TOWN OF PROSPER, TEXAS **ORDINANCE NO. 15-66**

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING ARTICLE 1.10, "CODE OF ETHICS," OF CHAPTER 1, "GENERAL PROVISIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY REPEALING EXISTING ARTICLE 1.10, "CODE OF ETHICS," AND REPLACING IT WITH A NEW ARTICLE 1.10, "CODE OF ETHICS"; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town"), on or about March 25, 2008, enacted Ordinance No. 08-036, which ordinance was subsequently codified in the Prosper Code of Ordinances as Article 1.10 of Chapter 1, and was entitled the "Code of Ethics"; and

WHEREAS, through its Code of Ethics, the Town Council determined that it was in the best interest of the Town to require all public officials, officers and employees of the Town, and all members of Town-appointed boards, commissions and committees, to be independent, impartial and responsible only to the people of the Town; and

WHEREAS, the Town Council, through its Code of Ethics, determined that no Town officer, official or employee, including all members of boards, commissions and committees, should have any interest, direct or indirect, nor engage in any business transaction or professional activity, nor incur any obligation of any nature, which is in conflict with the proper discharge of his or her duties in the public interest; and

WHEREAS, the Town Council, through its Code of Ethics, determined that it is in the best interest and welfare of the Town to preserve the integrity and nonpartisan nature of Town government by adopting the Code of Ethics; and

WHEREAS, the Town Council has determined that the Code of Ethics should be revised to provide an ethics review process involving the Town's municipal court and an impartial judge and/or jury to make any determination whether there has been a violation of the Code of Ethics, and by doing so, has eliminated any concern about impartiality in the decision-making process, as well as address recent legislative changes about acceptance of gifts by public servants from vendors.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

Existing Article 1.10, Code of Ethics," of Chapter 1, "General Provisions," of the Prosper Code of Ordinances is hereby repealed in its entirety and replaced with a new Article 1.10, "Code of Ethics," to read as follows:

"ARTICLE 1.10 CODE OF ETHICS

Sec. 1.10.001 Policy and purpose

(a) It is hereby declared to be the policy of the Town that the proper operation of democratic government requires that:

(1) Town officers, officials and employees, including all members of Town-appointed boards, commissions and committees, be independent, impartial and responsible only to the people of the Town;

(2) Governmental decisions and policies be made using the proper procedures of the governmental structure;

(3) No Town officer, official or employee, including all members of Town-appointed boards, commissions and committees, have any interest nor engage in any business transaction or professional activity nor incur any obligation of any nature which is in conflict with the proper discharge of his or her duties in the public interest;

(4) Public office not be used for personal gain; and

(5) Town officers, officials and employees fully comply with any federal and state statutes, laws and regulations, as amended, concerning conflicts of interest.

(b) In furtherance of this policy, the Town Council has hereby determined that it is advisable to enact this Code of Ethics for all Town officers, officials and employees, whether elected or appointed, advisory or administrative, including all members of Town-appointed boards, commissions and committees, to serve not only as a guide for official conduct of the Town's elected and appointed public servants, but also as a basis for discipline for those who refuse to abide by its terms and provisions.

Sec. 1.10.002 Definitions

For the purposes of this Article, the following words and phrases, when used in this Article, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

Compensation. Any economic benefit received in return for services, property or investment.

Discretionary authority. The power to exercise any judgment in a decision or action.

Economic benefit. Economic benefit refers to any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Employee. Any person employed by the Town, including those individuals employed on a part-time or seasonal basis, but such term shall not be extended to apply to any independent contractor.

Entity. A sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Gift. Gift means a favor, hospitality or economic benefit, other than compensation.

Non-Town board, committee or commission. A board, committee, commission or other governing or advisory body or panel of an organization, business entity or governmental entity that is not a Town-appointed board, committee or commission. Examples include, but are not limited to, serving on the board of directors (or similarly-situated governing or advisory body or panel) of a water district, municipal management district, hospital district, regional council of government organization or appraisal district.

Officer or official. Any member of the Town Council and any Town-appointive member of a board, commission, authority or committee set up by ordinance, Town Charter, state law, or otherwise on a temporary or permanent basis, including all members of a board, commission, authority or committee which functions only in an advisory or study capacity and which has no discretionary, governmental, quasi-judicial or administrative authority. For purposes of this Article, the Town Manager, the Town Secretary, the Town Attorney and any Municipal Judge(s) shall be considered Town Officials.

Relative. A relative means any person related to an officer, official or employee within the first degree by consanguinity or affinity and shall include a spouse, father, mother, son, daughter, brother or sister.

Substantial interest. An interest in another person or an entity if:

(1) The interest is ownership of ten percent or more of the voting stock, shares or equity of the entity of ownership of $5,000.00 or more of the equity or market value of the entity;

(2) Funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded $5,000.00 in salary, bonuses, commissions or professional fees or $20,000.00 in payment for goods, products or non-professional services, or ten percent of the person's gross income during that period, whichever is less;

(3) The person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity, other than a corporate entity owned or created by the Town council; or

(4) The person is a creditor, debtor or guarantor of the other person or entity in an amount of $5,000.00 or more.

Substantial interest in partnerships, professional corporations and other business entities. If a Town officer, official or employee is a member of a partnership or professional corporation, or conducts business through another entity, a substantial interest of the partnership, professional corporation or business entity shall be deemed to be a substantial interest of the Town officer, official or employee if:

(1) The partnership or professional corporation has fewer than 20 partners or shareholders;

(2) Regardless of the number of partners or shareholders, the officer, official or employee has an equity interest, share of draw equal to or greater than five percent of the capital or revenues of the partnership, professional corporation or other entity; or

(3) With regard to the partnership, professional corporation or other entity's substantial interest in a particular client, the officer, official or employee has personally acted within the preceding 24 months in a professional or fiduciary capacity for that client.

Substantial interest in real property. An interest in real property which is an equitable or legal ownership with a fair market value of $2,500.00 or more.

Sec. 1.10.003 Unethical activity

No officer, official or employee of the Town, including all members of Town-appointed boards, commissions and committees, shall:

(1) Accept any gift or economic benefit of more than $50.00 in value from any person or entity which gift or economic benefit might reasonably tend to influence such officer, official or employee in the discharge of official duties, or grant in the discharge of official duties any improper gift, economic benefit, service or thing of value; however, the provisions of this subsection shall not apply to any political contribution made pursuant to the Texas Election Code;

(2) Use his or her official position to solicit or secure special privileges or exemptions for himself/herself or others;

(3) Directly or indirectly disclose or use any information gained solely by reason of his or her official position for his or her own personal gain or economic benefit or for the private interest of others;

(4) Transact any business on behalf of the Town in his or her official capacity with any business entity of which he or she is an officer, agent or member or in which he or she owns a substantial interest. If such a circumstance should arise, then

in the case of an officer or official, he or she shall make known such interest and abstain from voting on the matter, or in the case of an employee, he or she shall turn the matter over to the employee's supervisor for reassignment, state the reasons for doing so and have nothing further to do with the matter involved;

(5) Engage in any outside activities which will conflict with his or her assigned duties in the Town, or which his or her employment with the Town will give him or her an advantage over others engaged in a similar business, vocation or activity;

(6) Engage in outside activities incompatible with the full and proper discharge of his or her duties and responsibilities with the Town, or which might impair his or her independent judgment in the performance of his or her public duties;

(7) Receive any fee or compensation for his or her services as an officer, official or employee of the Town from any source other than the Town, except as may otherwise be provided by law. This shall not prohibit an officer, official or employee from performing the same or other services that he or she performs for the Town for a private organization if there is no conflict with his or her Town duties and responsibilities;

(8) Represent, directly or indirectly, or appear on behalf of the private interests of others before any agency, board, commission, authority or committee of the Town, or accept any retainer or compensation that is contingent upon a specific action being taken by the Town or any of its agencies, boards, commissions, authorities or committees, unless such officer, official or employee of the Town has made full disclosure of such representation, retainer or compensation. For purposes of this section, the term "full disclosure" shall mean:

(a) The filing of an affidavit with the Town Secretary describing such representation, retainer or compensation;

(b) Disclosure, either orally or in writing, to the other members of the Town agency, board, commission, authority or committee;

(c) Refraining from any other discussion of the matter with other members of the Town agency, board, commission, authority or committee; and

(d) Refraining from voting on or participating in the consideration of such matter by the Town agency, board, commission, authority or committee.

(9) Knowingly perform or refuse to perform any act in order to deliberately hinder the execution and implementation of any Town ordinances, rules or regulations, including the Town Charter;

(10) Have a substantial interest in any contract with the Town or a substantial interest in the sale of the Town of any land, rights or interest in any land, materials, supplies or service;

(11) Participate in a vote or decision on any matter in which the officer or official has a substantial interest or in which a relative of the officer or official has a substantial interest;

(12) Grant any special consideration, treatment or advantage to any individual, business organization or group beyond that which is normally available to every other individual, business organization or group. This shall not prevent the granting of fringe benefits to Town employees as an element of their employment or as an added incentive to the securing or retention of employees;

(13) Knowingly disclose information deemed confidential by law; or

(14) Participate in any vote or decision relative to any amendment to the Town's comprehensive plan or any change in the zoning classification of property if the officer, official, employee or a relative of the officer, official or employee has any interest in any property within 200 feet of the property which is the subject of the amendment to the Town's comprehensive plan or on which the change in zoning classification is proposed. Further, any officer, official or employee who has any such interest in property shall be legally disqualified from participating in any vote or decision relative to the comprehensive plan amendment or change in zoning classification.

Sec. 1.10.004 Disclosure of interest

Any officer, official or employee of the Town, including all members of Town-appointed boards, commissions and committees, who has a prohibited or substantial interest in any matter pending before the Town shall disclose such interest to other members of the Town council, committee, commission or board of which he or she is a member, and shall refrain from further discussion of the matter; shall not be physically present when the subject is discussed in open or executive session; and shall not vote on or participate further in any such matter.

Sec. 1.10.005 Service on non-Town board, committee or commission allowed

Any officer, official or employee of the Town, including all members of Town-appointed boards, commissions and committees, may serve on a non-Town board, committee or commission, unless otherwise prohibited by law, and such service shall not be considered a violation of this Code of Ethics.

Sec. 1.10.006 Penalty

(a) Any Town officer, official or employee, including all members of Town-appointed boards, commissions and committees, knowingly violating any provision of this code of ethics shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1.01.009 of the Code of Ordinances.

(b) The penalty prescribed herein shall not limit the power of the Town Council to discipline its members pursuant to applicable provisions of the Town Charter, this Article, state statutes or other laws defining and prohibiting conflicts of interest.

(c) The penalty prescribed herein shall not limit the power of the Town Manager to discipline those employees under the Town Manager's supervision pursuant to applicable provisions of the Town Charter, this Article, the adopted personnel policies of the Town, state statutes or other laws defining and prohibiting conflicts of interest.

Sec. 1.10.007 Adoption of state statute

Chapter 171 of the Texas Local Government Code, as amended, relative to conflicts of interest of officers of municipalities in the State of Texas, is hereby adopted and made a part of this Code of Ethics for all purposes, with the proviso that in case of a conflict between the provisions of this Code of Ethics and Chapter 171 of the Texas Local Government Code, the more restrictive provision shall govern.

Sec. 1.10.008 Cumulative legal effect

In its legal effect, this Article is cumulative of all provisions of the Town Charter, the Code of Ordinances or federal and state statutes, laws or regulations defining and prohibiting conflicts of interest.

Secs. 1.10.009—1.10.020 Reserved"

SECTION 3

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 4

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 5

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine not to exceed the sum of five hundred dollars ($500.00) for each offense.

SECTION 6

This Ordinance shall become effective after its passage and publication, as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 13TH DAY OF OCTOBER, 2015.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney