

**ORDINANCE NO. 2020- 18**

**AN ORDINANCE ADOPTING A CODE OF ETHICS TO THE CITY OF SPRING HILL, KANSAS.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SPRING HILL, KANSAS:**

**SECTION ONE: Code of Ethics Application.** This Code of Ethics for Spring Hill, Kansas shall apply to all public officers or employees of the City and shall include all persons who are elected to the Governing Body of Spring Hill, Kansas; to all persons appointed or hired as employees of the City, its agencies, departments, boards or commissions, whether temporary or permanent, whether full-time or part-time, to all persons appointed by the Governing Body or the Mayor or any position, board or commission whether compensated or not; other than independent contractors who perform personal services for and on behalf of the City; provided that, the Code of Ethics shall apply to any appointive officer of the City who provides such services in the capacity of an independent contractor.

**SECTION TWO: Code of Ethics Definitions.** As used in this Article of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them herein:

- (a) **Business Entity.** Any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, person, association, venture, trust, or corporation.
- (b) **Interest.** Direct or indirect pecuniary or material benefit accruing to a public officer or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the City, except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated.

For the purposes of this Code, a public officer or employee shall be deemed to have an interest in the affairs of:

- (1) Any person related to him by blood or marriage, and a divorce or separation between spouses shall not be deemed to terminate any such relationship.
- (2) Any person or business entity with whom a contractual relationship exists with the public officer or employee or his spouse.
- (3) Any business entity other than an organization exempt from federal taxation of corporations under section 50 I (c) (3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States Code, in which the public officer or employee, or his spouse, is an officer, director, member or employee irrespective of the amount of compensation received by the public officer or employee or his spouse.

- (4) Any business in which the public officer or employee or his or spouse has ownership, either individually or collectively, of a legal or equitable interest not to exceed five percent (5%), whichever is less, and also including the receipt by the public officer or employee or his spouse, directly or indirectly, or any salary, gratuity, other compensation or remuneration or a contract for or promise or expectation of any such salary, gratuity, other compensation or remuneration having a dollar value of one thousand dollars (\$1,000.00) or more in the current or immediately preceding or succeeding calendar year from any business or combination of businesses, and also including the holding of the position of officer or director of any business, irrespective of the amount of compensation or remuneration received by the public officer or employee holding any such position. If the public officer's or employee's salary, compensation or other remuneration is a portion or percentage of a fee paid to a business or combination of businesses, a public officer or employee shall have a substantial interest in any client who pays a fee to such business or combination of businesses from which fee such public officer or employee receives one thousand dollars (\$1,000.00) or more in the current or immediately preceding calendar year.
- (c) Official Act or Action. Any legislative, administrative, quasi-judicial appointive or discretionary act of any officer or employee of the City or any council, agency, board, committee, or commission of the City.

### **SECTION THREE: Declaration of Policy.**

- (a) 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 proper channels of the governmental structure, 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, a Code of Ethics for all City officials and employees is adopted. The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for all such 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.
- (b) Responsibilities of Public Office. Public officials and employees 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 considerations, recognizing that the long-term public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.
- (c) Dedicated Service. All officials and employees of the City should be responsive to the objectives expressed by the electorate and the programs developed to attain those

objectives. Appointive officials and employees should adhere to the rule of work and performance established as the standard for their positions by the appropriate authority. Officials and employees 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.

- (1) Interest in Appointments. Canvassing of members of the Governing Body, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the municipal service shall disqualify the candidate for appointment.
- (2) Use of Public Property. No official or employee shall use, request the use of, 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 to the employee or official under City policy or contractual obligation for the use of such official or employee in the conduct of official business or use incidental thereto or provided as an element of compensation to the employee or officer.
- (3) Obligations to Residents. No official or employee shall grant any special consideration, treatment, or advantage to any resident beyond that which is available to every other resident.

**SECTION FOUR: Code of Ethics Established.** The requirements herein set forth shall constitute a Code of Ethics establishing reasonable standards and guidelines for the ethical conduct of public officers and employees of the City.

- (a) Disclosure of Confidential Information. No elected or appointive City official or employee, shall, without proper legal authorization, disclose or use confidential information concerning the property, government or affairs of the City.
- (b) Interest in Contract or Transaction. No public officer or employee having the power or duty to perform an official act or action related to a contract or transaction which is or may be the subject of an official act or action of the City shall:
  - (1) Have or thereafter acquire an interest in such contract or transaction; or
  - (2) Have an interest in any business entity representing, advising or appearing on behalf of, whether paid or unpaid, any person involved in such contract or transaction; or
  - (3) Have solicited or accepted present or future employment with a person or business entity involved in such contract or transaction; or

- (4) Have solicited, accepted or granted a present or future gift, favor, service or thing of value from or to a person involved in such contract or transaction. The prohibition against gifts or favors shall not apply to:
- i. An occasional non-pecuniary gift, insignificant in value; or
  - ii. An award publicly presented in recognition of public service; or
  - iii. Any gift which would have been offered or given to him if he were not an officer or employee.

A public officer or employee does not violate the provisions of this subsection when he or she has such an interest but abstains from any action, participation or vote involving the contract or transaction and properly discloses such interest. Any person abstaining shall, upon realization of such conflict, as soon as reasonably possible, state that he or she has conflict, leave the room until all discussion and action on the transaction has concluded, other than open public meetings, at which the recording officer or board member selected as secretary shall reflect any such abstention and departure from the proceedings, as applicable. Officers or employees shall disclose any interest to the Human Resources Manager or City Administrator and shall not participate in any RFP process, selection, contract or any sort – whether by RFP or upon Governing Body action – or any recommendation concerning the selection or retention of any entity.

- (c) Pre-Acquisition of Interest. No public officer or employee, with respect to any contract or transaction which is or may be the subject of an official act or action of the City, shall acquire an interest in or be affected by such contract or transaction at a time when the public employee believes or has reason to believe that it will directly or indirectly be affected by an official act or action of the City. A public officer or employee does not violate the provisions of this subsection if he abstains from any action, participation or voting on the contract or transaction.
- (d) Disclosure of Information. No public officer or employee shall disclose or reveal any information or discussion which would violate the provisions of the Kansas Open Meetings Act, K.S.A. 75-4319, as amended, or the Kansas Open Records Act, K.S.A. 45-221, as amended; provided that, disclosure mandated by law or act of law shall not violate this provision; further provided that, disclosure of illegal or unethical conduct to the appropriate executive or prosecuting authority shall not violate this provision. Any violation of these Acts shall be deemed violations of this Code of Ethics. This provision is not intended to prevent the City, Governing Body, or appointed officers, board member or employee from making a good faith report of alleged violation of the constitution or laws of the United States or the State of Kansas.
- (e) Interest in Public Contract. No public officer or employee shall, in his capacity as such officer or employee, make or participate in the making of a contract with any person or business by which he is employed or in whose business he has an

interest, and no such person or business shall enter into any contract where any public officer or employee, acting in such capacity, is a signature to or a participant in the making of such contract and is employed by or has an interest in such person or business. A public officer or employee does not make or participate in the making of a contract if he abstains from any action in regard to the contract. Provided the public officer or employee fully discloses the nature and extent of his or her interest, or immediate family member's interest, in the business or agency providing goods or services to the City, as described herein, this subsection shall not apply to:

- (1) A contract awarded through a process of public notice and competitive bidding; or
  - (2) Contracts for property or services for which the price or rate is fixed by law.
- (f) Participation in Noncontract Transactions. A public officer or employee shall not participate or take any official action on any transaction involving the City which is non-contractual in nature when such public officer or employee has an interest, as defined in Section One of this Article, in such transaction, person or business entity involved in the transaction. A public officer or employee does not participate or act if he abstains from all participation in the transaction.
- (g) Public Property. No public officer or employee shall request or permit the unauthorized use of City- owned vehicles, equipment materials or property for personal convenience or profit.
- (h) Special Treatment. No public officer or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

**SECTION FIVE: Exceptions to Code.** It shall not be deemed a violation of the standards of the Code of Ethics or constitute an interest if:

- (a) The interest of a public officer or employee in a person or business entity is a contractual obligation of less than five hundred dollars (\$500.00) which has not been preceded by another obligation, discharged or existing, between the parties and which is not the first in a series of two (2) or more loans or debts which either of the parties is under an obligation to make or incur.
- (b) The interest is a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of this State to engage in the making of such loans.
- (c) The interest is a contract for a commercial retail sale, even though over the value of five hundred dollars (\$500.00).

**SECTION SIX: Disclosure of interest.**

- (a) Disclosure of Interest in Legislative Action:

- (1) Any member of the City Council who has an interest in any proposed legislation before the City Council shall disclose on the record of the City Council the nature and extent of such interest; provided that, any attorney or corporate officer subject to a valid non-disclosure agreement may disclose only that he or she is unable to participate in the matter and fully recuse himself or herself from any further discussion or participation concerning the matter.
- (2) Any other officer or employee who has an interest in any proposed legislative action of the City Council and who participates in discussion with or gives an official opinion or recommendation to the City Council shall disclose on the record of the City Council the nature and extent of such interest.
- (3) Any officer or employee shall disclose any ownership interest or ownership interest of an immediate family member in any business or undertaking contracting with or providing services to the City in such circumstances permissible herein.

**SECTION SEVEN: Advisory opinions.** Where any public officer or employee has doubt as to the applicability of any provision of this Code of Ethics to a particular situation or as to the definitions of terms used herein, he may apply to the City Attorney for an advisory opinion. The officer or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the Code of Ethics before such advisory opinion is made. The City Attorney, upon approval of the Mayor, or if the Mayor is the party seeking an advisory opinion, upon approval of the Council President, consult with or refer the matter to outside counsel for an opinion. Any opinion regarding the authority or conduct of the City Attorney shall be referred to special counsel by the Mayor.

Such opinion, until amended or revoked, shall be binding on the City, the Governing Body, employees and officers, and the City Attorney in any subsequent actions concerning the public officer or employee who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. Such opinions shall not be binding in any action initiated by any private citizen.

**SECTION EIGHT: Enforcement.**

- (a) The City Attorney shall have the primary responsibility for the enforcement of this Code of Ethics. He or she shall have the power to investigate any complaint, to initiate any suit and to prosecute any criminal or civil action on behalf of the City where such action is authorized by the Governing Body or refer the matter to outside counsel to investigate, to initiate any suit, or to prosecute any criminal or civil action on behalf of the City where such action is authorized by the Governing Body.
- (b) The City Council may direct the City Attorney to investigate any apparent violation of the Code of Ethics, or it may employ or appoint any qualified attorney to investigate any violation or series of violations of this Code of Ethics by one or more persons.
- (c) Any person who believes that a violation of any portion of the Code of Ethics has occurred may file a complaint with the City Attorney or with the Governing Body who may, thereafter, proceed with appropriate action. However, nothing in the Code

of Ethics shall be construed to prevent complaints from instituting direct legal action through the appropriate judicial authority.

- (d) The City Attorney shall present his investigative findings to the City Administrator if an alleged violation regards a City employee or to the Governing Body if the person is an elected or appointed official or an officer of the City.

**SECTION NINE: Violations and penalties.**

- (a) Any public officer or employee who willfully and knowingly violates any of the provisions of this Article shall be subject to any of the following penalties:
  - (1) Warning.
  - (2) Reprimand.
  - (3) Censure.
  - (4) In the case of appointed members of a City board or agency, removal from such position.
  - (5) In the case of City employees, disciplinary action up to and including termination of employment pursuant to the Spring Hill Employee Handbook and Municipal Code.
  - (6) In the case of City officers, whether employed by the City or independent contractors fulfilling the role, either disciplinary action up to and including termination of employment pursuant to the Spring Hill Employee Handbook and Municipal Code or termination of the contractual relationship.
  - (7) In the case of elected or appointed members of the City Council, submission to the Attorney General of Kansas, Johnson County District Attorney, or Miami County Attorney of a request for review, investigation, and appropriate action pursuant to State law, including but not limited to ouster and/or prosecution for violations of State law.
- (b) Any appointed official who is the subject of an alleged violation shall have the right to present evidence on his or behalf before the Governing Body. Nothing in this Article shall be construed nor operate to eliminate any of the procedures or rights afforded to City officers or employees pursuant to the Spring Hill Employee Handbook.
- (c) Any contract or transaction which was the subject of an official act or action of the City in which there is an interest prohibited by this Code of Ethics or which involved the violation of a provision of this Code of Ethics shall be voidable at the option of the City.
- (d) The City Attorney shall have the power, where a violation of the provisions of this Code of Ethics is threatened or has occurred, to bring civil action or proceeding at

law or in equity for a judgment enjoining any violation of the provisions of this Article or requiring the relinquishment of any prohibited interest or the voiding of any such contract or transaction, taking into account the interests of the City and any third persons who may be injured thereby. Where the City Attorney determines that the public interest may best be served by not voiding a contract or transaction entered into in violation of this Article, such contract or transaction may be enforced and an action or proceeding may be brought against any public officer or employee found in violation of provisions of this Article for damages not to exceed twice the damages suffered by the City or twice the profit or gain realized by the public officer or employee, whichever is greater.


**SECTION TEN: Distribution of code copies.** 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 thirty (30) days after the effective date hereof. Each public officer and employee elected, appointed or engaged thereafter shall be furnished a copy before entering upon the duties of his office or employment.

**SECTION ELEVEN: Provisions are supplemental.** The provisions of this Article are supplemental to any and all applicable Federal, State, County and Spring Hill laws or regulations and shall not be construed to relieve the public officer or employee from compliance with any such laws or regulations.

**SECTION TWELVE: Effective Date.** This Ordinance shall take effect and be in force on November 12, 2020.

PASSED BY THE CITY COUNCIL this 12<sup>th</sup> day of November, 2020.

APPROVED BY THE MAYOR this 12<sup>th</sup> day of November, 2020.

  
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Steven M. Ellis, Mayor

ATTEST:

  
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Glenda Gerrity, City Clerk

(SEAL)



APPROVED AS TO FORM:

  
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Frank H. Jenkins, Jr., City Attorney