

ORDINANCE NO. 2019-004

AN ORDINANCE OF THE CITY OF CLUTE, TEXAS, CONTAINING A PREAMBLE; COMPLYING WITH SECTION 5.02, ITEM 31 OF THE HOME RULE CHARTER OF THE CITY OF CLUTE, TEXAS, BY ADDING TO CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY A NEW ARTICLE VI ESTABLISHING AN ETHICS POLICY FOR ALL APPOINTED OR ELECTED OFFICIALS, BOARDS AND COMMISSIONS, AS WELL AS EMPLOYEES WHEN REPRESENTING THE CITY OR DOING BUSINESS FOR THE CITY IN ANY CAPACITY; REQUIRING THAT SUCH ORDINANCE BE REVIEWED AND READOPTED ANNUALLY, AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.

Whereas, it is important that the public have confidence in the integrity of its government; and

Whereas, the City of Clute, Texas, is a "Home Rule City" and a "Home Rule Municipality" lying and situated in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

Whereas, Sections 51.072 and 342.011 of the Local Government Code of Texas and Sections 2.01, 5.01 and 5.02, Item 31, of the Home Rule Charter of the City of Clute, authorizes the City Council thereof to adopt the provisions of this Ordinance: and,

Whereas, the proper operation of government requires that all City Officials, including elected officers, appointed officers, boards and commission members, and employees be independent and impartial, and that governmental decisions and policy be made within the proper channels of the government structure; and

Whereas, the citizens of the City of Clute have voted and approved to amend the Home Rule Charter in a Charter Election held on May 6, 2017, to establish an Ethics Policy for the City by ordinance, to be reviewed and readopted annually; and

Whereas, the intent of this ordinance is to establish a set of general principles and guidelines pertaining to ethical conduct, responsibility, fair and equitable standards, and duty; and

Whereas, the City of Clute passed Ordinance 2018-001, the City Ethics Policy, on January 11, 2018, requiring annual review, and after such review, the City Council desires to amend its Ethics Policy through the passage of this ordinance.

Whereas, the City of Clute desires to adopt said policy to govern the actions of City Officials, including elected officers, appointed officers, boards and commission members, and employees and to memorialize their dedication and service to the citizens of the City; and

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

First, a new article, to be known as Article VI, is hereby adopted and added to Chapter Two of the Code of Ordinances of the City of Clute, Texas, consisting of two (2) divisions, which shall read as follows:

ARTICLE VI. CODE OF ETHICS

Division 1. – General Provisions.

Sec. 2-218. - Definitions.

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

Benefit means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution to expenditure made and reported in accordance with law.

Board means a board, commission, or committee:

- (1) Which is established by city ordinance, city resolution, charter, interlocal contract, or state law, or
- (2) Which serves as the board of a nonprofit development corporation that acts as an instrumentality of the city, and
- (3) Any part of whose membership is appointed by the city council, but does not include a board, commission, or committee which is the governing body of a separate political subdivision of the state.

Censure means an official condemnation, reprimand, or expression of adverse criticism, usually by a legislative or other formal body, of the conduct of one of its members or of someone whose behavior it monitors.

City (“the City”) means City of Clute

City Official means the Mayor, members of the City Council, the Municipal Court Judge and his appointees, employees, and individuals appointed to serve on the city's boards, commissions, committees, task forces, and other appointed advisory groups

Employee means a person employed and paid wages by the City whether under civil service or not, including those individuals on a part-time basis, but does not include an independent contractor or city council member.

Fair and Equitable Standards means the intent of the City of Clute to safeguard the rights of all citizens, to ensure that all citizen's actions are judged by fair and equitable standards, and to require that all rules are applied on an equitable basis.

Negotiating concerning prospective employment means a discussion between a city officer or employee and another employer concerning the possibility of the city officer or employee considering or accepting employment with the employer, in which discussion the city officer or employee responds in a positive way.

Officer or official means any member of the City Council and any appointed member of a board, committee, or commission set up by ordinance, resolution, charter, state law or otherwise, on a regular basis, excluding those boards and commissions not operating under the direct authority of or subject to the direct control of the City Council.

Working Days means regular business hours, Monday through Friday, not including official City holidays.

Sec. 2-219. – The Purpose of the Ethics Policy.

(a) The code of ethics has five purposes:

1. To encourage ethical conduct on the part of City Officials and employees;
2. To encourage public service with the City;
3. To establish standards of ethical conduct for City officials and employees by defining and prohibiting conduct that is incompatible with the interests of the City;
4. To require disclosure by City Officials and employees of their economic interests that may conflict with the interests of the City; and
5. To serve as a basis disciplinary action against those who fail to abide by its terms.

(b) The code of ethics is not intended to be used as a political weapon or to intimidate or embarrass affected persons. The officials charged with the administration of this code of ethics shall administer it in a manner that avoids any such use of this code of ethics.

(c) **Ethics Policy Statement**: It is the policy of the City that all City Officials and employees shall conduct themselves both inside and outside the City's service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the City and the public trust which the City holds.

(d) It is further declared to be the policy of the City that proper operation of democratic government requires that:

1. Officers, officials, and employees be independent, impartial and responsible;
2. Governmental decisions and policy be made using the proper procedures of the governmental structure;

3. No officer or employee have any financial interest, direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature which is in conflict with the proper discharge of his duties in the public interest;
 4. Public office is not used for personal gain; and
 5. All boards of the City are at all times maintained as a nonpartisan body.
 6. The policy of the City to upholds, promotes, and demands the highest standards of ethical behavior from its Mayor, members of the City Council, employees, and individuals appointed to serve on the City's boards, commissions, committees, task forces, and other appointed advisory groups. Honesty, integrity, fairness, equity, and transparency of action are the hallmarks of public service in Clute.
- (e) The Appearance of impropriety. Public service is a public trust. All City Officials and employees are stewards of the public trust. They have a responsibility to the citizens of the City to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each City Official and employee must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.
- (f) To implement this article, the City Council has determined that it is advisable to enact this code of ethics for all City 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 fail to abide by its terms.
- (g) Notwithstanding any other provision of this article, a member of the board of directors of a reinvestment zone established under the tax increment financing act, as amended, may:
1. Own property within that reinvestment zone; and
 2. Participate in discussions and voting on matters before the board of directors that may directly or indirectly affect the member's property within the reinvestment zone.

Secs. 2-220—2-229. - Reserved.

Division 2. – Ethics Administration.

Sec. 2-230. - Standards of conduct.

- (a) An officer, Municipal Court Judge or his appointee, or employee of the City shall not:
1. Accept or solicit a benefit that might reasonably influence the officer or employee in the discharge of his official duties.
 2. Use his official position to secure special privilege or exemptions for himself or others.

3. Grant any special consideration, treatment or advantage to a person or organization beyond that which is available to every other person or organization. This shall not prohibit the granting of fringe benefits to City employees a part of their contract of employment or as an added incentive to the securing or retaining of employees. This further shall not prohibit the City or Clute EDC from entering into Chapter 380 agreements or other economic development agreements authorized by statute and found to be in the best interest of the City and its citizens.
4. Disclose information that could adversely affect the property or affairs of the City, or directly or indirectly, use any information understood to be confidential which was gained by reason of his official position or employment for his own personal gain or benefit or for the private interest of others.
5. Transact any business on behalf of the City in his official capacity with any business entity of which he is an officer, agent or member or in which he has a financial interest. In the event that such a circumstance should arise, then he shall make known his interest, and:
 - a. In the case of a City Official leave the room during debate or hearing, refrain from discussing the matter at any time with the members of the body of which he is a member or any other body which will consider the matter and abstain from voting on the matter; or
 - b. In the case of an employee, turn the matter over to his superior for reassignment, state the reasons for doing so and have nothing further to do with the matter involved.
6. Personally provide services for compensation, directly or indirectly, to a person or organization who is requesting an approval, investigation, or determination from the body or department of which the City Official or employee is a member. This restriction does not apply to outside employment of a City Official if the employment is the City Official's primary source of income.
7. Accept other employment or engage in outside activities incompatible with the full and proper discharge of his duties and responsibilities with the City, or which might impair his independent judgment in the performance of his public duty.
8. Personally participate in a decision, approval, disapproval, recommendation, investigation, or rendering of advice in a proceeding, application, request for ruling or determination, contract, claim, or other matter under the jurisdiction of the City, if the City Official or employee is negotiating or has an arrangement concerning prospective employment with a person or organization which has a financial interest in the matter, and, in the case of an employee, it has been determined by the city manager that a conflict of interest exists. If a City Official or employee begins negotiation or enters an arrangement concerning prospective employment with a person or organization that has a financial interest in a matter in which the City Official or employee has been participating, the City Official or employee shall:

- (i) In the case of an employee, immediately notify the City Official responsible for appointment to his position of the nature of the negotiation or arrangement and, if the city manager determines that a conflict of interest exists, follow the instructions of the city manager with regard to further involvement in the matter; or
 - (ii) In the case of a board member, immediately notify the board of which he is a member the nature of the negotiation or arrangement and:
 - (a) Refrain from discussing the matter at any time with other board members or members of the City Council if the City Council will also consider the matter;
 - (b) Leave the room during debate hearing on the matter; and
 - (c) Abstain from voting on the matter; or
 - (d) In the case of a member of the City Council, file an affidavit with the City Clerk regarding the nature of the negotiation or arrangement and:
 - (i) Refrain from discussing the matter at any time with other council members or members of a board that will consider the matter;
 - (ii) Leave the room during debate or hearing on the matter; and
 - (iii) Abstain from voting on the matter.
9. Receive any fee or compensation for his services as a City Official or employee of the City from any source other than the City, except as may be otherwise provided by law. This shall not prohibit his performance of the same or other services for a public or private organization that he performs for the City if there is no conflict with his City duties and responsibilities.
10. In the case of a member of the City Council or an employee, personally represent, or appear on behalf of, the private interest of others:
 - (a) Before the City Council or any City board or department;
 - (b) In any proceeding involving the City; or
 - (c) In any litigation to which the City is a party.
11. In the case of a board member, personally represent or appear on behalf of, the private interests of others:
 - (a) Before the board of which he is a member;
 - (b) Before the City Council;

- (c) Before a board which has appellate jurisdiction over the board of which he is a member; or
- (d) In litigation or a claim to which the City or an employee of the City is a party if the interests of the person being represented are averse to the City or an employee of the City and the subject of the litigation or claim involves the board on which the board member is serving or the department providing support services to that board.

- 12. Use the prestige of his position with the City on behalf of any political party.
- 13. Knowingly perform or refuse to perform any act in order to deliberately thwart the execution of the City ordinances, rules or regulations or the achievement of official City programs.
- 14. Use City supplies, equipment or facilities for any purpose other than the conduct of official City business.
- 15. Engage in any dishonest or criminal act or any other conduct prejudicial to the government of the City or that reflects discredit upon the government of the City.

Sec. 2-231. - Exceptions.

- (a) The restrictions in this section do not apply to business associates of officers or employees, but only personally to the officers and employees themselves.
- (b) The restrictions and requirements of 2-230(a)(5) do not apply to an officer or employee of the City serving as a member of any board, commission, or other entity when transacting business on behalf of the City in an official capacity with that board, commission, or entity, if the officer or employee:
 - (1) Was appointed by the mayor, City Council, or city manager to represent the City on the board, commission, or entity; and
 - (2) Has no financial interest in the board, commission, or entity or in the business being transacted.

Sec. 2-232. - Financial interests.

Any City Official, whether elected or appointed, who has a financial interest in any matter that is pending before, or that might be considered by, the body of which the officer is a member shall:

- (a) Disclose such interest to the other members of the body;
- (b) Refrain from discussing the matter at any time with any other member of the body of which the City Official is a member or with a member of any other body that might consider the matter;

(c) Leave the room during debate or hearing; and

(d) Refrain from voting on the matter.

Sec. 2-233. - Political activities of City Officials.

(a) In elections other than for City Council, a member of the City Council may not:

(1) Use the prestige of the member's position with the City on behalf of a candidate;

(2) Solicit or receive contributions; or

(3) Serve as the designated campaign treasurer for a candidate as required by V.T.C.A. Election Code, Ch. 14.

(b) In any election, a member of a city board, commission, or committee, whether governmental or advisory, may not:

(1) Use the prestige of the member's position with the city on behalf of a candidate;

(2) Serve as the designated campaign treasurer for a candidate as required by V.T.C.A. Election Code, Ch. 14;

(3) Personally, solicit or receive contributions for a candidate. A member, however, is not prohibited from serving on a steering committee to plan a program of solicitation and listing the member's name without reference to the office held when the committee as a whole is listed.

(c) Subsections (a)(1) and (b)(1) do not prohibit a member of the City Council or of a board from lending the member's name in support of a candidate so long as the office held with the City is not mentioned in connection with the endorsement.

Sec. 2-234. - Additional employment.

An employee of the City may accept employment from a public utility corporation enjoying the grant of a franchise, privilege, or easement from the City if:

(1) The employee performs the duties of a security guard for the public utility corporation; or

(2) The employment complies with the Personnel Policy Handbook; and

(3) The employment does not conflict with his duties as an employee of the City.

Sec. 2-235. - Restrictions on contracting with the City or providing the representation of others.

(a) A City Official or employee in a position that involves significant reporting, decision-making, advisory, or supervisory responsibility who leaves the service or employment of the City may

not, within 12 months after leaving that service or employment, represent any other person or organization in any formal or informal appearance:

1. Before the City concerning a project for which the person had responsibility as a City Official or employee; or
 2. Before any other agency on a project for which the person had the responsibility as a City Official or employee.
- (b) A former City Official or employee who is subject to the requirements of subsection (a) shall, during the 24 months after leaving the service or employment of the City, disclose the City Official's or employee's previous position and responsibilities with the City when representing any other person or organization in any formal or informal appearance before a City agency.
- (c) A member of the City Council or an employee may not, within 12 months after leaving the service or employment of the City, either individually or as the officer or principal of a private business entity:
1. Submit a proposal, on behalf of the member or employee or on behalf of a private business entity, to make any city contract that is not required by state law to be competitively bid;
 2. Negotiate or enter into any city contract that is not required by state law to be competitively bid; or
 3. Have or acquire any financial interest, direct or indirect, in any city contract that is not required by state law to be competitively bid.

Sec. 2-236. - Limitations on employee political activity and on the holding of elective public office by an employee.

- (a) An employee of the City shall immediately request an unpaid leave of absence, resign at the time of announcement or upon election if a leave has been granted, or shall be dismissed upon failure to do so, if:
1. The employee becomes a candidate for election to the City Council; or
 2. The employee becomes a candidate for nomination or election in a partisan election for public office within the county or in a partisan election for a public office, the constituency of which includes all or part of the county; or
 3. The employee becomes a candidate for nomination or election to an elective public office where the holding of that office will conflict with the full and proper discharge of the employee's duties with the City; or

4. A managerial or supervisory exempt City employee becomes a candidate for nomination or election to an elective public office of an entity having contractual relations with the City that involve the employee's department.
- (b) No employee may hold an appointed or elective City of Clute office, nor hold an office from any jurisdiction or any other office where service would constitute a direct conflict of interest with City of Clute employment, as determined by the City Manager, either with or without remuneration.

Sec. 2-237. – The Penalty for violation of article; appeals.

- (a) The failure of any City Official or employee to comply with this section or the violation of one or more of the standards of conduct set forth in this article, which apply to him, shall constitute grounds for all legal remedies provided by law which may include, if permissible, expulsion, reprimand, censure, removal from office, or discharge. In the case of a City Council member, or the Municipal Court Judge or his appointee, the matter shall be decided by a vote of two-thirds of the entire membership of the city council.
- (b) The City Council hereby adopts the following procedures to implement a censure policy:
1. Two or more City Council members may file a written notice of censure against another city council member or the Municipal Court Judge or his appointee with the city clerk. The written notice shall set forth the allegation(s) of conduct which the accused city council member or the Municipal Court Judge or his appointee shall have allegedly violated. A copy shall be delivered to all council members. A written response to the allegation(s) may be filed by the accused city council member or the Municipal Court Judge or his appointee ten days after receipt thereof. A copy of the notice of censure and response thereto shall be delivered to each council member within three (3) working days after the response is filed.
 2. On the first regularly called meeting of the City Council, which complies with the Texas Open Meetings Act, after the filing of the notice and response, the Mayor shall formally read the notice and response into the public record. The City Council, by majority vote, shall thereafter determine whether or not good cause shall exist to set a formal hearing on the merits of the notice of censure or dismiss the allegation(s). If it is determined, based upon the merits that a formal hearing is required, a public hearing shall be set on the allegation(s) by the City Council. A vote to hold a public hearing shall not be construed to be a vote of censure.
 3. At a formal public hearing, the accused city council member or the Municipal Court Judge or his appointee has the right to be represented by legal counsel, present witnesses, as well as cross-examine any and all other witnesses relative to the allegation(s).
 4. A formal public hearing on the allegation(s) and response shall be held at either a regular or special called meeting of the City Council and shall be open to the public.

5. At a formal public hearing, the Mayor of the City of Clute shall be the presiding officer, and the City Council will hear evidence concerning the notice of censure. The City Council members proffering the charges shall present evidence in support of the allegation(s) contained in the notice of censure. The city council member or the Municipal Court Judge or his appointee who is the subject of the censure shall have the opportunity to present evidence to support his or her position with respect to the notice of censure and challenge the evidence presented against him/her. After receiving evidence at an open public meeting, the City Council shall then take a roll-call vote, after motion duly made and seconded, two-thirds of all members of the city council shall be required to sustain the censure of the city council member or the Municipal Court Judge or his appointee.

(c) In the case of an employee of the City, disciplinary action and appeals therefrom shall be in conformance with procedures established by the City Charter and personnel rules and regulations.

(d) In the case of members of boards or committees, the member shall be presented written notice of the allegations and shall be afforded the opportunity to provide a written response. The City Council shall review the written allegations and written response in making a decision. The matters shall be decided by a majority vote of the City Council.

(e) The decision of the bodies authorized to hear violations shall be final.

Sec. 2-238. - Annual Review and Approval.

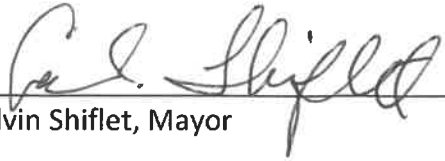
The City Council shall review and discuss this ordinance annually during a regular City Council meeting, as an enumerated item on the agenda. Such annual consideration must occur each year within 60 days of the anniversary date of original passage of this ordinance. After discussion the City Council shall take a vote to retain the ordinance without changes. Regardless of the result of that vote, this ordinance shall remain in full effect unless and until there is due notice and public hearing to make changes to this ordinance.

Secs. 2-239—2-249. - Reserved.

Second, should any article, section, part, paragraph, sentence, phrase, clause, or word of this ordinance, or any appendix thereof, for any reason be held illegal, inoperative, or invalid or if any exception to or limitation upon any general provisions herein continue to be held unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

Third, this ordinance shall take effect and be in force from and after its descriptive caption has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this 14th day of February 2019.



Calvin Shiflet, Mayor

ATTEST:

Approved as to form and legality:



Rosie Poitevint, City Clerk



Christopher Duncan, City Attorney

