

City of St. Charles, Illinois

Ordinance No. 2004-M-39

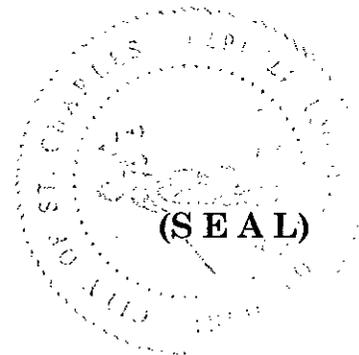
**An Ordinance Amending Title 2, Entitled
"Administration and Personnel," of the
City Code of the City of St. Charles to Insert
Therein Chapter 2.44, Entitled "Ethics"**

**Adopted by the
City Council
of the
City of St. Charles
May 17, 2004**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, May 21, 2004**



City Clerk



ORDINANCE NO. 2004-M- 39

**AN ORDINANCE AMENDING TITLE 2, ENTITLED
"ADMINISTRATION AND PERSONNEL" OF THE
CITY CODE OF THE CITY OF ST. CHARLES TO INSERT
THEREIN CHAPTER 2.44, ENTITLED "ETHICS"**

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 and local officials and employees; and

WHEREAS, the Act requires all units of local government and school districts, within six months after the effective date of Public Act 93-615, 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 and school districts 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, 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 rather than by resolution.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois as follows:

Section 1. That Title 2, entitled "Administrative and Personnel", of the City Code of the City of St. Charles, Kane and DuPage Counties, Illinois, is hereby amended by inserting the following:

CHAPTER 2.44

ETHICS

SECTION

- 2.44.010 Definitions
- 2.44.020 Prohibited Political Activities
- 2.44.030 Gift Ban
- 2.44.040 Ethics Advisor
- 2.44.050 Ethics Commission
- 2.44.060 Penalties

2.44.010 DEFINITIONS:

For purposes of this Chapter, the following terms shall be given these 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 that 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 work time requirement imposed as a condition of his or her employment, but for purposes of this Chapter, does not include an 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 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 that 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 St. Charles, 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 St. Charles.

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 or 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 local ordinance, regardless of whether the officer is compensated for service in his or her official capacity.

POLITICAL ACTIVITY 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 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:

(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

(2) Soliciting contributions, including but not limited to the purchase, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.

(3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value or intended as a campaign contribution.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

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

(10) Preparing or reviewing responses to candidate questionnaires.

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

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

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

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

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

PROHIBITED SOURCE means any person or entity who:

(1) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;

(2) 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;

(3) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the officer or employee.

2.44.020 PROHIBITED POLITICAL ACTIVITIES:

(A) No officer or employee shall intentionally perform any prohibited political activity during any compensated time, as defined herein.

(B) No officer or employee shall intentionally use any property or resources of the City of St. Charles in connection with any prohibited political activity.

(C) At no time shall any officer or employee intentionally require an 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).

(D) 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 in consideration for his or her participation in any prohibited political activity.

(E) 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 Chapter.

(F) 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 of 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.

2.44.030 GIFT BAN

(A) Except as permitted by this Section, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as "recipient(s)"), 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.

(B) Exceptions. Section 2.44.030 (A) is not applicable to the following:

(1) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(2) Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value.

(3) 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.

(4) Educational materials and missions.

(5) Travel expenses for a meeting to discuss business.

(6) 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.

(7) 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 gifts to other officers or employees, or their spouses or immediate family

members.

(8) Food or refreshments not exceeding Seventy Five Dollars (\$75.00) 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.

(9) 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.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this Chapter, "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.

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

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than One Hundred Dollars (\$100.00).

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

(C) 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 Chapter if the recipient promptly takes reasonable action to return a gift from a 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.

2.44.040 ETHICS ADVISOR:

(A) The Mayor, with the advice and consent of the City Council, shall designate an Ethics Advisor for the City of St. Charles. The duties of the Ethics Advisor may be delegated to an officer or employee of the City of St. Charles unless the position has been created as an office by the City of St. Charles.

(B) The Ethics Advisor shall provide guidance to the officers and employees of the City of St. Charles concerning the interpretation of and compliance with the provisions of this Chapter and State ethics laws. The Ethics Advisor shall perform such other duties as may be delegated by the Mayor and City Council.

2.44.050 ETHICS COMMISSION:

(A) There is hereby created a commission to be known as the Ethics Commission of City of St. Charles. The Commission shall be comprised of three members appointed by the Mayor, with the advice and consent of the City Council. No person shall be appointed as a member of the Commission who is related, either by blood or by marriage up to the degree of first cousin, to any elected officer of the City of St. Charles.

(B) At the first meeting of the Commission, the initial appointees shall draw lots to determine their initial terms. Two commissioners shall serve two-year terms, and the third commissioner shall serve a one-year term. Thereafter, all commissioners shall be appointed to two-year terms. Commissioners may be reappointed to serve subsequent terms.

(C) At the first meeting of the Commission, the commissioners shall choose a chairperson from their number. Meetings shall be held at the call of the chairperson or any two commissioners. A quorum shall consist of two commissioners, and official action by the commission shall require the affirmative vote of two members.

(D) The Mayor, with the advice and consent of the City Council, may remove a commissioner in case of incompetency, neglect of duty or malfeasance in office after service on the commissioner by certified mail, return receipt requested, of a copy of the written charges against the commissioner and after providing an opportunity to be heard in

person or by counsel upon not less than ten days' notice. Vacancies shall be filled in the same manner as original appointments.

(E) The Commission shall have the following powers and duties:

(1) To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.

(2) Upon receipt of a signed, notarized, written complaint, to investigate, conduct hearings and deliberations, issue recommendations for disciplinary actions, impose fines in accordance with Section 2.44.060 of this Chapter and refer violations of Section 2.44.020 or Section 2.44.030 of this Chapter to the appropriate attorney for prosecution. The Commission shall, however, act only upon the receipt of a written complaint alleging a violation of this Chapter and not upon its own prerogative.

(3) To receive information from the public pertaining to its investigations and to require additional information and documents from persons who may have violated the provisions of this Chapter.

(4) To compel the attendance of witnesses and to compel the production of books and papers pertinent to an investigation. It is the obligation of all officers and employees of the City of St. Charles to cooperate with the Commission during the course of its investigations. Failure or refusal to cooperate with requests by the Commission shall constitute grounds for discipline or discharge.

(5) The powers and duties of the Commission are limited to matters clearly within the purview of this Chapter.

(F) (1) Complaints alleging a violation of this Chapter shall be filed with the Ethics Commission.

(2) Within three (3) business days after the receipt of a complaint, the Commission shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her and a copy of the complaint. The Commission shall send by certified mail, return receipt requested, a

confirmation of the receipt of the complaint to the complainant within three (3) business days after receipt by the commission. The notices to the respondent and the complainant shall also advise them of the date, time, and place of the meeting to determine the sufficiency of the complaint and to establish whether probable cause exists to proceed.

(3) Upon not less than forty-eight (48) hours' public notice, the Commission shall meet to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of this Chapter, to determine whether there is probable cause, based on the evidence presented by the complainant, to proceed. The meeting may be closed to the public to the extent authorized by the Open Meetings Act. The Commission shall issue notice to the complainant and the respondent of the Commission's ruling on the sufficiency of the complaint and, if necessary, on probable cause to proceed within seven (7) business days after receiving the complaint.

If the complaint is deemed sufficient to allege a violation of Section 2.44.030 of this Chapter and there is a determination of probable cause, then the Commission's notice to the parties shall include a hearing date scheduled within four (4) weeks after the complaint's receipt. Alternatively, the Commission may elect to notify in writing the attorney designated by the corporate authorities to prosecute such actions and request that the complaint be adjudicated judicially. If the complaint is deemed not sufficient to allege a violation or if there is a determination of no probable cause, then the Commission shall send by certified mail, return receipt requested, a notice to the parties of the decision to dismiss the complaint and that notice shall be made public.

If the complaint is deemed sufficient to allege a violation of Section 2.44.020 of this Chapter, then the Commission shall notify in writing the attorney designated by the corporate authorities to prosecute such actions and shall transmit to the attorney the complaint and all additional documents in the custody of the Commission concerning the alleged violation.

(3) On the scheduled date and upon at least forty-eight (48) hours' public

notice of the meeting, the Commission shall conduct a hearing on the complaint and shall allow both parties the opportunity to present testimony and evidence. The hearing may be closed to the public only if authorized by the Open Meetings Act.

(4) Within thirty (30) days after the date the hearing or any recessed hearing is concluded, the Commission shall either (i) dismiss the complaint or (ii) issue a recommendation for discipline to the alleged violator and to the City Administrator, or impose a fine upon the violator, or both. In the event the City Administrator is the violator the recommendation for discipline shall be issued to the Mayor. The particular findings in the case, any recommendation for discipline, and any fine imposed shall be a matter of public information.

(5) If the hearing was closed to the public, the respondent may file a written demand for a public hearing on the complaint within seven (7) business days after the issuance of the recommendation for discipline or imposition of a fine, or both. The filing of the demand shall stay the enforcement of the recommendation or fine. Within fourteen (14) days after receiving the demand, the Commission shall conduct a public hearing on the complaint upon at least forty-eight (48) hours' public notice of the hearing and allow both parties the opportunity to present testimony and evidence. Within seven (7) days thereafter, the Commission shall publicly issue a final recommendation to the alleged violator and to the City Administrator, or impose a fine upon the violator, or both. In the event the City administrator is the violator the recommendation for discipline shall be issued to the Mayor.

(6) If a complaint is filed during the sixty (60) days preceding the date of any election at which the respondent is a candidate, the Commission shall render its decision as required under subsection 2.44.050 (F) (4) within seven (7) days after the complaint is filed; and if a complaint is filed during the seven (7) days preceding that election, the Commission shall render such decision before the date of that election, if possible.

(7) The commission may fine any person who intentionally violates any provision of Section 2.44.030 of this Chapter in an amount of not less than One Thousand One Dollars (\$1,001.00) and not more than Five Thousand Dollars

(\$5,000.00). The Commission may fine any person who knowingly files a frivolous complaint alleging a violation of this Chapter in an amount of not less than One Thousand One Dollars (\$1,001.00) and not more than Five Thousand Dollars (\$5,000.00). The Commission may recommend any appropriate discipline up to an including discharge.

(8) A complaint alleging the violation of this Chapter must be filed within one (1) year after the alleged violation.

2.44.060 PENALTIES:

(A) A person who intentionally violates any provision of Section 2.44.020 of this Chapter 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 sixty-four (364) days, and may be fined in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

(B) A person who intentionally violates any provision of Section 2.44.030 of this Chapter is subject to a fine in an amount of not less than One Thousand One Dollars (\$1,001.00) and not more than Five Thousand Dollars (\$5,000.00).

(C) Any person who intentionally makes a false report alleging a violation of any provision of this Chapter to the local enforcement authorities, the State's Attorney or any other law enforcement official 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 sixty-four (364) days, and may be fined in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

(D) A violation of Section 2.44.020 of this Chapter shall be prosecuted as a criminal offense by an attorney for the City of St. Charles by filing in the circuit court an information, or sworn complaint, charging such offense. The prosecution shall be under and conform to the rules of criminal procedure. Conviction shall require the establishment of the guilt of the defendant beyond a reasonable doubt.

A violation of Section 2.44.030 of this Chapter may be prosecuted as a quasi-criminal

offense by an attorney for the City of St. Charles, or, if an Ethics Commission has been created, by the Commission through the designated administrative procedure.

(E) In addition to any other penalty that may be applicable, whether criminal or civil, an officer or employee who intentionally violates any provision of Section 2.44.020 or Section 2.44.030 of this Chapter is subject to discipline or discharge.

Section 2. This Ordinance shall be in effect upon its passage, approval and publication as provided by law.

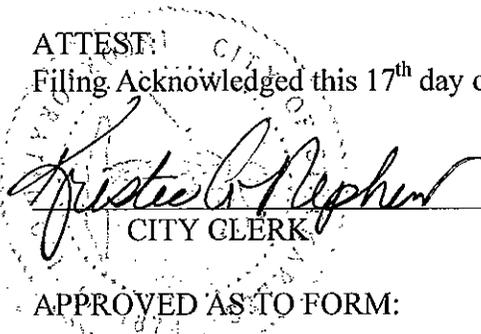
PRESENTED to the City Council of the City of St. Charles, Illinois, this 17th day of May, 2004.

PASSED by the City Council of the City of St. Charles, Illinois this 17th day of May, 2004.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 17th day of May, 2004.


MAYOR

ATTEST:
Filing Acknowledged this 17th day of May, 2004.


CITY CLERK

COUNCIL VOTE

Ayes - 10

Nays - 0

Absent - 0

Abstain - 0

APPROVED AS TO FORM:

/s/Brian W. Baugh
Special Legal Council

May 17, 2004

State of Illinois)
)
Counties of Kane and DuPage) ss.

Certificate

I, KRISTIE A. NEPHEW, certify that I am the duly elected and acting Municipal Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

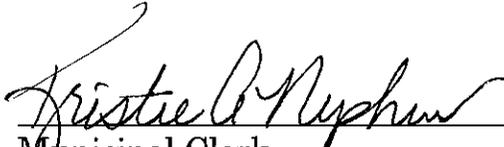
I further certify that on May 17, 2004, the Corporate Authorities of such municipality passed and approved Ordinance No. 2004-M-39, entitled

"An Ordinance Amending Title 2, Entitled
"Administration and Personnel," of the
City Code of the City of St. Charles to Insert
Therein Chapter 2.44, Entitled "Ethics","

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2004-M-39, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on May 21, 2004, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 18th day of May, 2004.



Municipal Clerk

