

## **ORDINANCE NO. 2021-XX**

**AN ORDINANCE OF THE CITY OF WYLIE, TEXAS, REPEALING ORDINANCE NO. 2014-19, CREATING A CODE OF CONDUCT; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, the City of Wylie ("City" or "Wylie") desires for all of its citizens to have confidence in integrity, independence, and impartiality of those who act on their behalf in government;

WHEREAS, the City of Wylie previously adopted Ordinance No. 2014-19, establishing a Code of Ethics; and

WHEREAS, the City of Wylie desires to create a Code of Conduct and repeal Ordinance No. 2014-19, as of the Effective Date of this Ordinance;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS that:**

### **Section 1. Creation of Code of Conduct.**

The City of Wylie creates this Code of Conduct (the "Code") and **repeals Ordinance No. 2014-19**, as of the Effective Date of this Ordinance.

### **Section 2. Policy.**

The proper operation of democratic local government requires that City Officials be independent, impartial and responsible to the people; that local government decisions and policy be made in the proper channels of the government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its City Officials. It is the policy of the City of Wylie that its City Officials meet the standards of conduct established in this Ordinance.

### **Section 3. Definitions.**

*Administrative Board* means any board, commission, or other organized body: (1) that has, by law, final decision-making authority on matters within its jurisdiction and that is either: (a) established under the City Charter, by City ordinance, or by appointment by the City Mayor; or (b) whose members are all council members or are appointed or confirmed by the City Council; or, (2) created as a non-profit economic development corporation by the City Council under the authority of the Development Corporation Act of 1979, as amended.

*Advisory Board* means a board, commission, or other organized body other than an Administrative Board, that was created by an act of the City Council whose members are appointed or confirmed by the City Council and are charged with making recommendations to the City Council on matters within its jurisdiction.

*City Official or Official* means the Mayor; a member of the City Council, members of Administrative Boards, Advisory Boards, and Committees and Commissions, appointed by the Mayor or City Council.

*Economic Interest* means a legal or equitable property interest in land, chattels, and intangibles, and contractual rights having a value of more than fifty thousand dollars (\$50,000.00). Service by a City Official as an Officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that City Official an "Economic Interest" in the property of the organization.

***Official Action* means:**

- (1) Any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an Official's duties; or
- (2) Any failure to act, if the Official is under a duty to act.

*Board of Review* means the body charged with reviewing and acting on complaints and requests for declaratory relief filed under this Ordinance.

**Section 4. Covered officials.**

The rules of ethical conduct contained below apply generally to City Officials unless otherwise specified.

**Section 5. Officials required to comply with both state and local law.**

Where a City Official's conduct is regulated by a provision of this Ordinance and a similar provision of state law, and it is possible to comply with the requirements of both, a City Official shall comply with both.

**Section 6. Education.**

The City shall provide training and educational materials to City Officials on their obligations under state law and this Ordinance. Such training shall include at least one formal classroom session in each calendar year. All City Officials shall annually attend the formal training session offered by the City or equivalent training sessions conducted by the Texas Municipal League or similar organizations. The City also shall prepare and distribute written materials on the subject to each City Official at the time of his or her election or appointment to office.

**Section 7. Standards of Conduct for City Officials.**

**(A) Appearance on behalf of private interests of others.**

- (1) A member of the City Council shall not appear before the City Council, an Administrative Board or an Advisory Board for the purpose of representing the interests of another person or entity. However, a member of the City Council may, to the extent as otherwise permitted by law, appear before any such body to represent the member's own interests or the interests of the member's spouse or minor children.
- (2) A City Official who is not a member of the City Council shall not appear before the body

on which he or she serves for the purpose of representing the interests of another person or entity, and shall not appear before any other body for the purpose of representing the interests of another person or entity in connection with an appeal from a decision of the body on which the City Official serves. However, the City Official may, to the extent as otherwise permitted by law, appear before any such body to represent the City Official's own interests or the interests of the City Official's spouse or minor children.

**(B) Misuse and disclosure of confidential information.**

- (1) It is a violation of this Code of Conduct for a City Official to violate *Texas Penal Code* § 39.06 (Misuse of Official Information)..
- (2) A City Official shall not disclose to the public any information that is deemed confidential under any federal, state, local law, or Council rules, unless authorized by law.

