

ORDINANCE

AN ORDINANCE OF THE CITY OF DESOTO, TEXAS, AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES BY AMENDING SECTION ARTICLE 1.1400, PROVIDING A CODE OF CONDUCT FOR PUBLIC OFFICIALS; PROVIDING DEFINITIONS; ESTABLISHING STANDARDS OF CONDUCT; PROVIDING FOR REVIEW OF COMPLAINTS; PROVIDING DISCIPLINARY MEASURES FOR VIOLATION OF THE STANDARDS OF CONDUCT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of DeSoto, Texas, upon full consideration of the matter, has determined the desirability and the necessity of providing standards of conduct for the City's public officials and providing measures for violations of such standards; and

WHEREAS, the Mayor, the members of the City Council, the Planning and Zoning Commission, Zoning Board of Adjustment, Civil Service Commission, Buildings and Standards Commission, Library Board, Tri-City Animal Shelter Advisory Board, DeSoto Texas Historical Foundation Board, Arts Commission, DeSoto Economic Development Corporation Board, DeSoto Park Development Corporation Board, DeSoto Housing Finance Corporation Board, DeSoto Health Facilities Corporation Board, Keep DeSoto Beautiful Corporation Board, and any appointed or confirmed member of any City of DeSoto board, commission, corporation, or committee established by Ordinance, Charter, State Law or otherwise, operating either under the direct or indirect authority or subject to the direct or indirect control of the City Council, should be governed by a code of conduct;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS:

SECTION 1. That the Code of Ordinances of the City of DeSoto, Texas, be, and the same is hereby amended, by amending Chapter 1, in part, to add Article 1.1400 to read as follows.

"ARTICLE 1.1400 CODE OF CONDUCT

Sec. 1.1401 Purpose

It is hereby declared to be the policy of the City that the proper operation of democratic government requires that public officials be independent, impartial and responsible only to the citizens of the City; that no Officer shall permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity to conflict with the proper discharge of their duties in the public interest; that public office not be used for personal gain; and that the City Council, Planning and Zoning Commission, Zoning Board of Adjustment, Civil Service Commission, Buildings and Standards Commission, Library Board, Tri-City Animal Shelter Advisory Board, DeSoto Texas Historical

Foundation Board, Arts Commission, DeSoto Economic Development Corporation Board, DeSoto Park Development Corporation Board, DeSoto Housing Finance Corporation Board, DeSoto Health Facilities Corporation Board, Keep DeSoto Beautiful Corporation Board, and any appointed or confirmed member of any City of DeSoto board, commission, corporation, or committee established by ordinance, charter, state law or otherwise, operating either under the direct or indirect authority or subject to the direct or indirect control of the City Council at all times shall be maintained as a nonpartisan body. To implement such a policy, the City Council deems it advisable to enact a Code of Conduct for all officials, whether elected or appointed, paid or unpaid, 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, the overriding interest being that officers of the City shall at all times strive to avoid even the appearance of impropriety.

Sec. 1.1402 Title; Application

- (a) This Article shall be known as the Code of Conduct.
- (b) The Code of Conduct shall apply to all Officials as defined herein.
- (c) This Code of Conduct does not apply to Employees, including those individuals employed on a full-time, part-time or internship basis or to independent contractors of the City. The standards of conduct for Employees are governed by the DeSoto Personnel Policies and Procedure Manual.

Sec. 1.1403 Definitions

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

Benefit means anything reasonably regarded as pecuniary or economic gain or pecuniary or economic advantage, including benefit to any other person in whose welfare the beneficiary has a Substantial Interest.

Business Entity means any person, entity, corporation (whether for-profit or non-profit), general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, holding company, joint-stock company, receivership, or other entity recognized by law, whether or not organized for profit conducting or seeking to conduct business with the City. Business Entity also includes any business entity that represents a party conducting or seeking to conduct business with the City.

Confidential information means any information to which an Official has access in such person's official capacity which may not be disclosed to the public except pursuant to state and/or federal law and which is not otherwise a matter of public record or public knowledge.

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Contract means any lease, claim, account or demand against or agreement with any person, whether express or implied, executed or executory, oral or written.

City shall mean the City of DeSoto, Dallas County, Texas.

City Council means the legislative and governing body of the City, consisting of the Mayor and City Council members.

Knowingly means a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or to circumstances surrounding the 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 the person's conduct whether the person is aware that the conduct is reasonably certain to cause the result.

Employee means any person employed by the City, including those individuals on a full-time, part-time or internship basis, but does not include independent contractors.

Gift means anything of value, regardless of form, including a favor offered or given in the absence of adequate and lawful consideration.

Intentionally means a person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

Officer or Official means the Mayor, the members of the City Council, any appointed or confirmed member of any City board, commission, corporation, or committee established by ordinance, charter, state law or otherwise, on a temporary or permanent basis, operating either under the direct or indirect authority or subject to either the direct or indirect control of the City Council. Such term shall include the City Manager, City Secretary, Municipal Judge, Health Officer, members of the Planning and Zoning Commission, the Board of Adjustment, the Civil Service Commission, the Building and Standards Commission, the Library Board, the Arts Commission, the board of directors of the DeSoto Economic Development Corporation, the DeSoto Park Development Corporation, the Keep DeSoto Beautiful Corporation, DeSoto Housing Finance Corporation and the DeSoto Health Facilities Corporation.

Relative means any person related to an Officer within the first degree by consanguinity or affinity. This relationship includes the spouse, parents, children, stepchildren, father and mother-in-law, or son and daughter-in-law of the Officer. The affinity relationship continues after death or divorce if there is a living child of that marriage.

Specific Economic Effect is an economic effect on a business entity that is distinguishable from the effect on the public.

Substantial Interest means the following.

- (1) Substantial interest in a Business Entity means: (i) the person owns ten percent (10%) or more of the voting stock or shares of a Business Entity; or (ii) the person owns ten percent (10%) or more of \$15,000 or more of the fair market value of a Business Entity; or (iii) funds received by the person from the Business Entity exceed ten percent (10%) of the person's gross income for the previous year; and action on the matter involving the Business Entity will have a specific economic effect on the Business Entity that is distinguishable from the effect on the public.
- (2) Substantial Interest in real property means the person has an interest in the real property that is equitable or legal ownership with a fair market value of \$2,500 or more; and it is reasonably foreseeable that an action on a matter involving the real property will have a specific economic effect on the value of the real property distinguishable from its effect on the public.
- (3) An Official is considered to have a Substantial Interest under the Code of Conduct if a Relative has a Substantial Interest under the Code of Conduct.

Sec. 1.140 Standards of Conduct for Officers

No Officer of the City or a Relative thereof shall

(a) Have a financial interest, direct or indirect, in any contract with the City or shall such person be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service. The "financial interest" contemplated under this Section 1.1803 and under Article XII, Section 2 of the City Charter requires that the Officer receive an actual financial benefit from the transaction with the City. An actual financial benefit from the transaction shall not include

- (1) An ownership in the entity transacting business with the City where the ownership interest is less than one (1) percent; or
- (2) Compensation as an Employee, Officer or director of the entity transacting business with the City where such compensation is not affected by the entity's transaction with the City.

(b) Participate in a vote or decision on any matter in which the Officer has a Substantial Interest.

(c) Represent or appear on behalf of private interests of others before the City Council, or any agency, board, commission, corporation, or committee of the City, nor represent any private interests of others in any action or proceeding involving the City, nor voluntarily participate on behalf of others in any litigation to which the City is a party or to which there is a substantial likelihood that the City will be a party.

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(d) Accept any Gift from any person that might reasonably tend to influence such Officer in the discharge of official duties, or that the Officer knows or should know is being offered with the intent to influence the Officer's official conduct. The prohibition against Gifts shall not apply to

- (1) A lawful political contribution as defined by the Texas Election Code;
- (2) An honorarium in consideration for services unless the Officer would not have been asked to provide the services but for the Officer's position;
- (3) Meals, lodging, transportation in connection with services rendered by the Officer at a conference, seminar or similar event that is more than merely perfunctory;
- (4) Complimentary copies of trade publications and other related materials;
- (5) Attendance at hospitality functions at local, regional, state or national association meetings and/or conferences;
- (6) An item with a value less than fifty dollars (\$50);
- (7) tee shirts, caps, mementos and other similar promotional material or items with a value less than fifty dollars (\$50);
- (8) Gifts on account of kinship or a personal, or professional, or business relationship independent of the Officer's status;
- (10) Complimentary attendance at political or charitable fundraising events; and
- (11) Meals, lodging, transportation, or entertainment furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public events.

(e) Use such person's official position to secure special privileges or benefits for such person or others.

(f) Grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group.

(g) Disclose confidential information.

(h) Use City supplies, personnel, property, equipment or facilities (whether tangible or intangible) for any purpose other than the conduct of official City business, unless otherwise provided for by law, ordinance or City policy.

(i) Act as a surety on any official bond required of any Officer or Employee of the City, or for a business that has a Contract with the City.

Sec. 1.1405 Additional Standards

(a) No member of the City Council, the Planning and Zoning Commission, or Board of Adjustment shall participate in, or vote on, any land use matter (e.g. zoning, variances, plats, permits) in which such Officer has a Substantial Interest in any real property within 200 feet of the real property, the subject of the land use matter.

(b) No member of the City Council who is on the governing body of a nonprofit organization shall vote on any funding request by that nonprofit organization other than for membership or subscription dues or fees, or as part of the City's annual budget, unless the nonprofit organization has a governing body appointed in whole or in part by the City Council.

(c) With the exception of those proceedings allowed under this Code of Conduct, City Councilmembers shall not personally appear in their own behalf before the City Council, or any City board, commission, corporation or committee but may designate and be represented by a person of their choice in any such personal matter.

Sec. 1.1406 Appearance by Past Officer

No past Officer of the City, shall for a period of one (1) year after the date of termination of such relationship with the City, appear before the City Council, or any City board, commission, corporation, or committee, to represent the interests of another on any matter.

Sec. 1.1407 Disclosure of Substantial Interest; Affidavit

Any Officer, who has a Substantial Interest in any matter pending before the body, board, commission, corporation or committee of which the Officer is a member, before a vote or decision on such matter, shall file an affidavit stating the nature and extent of the Substantial Interest, and shall abstain from further participation in such matter. Such Officer shall not be physically present when such matter is discussed, or when action is taken thereon. The affidavit shall be on a form provided by the City and must be filed with record keeper for such body, board, commission, corporation or committee.

Sec. 1.1408 Disclosure of Real Property Interest

Upon the election, appointment or confirmation of appointment, and thereafter on or before January first of each calendar year, every Officer shall file in writing with the City Secretary on a disclosure form provided by the City, the existence and location of any real property in the City in which the Officer, has any equitable or ownership interest, including any interest of one (1) percent or more in any entity which has an equitable or ownership interest in any real property in the City. Said disclosure shall also include the identity and location of all real

property within the City in which the Officer has acquired or conveyed any interest since the filing of the last report required by this Code of Conduct. If an Officer has an interest in an entity that will not disclose to the Officer whether or not the entity has a financial interest in real property in the City, the Officer may satisfy this disclosure requirement by stating such fact in writing to the City Secretary.

Sec. 1.1409 Complaints against Officers

(a) All complaints or allegations of a violation of this Code of Conduct against an Officer shall be made in writing on a form provided by the City, sworn to before a notary public, and filed of record with the City Secretary. Such complaint shall describe in detail the act or acts complained of and the specific section(s) of this Code of Conduct alleged to have been violated. A general complaint lacking in detail shall not be sufficient to invoke the investigation procedures contained herein; and anonymous complaints shall not be considered. The City Secretary shall provide a copy of the complaint to the affected Officer, City Council and immediately refer the complaint to the City Attorney, who shall initially review the complaint to determine if the complaint contains sufficient detail and alleges a violation of the Code of Conduct. The affected Officer may file a written response to the complaint within seven (7) days after the complaint is filed with the City Secretary, who shall forward the response, if any, to the City Attorney.

(b) The City Attorney shall submit a written report to the Council as soon as possible but not later than fourteen (14) days after the receipt of the complaint, unless an extension is granted by a majority of the non-implicated Councilmembers. The City Attorney may contact the complainant, interview witnesses and examine any documents necessary for the report. Such report shall be comprehensive and explain in detail all facts, findings and conclusions in support of the City Attorney's opinion as to whether or not a violation of this Code of Conduct occurred. When the City Attorney receives a vague complaint or one lacking in detail, the City Attorney shall contact the complainant to request written clarification. If the complainant fails to provide the City Attorney with written clarification, or if after written clarification is provided, it is the opinion of the City Attorney that the complaint is insufficient in detail and/or fails to allege a prima facie violation of the Code of Conduct, a written report to that effect shall be submitted to the City Council. If the City Attorney determines that a criminal violation may exist, the City Attorney shall refer the matter to the appropriate law enforcement agency.

(c) The City Council shall consider the complaint and the City Attorney's report at an executive session of the City Council. The affected Officer may request that the complaint be considered in a public meeting. At such meeting, the City Attorney shall present a written report to the City Council describing in detail the nature of the complaint and the City Attorney's findings and conclusions as to a possible violation of this Code of Conduct. The affected Officer shall have the right to a full and complete hearing before the City Council with the opportunity to call and cross-examine witnesses and present evidence in such person's behalf. The non-implicated Councilmembers in attendance shall conduct a hearing and review the complaint. The City Council may reject the

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complaint or take action authorized by Section 1.1810. If deemed necessary the City Council may direct the City Manager with the concurrence of the City Attorney to appoint a special legal counsel to conduct a further investigation and to provide a written report to the City Council

(d) No action or decision with regard to the complaint shall be made except in a meeting which is open to the public.

Sec. 1.1410 Violations

The City Council may take any one or more of the following actions in an open meeting concerning a complaint:

1. Issue a statement finding the complaint is totally without merit, brought for the purpose of harassment, or brought in bad faith; or
2. Issue a letter of notification when the violation is unintentional. A letter of notification shall advise the Officer of any steps to be taken to avoid future violations; or
3. Issue a letter of admonition when the violation is minor or may have been unintentional, but calls for a more substantial response than a letter of notification; or
4. Issue a reprimand when a violation has been committed knowingly or intentionally; or
5. Remove from office an Officer, other than a City Councilmember, for a serious or repeated violation of this Code of Conduct. Removal shall be in compliance with the Charter and State Law; or
6. Pass a resolution of censure or a recommendation of recall when the City Council finds that a serious or repeated violation of this Code of Conduct has been committed intentionally by a member of the City Council.

Sec. 1.1411 Adoption of State Statute

Section 171.001 *et seq.*, 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, is hereby adopted and made a part of this Code of Conduct for all purposes, with the proviso that, in the case of a conflict between the provisions of this code of conduct and the state statute, then in that event the more restrictive provision shall govern.

Sec. 1.1412 Limitations

A person must bring a complaint that an Officer has violated a provision(s) of this Code of Conduct not later than twelve (12) months after the day the complained act(s) occurred.

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Sec. 1.1413 Interpretation of Code

Any Officer may request and the City Attorney shall issue, a verbal or written opinion (as deemed appropriate) concerning the meaning or effect of any section, word, or requirement of this Code of Conduct as it affects such person.”

Sec. 1.1415 Criminal History Checks of Board and Commission Applicants

(a) Any person making application for appointment to a position on any board, commission, agency, or committee to which the City has the final authority to make such appointment shall consent to a criminal history check prior to consideration of the person’s application.

(b) Failure to consent to a criminal history check as required by this section shall be grounds for disqualification for consideration for appointment by the City Council.

(c) The City shall cause a criminal history check to be conducted on each applicant for appointment to a position described in subsection (a) of this section. If upon review of a criminal history check an applicant is found to have been convicted within the last 10 years or the applicant is on parole or probation for any of the following offenses, the applicant shall not be considered for appointment: a felony or any offense involving theft, burglary or moral turpitude. (Moral turpitude may be described as intentional dishonesty, fraud, deceit, conduct contrary to justice, or otherwise immoral conduct.)

(d) The provisions of this section are administrative in nature and not subject to criminal penalties.”

SECTION 2. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect

SECTION 3. That all provisions of the Code of Ordinances of the City of DeSoto, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. This ordinance shall take effect immediately from and after its passage; provided however, the Code of Conduct shall apply to officials and acts occurring after May 8, 2001.

IT IS ACCORDINGLY SO ORDAINED.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS, THE 4TH DAY OF JUNE, 2013.

APPROVED:

APPROVED:



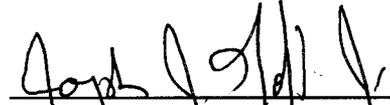
Carl O. Sherman, Mayor

ATTEST:



Kisha R. Morris, City Secretary

APPROVED AS TO FORM:



Joseph J. Gorfida Jr., City Attorney

