

ORDINANCE NO. BG2020 - 31
As Amended

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 25 (CODE OF ETHICS) OF THE CITY OF BOWLING GREEN CODE OF ORDINANCES TO AMEND SUBCHAPTERS RELATED TO DEFINITIONS, STANDARDS OF CONDUCT, CONFLICTS OF INTEREST IN CONTRACTS, GIFTS, FINANCIAL DISCLOSURE, BOARD OF ETHICS AND PENALTIES AS RECOMMENDED BY THE BOARD OF ETHICS AND CITY STAFF

WHEREAS, the City of Bowling Green Board of Ethics and City staff are recommending amendments to the Code of Ethics to revise language in Subchapters 25-2 (Definitions), 25-4 (Standards of Conduct), 25-5 (Conflicts of Interest in Contracts), 25-8 (Gifts), 25-12 (Financial Disclosure), 25-13 (Board of Ethics) and 25-14 (Penalties); and,

WHEREAS, the proposed amendments as recommended by the Board of Ethics and City staff are in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 25 (Code of Ethics) is hereby amended as follows:

25-2 DEFINITIONS.

...

“Domestic Partner” shall mean an adult, unrelated by blood, with which an unmarried or separated public official or employee has an exclusive committed relationship, maintains a mutual residence and shares basic living expenses.

~~“Public Official or Employee” shall mean any person, officer or employee holding a position by election, appointment or employment in the service of the City, whether paid or unpaid, full-time or part-time.]~~

“Employee” shall mean any person, whether full-time or part-time, seasonal or temporary,

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and whether paid or unpaid, who is employed by, or provides services to, the City. The term “employee” shall not include any contractor or subcontractor.

...

“Immediate Family Member” means a spouse, domestic partner, an unemancipated child residing in the public official’s or employee’s household, or a person claimed by the public official or employee, or the public official’s or employee’s spouse, as a dependent for tax purposes.

“Interest” shall mean any material direct or indirect benefit accruing to a public official or employee or their family members, whether in the public official’s or employee’s own name or the name of any person, firm, corporation, association or trust from which the public official or employee is entitled to receive any financial benefit, as a result of a contract or transaction which is or which is known will become the subject of an official act or action by or with the City (other than the duly authorized salary or compensation for his or her services to the City).

...

“Public Official” shall mean any member of the Board of Commissioners or any board appointee of a City agency.

...

25-4 STANDARDS OF CONDUCT.

No public official or employee of the City [~~or members of the board of any City agency as defined hereinabove~~] shall knowingly:

...

5. Represent private interests in any action or proceeding before the governmental body for which he or she serves or is employed without consulting and receiving written consent from the City. This standard of conduct shall not be construed to prevent a public official or employee from appearing, without compensation, before any governmental body of the City to express his or her

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personal views as a private citizen. No ~~[elected]~~ public official shall be prohibited from making any inquiry for information on behalf of a constituent, if no compensation, reward or other thing of value is promised to, given to, or accepted by the public official, whether directly or indirectly, in return for the inquiry;

...

25-5 CONFLICTS OF INTEREST IN CONTRACTS.

1. No ~~[elected]~~ public official ~~[of the City]~~ or employee ~~[of the City or member of the board of any City agency as defined hereinabove]~~ shall directly or through others undertake, execute, hold or enjoy, in whole or in part, any contract made, entered into, awarded or granted by the City or the board member's City agency, except that this prohibition shall not apply to contracts entered into before a ~~[n]~~ ~~[elected]~~ public official filed as a candidate for ~~[e]~~ City office, before a ~~[n]~~ ~~[appointed]~~ public official was appointed to a City or City agency office, or before an employee was hired by the City. However, if any contract entered into by ~~[a]~~ the City or City agency with a public official or employee before he or she was appointed to office or was hired as an employee is renewable after he or she assumes the appointed office or is hired as an employee, then this prohibition shall apply to the renewal of the contract. No elected public official shall directly or through others undertake, hold or enjoy, in whole or in part, any contract made, entered into, awarded or granted by any agency, board or commission that is created by the City, that is created jointly by the City and Warren County, that has any City representation on its board of directors or that receives funding from the City that is identified in the annual budget as either a City ~~[contract]~~ eligible agency, board or commission or competitive funding agency, board or commission. This prohibition shall not apply to contracts existing with any such agencies, boards or commissions prior to June 15, 2009. However, if any such existing contract is renewable after June 15, 2009, then this prohibition shall apply to the renewal of the contract.

...

25-8 GIFTS.

1. No public official^[5] or employee of the City, [~~or board member of a City agency~~] as defined hereinabove, shall, in such capacity, solicit, directly or indirectly, any gratuity for any intended or actual personal gain or benefit, regardless of value, from any person or entity [~~and not for any intended or actual person gain or benefit~~].

2. No public official^[5] or employee of the City, [~~or board member of a City agency~~] as defined hereinabove, shall offer, give, or accept, directly or indirectly, any gratuity, regardless of value, which is offered or based upon any understanding that the vote, official act, or judgment of [~~the~~] such public official, or employee [~~or board member~~] would be influenced thereby or if it may reasonably be inferred that the purpose of the [~~gift~~] gratuity was to influence the action of the public official or employee [~~or board member~~] or to affect the performance or nonperformance of an official act or that the gift-giver has an interest which may be substantially affected directly or indirectly by the performance or nonperformance of an official act.

3. Subject to the above prohibitions, a public official^[5] or employee of the City, [~~or board member of a City agency~~] as defined hereinabove, may accept unsolicited gratuities of a value up to and including one hundred dollars (\$100.00).

4. Public officials^[5] and employees of the City, [~~and board members of city agencies~~] as defined hereinabove, may accept gratuities, without regard to value, when such gratuities are offered to the City or a City agency and are accepted on behalf of the City or City agency, with the gratuity to be and remain the property of the City or City agency.

5. Public officials^[5] and employees of the City, [~~and board members of city agencies~~] as defined hereinabove, may accept, regardless of value, admission to, and actual and reasonable out-of-pocket expenses incurred for [~~and admission to~~], events to which they are invited in

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their official, representative capacity as a[~~n~~] public official or employee of the City, [~~or City agency~~] as defined hereinabove, and may accept noncash gratuities valued at no more than one hundred dollars (\$100.00) offered in appreciation for speaking or making any presentation at such event [~~that official or employee speaking or making any presentation before any group~~].

...

25-12 FINANCIAL DISCLOSURE.

...

3. The initial statement of financial interests required by this section shall be filed with the City Clerk no later than January 31, 1995. All subsequent statements of financial interests shall be filed no later than January 31 each year, provided that a[~~n~~] public official or employee newly-appointed to fill an office or position of employment with the City shall file his or her initial statement no later than thirty (30) days after the date of the appointment and a candidate for [~~e~~]City office, who is not a [~~city~~] public official or employee already required to file a statement of financial interest, shall file his or her initial statement no later than thirty (30) days after the filing deadline for that office.

4. The Board of Ethics may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.

5. In the event there is a material change in any information contained in a financial statement that has been filed with the Board, the public official or employee shall, no later than thirty (30) days after becoming aware of the material change, file an amended statement with the City Clerk.

6. The statement of financial interests shall be filed on a form prescribed by the Board of Ethics. The Board shall deliver a copy of the form to each public official and employee required to file the statement, by first class mail or hand delivery, no later than January 1 of each

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year. The failure of the Board to deliver a copy of the form to any public official or employee shall not relieve the public official or employee of the obligation to file the statement.

...

10. Nothing in this Section shall be construed to require any public official or employee to disclose any specific dollar amounts nor the names of individual clients or customers of businesses listed as sources of income.

...

25-13 BOARD OF ETHICS.

1. The Mayor, with the approval of the Board of Commissioners shall appoint a Board of Ethics composed of five (5) members. Effective with the members of the Board of Ethics with terms beginning January 1, 1998, three (3) members shall be appointed for terms of two (2) years. The remaining two (2) members shall be appointed for an initial term of three (3) years. All appointments thereafter shall be for a term of two (2) years. The Mayor, with the approval of the Board of Commissioners, shall appoint three (3) alternate members to serve in the temporary absence of a regular member of the Board of Ethics during hearings that are held as a result of an ethics complaint. The alternate members shall serve during the term of the Mayor. No member shall serve more than three (3) consecutive terms. No person appointed to the Board of Ethics shall hold any other elected or appointed position with any entity subject to the jurisdiction of this Board of Ethics. A member of the Board of Ethics may be removed by a vote of four (4) of the five (5) members of the Board of Commissioners for misconduct^[5] or inability to conduct, or willful neglect of duties. Before any member of the Board of Ethics is removed from office, the member shall be afforded the opportunity for a hearing before the Board of Commissioners. The decision of the Board of Commissioners shall be final and non-appealable. The City Attorney shall be assigned to the Board of Ethics for its administrative support. In the event an actual or potential conflict occurs,

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the Board of Ethics may retain private counsel at the expense of the City. The Board of Ethics will select a chairperson to serve for a one (1) year term. Vacancies on the Board of Ethics shall be filled within sixty (60) days by the Mayor and Board of Commissioners. Members of the Board of Ethics shall serve without compensation, but shall be reimbursed for all necessary and reasonable expenses incurred in the performance of their duties. Meetings of the Board of Ethics shall be held as necessary, upon the call of the chairperson or at the written request of a majority of the members. Minutes shall be kept for all proceedings of the Board of Ethics and the vote of each member on any issue decided by the Board of Ethics shall be recorded in the minutes.

2. Powers and Duties of the Board of Ethics. The Board of Ethics shall have the following powers and duties:

...

(b) To issue orders in connection with its investigations and hearings requiring persons to submit in writing and under oath reports and answers to questions that are relevant to the proceedings and to order testimony to be taken by deposition before any individual designated by the Board of Ethics who has the power to administer oaths.

(c) To issue orders requiring the attendance and testimony of those public officials or employees subject to this chapter and the production of documentary evidence relating to an investigation or hearing being conducted by the Board of Ethics.

(d) To refer any information concerning violations of this Chapter to the City Manager, the [~~City Commission~~] Board of Commissioners, the governing body of any City agency, the county attorney, or other appropriate person or body, as necessary.

(e) To render advisory opinions to public officials[~~s~~] or employees [~~or board members of appropriate city agencies~~] regarding whether a given set of facts and circumstances would constitute a violation of any provision of this Chapter.

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(f) To enforce the provisions of this Chapter with regard to all public officials and employees of the City and [e]City agencies who are subject to its terms by issuing appropriate orders and imposing penalties authorized by this Chapter.

...

(h) To develop and submit any reports regarding the conduct of its business that may be required by the City Manager or [City Commission] Board of Commissioners.

...

3. Filing of Complaints; Complaint Provisions.

...

(c) Any person who knowingly files with the Board of Ethics a false complaint alleging a violation of any provision of this Chapter by a[n] public official or employee of the City [or board member of any City agency] as defined shall be guilty of a Class A misdemeanor.

...

4. Penalties.

(a) If the Board of Ethics concludes in its report that in consideration of the evidence produced at the hearing a violation did not occur, the Board of Ethics may dismiss the complaint by a majority vote of the entire Board of Ethics; or,

(b) If the Board of Ethics concludes in its report that in consideration of the evidence produced at the hearing there is clear and convincing proof of a violation of this ordinance, the Board of Ethics, after considering any mitigating circumstances, may~~[-by a majority vote of the entire Board]:~~

~~[(1) Issue a written informal reprimand to the violator concerning the alleged violations.]~~

~~[(2)1] Issue a written formal reprimand to the violator concerning the~~

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violation(s) and provide a copy of the reprimand to the City Manager, [City] Board of Commissioners [or] and City agency with which the violator serves or is employed.

([3]2) Issue a written order requiring the violator to cease and desist the violation.

([4]3) Recommend in writing to the City Manager, [City] Board of Commissioners [or] and City agency with which the violator serves or is employed, that the violator be sanctioned as recommended by the Board of Ethics, which may include a recommendation for discipline, dismissal, [or] removal from office or employment, or any other penalties as recommended by the Board of Ethics.

([5]4) Issue a written order requiring the violator to pay a civil penalty of not more than one thousand dollars (\$1,000.00) [~~and, at the sole discretion of the Board of Ethics, requiring the violator to pay a portion or all of the legal costs incurred by the Board of Ethics and/or the City and/or City agency in relation to the violation(s)~~], which may be recovered by the City in a civil action in the nature of debt if the offender fails to pay the penalty within a prescribed period of time.

