

ORDINANCE NO. O-2019-64

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 1, "GENERAL PROVISIONS", ARTICLE III., "BOARDS", BY AMENDING ETHICS PROVISIONS RELATED TO ABSTENTION AND AFFIDAVITS OF INTEREST; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, the City Council has established certain ethics regulations in City Code Chapter 1; and

WHEREAS, it is important to amend to amend current ethics provisions related to abstention and affidavits of interest to conform to the State law; and

WHEREAS, it is important to make spelling and re-numbering changes as well;

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

PART 1: That Tyler City Code Chapter 1, "General Provisions", Article III., "Boards", is hereby amended by amending Section 1-29 to read as follows:

Sec. 1-29. Relationship of this Article to Texas Local Government Code Chapter 171 or successor statute; prohibited substantial interests of City officer.

a. If a City officer has a prohibited financial interest as defined herein, in a contract or transaction, then provisions of Texas Local Government Code Chapter 171 or successor statute are pre-empted by the stricter provisions of Section 71 of the City Charter and this Article, so that the application of the affidavit and abstention provided for in Chapter 171 is inapplicable, since the contract or transaction cannot be awarded by the City Council unless the City officer resigns, and therefore the issue of abstention is moot.

b. If the City officer does not have a prohibited financial interest as defined herein, but does have a prohibited substantial interest as defined in this subsection pursuant to Texas Local Government Code Chapter 171, then the provisions of Chapter 171 are applicable, and the City officer must comply with the requirements for abstention and for an affidavit of substantial interest under Texas Local Government Code Chapter 171 or successor statute. For purposes of this subsection, a person has a prohibited direct substantial interest in a business entity, or in real property, and the business entity or real property involved in a contract or transaction as defined herein.

1. Ownership of ten percent (10%) or more of the voting stock or shares of the business entity; or

2. Ownership of ten percent (10%) or more or \$15,000 or more of the fair market value of the business entity; or

3. Funds received by the person from the business entity exceed ten percent (10%) of the person's gross income for the previous year; or

4. Legal ownership, with a fair market value of \$2500 or more, in the real estate involved in the transaction; or


5. Equitable ownership, with a fair market value of \$2500 or more, in the real estate involved in the transaction.

c. For purposes of this Section, a City officer has a prohibited indirect substantial interest in a business entity if a parent, child, spouse, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the City officer has a prohibited direct substantial interest as defined in subsection b. of this Section. (Ord. No. 0-2005-33, 4/27/05) (Ord. No. 0-2019-64; 8/14/19)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be August 16th, 2019.


PASSED AND APPROVED this the 14th day of August, A.D., 2019.




MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS


ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY