

CITY OF VALDEZ, ALASKA

ORDINANCE NO. 22-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALDEZ,  
ALASKA, AMENDING CHAPTER 2.24 OF THE VALDEZ MUNICIPAL CODE  
TITLED CODE OF ETHICS

WHEREAS, the following amendments to Chapter 2.24 of the Valdez Municipal Code hereby establish antidiscrimination and harassment as prohibited conduct and establish procedures for complaints related to violation of this Chapter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA THAT the following amendments are made to Chapter 2.24 of the Valdez Municipal Code:

Section 1. Chapter 2.24 is hereby amended to read as follows:

**Chapter 2.24**  
**CODE OF ETHICS**

Sections:

- 2.24.010 Purpose.
- 2.24.020 Definitions.
- 2.24.030 Prohibited acts.
- 2.24.040 Business dealings with city.
- 2.24.050 Enforcement.
- 2.24.060 Advisory opinions.
- 2.24.070 Penalties—Forfeited position—Exemptions—Injunction.
- 2.24.080 Distribution of code of ethics.
- 2.24.090 Application of state statutes.

**2.24.010 Purpose.**

The purpose of this chapter is to set reasonable standards of conduct for elected and appointed city officials, and for city employees so that the public may be assured that its trust in such persons is well placed and that the officials and employees themselves are aware of the standards of conduct demanded of persons in like office and position. However, it is not the intent of this chapter to set unreasonable barriers that will serve only to deter aspirants from public service, but rather it is recognized that Valdez is a small, isolated community with a limited pool of talented people from which to draw its leaders. These factors are to be considered in the construction and application of these provisions.

B. This chapter is also intended to establish a process which will ensure that complaints or inquiries regarding the conduct of elected and appointed city officials and employees are resolved in the shortest practicable time in order to protect the rights of the public at large and the rights of the elected or appointed official. (Prior code § 8A-1)

#### **2.24.020 Definitions.**

A. As used in this chapter:

“Engaging in business” or “engage in business” means submitting a written or oral proposal or bid to supply goods, services or other things of value, or furnishing goods, services or other things of value, for consideration or otherwise entering into any contract or transaction with the city including but not limited to the lease, sale, exchange or transfer of real or personal property.

“Financial interest” means a direct or indirect pecuniary or material benefit accruing to a city official or employee as a result of a contract or transaction by or with the city except for such contracts or transactions which by their terms and by substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. A financial interest does not include city paid remuneration for official duties or city employment. A person has a financial interest in a decision if a substantial possibility exists that a financial interest of that person might vary with the outcome of the decision. A financial interest of an employee or official includes:

1. Any financial interest of a member of that person’s immediate family;
2. Any financial interest in an entity in which that person or a member of his immediate family has an ownership interest, or is a director, officer or employee;
3. Any financial interest of a person or entity with whom the employee or official or a member of his immediate family or an entity described in subparagraph 2 of this subsection has or is likely to acquire a contractual relationship relating to the transaction in question.

“Gratuity” means a thing having value given voluntarily or beyond lawful obligation.

“Harassment” means unwelcome conduct, whether verbal, physical, or visual, that is based on a person's race, color, ancestry, religion, national origin, age, gender, sex, pregnancy, sexual orientation, marital status, disability, genetic information, or veteran status. Harassment may include unwelcome conduct that occurs outside of work during nonwork hours if it has consequences in the workplace. Harassment does not include a minor annoyance or disappointment that an employee may encounter in the course of performing the employee’s work. Harassment becomes unlawful where:

1. Enduring the offensive conduct becomes a condition of continued employment, or
2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

“Immediate family” of a person means anyone related to that person by blood or current marriage or adoption in a degree up to and including the fourth degree of consanguinity or affinity or any relative or nonrelative who lives in that person’s household.

“City employee” or “employee” means any person employed or retained by the city, whether full-time or part-time, temporarily or permanently and includes, but is not limited to, all contract employees and volunteers.

“City official” or “official” means a person who holds elective or appointive office under the Charter or ordinances of the city, or who is a member of a city board, commission, committee, task force or other agency of the city.

“Official act” or “action” means any legislative, administrative, appointive or discretionary act of any officer or employee of the city or any agency, board, committee or commission thereof.

“Organization” means any corporation, partnership, firm or association, whether organized for profit or nonprofit.

“Political activity” means any act for the purpose of influencing the nomination or election of any person to public office, or for the purpose of influencing the outcome of any ballot proposition or question. Informing the public about a ballot proposition or question without attempting to influence the outcome of the ballot proposition or question is not political activity. (Prior code § 8A-2)

“Sexual harassment” means unwelcome sexual advances, or requests for sexual favors, or verbal/physical/visual conduct of a sexual nature when:

1. Submission to the conduct is made an explicit or implicit term or condition of employment;
2. Submission to or rejection of the conduct is used as the basis for an employment decision; or
3. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or hostile work environment.

#### **2.24.030 Prohibited acts.**

A. Official Action. A city official or employee shall not participate in any official action in which he has a financial interest. An official or employee who is a voting member of the city council or a city board, commission or other agency shall publicly disclose any existing or potential financial interest in any matter before the council, board, commission or agency before debate or vote upon the matter and may not participate in the debate or vote upon the decision. No official or employee may testify before the council, board, commission or other agency without first disclosing any financial interest which the official or employee has in the subject of the testimony.

B. Business Prohibition. No official or employee may engage in business with the city when that person has had substantial involvement in planning, recommending or otherwise supporting the project or transaction at issue. No official or employee shall attempt to influence the city's selection of any bid or proposal, or the city's conduct of business, in which the official or employee has a financial interest. Newly elected or appointed officials and newly hired employees who have preexisting contracts with the city may fulfill the terms and conditions of such contracts without penalty.

C. Use of Office for Personal Gain. No official or employee shall seek or hold office or position for the purpose of obtaining anything of value for himself, his immediate family or a business that he owns or in which he holds an interest or for any matter in which he has a financial interest. This prohibition shall not apply to the receipt of authorized remuneration for that office or position.

D. Representing Private Interests. No official or employee shall represent, for compensation, or assist those representing private business or personal interests before the city council, administration, or any city board, commission or agency. Nothing herein shall prevent an official from making verbal or written inquiries on behalf of constituents or the general public to elements of city government or from requesting explanations or additional information on behalf of such constituents. No official may solicit a benefit or anything of value or accept same from any person for having performed this service.

E. Confidential Information. No official or employee may disclose information he knows to be confidential concerning the property, government, or affairs of the city unless authorized or required by law to do so.

F. Outside Activities. An official or employee may not engage in business or accept employment with, or render services for, a person other than the city or hold an office or position where that activity or position is incompatible with the proper discharge of his city duties or would tend to impair his independence of judgment in performing his city duties. This prohibition shall include but not be limited to the following activities:

1. During the term of employment, a city employee shall not be eligible for election to a city office. A city employee shall not be eligible for appointment to a city board that has oversight over the department of employment of that employee.
2. A person who holds an appointed city office shall not be eligible for employment with the city, during their term of office, in the department that the appointed office or board has jurisdiction over until one year has elapsed following the term of appointment. An exception may be made with the approval of four or more members of the city council.
3. Pursuant to Section 2.3 of the Valdez City Charter, a person who holds or has held an elective city office shall not be eligible for appointment to an office or for employment with the city until one year has elapsed following the term for which he was elected or appointed. An exception may be made with the approval of four or more members of the city council.

G. Gratuities. No official or employee shall accept a gratuity from any person engaging in business with the city or having a financial interest in a decision pending with the city. No official or employee shall give a gratuity to another official or employee for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a city official or employee. This subsection does not prohibit accepting:

1. A meal;
2. Discounts or prizes that are generally available to the public or large sections thereof;
3. Gifts presented by employers in recognition of meritorious service or other civic or public awards;

4. A candidate for public office accepting campaign contributions;
5. An occasional nonpecuniary gift insignificant in value;
6. Any gift which would have been offered or given to him if he were not an official or employee.

H. Use of City Property. No official or employee may request or permit the use of city vehicles, equipment, materials or property for a noncity purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless specifically authorized by the city council.

I. Political Activities, Limitations of Individuals. Appointed officials and employees may not take an active part in a political campaign or other matter to be brought before the voters when on duty. Nothing herein shall be construed as preventing appointed officials or employees from exercising their voting franchise, contributing to a campaign or candidate of their choice or expressing their political views when not on duty or otherwise conspicuously representing the city.

J. Political Activity, Limitation on City Government. The city may prepare and disseminate general, objective information about the issues to be voted on in local elections. Such material shall be devoid of biased statements or slant and, where appropriate, may contain pro and con statements of equal weight and value.

K. Influencing Another Council Member's Vote. A city council member may not attempt to influence another council member's vote or position on a particular item through contact with a city council member's employer or by threatening financial harm to another city council member. (Ord. 94-13 § 1; Ord. 94-12 § 1; prior code § 8A-3)

L. Harassment and Discrimination. The city will not tolerate, condone, or permit unlawful harassment, including sexual harassment, or discrimination on the basis of race, religion, color, national origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood. All officials or employees who instigate or participate in unlawful harassment, including sexual harassment, or discrimination against any employee or official will be subject to disciplinary action. All officials and employees shall also refrain from discriminating against or harassing citizens and others while acting in an official capacity.

M. Retaliation. It is a violation of law to retaliate against a person who has opposed practices forbidden under Alaska Statutes Chapters 18.80.220 – 18.80.280 or who has reported or participated in the investigation of an allegation of harassment or discrimination. An employee or official may not engage in retaliation. All officials or employees who instigate or participate in retaliation against any employee or official will be subject to disciplinary action.

N. Hostile Work Environment. Discriminatory behavior or harassment sufficiently severe or pervasive to alter the conditions of the subject's employment and to create a hostile work environment violates Alaska Statutes Chapter 18.80.220 and is prohibited. All officials or employees who instigate or participate in unlawful harassment or discrimination that creates a hostile work environment will be subject to disciplinary action.

#### **2.24.040 Business dealings with city.**

In accordance with Section 12.4 of the Charter of the city of Valdez:

A. Before a city official or employee, or an organization or entity in which the official or employee has a financial interest, engages in business with the city, the official or employee shall file with the city clerk a statement, under oath, setting forth the nature of such business dealings and his interest therein, not less than ten days before the date when official action may be taken by the council or by any officer, employee, commission or other agency of the city upon the matter involved. If all other provisions of this chapter are complied with, the statement shall be sufficient for continuing transactions of a similar or like nature for one year from the date of its filing. However, if an employee or official has violated any of the provisions of this chapter, he shall be precluded from dealing with the city on that particular matter.

B. Upon taking office, or upon subsequently acquiring the interest, an official or employee shall file with the city clerk a statement disclosing any financial interests of the official or employee in an organization engaging in business with the city. (Prior code § 8A-4)

#### **2.24.050 Enforcement.**

A. The city council shall have the primary responsibility for the enforcement of this chapter with regard to the conduct of city officials and shall ensure that a determination of the validity of a complaint is made within thirty days or as soon as practicable after receipt of the complaint. The city manager shall have the primary responsibility for the enforcement of this chapter with regard to the conduct of employees pursuant to the personnel regulations and other applicable policies.

B. With regard to complaints regarding the conduct of city officials, the city council may direct the city attorney to investigate or prosecute any apparent violation of this chapter or it may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations by one or more persons of this chapter. The city council may establish polices and procedures related to the investigation of complaints against city officials for violation of any portion of this chapter. Investigation of complaints regarding the conduct of employees or complaints made by employees regarding the conduct of the City Manager shall proceed in accordance with the personnel regulations.

C. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the city attorney, city manager or the city council. Complaints by employees related to the conduct of other employees or the City Manager shall be made in accordance with the personnel regulations. However, nothing in this chapter shall be construed to prevent complainants from instituting direct legal action through the appropriate judicial authority. A complainant who is also an employee or official shall be protected from any official acts of retaliation for filing a complaint that has a reasonable foundation. (Prior code § 8A-5)

#### **2.24.060 Advisory opinions.**

A. Where any official or employee has a doubt as to the applicability of any provision of this chapter to a particular situation, or as to the definition of terms used herein, he may apply in writing to the city attorney for an advisory opinion. The official or employee shall have the

opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the chapter before such advisory opinion is made.

B. Such opinion until amended or revoked shall be binding on the city in any subsequent actions concerning the public official or employee who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. An advisory opinion shall be applicable and binding only to the particular set of facts and instance of conduct for which it was requested and shall have no force or effect for purposes of general application. Such opinion shall not be binding or admissible in evidence in any action initiated by any private citizen.

C. Any advisory opinion prepared by the city attorney may be made public. However, the name of the person requesting the opinion and the names of all persons or business entities mentioned in the opinion and other such identifying criteria shall be deemed confidential information and shall not be disclosed by the city attorney unless the official or employee waives such confidentiality. (Prior code § 8A-6)

#### **2.24.070 Penalties—Forfeited position—Exemptions—Injunction.**

A. Any official or employee who willfully and knowingly violates any of the provisions of this chapter shall be guilty of a violation subject to punishment pursuant to Section 1.08.010.

B. Upon conviction for any violation of this chapter of any official or employee, such official or employee shall immediately forfeit his office or position.

C. The city council may elect not to prosecute an employee or official whose conduct is believed to constitute a violation of this chapter if it is determined that prosecution of the employee or official is not necessary in the public interest.

D. Any contract or transaction which was the subject of an official act or action of the city in which there is an interest prohibited by this chapter, or which involved the violation of a provision of this chapter, shall be voidable at the option of the city.

E. The city may, where a violation of the provisions of this chapter is threatened or has occurred, bring civil action or proceeding at law or in equity for a judgment enjoining any violation of the provisions of this chapter or requiring the relinquishment of any prohibited interest or the voiding of any such contract or transaction, taking into account the interests of the city and any third persons who may be injured thereby. Where it is determined that the public interest may best be served by not voiding a contract or transaction entered into in violation of this chapter, such contract or transaction may be enforced. An action or proceeding may be brought against any official or employee found in violation of provisions of this chapter for damages not to exceed twice the damages suffered by the city or twice the profit or gain realized by the official or employee, whichever is greater. (Prior code § 8A-7)

#### **2.24.080 Distribution of code of ethics.**

The city clerk shall cause a copy of this chapter to be distributed to every official and employee of the city within thirty days after its enactment. Each official and employee elected, appointed

or engaged thereafter shall be furnished a copy before entering upon the duties of his office or employment. (Prior code § 8A-8)

**2.24.090 Application of state statutes.**

A. Nothing in this chapter is intended to curtail, modify or otherwise circumvent the application of the Alaska Statutes to any conduct involving bribery or other offenses against public administration.

B. City "officers" as defined by Alaska Statutes Chapter 39.50 are exempt from making the financial disclosures required by that statute. (Prior code § 8A-9)

Section 2: This ordinance becomes effective immediately upon passage and approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF VALDEZ, ALASKA

\_\_\_\_\_  
Sharon Scheidt, Mayor

ATTEST:

\_\_\_\_\_  
Sheri L. Pierce, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jake Staser, City Attorney  
Brena, Bell & Walker, P.C.

First Reading:  
Second Reading:  
Yeas:  
Nays:  
Absent:  
Abstain: