** A City Official or Employee may not enter into an agreement or understanding with any other person that Official Action by the City Official or Employee will be rewarded, affected or reciprocated by the other person, directly or indirectly, in any way, or at any time.

(c) **Appointment / Employment of Relatives.** A City Official or Employee shall not appoint or employ, or vote to appoint or employ, any relative of the City Official or employee within the second degree affinity and third degree of consanguinity, to any office or in any position within the City, including a position of employment with the City.

3. **Recusal and Disclosure.** A City Official or Employee whose conduct would otherwise violate Subsection 2.(c) of this Rule shall adhere to the recusal and disclosure provisions provided in Rule 1.15.201 (see 2. - Recusal and Disclosure).

**Sec. 1.15.204. Gifts.**

City Officials and Employees shall adhere to State law regarding giving and/or receiving/accepting gifts, as set forth in the Texas Penal Code, Chapter 36, *et sec.*, and as amended from time to time.

**Sec. 1.15.205. Representation of Private Interests.**

1. **Representation by a Then Serving Member of a Board, Body, Commission or Task Force.** A City Official or Employee who is a Member of a Board, Body, Commission, or Task Force shall not represent any person, group, or entity:

- (a) before that Board, Body, Commission or Task Force,
- (b) before City staff having responsibility for making recommendations to, or taking any action on behalf of, that Board, Body, Commission, or Task Force; or

- (c) before a Board, Body, Commission, or Task Force which has appellate jurisdiction over the Board, Body, Commission, or Task Force of which the City Official or Employee is a member.

2. **Representation Before the City.**

- (a) **General Rule.** A City Official or Employee shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the City Council, its Boards, Bodies, Commission, or Task Force.
- (b) **Exception for Board Members.** The rule stated in Subsection 2.(a) does not apply to a person who is classified as a City Official only because he or she is an appointed Member of a Board, Body, Commission, or Task Force.
- (c) **Prestige of Office and Improper Influence.** In connection with the representation of private interests before the City Board, Body, Commission or Task Force, a City Official or Employee shall not:
  - (1) assert the prestige of the City Official's or Employee's City position for the purpose of advancing private interests, or
  - (2) state or imply that he or she is able to influence any City action on any basis, other than on the merits of the matter.

3. **Representation in Litigation Adverse to the City.**

- (a) **City Officials and Employees, Other than Board, Body, or Commission Members.** A City Official or Employee, excluding a person who is classified as a City Official only because he or she is an appointed member of a City Board, Body, Commission or Task Force, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, with the exception of defense of suits involving misdemeanors, if the interests of that person, group, or entity are adverse to the interests of the City.

**Sec. 1.15.206. Conflicting Outside Employment.**

A City Official or Employee shall not solicit, accept, or engage in concurrent outside employment or work activity which could reasonably be expected to impair independence of judgment in, or faithful performance of, their official duties. A City Official or Employee shall not engage in outside employment, including self-employment, where such employment would constitute a conflict of interest or would adversely affect the City Official's or Employee's performance of his or her work responsibilities with the City. For employees, all outside employment shall comply with City of Bastrop's Employment Personnel Policies or procedures.

**Sec. 1.15.207. Confidential Information.**

1. **Improper Access.** A City Official or Employee shall not use his or her position to obtain official information about any person or entity for any purpose other than the performance of official duties.
2. **Improper Disclosure or Use.** A City Official or Employee shall not Intentionally, Knowingly, or Recklessly disclose any Confidential Government Information gained by reason of the City Official's or Employee's position concerning the property, operations, policies or affairs of the City. This rule does not prohibit: (a) any disclosure of information that is no longer confidential by law, or (b) the confidential reporting of illegal or unethical conduct to authorities designated by law.

**Sec. 1.15.208. Public Property and Resources.**

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

1. pursuant to duly adopted City policies, or
2. to the extent and according to the terms that those resources are lawfully available to the public.

**Sec. 1.15.209. Political Activity.**

1. **Influencing Subordinates.** A City Official or Employee shall not, directly or indirectly, induce or attempt to induce any subordinate of the City Official

or Employee: (a) to 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 (b) to refrain from engaging in any lawful political activity. A general statement merely encouraging another person to exercise their right to vote does not violate this rule.

2. **Paid Campaigning.** A City Official or Employee shall not accept anything of value, directly or indirectly, for political purposes or activities relating to an item pending on a ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a City Board, Body, Commission or Task Force that contributed to the development of the ballot item. For purposes of this rule, "anything of value" does not include a meal or other item of nominal value the City Official or Employee received in return for providing information about an item on the ballot.
3. **City Owned Vehicles.** A City Official or Employee shall not display or fail to remove political campaign materials on any vehicle owned by the City under the City Official and/or Employee's control.

**Sec. 1.15.210. Supervisory Duties.**

A City Official or Employee who has direct supervisory authority over another person providing services relating to the business of the City shall make reasonable efforts to ensure that the conduct of the supervised person is compatible with the obligations imposed on City Officials and Employees by this Code of Ethics. Reasonable efforts includes notifying and making information regarding this Code of Ethics readily available.

**Sec. 1.15.211. Training.**

1. **Employees.** The City Manager will make reasonable efforts to ensure that City Employees receive training related to this Code of Ethics, at a minimum of every 24 months.
2. **City Officials.** The City Attorney will be available and prepared to provide annual training for all City Officials on this Code of Ethics, at the request

and/or direction of the City. The City Secretary shall coordinate an annual date for training all City Officials.

**Sec. 1.15.212. Actions of Others.**

1. **Violations by Other Persons.** A City Official or Employee shall not Knowingly, Intentionally or Recklessly assist, induce, or attempt to assist or induce, any person to violate any provision in this Code of Ethics.
2. **Using Others to Engage in Forbidden Conduct.** A City Official or Employee shall not Knowingly, Intentionally or Recklessly violate, or attempt to violate, the provisions of this Code of Ethics through the acts of another.

**Sec. 1.15.300. Former City Official(s) and Employee(s).**

**Sec. 1.15.301. Subsequent Representation of Private Interests.**

1. **Representation by a Former Member of the Council, Board, Body, Commission, or Task Force.** For a minimum period of twelve (12) months after the termination of his or her official or employment duties, a former City Official or Employee shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, upon any issue related to his or her former duties:
  - (a) before the City Council, Board, Body, Commission or Task Force, or;
  - (b) before a City staff member having responsibility for making recommendations to, or taking any action on behalf of, that Board, Body, Commission, or Task Force; or
  - (c) before the Council, Board, Body, Commission or Task Force, which has appellate jurisdiction over the Board, Body, Commission or Task Force, of which the City Official or Employee was a member.

This subsection does not apply to a person who was classified as a City Official only because he or she was an appointed member of a Board, Body, Commission or Task Force.



In connection with the representation of private interests before the City Council, Board, Body, Commission or Task Force, a former City Official or Employee shall not state or imply that he or she is able to influence any City action on any basis other than on the merits.

2. **Representation in Litigation Adverse to the City.** A former City Official or Employee shall not, absent consent from the City, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to the interests of the City and the matter is one in which the former City Official or Employee personally and substantially participated prior to termination of his or her official duties or employment. The City Council shall be the final decision making authority concerning whether the participation of a City Official or Employee in the matter was sufficiently "substantial" to trigger this prohibition.

**Sec. 1.15.302. Employment Relating to a City Contract.**

1. **Performance of Compensated Work.**

A former City Official or Employee shall not, within two (2) years of the termination of their official duties, perform work on a compensated basis for any entity other than the City, relating to an existing contract with the City, if he or she personally and substantially participated in the negotiation or awarding of the compensated work. The City Council shall be the final decision making authority concerning whether the participation of a City Official or Employee in a matter was sufficiently "substantial" to trigger this prohibition. The City may waive this provision, after a public hearing on a request by a former City Official or Employee to do so, if it is in the public's best interest to do so.

**2. Personal Interest in City Contracts.**

A City Official or Employee shall not, either during their service with the City or within twelve (12) months of the termination of the official duties, have an economic interest, direct or indirect, in any contract with the City, nor shall they be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service. Any willful violation of this section shall constitute malfeasance in office, and any City Official or Employee violating this section shall forfeit his/her office or position. Any violation of this section, with the knowledge expressed or implied of a person or corporation contracting with the City, shall render the contract involved voidable by the Council. [See also City Charter, Section 13.01.]

**Sec. 1.15.303. Continuing Confidentiality.**

A former City Official or Employee shall not use or disclose Confidential Governmental Information acquired during their service as a City Official or Employee. This rule does not prohibit:

1. any disclosure or use that is authorized or required by law, or
2. the confidential reporting of illegal or unethical conduct to authorities designated by law.

**Sec. 1.15.400. General Anti-Discrimination Policy.**

**Sec 1.15.401. General Rule.**

City affairs must be conducted without bias or prejudice. A City Official or Employee shall not, in the performance of official duties, manifest by words or conduct, bias or prejudice toward any person, group, or entity, including bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, and shall not permit others subject to his or her direction and control to do so.

**Sec. 1.15.402. Exceptions.**

A City Official or Employee is not liable under this provision: for

1. conduct undertaken in good faith to implement an existing City Policy, or to carry out the directions of a superior if the violation is unknown to the City Official or Employee acting upon a supervisor's direction; or
2. conduct involving the legitimate advocacy of a position relating to race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status in litigation or similar proceedings, or incidental to the formation of City policy.

**Sec. 1.15.403. Definitions. [For purposes of this section]**

1. "**Words or conduct**" manifesting "bias or prejudice" includes, but is not limited to, physical abuse, verbal abuse, threats, intimidation, harassment, sexual harassment, coercion, assault, stalking, hate speech, and other conduct that threatens or endangers the health or safety of any person.
2. "**Good faith**" means that the City Official or Employee has a reasonable basis for believing, and does in fact believe, that the conduct in question is lawful and not discriminatory.
3. "**Legitimate advocacy**" means that the position espoused is not frivolous.

**Sec. 1.15.500. Enforcement.**

**Sec. 1.15.501 Creation of Ethics Commission.**

An Ethics Commission shall be created and consist of three (3) members, all of whom must reside within jurisdiction of the City, which for purposes of this Ordinance expressly includes the City's extraterritorial jurisdiction. Within sixty (60) days of its adoption of this Ordinance, each member of the City Council will submit to the City Attorney names of recommended appointees. The City attorney will provide the recommended appointees to the Mayor, who will then appoint the three (3) members of the Ethics Commission, upon concurrence of the members of the City Council. Members of the Ethics Commission may not hold or be a candidate for any City elected or appointed office any time during their service on the Ethics Commission.

**Sec. 1.15.502. Terms/Limits.**

Appointees to the Ethics Commission shall serve for terms of three (3) years. However, in order to ensure continuity by implementing staggered terms of service, the first three (3) appointees shall draw lots so that one member serves a one (1) year term, the second serves a two (2) year term, and the third serves a three (3) year term. No person may serve more than two (2) consecutive three (3) year terms. A person may be reappointed after having been off the Ethics Commission for twelve (12) consecutive months.

**Sec. 1.15.503. Ethics Commission Vacancies.**

All vacancies on the Ethics Commission shall be filled by the City Council within 60 days of the vacancy, for the remainder of the unexpired term, by use of the general process noted above. Ethics Commission members shall hold office until their successors have been appointed and shall continue to hold office after their successors have been appointed for the limited purpose of disposing of all complaints filed and unresolved during that Ethics Commission member's term.

**Sec. 1.15.504. Removal of Ethics Commission Members.**

In addition to the City Council's usual powers of removal, members of the Ethics Commission may be removed by a majority vote of the City Council for cause only.

**Sec. 1.15.505. Conflicts on Interest.**

When a complaint is referred to or comes under the purview of the Ethics Commission, it shall be the responsibility of the City Manager and the City Attorney to attempt to identify any potential conflicts of interest that may be present between any of the serving Ethics Commission members and the persons or entities involved in the Ethics complaint. The City Manager shall promptly report any identified, potential conflicts, to the City Council and the City Council shall, within thirty (30) days, take formal action to appoint a special replacement appointee to the Ethics Commission to hear and decide the matter that is subject of the conflict. The special replacement appointee shall retire from service once the matter at hand has been disposed of, and the regularly appointed Ethics Commission member shall resume service for the remainder of the Ethics Commission member's term.

**Sec. 1.15.506. Chair / Quorum.**

The Ethics Commission shall elect a Chairperson, who shall preside over the hearings before the Ethics Commission. The Chairperson shall serve a one (1) year term. The City Secretary shall serve as the administrative record keeper for the Ethics Commission. All three (3) members of the Ethics Commission shall constitute a quorum, and all Ethics Commission members shall be present for the Ethics Commission to conduct business.

**Sec. 1.15.507. Meetings.**

The Ethics Commission shall meet when necessary to carry out its responsibilities, but in any event the Ethics Commission shall hold an annual meeting during the month of February to elect its Chairperson. Any Ethics Commission member may call a meeting of the Ethics Commission, provided that a reasonable notice is given to all other Ethics Commission members. All Ethics Commission meetings shall be noticed, posted and conducted in compliance with the Texas Open Meetings Act.

**Sec. 1.15.508. Jurisdiction of the Commission.**

The Ethics Commission shall have jurisdiction over complaints involving the City Council, City Officials and other persons appointed to serve the City by the City Council. The City Manager shall have jurisdiction and authority to investigate and handle ethics complaints involving City Employees, pursuant to the City's approved personnel Policies. Employees shall have the right to appeal a decision of the City Manager to the Ethics Commission.

**Sec. 1.15.509. Duties of the Commission.**

1. **The Ethics Commission shall:**

- (a) Make recommendations to the City Council concerning matters relating to the standard of conduct for City Officials and Employees.
- (b) Preserve and maintain the confidentiality of any documentation filed with the Commission for a period of three (3) years after a finding has been rendered, at which time such documents shall be destroyed, unless disclosure is otherwise required by State law, or order of the Texas Attorney General or a court of jurisdiction.

(c) Review and investigate complaints related to violations of this Ordinance when presented and issue a written finding of the Ethics Commission's determination, when appropriate.

2. **The Ethics Commission may:**

(a) Prepare reports and make recommendations to the City Council regarding ethical issues affecting the City.

(b) Seek any necessary assistance from the City Council and City Manager regarding financial support needed to carry out the Ethics Commission's duties.

(c) Adopt rules of procedures for carrying out this Ordinance.

**Sec. 1.15.510. Role of the City Attorney.**

1. The City Attorney shall serve as legal counsel and staff liaison to the Ethics Commission. However, when complaints related to violations of this Ordinance are filed relating to the Mayor, City Council members, City Manager, City Attorney, City Prosecutor or Municipal Court Judge, independent legal counsel may be utilized to advise the Ethics Commission and to take part in the hearings, in the place of the City Attorney.

2. The City Attorney shall serve as ethics advisor, only, to City Employees and City Officials, and shall not represent Employees or City Officials before the Ethics Commission. As ethics advisor, the City Attorney is available to respond confidentially to inquiries from Employees, City Officials, and others appointed to serve the City by the City Council, on matters related to the content of the Ethics Ordinance. However, as legal counsel to the Ethics Commission, the City Attorney may not represent any person or party in any proceeding before the Ethics Commission.

3. The City Attorney shall receive all sworn complaints of violations of the Ethics Ordinance and, upon receipt, shall conduct a preliminary analysis and review of the complaint. Upon completion of the preliminary analysis and review, the City Attorney shall forward a written report detailing the initial legal review and recommendation to the Ethics Commission for its evaluation and action. If a sworn complainant alleges a violation by the

City Attorney, the complaint must be filed with the Chairperson of the Ethics Commission, with a copy to the Mayor, the City Manager, and the City Attorney.

**Sec. 1.15.511. Complaints.**

1. All complaints alleging a violation of the Ethics Ordinance shall:
  - (a) be submitted, in writing, on a form prescribed by the City Council,
  - (b) be signed under oath,
  - (c) shall cite the provision(s) of the Ethics Ordinance allegedly violated, and
  - (d) shall provide the facts and evidence, if any, supporting the alleged violation.

Any false statements that are Intentionally, Knowingly, or Recklessly made under oath by a complainant shall subject the complainant to legal redress, including potential prosecution under State law.

2. Complaints and any evidence collected during the investigation of the alleged violation shall be kept confidential by the Ethics Commission, unless disclosure is otherwise required by State law or Order of the Texas Attorney General or a court of jurisdiction.
3. Any complaint alleging a violation of the Ethics Ordinance is to be filed with the City Attorney within twelve (12) months from the date on which the complainant knew of or should have known of the alleged violation. Complaints filed after that period will not be considered.
4. No later than twenty-one (21) business days after receipt of the complaint, the City Attorney shall acknowledge receipt of the complaint in writing delivered by certified mail, to the complainant and provide a copy of the complaint to the Ethics Commission and any accused party. An accused party shall have twenty-one (21) business days from receipt of the complaint to submit a sworn written response to the complaint to the City Attorney. The City Attorney shall conduct a preliminary analysis and review of the complaint, including a review of any available evidence, to determine whether there appears to be a legal basis for the complaint. The City Attorney shall submit a preliminary analysis forward a report to the Ethics

Commission as set forth in 1.15.510(3) above. No later than sixty (60) business days after receipt of the complaint by the City Attorney, the Ethics Commission shall notify the complainant and any accused party in writing delivered by certified mail, if the Commission intends to schedule a hearing or take other action concerning the complaint. If the Ethics Commission determines not to proceed, it shall notify the complainant and the City Attorney that the complaint has been dismissed and no further action will be taken.

5. The recovery of any and all reasonable legal fees incurred by the accused party shall be paid by the complainant, if the Ethics Commission ultimately determines that the complaint was groundless and was brought:
  - (a) in bad faith, or
  - (b) for the purpose of harassment.

**Sec. 1.15.512. Ex Parte Communications.**

After a complaint has been filed with the Ethics Commission and during the consideration of a complaint by the Ethics Commission, a member of the Ethics 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 Ethics Commission.

**Sec. 1.15.513. Hearings.**

1. The Ethics Commission may, in its sole discretion, attempt to negotiate or mediate an equitable resolution of any complaint. If the Ethics Commission and the accused party are unable to negotiate or mediate a final resolution of the matter, the Ethics Commission will, at its discretion, convene a hearing at which the accused may have legal counsel present. The hearing may be open to the public, or closed, at the discretion of the Ethics Commission, and as allowed by applicable State law. The Ethics Commission hearing shall be held as expeditiously as possible, but in any event no later than one hundred and twenty (120) days from the date the sworn, written complaint was received by the City Attorney. The Ethics Commission hearing shall be attended and transcribed by a court reporter,



and the record of the hearing shall be maintained by the Ethics Commission. Witnesses before the Ethics Commission shall be placed under oath when providing testimony to the Ethics Commission. The Ethics Commission shall conduct the hearing under its own procedures. Formal rules of procedure, testimony, and evidence shall not apply.

2. The issue at the formal hearing before the Ethics Commission shall be whether the violation alleged in the complaint occurred. The Ethics Commission shall make its decision based on clear and convincing evidence presented during the Ethics Commission hearing. If the Ethics Commission determines that a violation has occurred, it shall state its finding(s) in writing, identify the particular provision(s) of the Ethics Ordinance that have been violated, and deliver a copy of its findings to the complainant, the accused party and the City Council within twenty-one (21) business days of closing the Ethics Commission hearing. Extensions of this time may be necessary and allowed in complex cases, but if an extension is required all interested parties shall be notified of the extension.

**Sec. 1.15.514. Sanctions.**

1. If the Ethics Commission determines that a City Official, or Employee has violated the Ethics Ordinance, it shall declare its findings along with any recommended sanctions in a report to the City Council. An affirmative vote of a majority of the members of the Ethics Commission hearing the matter shall be required for the determination that a violation has occurred and to recommend any sanction under the Ethics Ordinance.
2. If the Commission determines that a City Official or Employee has violated the Ethics Ordinance, it may recommend a private or public reprimand, temporary suspension, removal from office, bar from future service with the City, or any other sanction or corrective action within the power of the City Council.
3. In arriving at its recommendation, the Ethics Commission shall consider the seriousness of the violation, the importance of deterrence, the impact on public confidence in government, City Officials and Employees, the number

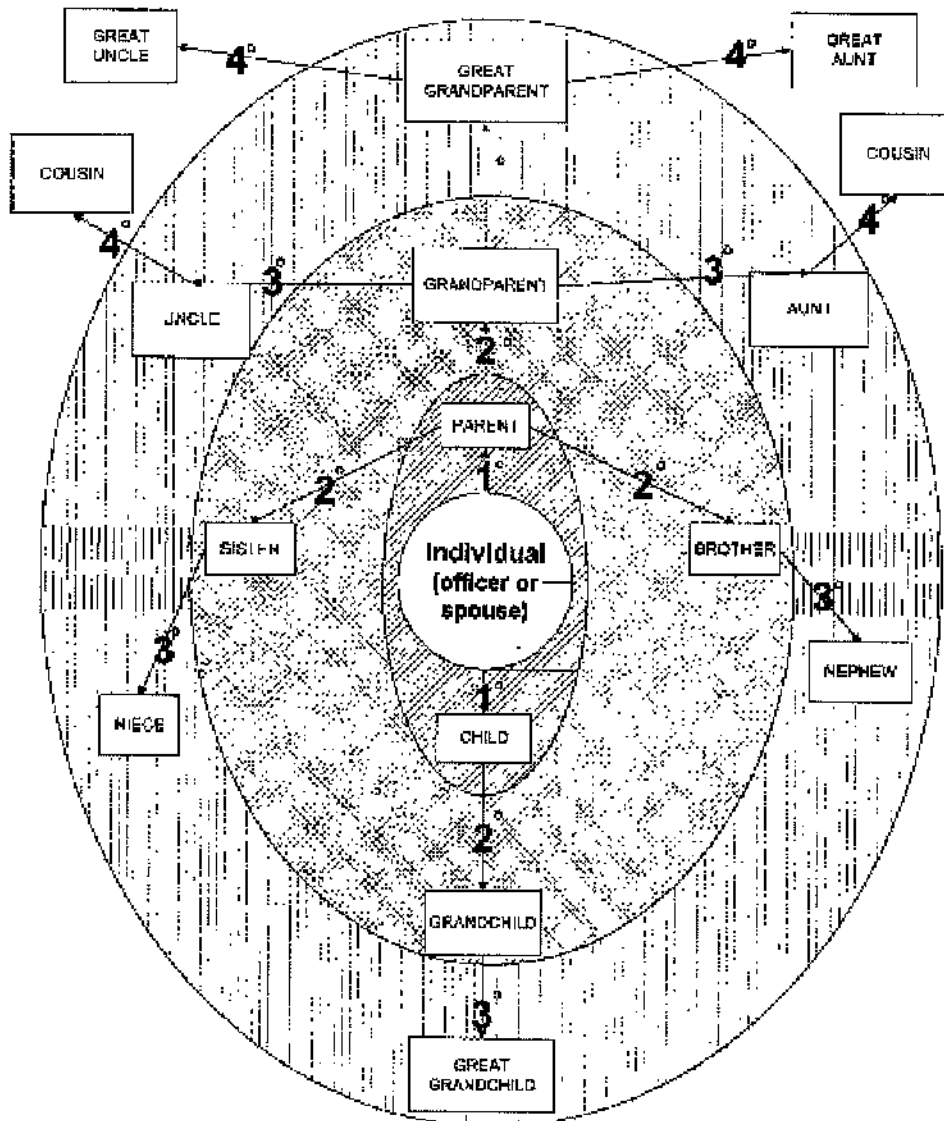
of times the violation occurred, the mental state with which the violation was committed and any previous violations committed by the accused party. A written recommendation on the sanction to be imposed shall be forwarded by the Ethics Commission to the City Council, with a copy to the complainant and the accused party .

4. If the Ethics Commission determines that the conduct occurred, but the facts indicate that the violation was unintentional and/or *de minimus*, the Ethics Commission may recommend that the complaint be dismissed and no sanction imposed by the City Council. The Ethics Commission may, in its discretion, issue a clarifying opinion to help guide future cases.
5. The City Council shall consider the Ethics Commission's recommended sanction and exercise its own judgment and discretion in determining what action, if any, shall be taken relating to the alleged violation.

**Sec. 1.15.515. Other Actions by Ethics Commission.**

If the Ethics Commission determines a member of City Council has violated the Ethics Ordinance, the Ethics Commission will, in such cases, have the sole and final authority to impose sanctions under the Ethics Ordinance. In addition to declaring its findings, the Ethics Commission may reprimand and/or recommend a public recall of the City Council member in question. An affirmative vote of a majority of the Ethics Commission members shall be required for the determination that a violation by a member of the City Council has occurred and to approve any sanctions under the Ethics Ordinance. A letter of reprimand or a recommendation of public recall of an elected City Official shall be delivered to the City Secretary, published in a local newspaper of the largest general circulation, and published prominently on the City's web site for a minimum of twelve (12) months after the decision is issued by the Ethics Commission.

## Appendix



## Degrees of Relationship Chart

When determining the degree of relationship by consanguinity, the individual in the center is the officer. For relationships by affinity, the officer's spouse is the individual in the center.

*Public Officers: Tips for the Lawyer - Office of the Attorney General*

**Part 3:** The preliminary draft of this Ordinance was prepared and submitted to the City Council by the members of the Ethics Task Force, who were, at the time of submission, The Honorable Chris Duggan - Chair, The Reverend R.D. Smith, The Reverend Lisa Hines, Linda Seale, LPC and Wuthipong Tantaksinanukij.

**Part 4:** This Ordinance shall be and is hereby declared to be cumulative of all other Ordinances of the City of Bastrop, and this Ordinance shall not operate to repeal or affect any of such other ordinances, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any in such other Ordinance or Ordinances are superseded.

**Part 5:** If any provision of this Ordinance or application thereof to any person or circumstance, shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are hereby declared to be severable.

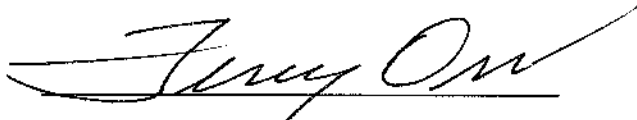
**Part 6:** The Mayor is hereby authorized to sign this Ordinance and the City Secretary to attest. This Ordinance shall become effective and be in full force and effect in accordance with the provisions of the Charter of the City of Bastrop, and State law.

READ and Approved on First Reading on the 13<sup>th</sup> day of December 2011.

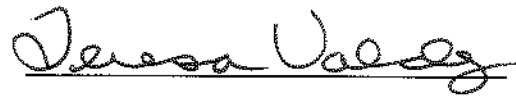
READ and Adopted on Second Reading on the 10<sup>th</sup> day of January 2012.

APPROVED:

ATTEST:



Terry Orr, Mayor



Teresa Valdez, City Secretary