

ORDINANCE NO. 2020-25

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 9.50, OF THE CITY OF GONZALES CODE OF ORDINANCES BY AMENDING DIVISION 1 CODE OF ETHICS AND CONDUCT FOR CITY OFFICIALS AND EMPLOYEES AND BY ADDING DIVISION 2 RULES OF PROCEDURE; PROVIDING FOR A CUMULATIVE CLAUSE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the citizens and businesses of Gonzales are entitled to have fair, ethical and accountable local government which earns the public's full confidence for integrity; and

WHEREAS, the strong desire of the City of Gonzales to fulfill this expectation therefore requires that city officials, both elected and appointed, and employees comply with both the letter and spirit of the laws and policies affecting the operations of government; be independent, impartial and fair in their judgment and actions; and that the office or position be used for the public good, not for personal gain; and,

WHEREAS, recognizing that stewardship of the public interest must be their primary concern, city officials and employees should work for the common good of the people of Gonzales and not for any private or personal interest, and they should assure fair and equal treatment of all persons, claims and transactions coming before the Gonzales City Council, boards, commissions, and committees; and,

WHEREAS, City officials and employees should comply with the laws of the nation, the State of Texas, and the City of Gonzales in the performance of their public duties, including laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies; and,

WHEREAS, the Gonzales City Council does hereby adopt this Code of Ethics and Conduct for city officials and employees to assure public confidence in the integrity of local government and its effective and fair operation.

NOW, THEREFORE: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS:

Section 1. Code Amended.

City of Gonzales Code of Ordinances, Chapter 9 (entitled "*Personnel*"), Article 9.50, (entitled "*Code of Ethics and Conduct for City Officials and Employees*") is hereby amended by amending Division 1. (now entitled "*Code of Ethics*") and by adding Division 2. (entitled "*Rules of Procedure*") as shown on **Exhibit A**, and incorporated herein.

Section 2. Findings.

The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment

and findings of the Council.

Section 3. Repealer.

All ordinances, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. Relation to Other Ordinances.

This ordinance shall not be construed to require or allow any acts which are prohibited by any other ordinance.

Section 5. Effective Date.

This Ordinance shall become effective immediately from and after passage and any publication if required by governing law.

Section 6. Savings Clause.

The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Gonzales under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

Section 7. Cumulative.

The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

Section 8. Severability.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

Section 9. Proper Notice and Meeting.

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place, and purpose of said meeting was

given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED, this, the 16th day of November 2020.

CONNIE KACIR, MAYOR

ATTEST:

KRISTI GILBERT, CITY SECRETARY

EXHIBIT A

ARTICLE 9.500 CODE OF ETHICS AND CONDUCT FOR CITY OFFICIALS AND EMPLOYEES

Division 1. Code of Ethics

Sec. 9.501 Statement of Purpose

(a) The citizens and businesses of Gonzales are entitled to have fair, ethical and accountable local government which earns the public's full confidence for integrity. The strong desire of the City of Gonzales to fulfill this expectation therefore requires that city officials, both elected and appointed, and employees:

- (1) Comply with both the letter and spirit of the laws and policies affecting the operations of government;
 - (2) Be independent, impartial and fair in their judgment and actions;
 - (3) The office or position be used for the public good, not for personal gain; and
- (b) To this end, the city council has adopted this code of ethics and conduct for city officials and employees to assure public confidence in the integrity of local government and its effective and fair operation.

Sec. 9.502 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings subscribed to them in this section.

Business. A corporation, partnership, sole proprietorship, firm, holding company, joint stock company, receivership, trust or any other for profit or non-profit entity.

City Council. The legislative and governing body of the city consisting of the mayor and city council members.

City Official. Any member of the city council and any appointed member of a board, commission, or committee set up by ordinance, resolution, state law or otherwise, on a temporary or permanent basis, and the city manager.

Employee. Any person employed by the city, including those individuals on a part-time basis, including independent contractors hired by the city for repetitive performance of services, but not independent contractors engaged for occasional services or professional services.

Sec. 9.503 Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, city officials and employees will work for the common good of the people of the city and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the city council, boards, commissions, and committees.

Sec. 9.504 Comply with the Law

City officials and employees shall comply with the laws of the nation, the state, and the city in the performance of their public duties. These laws include but are not limited to: the United States and Texas constitutions; laws pertaining to conflicts of interest, election campaigns,

financial disclosures, employer responsibilities, and open processes of government; and city ordinances and policies.

Sec. 9.505 Conduct of City Officials and Employees

The professional and personal conduct of city officials and employees must be above reproach and avoid even the appearance of impropriety. City officials and employees shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other city officials and employees, board, commission, and committee members and the public.

Sec. 9.506 Respect for Process

City officials and employees shall perform their duties in accordance with the processes and rules of order established by the city council and boards, commissions, and committees governing the public deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the city council by city staff.

Sec. 9.507 Conduct of Public Meetings

City officials have an obligation to attend meetings and be prepared for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfere with the orderly conduct of meetings.

Sec. 9.508 Decisions Based on Merit

It is expected that city officials and employees review material, participate in discussion and base their decisions on the merits and substance of the matter at hand.

Sec. 9.509 Communication

Prior to permitting final action to be taken on a matter under consideration city officials and employees shall publicly share substantive information, which they may have received from sources outside the public decision-making process, that is relevant to such action by the council, boards, commissions, or committees.

Sec. 9.510 Conflicts of Interest and Disclosure

City officials and employees shall familiarize themselves and abide by the following conflicts of interest and disclosure statutes and principles:

(1) Section 171 of the Local Government Code which requires council members and certain officers to file an affidavit disclosing a substantial interest in a business or property that would be beneficially affected by a decision of the city council and thereafter abstaining from participation in discussion and voting on the matter. Once the disclosure is made the city official is to remove themselves from the meeting area to ensure their presence does not hinder the discussion of the item or influence the vote.

(2) Section 176 of the Local Government Code which requires city council members and the city manager to file a conflicts disclosure statement disclosing any business relationship with a person or business doing business with the city or being considered by the city for a business relationship.

(3) Section 176.003(a)(2)(B) of the Local Government Code which requires the disclosure of gifts of an aggregate value of more than \$250.00 in the twelve (12) month period preceding a transaction described in section 176, other than gifts of food, lodging, transportation, or

entertainment accepted as a guest.

(4) Sections 553.001–553.003 of the Government Code which requires the filing of an affidavit before the date the city will acquire a property in which public servants have a legal or equitable interest.

(5) City employees shall disclose potential conflicts of interest to their supervisor and avoid participation in the handling of matters wherein employees have a personal interest.

(6) In order to assure their independence and impartiality on behalf of the public good, city officials and employees are prohibited from using their positions to influence government decisions in which they have a personal interest.

Sec. 9.511 Corruption

City officials and employees shall familiarize themselves and abide by the Penal Code mandates concerning corruption, including specifically section 36.02 prohibiting bribes, section 36.08(d) prohibiting illegal benefits, section 36.09 prohibiting receipt of prohibited gifts, section 39.02 concerning abuse of official capacity and section 39.06(a) concerning misuse of official information. (Penal Code section 36.10 provides the exceptions to 36.08 and 36.09.)

Sec. 9.512 Political Advocacy

(a) City officials and employees shall not utilize the city's name or logo for purposes of endorsing any political candidate or business. City employees shall not engage in electioneering while on the job. Electioneering means working for the election of a candidate to political office.

(b) City employees shall not be appointed or retained on the basis of their political support or activities. Employees shall not engage in political activities relating to a campaign for elective office while in uniform or on active duty. Employees elected to city offices shall be required to resign their employment upon acceptance of the office.

(c) City employees are prohibited from using their municipal title or position in any advertisement or endorsement of products, persons or activities, without exclusive authorization by the city council.

Sec. 9.513 Confidential Information

City officials and employees shall respect the confidentiality of information concerning city property, personnel or proceedings of the city. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal interests.

Sec. 9.514 Use of Public Resources

City officials and employees shall not use public resources generally unavailable to the public, such as city staff time, equipment, supplies or facilities, for private gain or personal purposes.

Sec. 9.515 Representation of Private Interests

In keeping with their role as stewards of the public interest, city officials and employees shall not appear on behalf of private interests of third parties before the council or any board, commission, committee, or proceeding of the city.

Sec. 9.516 Advocacy

City officials and employees shall represent the official policies or positions of the city council,

board, commission, or committee to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, city officials and employees shall explicitly state they do not represent their body or the city, nor will they allow the inference that they do.

Sec. 9.517 Policy Role of City Officials and Employees

City officials and employees shall respect and adhere to the city governmental structure as outlined in state law, the city's policies and procedures. In this structure, the city council determines the policies of the city with the advice, information and analysis provided by the public, boards, commissions, and committees and city staff. Except as provided by the city ordinance, city officials therefore shall not interfere with the administrative functions of the city or the professional duties of the city staff; nor shall they impair the ability of staff to implement council policy decisions.

Sec. 9.518 Independence of Boards, Commissions, and Committees

Because of the value of the independent advice of boards, commissions, and committees to the public decision-making process, city officials shall refrain from using their position to influence unduly the deliberations or outcomes of board, commission, and committee proceedings. This section should not be interpreted to limit the participation of a city official on a board, commission or committee to which they have been duly appointed by the city council.

Sec. 9.519 Positive Work Place Environment

City officials shall support the maintenance of a positive and constructive work place environment for city employees and for citizens and businesses dealing with the city. City officials shall recognize their special role in dealing with city employees and refrain from creating the perception of inappropriate direction to staff.

Sec. 9.520 Implementation

(a) As an expression of the standards of conduct for city officials and employees expected by the city, the Gonzales Code of Ethics and Conduct is intended to be self-enforcing. It therefore becomes most effective when city officials and employees are thoroughly familiar with it and embrace its provisions.

(b) Ethical standards shall be included in the regular orientations for candidates for city council, applicants to boards, commissions, and committees and newly elected and appointed officials and new employees.

(c) City officials and employees entering office, including those appointed to boards, commissions and committees shall sign a statement affirming they have read and understood the City of Gonzales Code of Ethics and Conduct. In addition, the code of ethics and conduct shall be reviewed periodically by the city council, boards, commissions, and committees, and the city council shall consider recommendations from boards, commissions, committees, employees, and citizens for revision as it becomes necessary.

Sec. 9.521 Compliance and Enforcement

(a) The Gonzales Code of Ethics and Conduct expresses standards of ethical conduct expected for city officials and employees of the city council, boards, commissions, and committees.

(b) City officials and employees themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence

in the integrity of government.

(c) The chairs of boards, commissions, and committees and the mayor have the additional responsibility to intervene when city officials' actions appear to be in violation of the code of ethics and conduct and are brought to their attention.

(d) The city council may impose sanctions, such as reprimand, formal censure, or loss of committee assignment, on city officials whose conduct does not comply with the city's ethical standards. The city council also may act to remove members of boards, commissions, and committees from office.

Reserved. Sec. 9.522-9.529

DELETE:

See. 9.522 Complaint Process

(a) Employees.

(1) A complaint that an employee has violated any provision of this article may be submitted to the city manager. If the complaint is that the city manager has violated any provision of this article may be submitted to the mayor and the presiding officer of the city council.

(2) Complaint against employees shall be processed as a disciplinary matter under the provisions stated for the handling of a complaint or grievance in the personnel policy.

(b) City Officials.

(1) Inquiry.

(A) Any suspected violation or alleged violation by a city official must be reported to the chair of the respecting board, commission or committee or when it is a member of the city council, to the mayor. Any suspected violation or alleged violation by the chair shall be reported to the vice-chair and any suspected violation or alleged violation by the mayor shall be reported to the mayor pro tem and the city attorney. In the case of a city staff member making the report regarding a city official, the report shall be made to the city manager, who will then report it to the mayor and/or city attorney. Upon report, the following procedures addressing violations or alleged violations shall apply.

(B) The role of leading an inquiry of any city official, other than a member of the city council member for any violation or alleged violation of this policy lies with the chair of the respective board, commission or committee. If the chair is the subject of an inquiry, the vice-chair, or the next ranking official by seniority and the city attorney (if requested) will lead the inquiry. All board, commission or committee members who are not the subject of an inquiry have a right to participate in the inquiry process regarding violations or alleged violations and their subsequent enforcement. A recommendation for action shall be made by the board, committee or commission shall be forwarded to the city council for consideration and possible action. The city council is not bound by the recommendation and may take the action deemed appropriate by the city council.

(C) The role of leading an inquiry of any council member for any violation or alleged violation of this policy lies with the mayor, mayor pro tem, and the city attorney. If the mayor is the subject of an inquiry, the mayor pro tem, or the next ranking official by seniority and the city attorney will lead the inquiry. All council members who are not the subject of an inquiry have a

~~right to participate in the inquiry process regarding violations or alleged violations and their subsequent enforcement.~~

~~(2) Enforcement Options.~~

~~(A) The members of the city council and appointed boards commissions and committees have the obligation to govern themselves responsibly in the enforcement of any violation of this policy. The objective for establishing rules of enforcement pertaining to this policy is to provide fair, consistent, concise, and efficient guidelines for the use of enforcement against violations of this policy. As a general matter, enforcement of this policy may be progressive, but circumstances may indicate that strong actions be taken immediately. Furthermore, council is not bound to the enforcement guidelines of this policy, and should make decisions on a case by case basis. City council, as a collective body, may change the order of the disciplinary steps listed below, or may choose not to use any step, depending on the circumstances under review.~~

~~(B) City council members may take any appropriate disciplinary action including, but not limited to:~~

~~(i) Cautioning.~~

~~a. Cautioning is identified as a verbal reprimand due to a violation. The cautioning is only a verbal reprimand and shall not be recorded.~~

~~b. A cautioning shall only be administered in private by the mayor with only one (1) member of council present. If the mayor is receiving the cautioning, it shall be administered in private by the mayor pro-tem with only one (1) member of council present.~~

~~(ii) Correction.~~

~~a. Correction is identified as a verbal reprimand due to multiple policy violations. The correction of any city official, including the mayor, will not be administered in writing and shall be conducted privately in closed session unless requested to be done in open session.~~

~~b. A quorum of council plus one (1), shall be present during the correction of another council member or city official.~~

~~c. The city attorney shall be notified of the correction before the correction is administered and the city attorney shall be present during the administration of the correction if requested.~~

~~(iii) Censure.~~

~~a. The act of placing a city official under censure is an official and public reprimand of a city official by the body of the city council for multiple and/or serious infractions against the code of ethics. Therefore, city officials who are placed under censure are considered to be 'not in good standing' with the council.~~

~~b. The censure of any council member, including the mayor, shall be administered in writing.~~

~~c. Censure may last up to sixty (60) days or as appropriately defined by city council on a case by case basis.~~

~~d. At the end of the censure period, the censure has expired and shall not be extended.~~

~~e. A city official placed under censure may return to a good standing status once their censure period has ended.~~

~~f. The body of the city council may determine to end the censure period of a city official prior~~

~~to the conclusion of said period at their discretion.~~

~~g. All censure hearings shall be conducted in the closed session of city council.~~

~~h. Because censures are administered in writing, a censure must be publicly voted on in open session of city council. The censure of any city official must be passed by a 2/3 supermajority vote.~~

~~(iv) Removal. Unless state law provides otherwise, city officials, other than members of the city council, serve at the pleasure of the city council and may be removed at will by a majority of the members of the city council present at any meeting where such is posted as an item for consideration.~~

~~(Ordinance 2019-23 adopted 12/12/19)~~

ADD:

Division 2. Rules of Procedure

As used in this Rules of Procedures, the following words and phrases have the meaning ascribed to them in this section, unless the context requires otherwise or more specific definitions set forth elsewhere in this code apply

Sec. 9.530 Definitions.

- (a) *Before the City.* Representation or appearance "before the City" means before the City Council; before a board, commission, or other City entity; or before a City official. Representation "before the City" does not include representation before a board where members of that board are not wholly appointed by the City Council.
- (b) *Business days.* "Business days" means the days of the week, Monday through Friday, in which the administrative offices of the City are open for business.
- (c) *City.* "City" means the City of Gonzales
- (d) *Code of Ethics.* "Code of Ethics," "Ethics Code," or "this code" means the city's Code of Ethics, its amendment(s), and/or enhanced definitions.
- (e) *Complainant.* "Complainant" means an individual who has filed a sworn complaint with the City Secretary as provided herein.
- (f) *Confidential government information.* "Confidential government information" includes all information held by the City that is not available to the public under the Texas Public Information Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, unless disclosure is permitted under the Open Meetings Act.
- (g) *Ethics Law.* Ethics law includes the Ethics Code of the City and any applicable state statutes

that establish rules and regulations for elected and appointed city officials.

- (h) *Ethical Violation.* "Ethical violation" includes violations of any of those enactments.
- (i) *Intentionally.* A person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
- (j) *Knowingly.* A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.
- (k) *Official.* The term "official" or "City official" includes the Mayor and members of the City Council. Members of all boards, commissions, committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be advisory only in nature, who are appointed by the Mayor, the City Council, or who are designated in the by-laws or organization papers of the entity to serve on behalf of the City; and board members of any entity who are appointed by the Mayor or City Council to such board membership.
- (l) *Official action.* "Official action" includes any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official's duties
- (m) *Official Information.* "Official information" includes information gathered or created by or on behalf of the City, in the conduct of the City's business, and under the power and authority of the City as a political subdivision of the State of Texas.
- (n) *Recklessly.* A person acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the result of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
- (o) *Representation.* "Representation" is a presentation of fact—either by words or by conduct—made to induce someone to act. "Representation" does not include appearance as a witness in litigation or other official proceedings.
- (p) *Respondent* means an individual identified in a sworn complaint to have allegedly violated the Ethics Code of the City.

Sec. 9.531 Function of the City Council

- (a) In accordance with the Texas Constitution, the Texas Local government Code, the City Code,

and the City Charter, the City Council has the powers and duties specified in therein, and other powers and duties prescribed by ordinance.

- (b) Composition of the City Council includes the Mayor and each member of the City Council.
- (c) A member of the City Council shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Council member may not participate in official action on any complaint:
 1. That the member initiated; or
 2. During the pendency of an indictment or information charging the member with any felony or misdemeanor offense, or after a finding of guilt of such an offense.
- (d) If the number of Council members who are recused from a case is so large that a Council Meeting cannot be convened to consider the complaint, the Mayor shall nominate a sufficient number of ad hoc members so that the case can be heard. Ad hoc members must be confirmed by a majority vote of the City Council and serve only for the case in question.

Sec. 9.532 Jurisdiction and powers.

- (a) *Jurisdiction.* The City Council has jurisdiction to investigate and make findings and conclusions concerning an alleged violation of the city's Ethics Code enacted from time to time by ordinance.
- (b) The City Council shall not consider any alleged violation that occurred more than 180 days prior to the date of the filing of the complaint.
- (c) The City Council has the discretion to accept or decline consideration of an alleged violation that has been resolved by the City Manager, or by a governmental agency or Council with jurisdiction over the matter.
- (d) *Powers.* The City Council has the power:
 1. To establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances pertaining to the Ethics Code;
 2. To meet as often as necessary to fulfill its responsibilities;
 3. To issue advisory opinions on behalf of the Council;
 4. To request from the City Manager the assignment of staff necessary to carry out its duties;
 5. To review, index, maintain on file, and dispose of sworn complaints;
 6. To make notifications, extend deadlines, and conduct investigations, both on referral or complaint;
 7. To compel the production of sworn testimony, witnesses and evidence;

8. To recommend cases for prosecution by appropriate authorities and agencies;
9. To enforce its decisions by assessing sanctions authorized by ordinance;
10. To request the City Attorney to provide an independent counsel to advise and represent the Council, when appropriate or necessary to avoid a conflict of interest;
11. To provide assistance in the training and education of City officials with respect to their ethical responsibilities;
12. To exercise such other powers and duties as may be established by ordinance.

Sec. 9.533 Complaints.

- (a) *Filing.* Any person (including a member of the City Council, acting personally or on behalf of the Council) who believes that there has been a violation of the ethics laws may file a sworn complaint with the City Secretary to allege such violations. A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the City Council, is subject to criminal prosecution for perjury or a private cause of action.
- (b) *Assistance.* The City Secretary shall provide information to persons who inquire about the process for filing a complaint.
- (c) *Form.* A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:
 1. The name of the complainant;
 2. The street or mailing address, the telephone number, and email address of the complainant;
 3. The name of each person complained about;
 4. The position or title of each person complained about;
 5. The nature of the alleged violation, including, if possible, the specific provision of the Ethics Code alleged to have been violated;
 6. A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
 7. All documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.
 8. The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to

administer oaths under penalty of perjury. A complaint that is not sworn as required shall not be forwarded by the City Secretary to the City Attorney as provided in subsection (d) but shall be returned to the complainant. The complaint must state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the City Council.

- (d) Review by the City Attorney and notification to the City Council and respondents.
 - 1. A copy of a complaint shall be promptly forwarded by the City Secretary to the City Attorney who shall review the complaint for compliance with the filing requirements of subsection (c) within five (5) business days of receipt from the City Secretary. The City Secretary shall notify the respondent(s) of a complaint filed. This notification is for information purposes only and does not trigger subsection (e) until a decision has been made to accept the complaint and forward to the City Council for consideration.
 - 2. If the complaint alleges a violation of the city's Ethics Code, and substantially complies with the filing requirements, the complaint shall be forwarded by the City Secretary to the members of the City Council and the respondents within ten (10) business days after receipt of the complaint from the City Secretary. If the complaint does not substantially comply with the filing requirements, the City Attorney shall return the complaint with a letter explaining the defects in the complaint to the City Secretary who shall return all information to the complainant.
 - 3. The City Secretary shall notify the respondent(s) of the resolution of a complaint.
- (e) The respondent(s) shall also be provided with a copy of the Ethics Code and shall be informed:
 - 1. That, within ten (10) business days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
 - 2. That failure to file a response does not preclude the City Council from adjudicating the complaint;
 - 3. That a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within five (5) business days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
 - 4. That the complainant(s) or respondent(s) may request a hearing.
 - 5. Upon receipt, the City Secretary shall forward the response to the City Attorney and the City Council.
- (f) Frivolous complaint.
 - 1. For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless, has no basis in law or fact, and is brought for the purpose of harassment.
 - 2. By a vote of at least two-thirds (2/3) of those present, the Council may order a complainant to show cause why the Council should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.

3. In deciding if a complaint is frivolous, the Council will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:
 - a. The timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - b. The nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Council;
 - c. The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - d. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - e. Any evidence of the complainant's motives in filing the complaint.
4. Notice of an order to show cause shall be given to the complainant by the City Secretary, with a copy to the respondent, and shall include:
 - a. An explanation of why the complaint against a respondent appears to be frivolous and without basis in law or fact; and
 - b. The date, time, and place of the hearing to be held under this section.
5. Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the Council shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.
6. By a record vote of at least two-thirds (2/3) of those present after the hearing under subsection (5) of this section, the Council may determine that a complainant filed a frivolous complaint against a respondent.

- (g) Confidentiality. Ex parte communications by members of the City Council are prohibited.
1. The Council shall not communicate any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.
 2. Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or City Council proceeding.
 3. Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.

Sec. 9.534 City Attorney's Office.

- (a) *City Attorney's Office.* The City Attorney's Office shall perform the following duties:
1. Act as legal counsel to the City Council;

2. Receive complaints and responses filed with the City Secretary as set forth above;
3. Review complaints for legal sufficiency;
4. Request additional information from complainant as needed; and
5. Issue advisory opinions to City officials about the requirements imposed by the ethics laws.

(b) *Independent Counsel.*

1. An independent attorney, who does not otherwise represent the City, may be appointed to serve as the independent Counsel when a complaint is filed relating to an alleged violation of the ethics laws by the Mayor, a member of the City Council, or a candidate for City Council.
2. When a complaint is filed relating to an alleged violation of the ethics laws by a City employee who is a department head or of higher rank, the City Attorney may recommend the appointment of an independent Counsel for that matter.
3. The City Attorney or City Council may request the appointment of an independent counsel for a particular case.

(c) *Exculpatory evidence.* The City Attorney shall disclose to the City Council and provide to the person charged with violating the ethics code evidence known to the City Attorney tending to negate guilt or mitigate the seriousness of the offense.

Sec. 9.535 City Council Action.

- (a) *Review by City Council.* The City Council will meet to review the complaint, responses, replies to responses and any other information it has requested be provided to assist in consideration of the complaint. The Council shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. If the Council finds that the complaint fails to allege a violation of the Ethics Code when assuming all facts set forth in the complaint to be true, the Council may dismiss the complaint without further proceedings.
- (b) Before the Council may find a violation of a particular rule, the respondent must be on notice that compliance with that rule is at issue and must have an opportunity to respond. Notice is conclusively established: if the complaint alleged that the rule was violated; or if the Council or the City Secretary provides the respondent with written notice of the alleged violation and a ten (10) business-day period within which to respond in writing to the charge.
- (c) *Scheduling of a hearing.* Regardless of whether the complainant or the respondent requests a hearing, the City Council has discretion to decide whether to hold a hearing.
- (d) *Ex parte communications.* It is a violation of this code:
1. For the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in ex parte communication about the subject matter of a complaint with a member of the City Council, or any known witness to the complaint; or

2. For a member of the City Council to:
 - a. Knowingly entertain an ex parte communication prohibited by subsection (1) of this rule; or
 - b. Communicate directly or indirectly with any person, other than a member of the City Council, City Staff, or City Attorney's Office about any issue of fact or law relating to the complaint.
- (e) *Duty to cooperate.* All City officials and employees shall cooperate with the City Council and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this subsection is a violation.
- (f) *Extension of deadlines.*
 1. A complainant or respondent who fails to meet a deadline to submit a filing with the City Council may file a request to accept the late filing. The complainant or respondent must include within the request a statement of good cause for the Council to grant the request. The Council may grant a request to accept a late filing for good cause. Any extension given to a respondent pursuant to his or her request shall extend the deadline for the Council to issue a decision under section 1-08 by the amount of time granted.
 2. The Council, under its own initiative or at the request of a respondent, may defer consideration of a complaint if the respondent is under investigation by any agency for the activity comprising the subject matter of the complaint, until such time as the investigation has concluded.
- (g) *Timeliness of notices or submissions.* When the Code of Ethics requires a notice or other document to be submitted or otherwise given to a person or to the City Council, the requirement is met in a timely fashion if the document is sent to the person or the Council by first-class mail or certified mail addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a date within the time required to provide notice or to submit a document, unless another method of submission is expressly required.

Sec. 9.536 Hearing Process and Prohibitions.

- (a) All hearings for removal from office and prohibitions shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act.
- (b) *Called Special Meeting.* A special meeting shall be called to hold the hearing to be held no earlier than fourteen (14) days subsequent from the delivery of written notice and no later than ninety (90) days after delivery of written notice, unless otherwise agreed to by a majority of the City Council and the individual subject to the hearing.
- (c) *General rules.*
 1. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the City Council. The City Council may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to

have violated the ethics laws unless a majority of the City Council so finds by a preponderance of the evidence.

2. A member of the City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote.
 3. The City Council shall state the nature of the hearing and the allegations to be considered.
 4. Public comments shall be allowed in conformance with established rules of order and decorum for the City Council.
- (d) *Evidence.* The City Council shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The Council shall further abide by the following:
1. The Council shall hear evidence relevant to the allegations; and
 2. The Council shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (e) *The person charged (respondent).* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. They shall be provided a copy of the results of the investigation, including any written testimony acquired during the investigation. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the Council. The time permitted for presentation will be at the discretion of the Council.
- (f) *The complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the Council. Witnesses may not be presented by the complainant, except with the permission of the Council. The time permitted for presentation will be at the discretion of the Council.