([6]5) Refer evidence of [~~criminal~~] violations of this [~~ordinance~~] Chapter or [s]State or Federal laws to the County Attorney, Commonwealth Attorney, or United States Attorney of the jurisdiction for prosecution.

...

7. Advisory Opinions.

(a) The Board of Ethics may render advisory opinions concerning matters under its jurisdiction, based upon real or hypothetical facts and circumstances, upon its own initiative, or when requested by any public official or employee of the City [~~or board member of a City agency~~] as defined which is covered by this Chapter.

...

8. Reprisals Against Persons Disclosing Violations Prohibited.

(a) No public official~~[s]~~ or employee of the City ~~[or board member of any City agency]~~ as defined shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence in any manner whatsoever which tends to discourage, restrain, deter, prevent, interfere with, coerce, or discriminate against any person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Board of Ethics or any other agency or official of the City or the Commonwealth any facts or information relative to an actual or suspected violation of this Chapter.

(b) This section shall not be construed as:

(1) Prohibiting disciplinary or punitive action if a~~n~~ public official or employee of the City ~~[or board member of any City agency]~~ as defined discloses information which he or she knows:

...

25-14 PENALTIES.

Except when another penalty is specifically set forth in this Chapter or State or Federal law, the violation of the Code of Ethics shall be punishable as follows:

1. ~~[In the case of employees, by one or more of the following to be determined by the City Manager: reprimand, suspension for a period not exceeding six (6) months, reduction in rank, removal from office, employment or service and]~~ Any public official or employee of the City found by the Board of Ethics to have violated this Chapter shall forfeit~~ure~~ to the City or City agency [of salary] an amount equal to the economic benefit or gain realized by [the] such public official or employee of the City, as determined by the Board of Ethics. This forfeiture, in addition to any order of the Board of Ethics requiring payment of any civil penalty [and/or legal costs], may

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be ~~[recovered]~~ enforced by the City in a civil action in the nature of the recovery of a debt if the offender fails to pay the amount within the prescribed time, or, if there is none, within a reasonable amount of time.

2. In the case of elected officials and other ~~[appointed]~~ public officials other than employees of the City, a violation of this Code of Ethics shall be considered misconduct subject to ~~[removal from office when]~~ remedies as determined by the Board of Commissioners.

~~[3. In the case of contractors, by one or more of the following: oral or written reprimands, cancellation of the transaction and suspension or disqualification from being a contractor or subcontractor under City or City funded contracts, with such decision to be recommended by the City Manager and approved by the Board of Commissioners.]~~

~~[4]3.~~ ~~[Suspension may be imposed upon an employee, other appointed public official or a contractor during an investigation of charges of a serious and compelling nature based on adequate evidence indicating violation under this section with such decision to be made by the City Manager in the case of employees; recommended by the City Manager with approval of the Board of Commissioners for contractors, and recommended and approved by the Board of Commissioners for appointed public officials.]~~ In addition to all other remedies which may be imposed under this Chapter, a finding by the Board of Ethics that an employee of the City is guilty of a violation of this Chapter shall be sufficient cause for disciplinary action including, but not limited to, removal, demotion, and/or suspension, as determined by the Board of Commissioners or City agency.

~~[5. In addition to the above penalties, any public official or employee of the City or board member of any City agency as defined who is found by the Board of Ethics to have violated any provision of the ordinance shall be deemed guilty of a civil offense and may be subject to a civil fine imposed by the Board of Ethics not to exceed one thousand dollars (\$1,000.00) which may be recovered by the City in a civil action in the nature of debt if the offender fails to pay the penalty~~

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~~within a prescribed period of time.]~~

...

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on September 15, 2020, and given final reading on October 20, 2020, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: October 20, 2020

APPROVED: Bruce Wilkerson
Mayor, Chairman of Board of Commissioners

ATTEST: Ashley Jackson
City Clerk

SPONSORED BY: Bruce Wilkerson, Mayor
Ordinance No. BG2020-31 was amended on the floor at the September 15, 2020 Board of Commissioners meeting.