

**ORDINANCE NO. 2010- 03**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, ADOPTING A CODE OF ETHICS APPLICABLE TO THE TOWN COUNCIL, THE TOWN ADMINISTRATOR, AND PERSONS CONDUCTING BUSINESS WITH THE TOWN; CONTAINING STANDARDS OF CONDUCT FOR MEMBERS OF THE TOWN COUNCIL AND THE TOWN ADMINISTRATOR; CONTAINING PROVISIONS FOR REFRAINING FROM VOTING AND DISCLOSURE; CONTAINING REGULATIONS RELATIVE TO GIFTS; PROVIDING FOR ETHICAL STANDARDS; CONTAINING PROVISIONS FOR ENFORCEMENT, FOR HEARINGS, AND OTHER IMPLEMENTATIONS; CONTAINING PENALTIES; PROVIDING FOR LEGAL REPRESENTATION; PROVIDING FOR APPLICANT DISCLOSURES; PROVIDING FOR ANNUAL DISCLOSURE FILINGS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Southwest Ranches ("Town") desires to adopt its own Code of Ethics relative to the Town Council, the Town Administrator, and persons conducting business with the Town; and

**WHEREAS**, the purpose of this Code of Ethics is to set forth ethical behavior standards and disclosure requirements for the Town Council, the Town Administrator, Applicants and persons and/or entities conducting business with the Town. The Town finds that it is in the best interests of the public that this Code of Ethics be enacted for the public good, for the trust of the public in their elected officials and for the proper functioning of the Town Government; and

**WHEREAS**, all members of the Town Council, and candidates of the Town Council are expected to conduct themselves with the disclosure and ethical requirements of this Code of Ethics, and to set forth penalties for not doing so. The standards set forth in this Code of Ethics are higher standards than those set forth in the Florida Statutes. The residents of the Town have a right to honest government and services, free from fraud, self-enrichment and self-dealing without conflicts or improper benefits as stated in this Code of Ethics. The residents of the Town also have a right to the disclosures and public dissemination of the disclosures stated in this Code of Ethics; and

**WHEREAS**, a necessary component of good government in the Town is for there to be disclosure requirements for Applicants and person and/or entities doing business with the Town. All Applicants and persons and/or entities doing business with the Town are expected to

avoid putting members of the Town Council in a conflict situation, and if a conflict situation cannot be avoided, to disclose such conflict. Corruption, impropriety, conflicts, influence or the appearance of these weakens honest, effective and fair government. No Applicant or person and/or entity doing business with the Town shall benefit from a conflict as described in this Code, and/or the lack of disclosure of such conflict. Consequently, there are parts of this Code that apply to Applicants and persons and/or entities doing business with the Town, and the consequences of such persons or entities violation of this Code. Therefore, it is not only the member of the Town Council that must disclose when there is a conflict, it is also the Applicants and persons and/or entities doing business with the Town that must disclose when there is a conflict; and

**WHEREAS**, this Code of Ethics also seeks to provide legal representation for the Council or for the Town Administrator when an ethical conflict is asserted, and to require repayment for the legal fees and costs incurred if a conflict is found; and

**WHEREAS**, the adoption of this Code of Ethics is in the best interest of the general welfare of the Town;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:**

**Section 1:** The foregoing "WHEREAS" clauses are true and correct and hereby ratified and confirmed by the Town Council.

**Section 2:** That the Code of Ethics, for the Town of Southwest Ranches, Florida is hereby created and read as follows:

Code of Ethics

**Section 1. Short Title.**

This Ordinance may be referred to in whole as the Town's Code of Ethics.

**Section 2. Intent and Purpose.**

The purpose of this Code of Ethics is to strengthen the quality of representative government by governing the conduct of the Town's elected officials, its Town Administrator, and applicants before the Town, at the highest standard of ethics. It is the policy of the Town of Southwest Ranches to assure the policies and decisions made by public officers are made through established processes of government; that public officers do not utilize public office for private or personal benefit; that public officers avoid action which creates the appearance of impropriety; and that the public have confidence in the integrity of the Town's government and the Town's public officers.

**Section 3. Definitions.** References in this section to the Florida Statutes shall be interpreted as meaning Florida Statutes, as amended from time to time.

Business entity shall have the meaning ascribed in Section 112.312(5), Florida Statutes.

Candidate shall have the meaning ascribed in Section 112.312(6), Florida Statutes.

Conflict or conflict of interest shall have the meaning ascribed in Section 112.312(8), Florida Statutes.

Entity includes employees, shareholders, members, partners, officers and directors of the entity.

Gift shall have the meaning ascribed in Section 112.312(12), Florida Statutes.

Public officer shall have the meaning ascribed in Section 112.313(1), Florida Statutes.

Relative means a spouse, "significant other", domestic partner, or a person who is related to a member of the Council, candidate to become a member of the Council, or the Town Administrator, as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, sister-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the member of the Council, candidate to become a member of the Council, or the Town Administrator, or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the member of the Council, candidate to become member of the Council or Town Administrator, or intends to form a household, or any other natural person having the same legal residence as the public officer or employee. For purposes of this Ordinance, "domestic partner" is an adult, unrelated by blood, with whom an unmarried or separated official or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

Regulated Officer means a member of the Town Council or the Town Administrator.

Counsel means the legal representative for the Town of Southwest Ranches.

Legal Defense means the services provided by counsel in defending a legal or administrative proceeding.

#### **Section 4. Acknowledgement.**

All public officers of the Town and candidates for Town elective office, upon appointment, election, or qualifying, must submit a signed statement to be provided by the Town Clerk acknowledging that they have received, read, understand, and agree to be bound by the Town of Southwest Ranches Code of Ethics.

#### **Section 5. Applicability of Chapter 112, Florida Statutes.**

Nothing in the Town of Southwest Ranches Code of Ethics shall be interpreted or construed as conflicting with Section 112.311 et seq., Florida Statutes, as may be amended from time to time, which is also applicable to public officers of the Town. This Code is intended to supplement state law provisions governing ethics in government.

#### **Section 6. Required and Prohibited Conduct.**

In furtherance of the public trust assumed by public officers of the Town upon their election or appointment to public office or employment, the following standards of conduct shall be applicable to public officers of the Town:

- A. No member of the Town Council or the Town Administrator (hereinafter referred to as "Regulated Officers") shall use their official position or office, by either taking any action or failing to take any action, or participate in any council discussion, in a manner calculated to obtain a personal financial benefit not shared by a substantial portion of the public or an affected class or special private gain for himself/herself, or a principal, by whom he/she has been retained, or for the special private gain of any of the following:
1. Himself or herself;
  2. A relative, as herein defined, or the employer or business of such relative;
  3. A customer or client of the Regulated Officer or a customer or client of a principal by whom the Regulated Officer is retained;
  4. A substantial debtor or creditor of the Regulated Officer or principal by whom he/she is retained; or
  5. A nongovernmental civic group, union, social, charitable, or religious organization, not including the Southwest Ranches Volunteer Fire-Rescue, Inc., the Southwest Ranches Historical Society, Inc., or the Aster Knight Park's Foundation, Inc., of which he or she (or his or her spouse or domestic partner) is an officer or director.

- B. A Regulated Officer shall not, while holding said office, have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligations of any nature which is in substantial conflict with the proper discharge of his or her public duties or employment.
- C. A Regulated Officer shall not influence the Town's selection of, or conduct of business with, a corporation, person, or firm having or proposing to do business with the Town if the Regulated Officer has a financial interest in or with the corporation, person, or firm unless such interest is a remote interest and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records prior to formation of the contract. All reasonably known remote interests shall be disclosed prior to the discussion of a matter and shall be defined as set forth below:
1. That of a non-salaried officer of a nonprofit corporation;
  2. That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
  3. That of a holder of less than 1 percent of the shares of a corporation, limited liability company, or other entity which is a contracting party.
- D. A Regulated Officer shall not use or attempt to use his/her official position to improperly or unreasonably request, grant, or obtain in any manner any privileges, advantages, benefits or exemptions for themselves or others that are not available to those generally available to Town residents or which are not specifically incident to their position and the conduct of their public duties.
- E. A Regulated Officer shall not disclose or use any confidential, privileged, or proprietary information gained by reason of his/her official position for a purpose which is for other than a Town purpose; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is available to the public on request. This prohibition is not applicable to disclosure given under legal compulsion.
- F. A Regulated Officer shall not employ or use any person under his/her official control or direction for the personal benefit, gain, or profit of the Regulated Officer or another.
- G. A Regulated Officer shall not use Town-owned equipment, materials, money, or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of

official business, and for such purposes and under such conditions as are approved by the Town Administrator or the Town Council.

- H. A Regulated Officer shall not sexually harass, date, have sexual relations with, or have a romantic relationship with an employee of the Town. This shall not apply to a case where a Regulated Officer is married or engaged to said employee at the time of the adoption of this Ordinance or at the time of taking office.
- I. No Regulated Officer and no partner or business associate of a Regulated Officer shall represent any other person or entity before the Town, Town Council, Town board, Town department, or Town agency, except that he/she may represent constituents without compensation on matters of public advocacy, may represent the Town, or may represent himself/herself. This prohibition includes not communicating with any staff of the Town concerning the matter.
- J. When a Regulated Officer appears before any public body or board or authors any non-Town sanctioned document intended to be published or widely distributed (other than campaign literature) he/she shall disclose within the statement or the writing whether he/she is appearing in his/her official capacity or as a private citizen.
- K. No Regulated Officer shall promise an appointment or the use of his/her influence to obtain an appointment to any position as a reward for any political support, activity, assistance or contribution.
- L. No Regulated Officer shall, directly or indirectly, give or receive, or agree to give or receive, any compensation, gift, favor, reward, or gratuity for a matter connected with or related to the Regulated Officer's services to the Town of Southwest Ranches, except this prohibition shall not apply to:
  - 1. Attendance of a Regulated Officer at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of Town business or where official attendance by the Regulated Officer as a Town representative is appropriate;
  - 2. An award publicly presented in recognition of public service;
  - 3. Any gift or meal valued at \$25 or less or which cannot reasonably be presumed to influence the vote, action, or judgment of the Regulated Officer or be considered as part of a reward for action or inaction; or
  - 4. A gift given to the Town, which is then given by the Town to the Regulated Official.

M. For a period of two (2) years after the termination of his/her serving as a Regulated Officer, the Regulated Officer shall not:

1. Appear before or practice before any Town department, agency, board or Council except on his or her own behalf, or on behalf of the Town serving on a volunteer basis or a civic group serving on a volunteer basis;
2. Receive compensation for working on, or have associates working on, any matter before any Town department, agency, board or Council;
3. Receive any consideration for assisting any person in matters involving the Town if, while in the course of duty with the Town, the former Regulated Officer was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter; or
4. Participate as or with a bidder, vendor, or consultant in any competitive selection process for a Town contract in which he or she assisted the Town in determining the project, or work to be done, or the process to be used.

N. Council Members shall not cast a vote on any matter where a Town Council Member is aware, or reasonably should be aware, that he/she has a conflict under applicable State law. If the Council Member is absent when such vote is taken he/she shall nevertheless file the Conflict Disclosure Form within 15 days of the vote.

O. Where the application of this Code of Ethics would require the Regulated Officer to refrain from voting but where the Regulated Officer is prohibited from doing so by Section 286.012, Florida Statutes, the act of casting a vote shall not be construed to be a violation of this Code of Ethics. This shall be considered a "non-actionable conflict" under this Code of Ethics.

P. Town Council Members casting any vote on any matter where a Town Council Member is aware, or reasonably should be aware, that he/she has a non-actionable conflict shall file a written disclosure form ("Conflict Disclosure Form") as set forth below. The Conflict Disclosure Form disclosure shall be filed either before the meeting whenever possible, or in no event more than 15 days after the vote. The filing shall be made with the Town Clerk. The Council Member shall announce the non-actionable conflict and publicly describe the nature of the non-actionable conflict prior to the vote. If the Council Member is absent when the vote is taken he/she shall nevertheless file the disclosure form within 15 days of the vote even though he/she did not cast a vote and even though he/she has a non-actionable conflict. Where a matter is scheduled on an agenda for discussion or action by the Town Council and there would be a voting conflict of interest

under Chapter 112, Florida Statutes, or a non-actionable conflict under this Code of Ethics if a vote were taken, a Conflict Disclosure Form shall be filed for said meeting even if no vote is taken.

- Q. A Regulated Officer, his or her spouse or domestic partner, child or step-child, parent, or member of his or her household, shall not solicit or accept a gift as defined in Section 112.312 Florida Statutes, as may be amended from time to time, from any person and/or Entity that a Regulated Officer reasonably knows, or has reason to believe, has received or sought any approvals from the Town (other than a building permit) within the previous three years. If a gift is accepted and within two years from the date of acceptance the person or Entity seeks any approval(s) from the Town, the Regulated Officer shall publicly disclose the gift and shall return the gift or the fair market value of the gift to the donor.
- R. The provisions of this Code of Ethics relating to compensation to one's business or employer shall specifically not apply in situations where:
1. A member of the Town Council is employed by any newspaper which publishes any municipal notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;
  2. A member of the Town Council is employed by a public utility that furnishes public utility services to the Town.
  3. A member of the Town Council is employed by a governmental agency other than the Town.
- S. A Regulated Officer shall not, directly or indirectly, induce, encourage, or aid anyone to violate any provision of this Ethics Code.

### **Section 7. Effect on Vote.**

Where a Regulated Officer votes on any matter without making a required disclosure, the specific action shall be deemed void and of no force and effect upon the finding of a violation pursuant to the procedure set forth herein. The Town Council may ratify said action in an open session held after applicable public notice. The ratification of its actions does not serve to nullify any penalties imposed pursuant to this Code of Ethics.

### **Section 8. Enforcement Proceedings.**

The Town has a strong commitment to a neutral, non-politicized ethical environment and this procedure for investigation and hearings is to effect a clear message to the residents of the



Town that to the extent possible, the Town is committed to such a neutral, non-politicized ethical environment.

(1) Assignment of Outside Legal Counsel or Hearing Officer

A. The investigation of an alleged violation of this Code of Ethics may require the Town Attorney to assign an Outside Legal Counsel and/or a Hearing Officer to review the matter. The Outside Legal Counsel or Hearing Officer shall not be a law firm or attorney presently representing the Town or representing individuals before or adverse to the Town. The Outside Legal Counsel or Hearing Officer shall be either a current or former municipal attorney with at least ten years municipal law experience, an attorney with at least ten years of experience dealing with code of ethics and ethics complaints, a former circuit court judge in the State of Florida, a former county court judge in the State of Florida, a former administrative judge in the State of Florida, or a former Federal judge or magistrate with jurisdiction included in the State of Florida. Prior to accepting an assignment, the Outside Legal Counsel and/or Hearing Officer shall be provided a copy of the complaint to determine that they have no conflicting employment or other relationships which would prohibit them from undertaking their role without any allegation of bias or prejudice. Aside from the Town Attorney, no one shall speak or correspond with either the Outside Legal Counsel or Hearing Officer while the process as set forth herein is being employed. The Town shall agree to pay a reasonable fee to Outside Legal Counsel and the Hearing Officer in an amount not to exceed \$250 per hour. No Regulated Officer shall discuss with, suggest, consult with, or in any way communicate with the Town Attorney at any time concerning any potential person who might be selected as Outside Legal Counsel or Hearing Officer.

(1) Filing of a Complaint, Review & Hearing Procedures

A. Anyone who with good reason believes that a Regulated Officer has violated this Code of Ethics may report the violation in writing to the Town Attorney or his designee through a written complaint containing the nature of the alleged violation, along with the complainant's name, address and phone number. Any anonymous complaints or complaints failing to contain the requisite information will be summarily dismissed. If the complaint contains the requisite information the Town Attorney shall assign the matter to Outside Legal Counsel who shall make an initial determination of whether a prima facie case exists as to the indicated violation by this Code of Ethics by a Regulated Officer. If the Outside Legal Counsel finds that there is no prima facie case of a violation, he/she shall issue a written opinion to that effect and shall tender a copy of same to the Town Attorney and to the complainant. If the Outside Legal Counsel determines that there is stated a prima facie violation of this Code then he/she shall further investigate the complaint as delineated below.

- B. If the Outside Legal Counsel finds that a prima facie case exists, he/she shall make a determination as to whether he/she believes there is probable cause, or a reasonable basis for the belief that a violation of this Code has occurred. If the Outside Legal Counsel finds that there is no probable cause, he/she shall issue a written opinion to that effect and shall tender a copy of same to the Town Attorney and to the complainant. In the event that no probable cause is found, there shall be no further action on the complaint. If, however, the Outside Legal Counsel finds probable cause he/she shall issue a written opinion to that effect, known as the charge, and shall file a copy of the charge with the Town Attorney and shall provide a copy to the complainant. Within ten (10) days of the receipt of same, the Town Attorney shall assign a Hearing Officer to preside over a hearing to determine whether this Code of Ethics has been violated.
- C. Upon assignment, the Hearing Officer shall confer or attempt to confer with Outside Legal Counsel and the respondent or his/her representative in order to schedule a hearing, which shall be scheduled no sooner than thirty (30) days and no more than forty five (45) days from the date of the Hearing Officer's assignment to the matter.
- D. The respondent shall have twenty (20) days from the filing of the charge, as set forth above, to respond to the charge which response shall:
1. Admit the violation;
  2. Admit the violation with extenuating or mitigating circumstances; or
  3. Deny the violation.
- E. The Hearing Officer may grant or deny a written extension or continuance(s) for any time frames as set forth herein, which grant or denial shall be in writing with copies to be given to all parties involved in the proceeding. At least five (5) days prior to the date set for the hearing the Outside Legal Counsel, respondent or his representative shall file with the Hearing Officer a statement of all witnesses they intend to introduce at the hearing together with a list of copies of all exhibits they intend to introduce. Copies of same shall be furnished to all parties. Failure to provide a statement may result in the exclusion of evidence or witnesses at the sole discretion of the Hearing Officer.
- F. At the hearing, the Hearing Officer shall require the Outside Legal Counsel to first present the case for a violation to be followed by the case for the respondent. The Hearing Officer may permit the making of opening statements and shall permit the direct and cross-examination of witnesses. The strict rules of evidence shall not apply in the hearing, but the Hearing Officer shall assure that due process is afforded both parties. All evidence which the Hearing Officer finds

that a reasonably prudent person would rely upon in the conduct of their ordinary affairs may be admitted at the hearing. If the respondent admits the violation of the Code, the hearing shall be solely related to the penalty. In the absence of said admission the hearing shall be to determine if there was a violation, the severity of the violation and the nature of the penalty. The Town shall assure that a court reporter shall attend the hearing and make a full transcription of the hearing.

G. Other than as stated within this Code of Ethics, there is no pre-hearing discovery.

H. The Town shall have the burden of proof through its Outside Legal Counsel by the greater weight of the evidence. The "greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case presented to the Hearing Officer. Within ten (10) days of the conclusion of the hearing, the Hearing Officer shall make a written determination as to whether or not there was a violation. If the Hearing Officer finds that there was no violation that shall conclude the proceeding. If the Hearing Officer finds that there was a violation he/she shall then make a determination as to the penalty. In determining the penalty, the Hearing Officer shall consider:

1. The gravity of the offense (this is the most significant factor in determining the penalty),

2. Whether or not there has been an admission of the violation (the Hearing Officer may consider as an exacerbating factor a person who denies a violation that is later proved),

3. The knowledge of the violation (although ignorance of the violation is no defense, and in fact, all persons subject to this Code are charged with constructive knowledge of this Code and a responsibility to fully and completely follow it, the Hearing Officer may find a violation of this Code whether or not the evidence shows actual knowledge of the Code violation at the time of the violation), and

4. All facts which the Hearing Officer deems relevant and appropriate.

I. The Hearing Officer may impose the following penalties:

1. Forfeiture of whole or part of salary and benefits or reimbursement to the Town for salary and benefits in an amount determined by the Hearing Officer; and/or

2. A public reprimand. A public reprimand must be read at the beginning of two consecutive Council meetings and shall be posted on the Town's official website for a period of six months.
- J. The Ruling of the Hearing Officer is considered final unless either side timely files a Motion for Rehearing, Reconsideration and/or Clarification. Either side may request a rehearing of the Hearing Officer's ruling and/or penalty, but to timely do so it must be done by filing within ten (10) days from date of the Hearing Officer's Report and delivering within the same time period to the other side a Motion for Rehearing, Reconsideration and/or Clarification stating specifically and in detail why a Rehearing should be granted. The Hearing Officer shall consider this Motion and rule on it in writing without having a hearing within ten (10) days of its receipt. If he/she denies the Motion for Rehearing, Reconsideration and/or Clarification, then the matter is final. If the Motion is granted, the other side has ten (10) days to respond to the Motion for Rehearing, Reconsideration and/or Clarification, and the Hearing Officer, in his/her sole discretion, may have a hearing on the Motion or may rule based upon the Motion and Response to the Motion, or may have a hearing on the matter. The matter is then final upon that written ruling by the Hearing Officer.
- K. Either side may appeal the final determination of the Hearing Officer to the Circuit Court of Broward County, Florida, through a Writ of Certiorari, pursuant to the applicable appellate period.
- L. Either side may file a Petition for Enforcement of the final determination with the Circuit Court of Broward County, Florida.
- M. The Town Attorney is to prepare all forms mandated by this Code. However, it is still the responsibility of the Regulated Officer and all third persons/entities to comply with the Ethics Code and make all disclosures mandated by the Code of Ethics.

(3) Advisory Opinions:

- A. A Regulated Officer may seek through a written "Request for Advisory Opinion" a written advisory opinion from the Town Attorney concerning whether or not a matter that has not yet occurred is a violation of the Code of Ethics, or an interpretation or application of the Code of Ethics.
- B. The Regulated Officer seeking such opinion must certify that it is not just theoretical or hypothetical but concerns a matter that is of actual current concern for the Regulated Officer requesting the Advisory Opinion (and not concerning the conduct of a third person) as to how that person may act. A written Advisory

Opinion request may be given in writing by the Town Attorney or his/her staff or by Outside Legal Counsel, as the Town Attorney in his/her sole discretion determines appropriate. The Advisory Opinion must be in writing, and the Advisory Opinion shall only pertain to the facts stated in the Request for Advisory Opinion and in the Advisory Opinion. Nothing will be considered in the Advisory Opinion that is not written in the Request for Advisory Opinion. If the facts stated are inadequate to give a written Advisory Opinion, the Regulated Officer requesting it will be advised in writing.

- C. A request given by a Regulated Officer must be given in good faith and an Advisory Opinion given in good faith may be relied upon by the Regulated Officer requesting the Advisory Opinion for all actions or inactions consistent with the Advisory Opinion after the date the Advisory Opinion is issued, but does not prevent the person requesting the Advisory Opinion from being charged for any actions or inactions or violation of the Ethics Code before the date the written Advisory Opinion is issued. This written Advisory Opinion will be filed with the Town Clerk.

### (3) Frivolous Complaint.

- A. For the purposes of this section, a "frivolous complaint" is a complaint that is groundless and brought in bad faith or brought for the purpose of harassment.
- B. The Outside Legal Counsel or Hearing Officer may order complainant to show cause why the complaint filed against the Regulated Officer is not a frivolous complaint. This Order may be on either his/her own accord or at the request of the Town Attorney, the respondent, or any member of the Town Council.
- C. In deciding if a complaint is frivolous, the Outside Legal Counsel or Hearing Officer may be guided by Section 57.105, Florida Statutes, as may be amended from time to time, and may also consider other factors including, but not limited to the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant; in consideration and with respect to the date of any pending election in which the respondent is a candidate; the nature and type of any publicity surrounding the complaint; the existence and nature of any relationship between the complainant and the respondent Regulated Officer before the complaint was filed; and any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless.
- D. If the Outside Legal Counsel or Hearing Officer determines that complaint was a frivolous complaint, he/she shall consider the following factors before imposing a sanction:

1. The seriousness of the violation including the nature, circumstances, consequences, extent and gravity of the violation;
2. The sanction necessary to deter future violations;
3. Any other matter that justice may require

E. The Outside Legal Counsel or Hearing Officer may impose the following sanctions:

1. Penalty of not more than \$250;
2. Imposition of attorneys' fees incurred by the Town and the respondent;
3. Administrative Costs;
4. Any other sanction permitted by State law.

### **Section 9. Defense of Regulated Officials for Matters Within the Course and Scope of the Service to the Town.**

In furtherance of the Town's policy to encourage qualified persons to serve the Town, the Town believes it necessary and in the best interest and welfare of the Town to protect such persons from certain legal expenses incurred in protecting themselves from allegations while acting in the course and scope of their service to the Town:

- A. Upon the written request of a Regulated Officer, the Town may, in its sole discretion, provide for the Legal Defense and payment of costs related to any action or proceeding brought against such Regulated Officer for acts or omissions arising out of and in the course and scope of the Regulated Officer's employment or function, when such Regulated Officer is charged with a violation of this Code of Ethics or the State of Florida's Code of Ethics. The action against the Regulated Officer must arise out of or in connection with the performance of official duties.
- B. A written request for the provision of Legal Defense (the "Request") shall be submitted by the Regulated Officer and reviewed in accordance with the following procedure:
  1. A request shall be submitted to and reviewed by the Town Attorney;
  2. A request shall be submitted promptly after the Regulated Officer obtains a copy of the complaint, notice, charge, summons, process or other

initiating pleading, such that the Town has ample time to review such request and respond accordingly;

3. A request shall include the name, address, resume, and hourly rate of the Regulated Officer's "chosen counsel," which shall not exceed the Town's standard rate of \$250 per hour, and a copy of the complaint, notice, charge, summons, process or other initiating pleading. The Regulated Officer's "chosen counsel" shall mean the attorney independently selected by the Regulated Officer for the purpose of defending him/her in actions or proceedings in accordance with this section. Counsel shall be licensed to practice law in the State of Florida and otherwise adequately qualified for the purpose of such representation; and

4. The Town Attorney shall approve or deny the request in writing within ten (10) days after receipt of such request and the Town Council shall be copied with the decision. If the Town Attorney denies the request, the Regulated Officer may appeal the decision to the Town Council. Such appeal shall be filed within ten (10) days of the Town Attorney's opinion. The appeal shall be in writing and directed to the Town Attorney. The Town Council shall promptly hear the appeal and make a formal determination by a majority vote at its next regularly scheduled meeting. The Regulated Officer making the appeal may speak on the issue, but shall assert a voting conflict.

C. The Town Administrator is hereby authorized to expend Town Funds upon the review and approval of a request for legal counsel for the payment of legal expenses in accordance with subsection (B). The authorization to expend Town Funds shall not extend to any appeal or other judicial review without additional authorization, which may be given in the same manner set forth above. The expenditure of Town Funds for the payment of Legal Expenses shall be subject to the following:

1. The Regulated Official's chosen counsel shall, on a monthly basis, submit all current bills for legal expenses to the Town Attorney;

2. The Town Attorney shall review and approve all submitted bills prior to payment by the Town;

3. Upon approval of submitted bills by the Town Attorney, the Town Administrator shall provide for direct payment to the Regulated Officials chosen counsel. Payments shall be made on a monthly basis during the pendency of the action or proceeding;

4. The Town Attorney shall on a monthly basis provide a copy of all approved bills to the Town Clerk for filing and retention as a public record and for public inspection, subject to any applicable exemptions.
- D. The provision of the Legal Defense of a Regulated Officer, as provided herein, including those acts for which the defense may be provided and the extent of Town Funds which may be expended, shall be solely within the discretion of the Town.
1. The Town reserves unto itself the right to deny or revoke approval of the request if it is determined by the Town Attorney (or Town Council) to be beyond the scope of this Code of Ethics inconsistent with the purposes of this Code of Ethics.
  2. The Town Attorney (or Town Council) reserves unto itself the right to deny the Request where the Official has failed to select qualified counsel, or where the proposed fee schedule is deemed unreasonable.
  3. The Town Attorney (or Town Council) reserves unto itself the right to revoke approval of the Request where such Regulated Officer fails to cooperate in the defense of such action or proceeding;
- E. As a condition of the Town making the payments set forth herein, the Regulated Officer shall reimburse the Town within thirty (30) days, for any and all Town funds expended where it is determined that the alleged act or omission was taken outside the course or scope of the employment or duties of the Regulated Officer, or where such Regulated Officer was adjudicated guilty of the alleged violation, or is the subject of an adverse judgment. The Regulated Officer shall confirm in writing his/her agreement to this condition prior to the expenditure of any Town funds; the Town Council may waive this requirement for reimbursement when, in its sole judgment, it would serve the public interest.
- F. Nothing in this section shall authorize the Town to provide for the Legal Defense of a Regulated Officer where the alleged act or omission was clearly taken outside the course or scope of employment or duties of the Regulated Officer, or where the Regulated Officer has acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property.
- G. Nothing in this section shall be construed as a waiver by the Town or any Official of any claim of immunity, including sovereign immunity, applicable to any action.
- H. Where a Regulated Officer fails to avail himself/herself of the provisions of this section, and no legal defense was provided at the expense of the Town, nothing herein shall prohibit such Regulated Officer from seeking reimbursement from



the Town, in accordance with the terms set forth herein, for legal expenses incurred in the successful defense of a violation, or any criminal action where said Regulated Officer was acting in the course and scope of the Regulated Officer's employment or function, and said Regulated Officer is subsequently acquitted, or the charge or charges against said Regulated Officer are dismissed upon no violation being found.

- I. The provisions of this Section shall apply to all actions and proceedings pending upon or instituted after the effective date of this Section. As used herein, an action shall be construed to be pending where the action has not been tried, or if tried where the judgment has not become final by reason of the completion of any appellate proceedings.
- J. This Section shall not apply where there is insurance carrier defense of a matter.

**Section 10. Disclosure and Behavior Requirements of Applicants and Person/Entity seeking a Town contract or currently doing business with the Town.**

Any applicant seeking approval of a Town Board, Committee, or the Town Council or any person/entity seeking a Town contract through a request for proposal, request for qualification, request for letters of interest, or any sealed bid process (all referred to as "applicant"):

- A. Shall not induce, attempt to induce, offer, solicit or knowingly assist any person in violating this Code of Ethics.
- B. Shall with their application, proposal or bid:
  - 1. Include a listing of all campaign contributions to sitting Council Members in the past four (4) years as well as contributions of all relatives, officers, directors, shareholders of the corporation if the applicant is a corporation, or partners if the applicant is a partnership, or members, whether general or limited, if the applicant is a limited liability company.
  - 2. Disclose all those items that a Regulated Officer is required to disclose concerning any conflict, whether actionable or non-actionable.
  - 3. Disclose any action that is a violation of this Code of Ethics by a Regulated Officer (in reference to the application) with the applicant and/or the applicant's agents, and what was done to rectify the violation (for example: if a gift was given, when demand was made for return of the gift).

4. An applicant shall fully, completely, accurately, and not misleadingly report and file all disclosures referenced in this Code of Ethics and not omit material information, and/or file misleading and/or deceitful information in the disclosure.
5. An applicant has a continuous duty to report any violation of this Code of Ethics related to their application.
6. Failure to make a disclosure in compliance with this Section shall be a violation of this Code of Ethics and shall be grounds for the Town Council to void or rescind any approval or contract, or to disqualify a response to a Town procurement.

### **Section 11. Disclosure Requirements.**

- A. All disclosure forms are to be timely made as required by this Code. All written disclosure forms shall be filed with the Town Clerk. All persons required to make disclosures shall fully, completely, accurately, and not misleadingly report and file all disclosures referenced in this Code of Ethics and not omit material information, and/or file misleading and/or deceitful information in the disclosure.

All persons required to make disclosures have a continuing duty to report any violation of this Code, any Conflicts, and any non-disclosures.

