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ORDINANCE NO. F-0990

AN ORDINANCE AMENDING CHAPTER 42, SECTION 42,
ARTICLE V-42-125 OF THE WHEATON CITY CODE

WHEREAS, the Illinois General Assembly has enacted the State Officials and Employees Ethics Act (Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003), which is a comprehensive revision of State statutes regulating ethical conduct, political activities and the solicitation and acceptance of gifts by State officials and employees; and

WHEREAS, the Act requires all units of local government (including Home Rule Municipalities), to adopt ordinances or resolutions regulating the political activities of, and the solicitation and acceptance of gifts by, the officers and employees of such units "in a manner no less restrictive" than the provisions of the Act; and

WHEREAS, it is the clear intention of the Act to require units of local government to implement regulations that are at least as restrictive as those contained in the Act, and to impose penalties for violations of those regulations that are equivalent to those imposed by the Act, notwithstanding that such penalties may exceed the general authority granted to units of local government to penalize ordinance violations; and

WHEREAS, it is the clear intention of the Act to provide units of local government with all authority necessary to implement its requirement at the local level regardless of any general limitations on the power to define and punish ordinance violations that might otherwise be applicable; and

WHEREAS, because the Act provides for the imposition of significant penalties for violations of said local regulations, it is necessary to adopt the required regulations by Ordinance; and

WHEREAS, Public Act 93-617 incorporates provisions related to prohibited political activities as well as prohibitions against certain gifts; and

WHEREAS, the City of Wheaton, previously adopted Chapter 42, Article V entitled "Gift Ban" of the Wheaton City Code; and

WHEREAS, based upon Public Act 93-617 the Corporate Authorities of the City of Wheaton find it appropriate to repeal Article V of Chapter 42 entitled Gift Ban Act and replace it with a new Article V of Chapter 42 to be entitled "Prohibited Political Activities/Gift Ban."

NOW, THEREFORE, be it Ordained by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois that Article V of Chapter 42 entitled "Gift Ban" including all of its sub-sections, of the Wheaton City Code, are hereby repealed and rescinded in their entirety and replaced with a new Article V of Chapter 42 sub-sections 42-125-42-139 to be entitled "Prohibited Political Activities/Gift Ban" which shall read as follows:

“Section 42-125. Definitions.

“Campaign for Elective Office” means any activity in furtherance of an effort to influence the selection, nomination, election or appointment of any individual to any federal, state or local public office or office in a political organization, or the selection, nomination or election of Presidential or Vice-Presidential electors, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person’s official duties.

“Candidate” means a person who has filed nominating papers or petitions for nomination or election to an elected office, or who has been appointed to fill a vacancy in nomination, and who remains eligible for placement on the ballot at a regular election, as defined in Section 1-3 of the Election Code (10 ILCS 5/1-3).

“Collective Bargaining” has the same meaning as the term is defined in Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3).

“Compensated Time” means, with respect to an employee, any time worked by or credited to the employee that counts toward any minimum time requirement imposed as a condition of his or her employment, but for purposes of this Ordinance, does not include any designated holidays, vacation periods, personal time, compensatory time off or any period when the employee is on a leave of absence. With respect to officers or employees whose hours are not fixed, “compensated time” includes any period of time when the officer or employee is on premises under the control of the employer and any other time when the officer or employee is executing his or her official duties, regardless of location.

“Compensatory Time Off” means authorized time off earned by or awarded to an employee to compensate in whole or in part for time worked in excess of the minimum work time required of that employee as a condition of his or her employment.

“Contribution” has the same meaning as the term is defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).

“Employee” means a person employed by the City of Wheaton, whether on a full-time or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, but does not include an independent contractor.

“Employer” means the City of Wheaton.

“Gift” means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment of the official position of an officer or employee.

“Leave of Absence” means any period during which an employee does not receive (i) compensation for employment, (ii) service credit towards pension benefits, and (iii) health insurance benefits paid for by the employer.

“Officer” means a person who holds, by election or appointment, an office created by statute or ordinance, regardless of whether the office is compensated for service in his or her official capacity.

“Political Action” means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person’s official duties.

“Political Activity” means:

- (a) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
- (b) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
- (c) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
- (d) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (e) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a

political organization for political purposes or for or against any referendum question.

(f) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.

(g) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.

(h) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.

(i) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.

(j) Preparing or reviewing responses to candidate questionnaires.

(k) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidates for elective office or for or against any referendum question.

(l) Campaigning for any elective office or for or against any referendum question.

(m) Managing or working on a campaign for elective office or for or against any referendum question.

(n) Serving as a delegate, alternate or proxy to a political party convention.

(o) Participating in any recount or challenge to the outcome of any election.

“Political Organization” means a party, committee, association, fund or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code (10 ILCS 5/9-3), but only with regard to those activities that require filing with the State Board of Elections or a county clerk.

“Prohibited Political Activity” means political activity performed by an officer or employee during any compensated time.

“Prohibited Source” means any person or entity who:

- (a) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;
- (b) does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee;
- (c) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or
- (d) has interest that may be substantially affected by the performance or non-performance of the official duties of the officer or employee.

PROHIBITED POLITICAL ACTIVITIES

Section 42-126. Prohibited Political Activities. (a) No officer or employee shall intentionally perform any prohibited political activity. No officer or employee shall intentionally use any property or resources of the City of Wheaton in connection with any prohibited political activity.

- (b) At no time shall any officer or employee intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off).
- (c) No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.
- (d) Nothing in this Section prohibits activities that are permissible for an officer or employee to engage in as part of his or her official duties, or activities that are undertaken by an officer or employee on a voluntary basis which are not prohibited by this Ordinance.
- (e) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by Federal funds and that is subject to the Federal Standards for a Merit System or Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

GIFT BAN

Section 42-127. Gift Ban. Except as permitted by this Article, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as “recipients”), shall intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance. No prohibited source shall intentionally offer or make a gift that violates this Section.

Section 42-128. Gift Ban Exceptions.

Exceptions. Section 42-127 is not applicable to the following:

- (a) Opportunities, benefits, and services that are available on the same conditions as for the general public.
- (b) Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value.
- (c) Any (i) contribution that is lawfully made under the Election Code or (ii) activities associated with a fundraising event in support of a political organization or candidate.
- (d) Educational materials and missions.
- (e) Travel expenses to and from a meeting to discuss business.
- (f) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual’s spouse and the individual’s fiancé or fiancée.
- (g) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gift to other officers or employees, or their spouses or immediate family members.
- (h) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were

purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food ~~or~~ refreshments that are purchased ready to consume which are delivered by any means.

(i) Food, refreshments, lodging, transportation, and other benefits resulting from ~~outside~~ business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.

(j) Intra-governmental and inter-governmental gifts. For the purposes of this Act, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(k) Bequests, inheritances, and other transfers at death.

(l) Any items or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

Section 42-129. Disposition of gifts. An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this Ordinance if the recipient promptly takes a reasonable action to return a gift from prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c) (3) of the Internal Revenue Code of 1986, as now ~~or~~ hereafter amended, renumbered or succeeded.

ETHICS ADVISOR

Section 42-130. Ethics Advisor. The Mayor with the advice and the consent of the City Council shall nominate an Ethics Advisor for the City.

Section 42-131. Advisors Duties. The Ethics Advisor shall provide guidance to the officers and employees of the City concerning the interpretation of and compliance with the provisions of this Ordinance and State ethics laws. The Ethics Advisor shall perform such other duties as may be delegated by the Corporate Authorities of the City.

PROSECUTION OF VIOLATIONS

Section 42-132. Investigation and Prosecution of Ethics Violations. The Mayor with the advice and consent of the City Council shall designate an attorney to investigate, and where there is probable cause, to prosecute violations of Section 3 of this Ordinance in the Courts of the Eighteenth Judicial Circuit, DuPage County, Illinois. Allegations of violations of Section 2 shall be referred to the State's Attorneys Office of DuPage County, Illinois, for investigation and prosecution. If the State's Attorneys Office refuses or is unable to prosecute an alleged violation

of Section 2, the Mayor with the advice and consent of the City Council shall appoint an attorney who may investigate the allegations and upon reaching an opinion that there is probable cause, file an Information for Preliminary Hearing. If a court of competent jurisdiction finds probable cause after preliminary hearing, the matter shall be prosecuted by the appointed attorney in conformance with Illinois Code of Criminal Procedure. The powers and duties of an attorney appointed to prosecute any alleged violation of this Ordinance shall be limited to matters clearly within the purview of this Ordinance.

Section 42-133. The Mayor shall only nominate and appoint an attorney to prosecute alleged violations of Sections 2 or 3 upon the filing of a Complaint. A Complaint alleging a violation of this Ordinance shall be filed with the City Clerk. The Complaint shall, in summary, allege the facts supporting the purported violation as well as the Sub-sections of this Ordinance which the Complainant alleges are violated.

Section 42-134. Appointed Attorney's Powers and Duties. Any attorney appointed to investigate and prosecute violations of this Ordinance shall have the following powers and duties:

- a) interview witnesses
- b) perform all reasonable and necessary investigations
- c) receive information from the public pertaining to the investigation
- d) require the production of additional information and documents from persons who may have violated the provisions of this Ordinance
- e) file complaints with the Courts, negotiate settlement agreements, and prosecute complaints to verdict.

Section 42-135. Mayor Conflict of Interest. Whenever the Mayor is accused of a violation of Section 2 or Section 3 of this Ordinance, the City Council shall appoint a Mayor pro-tem who shall have all of the powers and duties set forth in this Ordinance for purposes of the allegations against the Mayor.

Section 42-136. City Clerk and Appointed Attorney Procedures. Any Complaint alleging a violation of this Ordinance shall first be filed with the City Clerk in conformance with Section 42-133.

(a) Within three (3) business days after receipt of a Complaint, the City Clerk shall send by certified mail, return receipt requested, a notice to the respondent that a Complaint has been filed against him/her and a copy of the Complaint. The City Clerk shall deliver a copy of the Complaint to the Mayor who shall then undertake the nomination and appointment of a prosecuting attorney at the next regularly scheduled meeting of the Wheaton City Council.

(b) Within seventy-two (72) hours of the acceptance of his or her appointment, the prosecuting attorney shall review the Complaint to determine whether it is sufficient to allege a violation of this Ordinance. If the Complaint is deemed sufficient to allege a violation of this Ordinance, the attorney shall then undertake any and all steps authorized by Section 42-134 (a-d) to make a preliminary determination of probable cause. If probable cause exists in the opinion of

the appointed attorney, he or she shall undertake prosecution of the matter in conformance with Section 42-132.

(c) If the complaint is filed during the sixty (60) days preceding the date of any election at which the respondent is a candidate, the attorney, upon determining that the Complaint is legally sufficient to allege a violation of this Ordinance, shall investigate the Complaint promptly in an attempt to reach an opinion as to whether there is or is not probable cause within five (5) business days of the receipt of the Complaint. The appointed attorney, upon reaching a conclusion of probable cause shall file a Complaint with the Eighteenth Judicial Circuit Court within 48 hours of reaching such determination for proceedings in the Misdemeanor Court, or where the offense constitutes a felony, for preliminary hearing for a judicial probable cause determination. The appointed attorney shall then undertake those steps necessary to expedite resolution of the complaint in as prompt a time period that the Court will allow.

PENALTIES

Section 42-137. Penalties. The Court may fine any person who intentionally violates any provisions of Section 42-127 in an amount not less than one thousand one dollars (\$1,001.00) and not more than five thousand dollars (\$5,000.00). Any person who violates any provision of Section 42-126 of this Ordinance may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than three hundred and sixty five (365) days, and shall be fined an amount not less than one thousand one dollars (\$1,001.00) and not more than five thousand dollars (\$5,000.00). If a Court finds the respondent not guilty and a subsequent Court upon prosecution further concludes that the person initiating the Complaint with the City Clerk knowingly filed a frivolous Complaint alleging a violation of this Ordinance, the Court shall fine that person in amount of one thousand one dollar (\$1,001.00) and not more than five thousand dollars (\$5,000.00). A fine for a frivolous complaint shall not be imposed on the appointed prosecuting attorney.

DISCIPLINE

Section 42-138. Discipline. In addition to any penalty imposed by a Court for a violation of this Ordinance, any employee shall be subject to discipline up to and including discharge. Any officer convicted of a violation of this Ordinance may be removed from Office so long as said removal is otherwise provided for in the Statutes of the State of Illinois and/or the Illinois Constitution.

CONSTITUTIONALITY

Section 42-139. Constitutionality. If the Illinois Supreme Court declares any part of Public Act 93-617 adopted by this Ordinance unconstitutional but upholds the constitutionality of other portions of the Act adopted by this Ordinance, then the constitutional portion(s) of this Ordinance shall remain in full force and effect and that part of the Ordinance adopting the unconstitutional portions of Public Act 93-617 shall be deemed repealed without further action by the Corporate Authorities of the City.

That all ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

That if any part of part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this ordinance.

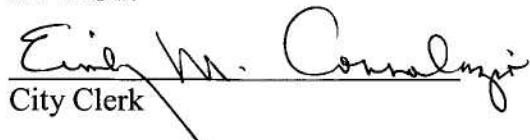
That this ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as is hereby authorized and directed to be done by the Mayor and City Council.

Any sections of Ordinances not repealed by this Ordinance and contained in subsequent Articles of Chapter 42 shall be re-numbered sequentially as is consistent with the numbering of Chapter 42.



James Carr
Mayor

ATTEST:



Cindy W. Connalanza
City Clerk

Roll Call Vote:

Ayes:

Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: January 3, 2005
Published: January 4, 2005