

ORDINANCE NO. 2010- 940

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YORBA LINDA ADDING CHAPTER 2.44 OF TITLE 2 OF THE YORBA LINDA MUNICIPAL CODE ESTABLISHING ETHICS REGULATIONS

WHEREAS, the City Council has directed staff to prepare a comprehensive ordinance establishing ethics and open government regulations to address a variety of issues; and

WHEREAS, the issues to be addressed include campaign contributions; endorsements from city employees and commissioners; guidelines for elected and appointed officials; protection for "whistleblowers;" mandatory AB 1234 training for all staff members and City officials, whether elected or appointed; prohibiting ad hoc committee meetings of the City Council and Commission; tape recording of all closed session meetings of the City Council; and prohibiting the misuse of City resources or staff involvement in elections; and

WHEREAS, the proposed regulations sought by the Council are intended to establish practices consistent with the City Council's commitment to conduct the public's business in accordance with high ethical standards and in a manner consistent with open government practices.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YORBA LINDA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 2.44 of the Yorba Linda Municipal Code is hereby stated to read as follows:

**"CHAPTER 2.44
ETHICS REGULATIONS**

Sections:

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| Sec. 2.44.010 | No solicitation of campaign contributions from city contractors. |
| Sec. 2.44.020 | Prohibition against accepting campaign contributions for twelve months after approving a permit or decision. |
| Sec. 2.44.030 | Disqualification from acting upon a permit or decision if a campaign contribution was accepted within a previous twelve month period. |
| Sec. 2.44.040 | Prohibition against seeking endorsements from city employees, commissioners, city contractors or labor associations affiliated with city contractors. |
| Sec. 2.44.050 | Adoption of a code of conduct for elected and appointed officials. |
| Sec. 2.44.060 | Adoption of a "whistleblower" procedure. |
| Sec. 2.44.070 | Mandatory AB1234 training for all city staff, executives and appointed and elected officials. |
| Sec. 2.44.080 | Prohibition against closed door ad hoc committee meetings of the City Council and Commissions. |
| Sec. 2.44.090 | Tape recording of all closed session meetings of the City Council. |

Sec. 2.44.100 Prohibitions against the misuse of City resources or staff involvement in elections.

Sec. 2.44.110 Enforcement.

Sec. 2.44.010. No solicitation of campaign contributions from city contractors

It is unlawful for any City Official to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person, firm, entity or any labor association affiliated with any of the foregoing, that is under current contract to do business with the city or desires to contract to do business with the city, to make a campaign contribution to an individual, political action committee or association of citizens in connection with promoting or opposing any candidate for city council or any municipal initiative or referendum on the ballot for a City election, or to accept a campaign contribution from an existing city contractor or labor association of a city contractor. For purposes of this section, City Official shall mean a Council Member, a Commissioner or any other person required by the City's Conflict of Interest Code to file a Form 700 Statement of Economic Interest. Furthermore, this section shall not prohibit a City Official from seeking a campaign contribution from an employee of a city contractor in the case where the employee resides within the City.

Sec. 2.44.020. Prohibition against accepting campaign contributions for twelve months after approving a permit or decision.

No Council Member or any campaign committee controlled by a Council Member shall solicit or accept any campaign contribution or loan of two hundred fifty dollars (\$250) or more from any person for a period of twelve months following the date a final decision is rendered in any proceeding before the Council involving a license, permit, contract or other land use entitlement, if the Council Member knows or has reason to know that the person was the applicant, the contractor or the direct recipient of the approval. For purposes of this section, members of the public, other than the applicant, the contractor or direct recipient of an approval, who expresses an opinion to the City Council through direct public comment, testimony at a public hearing or in writing shall not be affected by this section.

Sec. 2.44.030 Disqualification from acting upon a permit or decision if a campaign contribution was accepted within a previous twelve month period.

A Council Member shall not participate in, nor use his or her official position to influence, a decision of the city council if it is reasonably foreseeable that the decision directly benefits a recent campaign contributor by granting the contributor a license, permit, contract, land use entitlement or other benefit sought by the contributor from the City. A recent campaign contributor means any person, firm or entity who has made campaign contributions totaling two hundred fifty (\$250) or more to the Council Member or to any campaign committee controlled by the Council Member in the twelve-month period immediately preceding the date of the decision.

Sec. 2.44.040. Prohibition against seeking endorsements from city employees, commissioners, city contractors or labor associations affiliated with city contractors.

It is unlawful for any City Official, candidate for public office or person promoting or opposing a municipal initiative or referendum to solicit, directly or indirectly, a political endorsement from any City employee, City Commissioner, city contractor or labor association affiliated with city contractors. Notwithstanding the prohibition stated above this section shall not prohibit a City Official, a candidate for elective office or a person

promoting or opposing a municipal initiative from soliciting an endorsement from City employees if the solicitation is part of a solicitation made to a significant segment of the public which may include City employees. City Official shall include any Council Member, Commissioner, the City Manager, the City Attorney or Department Head.

Sec. 2.44.050. Adoption of a code of conduct for elected and appointed officials.

The City Council shall adopt by resolution a "Code of Conduct for Elected and Appointed Officials" to describe the manner in which Council members and Commissioners should treat one another, city staff, constituents, and others they come into contact with in representing the City of Yorba Linda.

Sec. 2.44.060. Adoption of a "whistleblower" procedure.

The City Council shall adopt by separate ordinance a "whistleblower" procedure to protect City of Yorba Linda employees who have reported improper governmental actions in accordance with the City of Yorba Linda's policies and procedures.

Sec. 2.44.070. Mandatory AB1234 training for all city staff, executives and appointed and elected officials.

All department heads, managers, City Council Members, City Commissioners and the City Manager shall complete AB1234 training and shall keep on file with the City Clerk evidence of completion of such training. The City Clerk shall coordinate training sessions with the City Attorney and the training shall be provided no less frequently than every other year. There may be valid reasons for a person to accomplish training outside of the City's official training sessions. City Council Members and Commissioners must inform the Mayor in writing as to the reason why the person cannot attend the City provided training. Managers and Department Heads may only be excused by the City Manager.

Sec. 2.44.080. Prohibition against closed door ad hoc committee meetings of the City Council and Commissions

The Mayor and Commissioner Chairs shall not appoint ad hoc committees for the purpose of permitting less than a quorum of the Council or Commission to meet behind closed doors, or otherwise in private, with members of the public, other officials or applicants to discuss official city business related to matters pending before the Council or Commissioner or matters which are to be brought forward to the Council or Commission. If the Mayor or a Commission Chair desires a committee to work on a particular matter the Mayor or Chair may appoint a committee and instruct the committee to comply with the noticing and meeting requirements of the Brown Act.

Sec. 2.44.090. Tape recording of all closed session meetings of the City Council.

The Brown Act authorizes the City Council to direct that closed session discussions of the City Council be recorded and maintained by a designated person. The City Manager is hereby directed to provide for the audio taping of all closed session meetings of the City Council and the Mayor shall cause such audio tapes to be delivered to the City Clerk. The audio tapes shall be maintained by the City Clerk in sealed envelopes and shall remain at all times in a secure location accessible only to the City Clerk. The closed session audio tapes shall not be deemed a public record and shall only be accessed in accordance with the provisions of the Brown Act in connection with an official investigation or review as provided for in the Brown Act or by a vote of at least three members of the City Council only when such release is permitted by law.

Sec. 2.44.100. Prohibitions against the misuse of City resources or staff involvement in elections.

(a) It is unlawful for any City Official or staff person to engage in campaign-related activities, such as fund-raising, the development of electronic or written materials, or research, for a campaign for any elective office using City facilities, equipment, supplies, or other City resources. It is unlawful for any person to induce or coerce, or attempt to induce or coerce any other person to engage in any activity prohibited by this section.

(b) It is unlawful for any current or former City Official to use or disclose to any person any confidential information he or she acquired in the course of his or her official duties, except when such disclosure is a necessary function of his or her official duties.

(c) Nothing in this section shall prohibit the use of City resources to provide information to the public about the possible effects of any bond issue or other ballot measure relating to City activities, operations, or policies, provided that:

(1) the use of public resources is otherwise legally authorized; and

(2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure."

Sec. 2.44.110. Enforcement.

Alleged violations of this Chapter 2.44 by any person other than the City Manager or the City Attorney shall be reported in writing to the City Attorney. The City Attorney shall notify the City Council of the allegation and refer the matter for investigation and potential enforcement to the District Attorney and special legal counsel selected by the City Council. Each year when the City Council reaffirms the City's Conflict of Interest Code as required by the Political Reform Act, the City Council shall also select special legal counsel to be used for the enforcement of this Chapter. Alleged violations of this Chapter by the City Manager or the City Attorney shall be made in writing to the Mayor who shall refer the matter directly to the special legal counsel.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions might subsequently be declared invalid or unconstitutional.

Section 3. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment.

Section 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance or a summary thereof to be published in the manner required by law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Yorba Linda on this 19th day of January, 2010.

(d)(5)

MAYOR JOHN ANDERSON
CITY OF YORBA LINDA

ATTEST:

(d)(5)

MARCIA BROWN, CITY CLERK
CITY OF YORBA LINDA

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

(d)(5)

CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.

I, **MARCIA BROWN**, City Clerk of the City of Yorba Linda, California, DO **HEREBY CERTIFY** that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Yorba Linda held on the 19th day of January, 2010, and was carried by the following roll call vote:

AYES: COUNCILMEMBERS: ANDERSON, RIKEL, SCHWING
NOES: COUNCILMEMBERS: HORTON, WINDER
ABSENT: COUNCILMEMBERS: NONE

(d)(5)

MARCIA BROWN, CITY CLERK
CITY OF YORBA LINDA