

FIRST AMENDED COMPLAINT

I, Alfonso Benavides, hereby file the following charges against Jose H. Hernandez, a/k/a Joe Hernandez, Mayor (hereinafter referred to as Mayor Joe Hernandez) of the City of San Benito, Texas:

Texas Local Government Code, Chapter 171 entitled "Regulation of Conflicts of Interest of Officers of Municipalities" (Ethics Violations)

CHARGE 1: Section 171.004(a)(2)

In violation of Section 171.004 (a)(2) Mayor Joe Hernandez placed Item Number 5(c)(ii) on the agenda of the Special Meeting of the City Commission of San Benito for the meeting dated July 11, 2011 when he knew of the existence of his conflict of interest as defined in Chapter 171.002(2)(b) of the Texas Local Government Code.

CHARGE 2: Section 171.004(a)(2)

In violation of Section 171.004 (a) (2) Mayor Joe Hernandez placed Item Number 17, "Consider first reading of Ordinance no. 2385-B," on the agenda of the Special Meeting of the City Commission of San Benito for the meeting dated July 13, 2011, when he knew of the existence of his conflict of interest as defined in Chapter 171.002(2)(b) of the Texas Local Government Code.

CHARGE 3: Section 171.004

In violation of Section 171.004 Mayor Joe Hernandez knowingly and willfully violated this Chapter of the Texas Local Government Code when, having admitted in open session that he had a conflict of interest and stating he had signed an Affidavit acknowledging such conflict, spoke in favor of agenda Item Number 5(c)(ii) during the Special Meeting of the City

Commission of San Benito for the meeting dated July 11, 2011, with full knowledge that the law prohibited his involvement in the discussion.

CHARGE 4: Section 171.004(a)(2)

In violation of Section 171.004 (a) (2) Mayor Joe Hernandez violated Chapter 171.004 of the Texas Local Government Code by participating in the discussion on the proposed ordinance in an attempt to persuade the City Commission to revise Ordinance 2385-A to his pecuniary benefit.

Texas Penal Code Violations

CHARGE 5: Section 39.02(a)(1) Abuse of Official Capacity

From May 19, 2011, when he took the oath of office of Mayor through January 21, 2012, Hernandez enabled and permitted the business known as "Noe's Tropical Sno-Wiz" to operate with the intent to benefit by leasing his vacant lot for profit and accepting remuneration for water and electric utilities in violation of the Charter of the City of San Benito, Section 8.01, in violation of Section 39.02 (a)(1).

CHARGE 6: Section 39.02(a)(2) Abuse of Official Capacity

From May 19, 2011 through January 21, 2012, Hernandez violated the public trust and misused services and personnel for his own pecuniary benefit by allowing city personnel to overlook his violations, not fulfill their job responsibilities of enforcing ordinances, specifically Ordinances 2385-A, 2252, 2122, 2393, 2002 and 2216 in violation of Section 39.02 (a)(2).

CHARGE 7: Section 37.09(a) 1 – Tampering With or Fabricating Physical Evidence

Mayor Joe Hernandez, aware that a Complaint had been filed with the City Attorney and that an investigation and official proceeding was in progress into the existence of "Noe's

Tropical Sno-Wiz” stand on his lot, removed or had the stand removed in an attempt to alter, destroy and conceal its availability as evidence in the investigation and proceeding in violation of Section 37.09(a)1.

City of San Benito Charter and Code of Ordinances Violations

CHARGE 8: San Benito Charter Section 3.03 Mayor

Mayor Joe Hernandez has failed to fulfill his duties and obligations as detailed in this section of the charter, specifically, “he shall exercise all powers and perform all duties as chief executive officer imposed upon him by this Charter and by the ordinances of the City.”

CHARGE 9: San Benito Charter Section 8.01 Conflicts of Interest

Mayor Joe Hernandez has used, and attempted to use, the office of Mayor for private gain by acting in an official capacity when he placed the proposed Ordinance revision on the agenda of the Special Meeting of the City Commission of San Benito for the meeting dated July 11, 2011 in which he had a private financial interest clearly separate from that of the general public.

CHARGE 10: Section 13.03.003 Code of Ordinances, City of San Benito

Mayor Joe Hernandez has violated Section 13.03.003 of the Code of Ordinances, City of San Benito, by supplying water to a mobile vendor located on a lot at 185 Corral Street, San Benito, Texas, from his business located on an adjoining lot located at 796 Robertson Street, San Benito, Texas, thereby denying the City of San Benito related tap and usage fees.

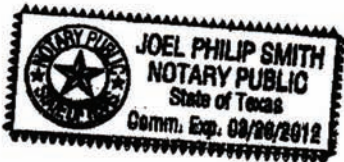
CHARGE 11: Section 13.03.005 Code of Ordinances, City of San Benito

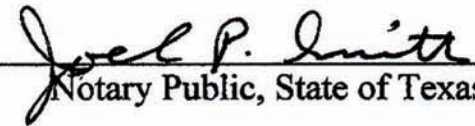
Mayor Joe Hernandez has violated Section 13.03.003 of the Code of Ordinances, City of San Benito, by permitting a mobile vendor, in violation of City Ordinances and state laws

governing sanitary sewer, to access water from his property while not providing sanitary sewer connection and sewer tap fees to the City of San Benito.


ALFONSO BENAVIDES

SWORN TO AND SUBSCRIBED BEFORE ME THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF TEXAS THIS 7th DAY OF FEBRUARY 2012.




Notary Public, State of Texas