**(C) Restrictions on political activity and political contributions.**

- (1) No City Official shall use state or local funds or other resources of the City to electioneer for or against any candidate, measure, or political party.
- (2) A City Official shall not directly or indirectly induce, or attempt to induce, any City employee:
  - a. To participate in an election campaign (beyond merely encouraging another to vote), to participate in a political fundraising activity, or to contribute to a political candidate or political committee;
  - b. To engage in any other activity relating to a particular candidate, party or issue that is not directly related to a legitimate function of City government; or
  - c. To refrain from engaging in any lawful political activity after working hours.

**(D) Use of cell phones or electronic devices by appointed or elected officials during meetings of City Boards, Committees, or Commissions, of which they are a member.**

City Officials shall refrain from using cell phones or electronic devices during a City meeting at which the City Official is attending as a member of that Board, Committee, or Commission. However, City Officials may access agendas and information relevant to the agenda. Cell phones shall be turned off or put on vibrate during meetings. Should it be necessary to use a cell phone, City Officials shall leave the meeting. Text messaging, emails and other written communications shall not be sent during a meeting unless it is an emergency.

**(E) Conflicts of Interest.**

A City Official must not use, or attempt to use, his or her official position or office, or take or fail to take any action, or influence, or attempt to influence, others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal, financial benefit, or Economic Interest not shared with a substantial segment of the City's population, for any of the following persons or entities:

- (1) The Official;
- (2) The Official's relative, or the employer or business of the relative;
- (3) A person with which the Official has a financial or business relationship, including but not

limited to:

- a. A business of the Official, or the Official's spouse or domestic partner, or someone who works for such outside employer or business; or
- b. A client or substantial customer.
  - (4) A publicly traded company if the Official or his or her spouse, parent or child owns the stock or instruments of debt greater than ten percent of the value of the company;
  - (5) Real property if the Official or his or her spouse, parent or child holds an equitable or legal ownership with a fair market value of \$2,500.00 or more;
  - (6) A nongovernmental civic group, social, charitable, or religious organization of which the Official, or the Official's spouse or domestic partner, is an officer or director; or
  - (7) A public or private business entity for which the Official, or his or her relative serves as a director, general partner, or officer, or in any other policy-making position except when so appointed to the position by the City.

**(F) Compliance with Texas Local Government Code Chapters 171 and 176.**

It is a violation of this Code of Conduct for a City Official to violate Texas Local Government Code, §§ 171 and 176.

**(G) Prohibitions - Granting Special Privileges and Use of City Supplies and Equipment.**

It is a violation of this Code of Conduct for a City Official:

- (1) To use his official position to secure special privileges or exemptions for himself or others;
- (2) To 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. This shall not prevent the granting of fringe benefits to City employees as a part of their contract of employment or as an added incentive to the securing or retaining of employees; or
- (3) To use City supplies, equipment or facilities for any purpose other than the conduct of official City business, unless otherwise provided for by law, ordinance or City policy.

**Section 8. Board of Review.**

**(A) Creation and appointment.**

There is hereby created a Board of Review to consist of five ( 5 ) members and two (2) alternates. The purpose of the Board shall be to issue advisory opinions and waivers on conduct issues arising under this Section and to hear inquiries or complaints and issue findings regarding alleged violations of this Code.

Prospective Board of Review members shall be interviewed and appointed by a majority of the City Council present at a duly called meeting.

**(B) Qualifications.**

- (1) All members must live within the City of Wylie city limits;
- (2) Members may not serve on any other Council appointed Board or Commission during their term on the Board of Review; and
- (3) No City Council member or City of Wylie employee may serve on the Board of Review.

**(C) Terms of appointment.**

No Board of Review member may serve more than two (2) consecutive years on staggered terms.

**(D) Removal.**

The unexcused absence of any member of the Board of Review from three (3) consecutive meetings, unless the Board has excused the absence for good and sufficient reasons, as determined by the *Board*, shall constitute a resignation from the Board.

A member may be removed for inappropriate conduct before the expiration of the member's term. Before removing a member, the Board of Review shall specify the cause for a recommendation of removal and shall give the member the opportunity to present the member's defense to removal. Then the recommendation shall be brought to the City Council for an official vote by Council. If the recommendation involves a City Council member that member may not participate in the City Council discussion or vote.

**(E) Consultation with City attorney.**

The Board of Review may consult with the City attorney or a designee of the City attorney regarding legal issues which may arise in connection with this article and may request advisory assistance from the City attorney in conducting hearings on inquiries during any stage of the process.

**(F) Advisory opinions and waivers.**

- (1) Any current elected Officials or Board/Commission members may submit a written request to the Board of Review for advisory opinions on whether conduct by that person would constitute a violation of the Code of Conduct. The Board of Review shall render an advisory opinion pursuant to written rules adopted by the *Board*, but in no case shall the Board take longer than six (6) weeks from the time it received the request to issue an advisory opinion or to give written notice explaining the reason for delay and stating an expected issuance date.
- (2) Any current elected Officials or Board/Commission members may submit a written request for a waiver of any provision of the Code of Conduct. The Board of Review is empowered to grant a waiver if it finds that the waiver will serve the best interests of the City. The Board shall issue appropriate notice of its meeting on the waiver and its meeting shall be open to the public. The Board shall either issue or deny the waiver within six (6) weeks of receiving the request.

**(G) Complaints or inquiries to the Board of Review.**

- (1) Filing. Any citizen of Wylie who believes that there has been a violation of the Code of

Conduct may file a sworn Complaint (the “Complaint”) with the City Secretary. The Complaint shall:

- a. Identify the person or persons who allegedly committed the violation;
- b. Provide a statement of the facts on which the Complaint is based;
- c. To the extent possible, identify the rule or rules allegedly violated; and
- d. Be sworn to in the form of an affidavit and be based on personal knowledge of the affiant and be subject to the laws of perjury.
- e. The complainant may also recommend other sources of evidence that the Reviewing Attorney should consider and may request a hearing.

(2) Review of Complaint.

- a. The City Council shall select and appoint an independent private attorney to investigate the Complaint (“Reviewing Attorney”). The Reviewing Attorney shall be selected by the City Manager from a list of three attorneys appointed by the City Council.
- b. Within seven (7) business days of receiving the Complaint from the City manager, the Reviewing Attorney shall take one of the following actions:
  - i. If not already dismissed, dismiss the Complaint if:
    1. The deadline for filing a Complaint has passed;
    2. The accused is not subject to the Code;
    3. The conduct alleged is not regulated under the Code;
    4. The Complaint is not completed as defined herein or signed and sworn to by the person filing the complaint in the form of an affidavit; or
    5. The person who is the subject of the complaint or inquiry had obtained a waiver or an advisory opinion under section 8.F. permitting the conduct.

(3) Timelines / Limitations.

- a. Days, as used herein, is defined as City business days.

(4) A Complaint must be filed with the City Manager within one (1) year of the date the violation is alleged to have occurred. The City Manager shall not accept or process any complaint that is filed more than one (1) year after the date of the violation alleged in the complaint. Complaints not filed within this timeframe are barred and will be dismissed as untimely. Notification of Complaint.

- a. Within one (1) business day of receipt of the Complaint, the City Manager will provide copies of each Complaint to the person or persons accused, the City Attorney and the Reviewing Attorney. If the City Manager is not available or is implicated, the City Secretary will provide copies, as outlined herein.
- b. If the Reviewing Attorney dismisses the Complaint, the City Manager will notify the complainant in writing.

(5) Referral of Complaint to the Board of Review.

- a. If the Reviewing Attorney determines the Complaint should not be dismissed, the Reviewing Attorney will forward the Complaint to the Board of Review.
- b. The Reviewing Attorney’s referral of the Complaint to the Board of Review does not mean that any of the allegations of the complaint are true or false or that any current Official has violated or has not violated the Code.

(6) Board of Review Process.

- a. The Board shall meet within thirty-one (31) days of receiving a complaint or inquiry to screen the complaint or inquiry. The rules shall allow the Board to immediately dismiss a complaint or inquiry if:
    - i. The alleged violation is a minor or de minimis violation;
    - ii. The complaint or inquiry *is*, on its *face*, frivolous, groundless, or brought for purposes of harassment; or
    - iii. The matter has become moot because the person who is the subject of the complaint or inquiry is no longer an elected official or board/commission member.
  - b. The rules shall require the dismissal and the reason for dismissal to be in writing and available to the public.
  - c. The Board will have hearings at meetings, which are open to the public on complaints or inquiries, which have not been dismissed pursuant to paragraph G of this section
- (7) The Board shall allow any person who is the subject of a complaint or inquiry to designate a representative if he or she wishes to be represented by someone *else*, to present evidence, and to cross-examine witnesses. The rules shall allow the complainant and the subject of the complaint or inquiry sufficient time to examine and respond to any evidence not presented to them in advance of the hearing;
  - (8) The Board shall require deliberations on complaints or inquiries to be conducted in open session;
  - (9) The Board shall allow the Board to dismiss a complaint or inquiry without a finding for or against the subject of the complaint or inquiry if the person committed the violation due to oversight and comes into voluntary compliance;
  - (10) The Board shall allow the Board to dismiss a complaint or inquiry if the person who submitted it does not appear at hearing and if, in the opinion of the *Board*, it would be unfair to the subject of the complaint or inquiry not to have the opportunity to examine the person. The rules *shall, however*, require the Board to schedule the hearing at a time that is reasonably convenient to both the person who submitted the complaint or inquiry and the subject of the complaint or inquiry;
  - (11) The Board shall require the Board to base a finding of a violation upon a preponderance of the evidence;
  - (12) The Board shall require the Board to inform the person who submitted the complaint or inquiry and the subject of the complaint or inquiry in writing if it believes a complaint or inquiry is frivolous, groundless, or brought for purposes of harassment;
  - (13) The Board shall prohibit members who have not been present for the hearing from participating in a recommendation;
  - (14) The Board's findings and recommendations shall be made only by a majority of the Board;
  - (15) The Board shall consider, when it makes findings and recommendations, the severity of offense; the presence or absence of any intention to conceal, deceive, or mislead;

whether the violation was deliberate, negligent, or inadvertent; and whether the incident was isolated or part of a pattern;

- (16) The Board may issue an advisory opinion in response to a complaint or inquiry, in lieu of making findings and recommendations, where deemed appropriate by the Board.

#### **(H) Consequences**

City Officials deemed to be in violation of the Code are subject to consequences, including but not limited to the following:

- (1) Censure - If the violation did not involve a matter of public concern and the City Council finds that a violation of this Code occurred, the City Council may issue a censure of the City Official, to the extent permitted by law.
- (2) Letter of Notification – The City Council may issue a letter of notification if the City Council finds that a violation of this Code was clearly unintentional. A letter of notification must advise the City Official of any steps to be taken to avoid future violations.
- (3) Letter of Admonition – The City Council may issue a letter of admonition if the City Council finds that a violation of this Code was minor, but where the circumstances call for a more substantial response than a letter of notification.
- (4) Reprimand – To the extent permitted by law, City Council may issue a reprimand if the City Council finds that a violation of this Code was not minor and was committed intentionally or through reckless disregard of this Code.
- (5) Removal from Leadership Position – In addition to, or in place of, the consequences outlined above, the City Council may remove a City Official from any position held by that City Official as a member of the body in which the City Official serves.

#### **Section 8. Other Obligations.**

This Code of Conduct is cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this Code shall not excuse or relieve any person from any obligation imposed by state or federal law regarding conduct, financial reporting, lobbying activities, or any other issue addressed herein.

Even if a City Official is not prohibited from taking official action by this Code of Conduct, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

#### **Section 9. Effective Date.**

This Code of Conduct shall take effect on [DATE], following its adoption and publication as required by law (the “Effective Date”). Every person shall be provided reasonable opportunity to review this Code of Conduct as a condition of their candidacy and/or application to be a City Official. Individuals seated as City Officials on the Effective Date of this Ordinance shall be bound by it and shall sign a written acknowledgement of receipt and understanding of this Code within 30 days of the Effective Date. All City Officials elected, appointed or retained following the Effective Date of this Code shall sign a written acknowledgement of receipt and understanding of this Code before performing any of the duties or functions of the City Official's position.

#### **Section 10. Distribution and Training.**

- (A) At the time of application for a position of City Official, every applicant shall be furnished with



a copy of this Code of Conduct. No application shall be considered complete without a signed acknowledgement of receipt and understanding of this Code by the applicant.

- (B) The City Attorney or City Manager as designated by the City Council shall develop educational materials and conduct educational programs for the City Officials on the provisions of this Code of Conduct, the City Charter, and Chapters 171 and 176 of the Texas Local Government Code. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these conduct laws.

**Section 11. Severability.**

If any provision of this Code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this Code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Code which can be given effect without the invalid or unconstitutional provision or application.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS**, on this \_\_\_ day of \_\_\_\_, 2021.

\_\_\_\_\_  
Matthew Porter, Mayor

**ATTESTED AND  
CORRECTLY RECORDED:**

\_\_\_\_\_  
Stephanie Storm, City Secretary