Sec. 9.537 Disposition.

- (a) *Violation of City Code of Ethics.* City Council may on the affirmative vote of a majority of the City Council take any of the following actions:
1. Direct further investigation;
 2. Request further information;
 3. Vote to enforce a penalty pursuant to the City Code;
 4. Vote to bring an action in Municipal Court;
 5. Take a vote of censure; or

6. Upon the affirmative vote of two-thirds of City Council find that sufficient evidence exists to merit removal of an appointee.

(b) *Written opinion.* The Council shall issue a decision within ninety (90) calendar days after the filing of a complaint. This deadline shall be extended by any amount of time granted to a respondent pursuant to a respondent's request for additional time to respond or to attend proceedings. The Council shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:

1. Dismiss the complaint; or
2. Upon finding that there has been a violation of the ethics laws:
 - a. Impose sanctions in accordance with these regulations; or
 - b. Recommend criminal prosecution and/or civil remedies, in accordance with this rule; or
 - c. State why no remedial action is imposed or recommended.
3. If the Council determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Council to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(c) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint, the City Attorney, and any member of the City Council who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the City Secretary, who shall make it available as authorized by law.

(d) *Recommendations.* A recommendation for criminal prosecution or removal shall be forwarded to the appropriate authority.

(e) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the City Council shall not entertain any other similar complaint based on substantially the same evidence.

(f) *Factors relevant to sanctions.*

1. *General violations.* In deciding whether to recommend or impose, in the case of a violation of the ethics laws, criminal prosecution and/or civil remedies, the City Council shall take into account relevant considerations, including, but not limited to, the following:

- a. The culpability of the person charged in the complaint;
- b. The harm to public or private interests resulting from the violation;
- c. The necessity of preserving public confidence in the conduct of local government;
- d. Whether there is evidence of a pattern of disregard for ethical obligations; and
- e. Whether remedial action has been taken that will mitigate the adverse

effect of the violation.

To impose or recommend sanctions for a first violation of the Ethics Code, other than a letter of notification, a letter of admonition or a referral to training, the Council must find by a preponderance of the evidence that the person acted knowingly, unless otherwise provided by this code.

- (g) *Civil sanctions for Ethics Code violations.* The following civil remedies may be recommended or imposed by the City Council which finds that the ethics laws have been violated:

1. *Disciplinary action.* City Council members who engage in conduct that violates the Code of Ethics may be notified, warned, reprimanded, suspended, or removed from office in any manner authorized by law. Disciplinary action under this section may be imposed in addition to any other penalty or remedy contained in the Code of Ethics or any other law;
2. *Civil fine.* The City Council may impose on a City Official who violates any provision of the Code of Ethics a fine not exceeding five hundred dollars (\$500.00).
3. *Letter of notification.* The City Council may issue a letter of notification to a City Official, when the Council finds that a violation of the Code of Ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations.
4. *Letter of admonition.* The City Council may issue to a City Official, a letter of admonition when the Council finds that the violation of the Code of Ethics was minor and/or may have been unintentional or inadvertent.
5. *Letter of reprimand.* The City Council may issue to a City Official, a letter of reprimand when the Council finds that the person has intentionally or knowingly violated the Code of Ethics.
6. *Referral to ethics training.* Upon finding of violation of the Ethics Code, the City Council may require a City official to attend Ethics training.

- (h) *Reconsideration.* Within five (5) business days of receiving the final opinion of the City Council, the complainant or respondent may request the City Council to reconsider its decision. The request must be filed with the City Secretary. Within ten (10) business days after filing with the City Secretary, the City Council shall review the request for reconsideration. If the full and seated Council grants reconsideration, the Council may then order further proceedings in accordance with the provisions of this rules.

- (i) *Council action.* City Council shall dispose of the reconsideration within ninety (90) calendar days of approving the reconsideration. Failure to take action within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.