

ORDINANCE NO. COE-3303

AN ORDINANCE ESTABLISHING A CODE OF ETHICS FOR ELECTED AND APPOINTED OFFICIALS OF THE CITY OF OVERLAND PARK, KANSAS, AND PROVIDING SANCTIONS FOR VIOLATIONS THEREOF; AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTION 2.22.010 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS, AS FOLLOWS:

Section 1. Overland Park Municipal Code Sections 2.22.010 through 2.22.090 shall be incorporated into an Article titled “Article I. Code of Ethics for City Employees.” New Overland Park Municipal Code Sections 2.22.110 through 2.22.170 shall be incorporated into an Article titled “Article II. Code of Ethics for Elected and Appointed Officials.”

Section 2. Overland Park Municipal Code Section 2.22.010 is hereby amended to read as follows:

2.22.010 Adoption of Code of Ethics for City Employees and Declaration of Policy

There is hereby established a Code of Ethics for all City employees, whether paid in whole or in part by the City, or unpaid. The purpose of this Code is to establish ethical standards of conduct for all City employees by setting forth those acts or actions that are incompatible with the best interests of the City. The provisions and purpose of this Code and such rules and regulations as may be established by the City Manager are hereafter declared to be in the best interests of the City of Overland Park, Kansas.

Section 3. Overland Park Municipal Code Section 2.22.110 is hereby added to read as follows:

2.22.110 Adoption of Code of Ethics for Elected and Appointed Officials and Declaration of Policy

There is hereby established a Code of Ethics for all elected and appointed officials of the City. The proper operation of democratic government requires that elected and appointed officials be accountable to the people they serve. The purpose of this Code is to establish a process to determine whether an elected or appointed official has committed misconduct, promote and maintain the highest ethical standards of conduct for elected and appointed officials, and encourage public confidence in the City's services and public trust of its decision-makers.

Section 4. Overland Park Municipal Code Section 2.22.120 is hereby added to read as follows:

2.22.120 Responsibilities of Public Office.

Elected and appointed officials of the City are bound to uphold and carry out impartially the laws of the United States, the State of Kansas, and the City of Overland Park, and thus are expected to

foster respect for all levels of government.

Section 5. Overland Park Municipal Code Section 2.22.130 is hereby added to read as follows:

2.22.130 Official Misconduct.

Elected and appointed officials of the City shall not commit official misconduct. Official misconduct includes:

- a. **Discrimination.** Elected and appointed officials 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 officials 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.
- b. **Nepotism.** In order to avoid conflicts of interest or perceptions of a conflict, family members of the Governing Body should not be appointed to serve as a member of a Plural Authority, and elected or appointed officials shall not request or recommend family members for employment with the City. This provision shall not prevent an official from providing a recommendation for their minor child(ren)'s temporary employment with the City, or an official's minor child(ren) from being appointed to a Plural Authority. For purposes of this provision, "family member" is defined as the spouse, child, or parent of the official.
- c. **Personal Gifts and Favors.** Elected and appointed officials shall not accept personal gifts where they know or should know a personal gift worth more than a nominal value (\$50.00 or more) would not be extended to them except for their official position, or where they know or should know a personal gift is intended to influence their official actions. This provision shall not apply to: a) an award publicly presented in recognition of public service, b) gifts conferred on account of kinship or other personal, professional, or business relationships independent of the official status of the receiver, or c) trivial gifts involving no substantial risk of undermining official impartiality.
- d. **Pre-Acquisition of Interest.** Elected or appointed officials shall not acquire a personal financial interest in a contract or transaction which is under consideration by the City if the official learns while acting within the scope of their official duties that they will obtain a personal financial benefit by the action of the City on such contract or transaction.
- e. **Private Use of Public Resources.** Elected and appointed officials 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 post or otherwise interact on social media pages, pursue personal commercial endeavors, or conduct political activity to include the activity prohibited by K.S.A. 25-4169a, and amendments thereto.

- f. **Representation of Private Interests.** To avoid creating the appearance of impropriety, undue influence, and impartiality, elected and appointed officials shall not appear on behalf of the private interests of any person or business entity before the City Council, Council Committee, or any Plural Authority to which they have been appointed, unless they are representing themselves, their spouse, or their minor child(ren). This provision does not prohibit an elected or appointed official from attending City Council, Council Committee, or Plural Authority meetings in the performance of public or civic obligations.
- g. **Use or Disclosure of Confidential Information.** Elected and appointed officials shall not, without proper legal authorization, disclose any confidential or privileged information provided to them in their official capacity, nor use such information to advance their personal, financial, or other private interests. For the purposes of this provision, “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 official knows or should know is confidential.

Section 6. Overland Park Municipal Code Section 2.22.140 is hereby added to read as follows:

2.22.140 Advisory Opinions.

Any elected or appointed official 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 Article. The official shall have the opportunity to present the official’s interpretation of the facts at issue and of the applicability of provisions of this Article before such advisory opinion is made. When determining if there is clear and convincing evidence that an official who is the subject of the alleged violation violated a provision of this Article, the Independent Counsel shall presume that the official did not violate a provision of this Article if the official has received an advisory opinion and acted in accordance with its provisions.

Section 7. Overland Park Municipal Code Section 2.22.150 is hereby added to read as follows:

2.22.150 Enforcement.

a. **Complaints.**

1. If an elected or appointed official believes another elected or appointed official has violated a provision of this Article, the official with that belief should first advise the other official of their belief. If the official initiating the concern does not believe the matter has been satisfactorily resolved, the official may file a written complaint with the City Attorney who will forward the complaint to the Independent Counsel and the official accused of the violation.
2. Any person that is not an elected or appointed official may submit a written complaint regarding an apparent violation of this Article to the City Attorney who will forward the complaint to the Independent Counsel and the official accused of the violation.

b. Investigations.

1. The City Attorney shall select Independent Counsel to investigate complaints and if necessary present investigative findings to the Council Committee of the Whole. The Independent Counsel should have experience conducting investigations or in the area of governmental ethics.
2. The Independent Counsel shall investigate the complaint if they determine that the allegations in the complaint, if true, would constitute a violation of the provisions of this Article. If the Independent Counsel does not believe the allegations in the complaint, if true, would constitute a violation of this Article, the Independent Counsel shall provide their reasons for this finding in writing to the City Attorney who will forward those reasons to the complainant and the official accused of the violation.
3. If Independent Counsel proceeds with an investigation, they will also determine whether the alleged violation of the provisions of this Article would also constitute a violation of State or other local law.
4. The Independent Counsel or City Attorney may also determine that a complaint is frivolous, or that repeated complaints are intended to disrupt essential functions of the City or harass an elected or appointed official. If the Independent Counsel makes such a determination, the Independent Counsel shall present that finding to the City Attorney. 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 City Attorney may dismiss the complaint and refuse to accept another complaint from the complainant for up to one (1) year following notice to the complainant. Such determination may be appealed to the City Manager and the right to appeal shall be included in the notice to the complainant. For the purposes of this provision, a frivolous complaint is a complaint that has no basis in law or fact and is brought either in bad faith or for the purpose of harassment.

c. Investigative Findings.

1. Upon concluding the investigation of a complaint, if the Independent Counsel finds that there is clear and convincing evidence that the official who is the subject of the complaint violated a provision of this Article, they shall notify the City Attorney and the City Manager, and the City Manager shall coordinate issuance of a Call and Notice for a Special Formal Meeting of the Council Committee of the Whole. Prior to the meeting of the Council Committee of the Whole, the City Attorney shall present the investigative findings to the official accused of the violation. The Independent Counsel shall present their investigative findings at the meeting of the Council Committee of the Whole where the matter is discussed, and the official who is accused of the violation shall have the right to present evidence on their behalf at the meeting. After reviewing the investigative findings and the presentation of any evidence, the Council Committee of the Whole will determine whether or not the official accused of the violation committed official misconduct.
2. If the Independent Counsel concludes that there is clear and convincing evidence that an official has violated a provision of this Article and that such violation also constitutes a violation of State or other local law, the Independent Counsel shall

include this information in the investigative findings they present to the City Manager, City Attorney, and Council Committee of the Whole.

3. Upon concluding the investigation of a complaint, if the Independent Counsel finds that there is not clear and convincing evidence that the official who is the subject of the alleged violation violated a provision of this Article, the 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 City Attorney who will forward those reasons to the complainant and the official accused of the violation.

Section 8. Overland Park Municipal Code Section 2.22.160 is hereby added to read as follows:

2.22.160 Sanctions.

If the Council Committee of the Whole determines an official who is the subject of an investigation under this Article committed official misconduct, the Committee may recommend to the City Council and the City Council may approve one or more of the following actions:

- a. No action be taken;
- b. Requiring that the official 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 Article;
- c. Issuing a written warning or an informal reprimand;
- d. Adopting a formal resolution of public censure;
- e. In the case of appointed members of a Plural Authority, recommending that the Governing Body remove the member from such position in accordance with Section 2.09.071 of the Overland Park Municipal Code; or
- f. Other lawful action that the City Council deems appropriate.

Section 9. Overland Park Municipal Code Section 2.22.170 is hereby added to read as follows:

2.22.170 Violations of State or Other Local Laws.

Violations of State or other local laws by elected and appointed officials of the City may involve independent proceedings and penalties. If a complaint alleges a violation of any State or other local law, or if the Independent Counsel concludes that an official has violated a provision of this Article and such violation also constitutes a violation of State or other local law, the City Manager, City Attorney, or Governing Body 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.

Section 10. Existing Overland Park Municipal Code Section 2.22.010 is hereby repealed.

Section 11. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

PASSED by the City Council this 2nd day of November, 2020.

APPROVED by the Mayor this 2nd day of November, 2020.

CITY OF OVERLAND PARK, KANSAS

(s) Carl Gerlach
Carl Gerlach
Mayor

(SEAL)

ATTEST:

(s) Elizabeth Kelley
Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

(s) Michael Koss
Michael Koss
Deputy City Attorney