- B. Annual General Disclosure Statements. All Regulated Officials and candidates shall file an Annual General Disclosure. Regulated Officials shall file by December 31 of each calendar year and candidates shall file upon the filing of their candidacy. The Annual General Disclosure statements shall include the following information as it relates to the Regulated Officials and candidates and the spouses or domestic partners, child or step-child, parent, or member of his/her household of same:

1. The location of any real property in the Town, in which the person disclosing has a financial interest, and the type of financial interest.
2. With respect to each outside employer or business entity of the person disclosing (business entity includes, but is not limited to, the person being a sole proprietor, partner, member, officer, director, shareholder, equity owner of any non-publicly held company, but does not include publicly held and traded companies in which the person is solely a passive investor of that publicly held and traded company, or a governmental entity):
  - i) Its name (if any);

- ii) The nature of its business and address; and
- iii) The person disclosing relationship to the outside employer or business entity such as sole proprietor, owner, partner, official, director, member, employee, bondholder, or shareholder.
- iv) Any additional information which may be deemed necessary and proper by the Town Attorney from time to time.

C. Conflict Disclosure Forms shall contain the following:

- (1) Name of the Regulated Officer;
- (2) Date on which the matter which is the subject of the conflict was or is anticipated to be on the Agenda and date on which any discussion occurred or which any vote was taken; and
- (3) The nature of the conflict and/or the required disclosure under this Code.
- (4) Any additional information which may be deemed necessary and proper by the Town Attorney from time to time.

**Section 12.** The Town Clerk must maintain on file for public inspection and with respect to disclosure statements, the following documents:

- A. A copy of the Annual General Disclosure Statement;
- B. A copy of the Annual Disclosure for Gifts;
- C. Copies of all disclosure forms made under this Code of Ethics;
- D. A list of campaign contributions given to each current member of the Council from the previous election, the date of contribution, amount of contribution and name and address of contributor.
- E. During a campaign, as each financial report is filed, a list of campaign contributions given to each candidate to become a member of the Town Council

in that current election, the date of contribution, amount of contribution and name and address of contributor.

**Section 13.** Before any item or action is considered by the Town Council at a meeting, the Town Clerk or Town Attorney shall announce the disclosures made on that particular item by the Regulated Officer and Applicant and the Regulated Officer and Applicant shall announce if there are any additional matters that have to be disclosed. The disclosure may be made by the Town Clerk or Town Attorney by referencing the disclosure document(s) rather than the entire contents of the Disclosure Statement(s).

**Section 14. Conflicts.** If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

**Section 14. Inclusion.** It is the intention of the Town Council, that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Southwest Ranches, that the sections of the Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 15. Severability.** If any word, phrase, clause, sentence or section of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

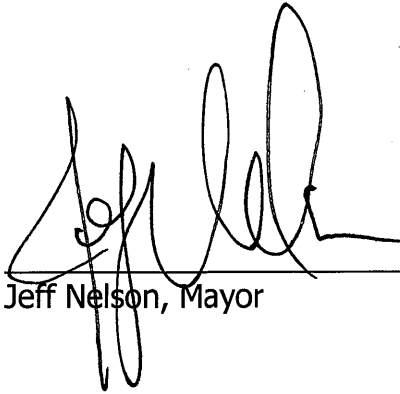
**Section 16. Effective Date.** This Ordinance shall become effective immediately upon adoption.

**PASSED ON FIRST READING** this 17<sup>th</sup> day of December, 2009, on a motion made by Vice Mayor Aster Knight and seconded by Council Member Doug McKay.

**PASSED AND ADOPTED ON SECOND READING** this 21st day of January, 2010, on a motion made by Council Member Breitkreuz and seconded by Council Member Fisikelli.

Nelson	<u>    AYE    </u>	Ayes	<u>    5    </u>
Knight	<u>    AYE    </u>	Nays	<u>    0    </u>
Breitkreuz	<u>    AYE    </u>	Absent	<u>    0    </u>
Fisikelli	<u>    AYE    </u>	Abstaining	<u>    0    </u>
McKay	<u>    AYE    </u>		

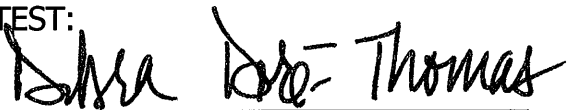
**[Signatures on Following Page]**



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Jeff Nelson, Mayor

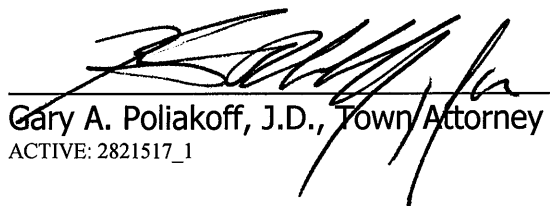
ATTEST:



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Debra Doré-Thomas, CMC, Town Clerk

Approved as to Form and Correctness:



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Gary A. Poliakoff, J.D., Town Attorney  
ACTIVE: 2821517\_1