

ORDINANCE NO. 2493

AN ORDINANCE REGARDING THE CITY CODE OF ETHICS, AMENDING SECTION 1-212 (CODE OF ETHICS) OF ARTICLE 2 (GOVERNING BODY), CHAPTER I (ADMINISTRATION), OF THE CODE OF THE CITY OF PRAIRIE VILLAGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. Section 1-212 of the Prairie Village Municipal Code is hereby deleted in its entirety and amended to read as follows:

1-212. – CODE OF ETHICS.

~~(a) Purpose. To establish guidelines for ethical standards of conduct.~~

~~(b) Scope. This policy applies to officials and employees.~~

~~(c)~~

(a) Purposes, Policy, Goals, and Guidelines.

(i) The proper operation of democratic government requires that public officials ~~and employees~~ be independent, impartial, and responsible to the people; that government decisions and policy be made in the proper channels or governmental structures; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. ~~In recognition of these goals, there is hereby established a code of ethics for all officials and employees.~~

(ii) ~~The~~ Among other things, the purpose of this code is to establish guidelines for ethical standards of conduct for all officials ~~and employees~~ by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city. The provisions and purpose of this code of ethics are in the best interests of the city. ~~This code of ethics shall not apply to persons who serve only as members of boards, committees, or commissions.~~

(iii) ~~(1) Responsibilities of Public Office. Public officials and employees~~ Elected and appointed members of the governing body of the city are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the nation, state, and city and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office, regardless of personal consideration, recognizing that the public interest must

be their primary concern. The conduct in both official and private affairs should be above reproach.

~~(2) — Dedicated Service.~~

(b) **Applicability.** This policy is intended to establish a code of ethics policy for all persons elected or appointed to the governing body. City employees are not covered by this policy, but the city administrator shall establish and maintain a comparable code of ethics policy for application to all city employees. Members of public committees shall be governed by the Code of Conduct set forth in City Council Policy CP001, as amended. The provisions of this code of ethics policy shall apply in addition to all applicable state and local laws. Violations of this code of ethics policy, by themselves, are not offenses or violations of law for purposes of section 1-116 of the city code.

(ac) ~~All officials and employees~~ **General Expectations of Conduct.** All members of the city governing body should be loyal to the objectives expressed by the electorate, as understood by such members, and the programs developed to attain those objectives. ~~Appointive officials and employees should adhere to the rules of work and~~ Members of the governing body are expected to be civil and professional in the performance established as the standard for of their positions by the appropriate authority.

~~(b) — Officials and employees~~ duties. Members are expected to not knowingly misrepresent information for the purpose of achieving a desired outcome. Members should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

~~(d) — Fair and Equal Treatment.~~ No official or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen, other than those established by council as employee fringe benefits.

~~(e) — Conflict of Interest.~~

~~(1) — No councilmember or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her duties in the public interest or would tend to impair his or her independence of judgment or action in the performance of his or her official duties.~~

~~(2) — Substantial Interest in Any Business.~~ No councilmember or other official or employee shall act on any matter which will affect any business in which he or she holds a substantial (as defined in

~~K.S.A. 75-4301) interest unless a written report of the nature of such interest has been filed with the county clerk.~~

~~(3) — Participation~~

(d) **Requirements of and Actions Prohibited by the Code of Ethics.**

(i) Fair and Equal Treatment. Members of the governing body shall not discriminate on the basis of sex, race, color, ethnic background, religion, age, national origin, gender, sexual orientation, disability, gender identity, or gender expression of employees in their employment with the city or individuals in their use and enjoyment of the services, privileges, and advantages of the city. This provision does not prohibit the governing body from making appointments, filling vacancies, or otherwise engaging the public in such way as to include community members with diverse backgrounds based on sex, race, color, ethnic background, religion, age, national origin, gender, sexual orientation, disability, gender identity, or gender expression.

(ii) Conflicts of Interest. As used in this code, the terms “local governmental officer” and “substantial interest” shall have such meanings as are provided by K.S.A. 75-4301a(a), as amended.

(A) ~~As provided in a City Contract. No councilmember or other official shall~~K.S.A. 75-4304, as amended, no local governmental officer shall, in the capacity of such an officer, make or participate in the making of any contract by the city with any person or business by which ~~he or she~~the officer is employed or in whose business ~~he or she~~the officer has a substantial interest. ~~Any official or employee~~A local governmental officer does not make or participate in the making of a contract if he or she the officer abstains from any ~~action~~vote in regard to the ~~contact~~contract. This ~~rule does~~subsection shall not apply: (i) if the contract is let after the competitive bidding has been advertised for by public notice, or (ii) when a contact is for property or services for which the price or rate is fixed by law.

~~(4) — Incompatible Employment — No councilmember or other official or employee~~

(B) As provided in K.S.A. 75-4305, as amended, any local governmental officer who has not filed a disclosure of substantial interests as required by law shall, before acting upon any matter which will affect any business in which the officer has a substantial interest, file a written report of the nature of the interest with the Johnson County Election Office. A local governmental officer does not pass or act

upon any matter if the officer abstains from any vote in regard to the matter.

(C) Unless otherwise permitted by law and proper disclosure is made, no member of the governing body shall engage in or accept private or public employment or render services for pay or monetary consideration for a private interests or public interest when such employment or service is legally or clearly incompatible with the proper discharge of his or her such member's official duties or would tend to clearly impair his or her independence of such member's independent judgment or action in the performance of his or her such member's official duties, unless otherwise permitted by law and unless disclosure is made as provided in this Code.

(iii) Private Benefit and Interests.

(A) Members of the governing body shall not use their public office or position for their own private financial or personal gain or advantage of a kind that is not or could not be generally available to other citizens; nor for the private financial or similar personal gain or advantage of friends, relatives, or persons with whom the member is affiliated with in a non-governmental capacity.

(B) To avoid creating the appearance of impropriety, undue influence, and impartiality, members of the governing body shall not appear on behalf of the private interests of any person or business entity before the city council, council committee of the whole, or any other commission, committee, or agency of the city to which they have been appointed, unless they are representing themselves, their spouse, or their minor child(ren). This provision does not prohibit a member of the governing body from attending city council, council committee of the whole, or any other commission, committee, or agency meetings in the performance of public or civic obligations.

(iv) Late Case Interest. No member of the governing body shall, after the termination of service or expiration of their term as a member of the governing body with the city, appear before any board, commission, committee, or agency of the city in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service or tenure, or which was under his or her active consideration. This does not preclude former members from testifying in court on city-related matters.

(v) ~~(5) Disclosure of Confidential Information—.~~ No councilmember or other official or employeemember of the governing body, shall, without proper legal authorization, disclose confidential or privileged information provided to them in their official capacity concerning the property, government, or affairs of the city. Nor shall he or she use such information to advance the financial or other private interest of himself, herself, or others. ~~When a question arises about classification of information, the~~

~~departmental supervisor and/or the city attorney shall make the determination~~For the purposes of this subsection, "confidential or privileged information" includes any material information discussed in a closed or executive meeting that is specifically related to the basis for the closed or executive meeting and has not previously been made available to the public, and any record or information therein that has not previously been made available to the public and the member knows or should know is confidential or privileged.

(vi) ~~(6) Gifts and Favors.~~ No ~~councilmember or other official or employee~~member of the governing body shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm, or corporation which to ~~his or her~~their knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the city; nor shall any such official ~~or employee~~: (aA) accept any gift, favor or thing of value that may tend to influence ~~him or her~~them in the discharge of ~~his or her~~their duties or (bB) grant in the discharge of ~~his or her~~their duties any improper favor, service, or thing of value. The prohibition against gifts or favors shall not apply to: (aA) an occasional nonpecuniary gift, or token of appreciation of only nominal value ~~or~~; (bB) an award publicly presented in recognition of public service ~~or~~; (cC) ~~any gift which would have been offered or given to him or her if not~~any gifts or hospitality conferred on account of kinship or other personal, professional, or business relationships independent of the official status of the receiver; (D) invited attendance at receptions, events, luncheons, dinners, sporting events, or the like involving no substantial risk of undermining official impartiality; or employee(E) other gifts or invitations involving no substantial risk of undermining official impartiality or not clearly targeted at obtaining contractual or other business or financial arrangements from the member on behalf of the city.

~~(7) Late Case Interest. No public officer or employee shall, after the termination of service or employment with the city, appear before any board, commission, committee or agency of the city in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration. This does not preclude ex-employees from testifying in court on city-related matters.~~

~~F. Political Activity. Employees are encouraged to vote in any and all elections for which they are eligible; however, to safeguard the city's policy of employment and advancement on the basis of merit and qualifications, employees are prohibited from participating in the election campaign of any candidate for city office or from holding any office in any political party organization "within the city" which may influence the election of any city official.~~

~~No official or employee, whether elected or appointed,~~

- ~~(vii) Misuse of City Property and Staff. Members of the governing body shall not use public resources that they may use in their official capacity (e.g., city-owned vehicles, city staff time, equipment, supplies, property, etc.) for private gain, personal purposes, or other activities not related to city business unless otherwise authorized by law or city policy. Prohibited activities that are not related to city business include using public resources to pursue personal commercial endeavors or conduct political activity, to include the activity prohibited by K.S.A. 25-4169a, and amendments thereto. Elected and appointed officials are expected to follow proper chains of command through the mayor, the city administrator, and department heads.~~
- ~~(viii) Political Activity. No member of the governing body shall promise an appointment to any municipal position as a reward for any political activity.~~

~~G. — Misuse of City Property. No city official or employee shall request or permit the use of city-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as municipal policy for the use of such official or employee in the conduct of official business.~~

~~H. — Applicability of Code. When a councilmember or other official or employee has doubt as to the interpretation or the applicability of a provision of this Code to a particular situation, he/she should apply in writing to the policy/services committee for an advisory opinion and be guided by that opinion when given. Any official, employee or citizen shall have the opportunity to present his or her interpretation of the facts at issue and of the applicable provision(s) of the Code before such advisory decision is made. This Code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or charter provision and statutory or charter action is mandatory, or when the application of a statutory or charter provision is discretionary but determined to be more appropriate or desirable.~~

~~I. — Distribution of Code of Ethics. The city clerk shall cause a copy of this code of ethics to be distributed to every public officer and employee of the city within 30 days after enactment of this Code. Each public officer and employee elected, appointed or employed thereafter, shall furnish a copy.~~

~~J. — Enforcement of Code. Any alleged violation by a public official or employee shall be brought to the attention of the Council Committee of the Whole by a written complaint duly signed by a complaining party. The Council Committee of the Whole shall investigate the written complaint. The Council Committee of the Whole shall adopt its own rules for studying and investigating complaints. After investigating the complaint, the Council Committee of the Whole shall make recommendations in writing to the mayor and the department head of the~~

~~employee. The mayor and department head shall take whatever action they deem appropriate. In the case of employees, action shall be based upon established employment policies of the city, including dismissal where appropriate. On the part of public officials, action, if any, shall either be public censor or ouster, provided that all action be in accordance with the applicable statutes of the State of Kansas.~~

(e) **Advisory Opinions.** Any member of the governing body may submit a written request to the city attorney for an advisory opinion regarding whether their own proposed actions or conduct would violate a provision of this code. A copy of such request and any advisory opinion shall be provided to the mayor and the city administrator. The member shall have the opportunity to present the member's interpretation of the facts at issue and of the applicability of provisions of this code before such advisory opinion is made. When determining if there is clear and convincing evidence that a member who is the subject of the alleged violation violated a provision of this code, the city attorney and any independent counsel shall presume that the member did not violate a provision of this code if the member has received an advisory opinion and acted in accordance with its provisions. Any advisory opinion provided by the city attorney shall not create an attorney-client relationship and shall not be considered subject to the attorney-client privilege.

(f) **Self-Responsibility.** This code of ethics policy is intended to be self-enforcing and is an expression of the standards of conduct expected by the city. Therefore, a copy of this policy shall be provided to all members of the governing body as part of their public office orientation. Each member of the governing body is responsible for upholding these standards. The responsibility of knowing whether or not a given set of circumstances creates an ethical conflict and for acting appropriately rests solely with the individual.

(g) **Complaints under the Code of Ethics; State or other Local Law.**

(i) Generally.

(A) If member of the governing body believes another member has violated any of the provisions of this code or other state or local law, the member with that belief should first advise the other member of their belief. If the member initiating the concern does not believe the matter has been satisfactorily resolved, such member may file a written complaint as provided below.

(B) Any allegation of a violation of any of the provisions of this code or other state or local law against a member of the governing body may be brought by any person and must be submitted in writing as a formal complaint to the attention of the city clerk. Such complaint must be signed and notarized. The city clerk shall forward the complaint to the mayor, the city administrator, the city attorney, and the member accused of the violation.

(ii)

Investigations.

- (A) Subject to subsections (j) and (k) below, the city attorney shall initially be responsible for investigating complaints and, if necessary, presenting investigative findings to the council committee of the whole. Alternatively, the city attorney may select, with the approval of the city administrator, independent counsel to conduct such investigations; provided, that nothing herein shall be deemed to require that the city attorney itself conduct any investigation if, in the reasonable opinion of the city attorney, the conduct of such an investigation would create any conflict with the role of the city attorney or other regulations applicable to licensed attorneys. Any independent counsel should have experience conducting investigations or in the area of governmental ethics.
- (B) The city attorney or independent counsel, as the case may be, shall investigate the complaint if they determine that the allegations in the complaint, if true, would constitute a violation of any of the provisions of this code or other state or local law. If the city attorney or independent counsel does not believe the allegations in the complaint, if true, would constitute a violation of any of the provisions of this code or other state or local law, the city attorney or independent counsel shall provide their reasons for this finding in writing to the mayor and the city administrator who will forward those reasons to the complainant and the member of the governing body accused of the violation.
- (C) If the city attorney or independent counsel proceeds with an investigation, they will also determine whether the alleged violation of the provisions of this code would also constitute a violation of state or other local law.

(iii)

Investigative Findings.

- (A) Upon concluding the investigation of a complaint, if the city attorney or independent counsel finds that there is clear and convincing evidence that the member of the governing body who is the subject of the complaint violated any of the provisions of this code, they shall notify the mayor and the city administrator, and the city administrator shall coordinate the holding of a meeting of the council committee of the whole for consideration of such investigation. Prior to the meeting of the council committee of the whole, the city attorney or the independent counsel shall present the investigative findings to the official accused of the violation.
- (B) The city attorney or independent counsel shall present their investigative findings at the meeting of the council committee of the whole where the matter is discussed, and the governing body member who is accused of the violation shall have the right to present evidence on their behalf at the meeting. It is the expectation that such person accused will otherwise recuse themselves from

discussion, deliberation, and debate on the matter. Failure to so recuse oneself shall constitute a separate and additional violation of the provisions of this code. After reviewing the investigative findings and the presentation of any evidence, the council committee of the whole will determine whether or not the member accused of the violation committed a violation of any of the provisions of this code.

(C) If the city attorney or independent counsel concludes that there is clear and convincing evidence that a governing body member has violated any of the provisions of this code and that such violation also constitutes a violation of state or other local law, the city attorney or independent counsel shall include this information in the investigative findings they present to the mayor, city administrator, and council committee of the whole.

(D) Upon concluding the investigation of a complaint, if the city attorney or independent counsel finds that there is not clear and convincing evidence that the governing body member who is the subject of the complaint violated any of the provisions of this code or other state or local law, the city attorney or independent counsel shall not present the investigative findings to the council committee of the whole but shall provide their reasons for this finding in writing to the mayor and the city administrator who will forward those reasons to the complainant and the member accused of the violation.

(i) **Penalties.** If the council committee of the whole determines a member of the governing body who is the subject of a complaint under this code committed a violation of any of the provisions of this code, the committee may recommend to the city council and the city council may approve one or more of the following actions:

(i) No action be taken;

(ii) Requiring that the governing body member participate in ethics training. Failure to complete such training after it has been ordered by the city council shall constitute a separate and additional violation of the provisions of this code;

(iii) Issuing a written warning or an informal reprimand, or adopting a formal resolution of public censure; or

(iv) Other lawful action that the city council deems appropriate, including but not limited to the institution of ouster proceedings.

(j) **Violations of State and other Local Laws.** Violations of state or other local laws by members of the governing body may involve independent proceedings and penalties. Notwithstanding the foregoing procedures, if a complaint alleges a violation of any state or other local law, or if the city attorney or independent counsel concludes that a governing body member has violated a provision of this code and/or any such violation constitutes a violation of state or other local law, the city administrator,

city attorney, council committee of the whole, or city council may submit to the chief of police, the Kansas Governmental Ethics Commission, the Kansas Attorney General, the Johnson County District Attorney, or other appropriate official a request for review, investigation, or other appropriate action pursuant to state or local law, including but not limited to initiation of criminal or civil proceedings, forfeiture of office, or ouster proceedings if appropriate.

(k) ***Limitations on Investigations and Enforcement.***

(i) **Generally.**

(A) This code acknowledges that mere political, personal, or policy disagreements cannot generally support a claim for a violation of the code of ethics unless a specific prohibition or requirement of the code is claimed to have been violated. Public officials have a wide variety of backgrounds, personalities, values, opinions, and goals, but despite this diversity, have all chosen to serve the public and act in the best interest of the community. A mere showing that a member of the governing body has a particular political or policy view or general opinion about a given issue, or is a member or employee of an organization that holds a particular political or policy view or general opinion about a given issue, will generally not suffice to show any violation of this code.

(B) Accordingly, and unless directed otherwise by the mayor, the city administrator, or the city council, the city attorney or independent counsel shall not generally be called upon to investigate complaints related to political, personal, or policy disagreements, or complaints related to the general purposes, policies, goals, or guidelines of this code, or general expectations of conduct provided in this code.

(C) if the city attorney or independent counsel finds that a complaint primarily involves political, personal, or policy disagreements, or complaints related to the general purposes, policies, goals, or guidelines of this code, or general expectations of conduct provided in this code, the city attorney or independent counsel shall not present any investigative findings to the council committee of the whole but shall provide their reasons for this finding in writing to the mayor and the city administrator who will forward those reasons to the complainant and the member of the governing body accused of the violation.

(ii) **Campaign or Non-City-Related Matters.** Nothing herein shall be deemed to require that city staff, the city attorney, or any independent counsel review, consider, or investigate complaints or issue advisory opinions related to matters which do not involve

city business or operations or which, in the opinion of the city administrator, city attorney, or any independent counsel, constitute campaign or political questions or disputes, including but not limited to political remedies such as recall under K.S.A. 25-4301 et seq.

(iii) Frivolous Complaints. Notwithstanding the foregoing procedures, the city administrator, city attorney, or independent counsel may also determine that a complaint is frivolous, or that repeated complaints are intended to disrupt essential functions of the city or harass a member of the governing body. If the city administrator, city attorney, or independent counsel makes such a determination, the city administrator, city attorney, or independent counsel shall present that finding to the mayor and (to the extent handled by the city attorney or independent counsel) the city administrator. If a determination has been made that a complaint is frivolous or is intended to disrupt essential functions of the city or harass an elected or appointed official, the mayor, city administrator, city attorney, or independent counsel may dismiss the complaint and the city may refuse to accept another complaint from the complainant for up to one (1) year following notice to the complainant. For the purposes of this provision, a frivolous complaint is a complaint that has no basis in law or fact, fails to state a legitimate claim, or is brought either in bad faith or for the purpose of harassment.

Section 2. Section 1-212 of the Prairie Village Municipal Code, in existence as of and prior to the adoption of this ordinance, are hereby repealed. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on _____, 2024.

APPROVED:

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

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