

EXHIBIT A

AN ORDINANCE

OF THE CITY OF FAIR OAKS RANCH, TEXAS, AMENDING THE FAIR OAKS RANCH CODE OF ORDINANCES CHAPTER 1 ARTICLE 1.10 ETHICS BY ESTABLISHING A CODE OF ETHICS FOR ALL CITY-ELECTED OFFICIALS; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council has determined that it is in the best interest of the city to require all elected officials of the city to be independent, impartial, and responsible to the citizens of the city; and,

WHEREAS, the City Council has determined that no city-elected official should have any interest, direct or indirect, nor engage in any business transaction or professional activity, nor incur any obligation of any nature, which conflicts with the proper discharge of his or her duties in the public interest; and,

WHEREAS, in November 2020 the City Council passed and approved the Code of Ethics Rules and Procedures on City Council Hearings for Code of Ethics violations and City Charter forfeitures and prohibitions and Administrative Provisions; and,

WHEREAS, the City of Fair Oaks Ranch Ethics provisions is codified in the Fair Oaks Ranch Code of Ordinances in Chapter 1 Article 1.10; and,

WHEREAS, the City Council deems it is in the best interest and welfare of the City to preserve the integrity and nonpartisan nature of City government by Division Code of Ethics in the city's Code of Ordinances Chapter 1, Article 1.10 Ethics.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

- PART 1.** That the City Council hereby amends the Fair Oaks Ranch Code of Ordinances Chapter 1, Article 1.10 Code of Ethics by establishing Division 2 Code of Ethics as set forth in the attached **Exhibit A**.
- PART 2.** That the recitals contained in the preamble hereto 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.
- PART 3.** 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.
- PART 4.** That it is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

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PART 5. This ordinance shall take effect immediately from and after its second reading and passage.

PART 6. 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 Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 7. 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.

PASSED AND APPROVED on the first reading on xxth day of xxxx, 2022.

PASSED, APPROVED, AND ADOPTED on the second reading, this xxth day of xxxx, 2022.

Greg Maxton, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

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Exhibit A

Chapter 1 General Provisions of the Code of Ordinance Article 1.10 Code of Ethics is hereby amended by the addition of the following Division:

DIVISION 2. CODE OF ETHICS

I. DECLARATION OF POLICY

Sec. 1.10.021 Statement of purpose.

It is essential in a democratic system that the public has confidence in the integrity, independence, and impartiality of those who act on their behalf in government. Such confidence depends not only on the ethical conduct of those who exercise official power, but on the availability of aid or redress to all persons on equal terms and on the accessibility and dissemination of information relating to public affairs.

For the purpose of promoting confidence in the government of the City and thereby enhancing the City's ability to function effectively, this Code of Ethics is adopted. The Code of Ethics establishes standards of ethical conduct, disclosure requirements, and enforcement mechanisms relating to City officials whose actions affect public faith in city government. By prohibiting conduct incompatible with the City's best interests and minimizing the risk of any appearance of impropriety, this Code of Ethics furthers the legitimate interests of democracy.

Public service is a public trust. All city officials are stewards of the public trust. They have a responsibility to the citizens of the city to enforce the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in city government, each city official must not only adhere to the principles of ethical conduct set forth in this Code and technical compliance therewith, but they must scrupulously always avoid the appearance of impropriety. This section shall not be used for the basis of an ethics complaint.

Sec. 1.10.022. Definitions.

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

- (a) *Acceptance*. A written or verbal indication that someone agrees; "Acceptance" of an offer of subsequent employment or business opportunities includes legally binding contracts and all informal understandings that the parties expect to be carried out. An agreement, either by express act or by implication from conduct to the terms of an offer so that a binding contract is formed.
- (b) *Affiliated*. Entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent entities.
- (c) *Affinity*. Relationship by "affinity" (by marriage) is defined in V.T.C.A., Government Code §§ 573.024 and 573.025.
- (d) *Before the City*. Representation or appearance "before the City" means before the City Council; before a board, committee, or other city entity; or before a city official.

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- (e) *Benefit*. "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.
- (f) *Business days*. "Business days" means the days of the week, Monday through Friday, on which the administrative offices of the city are open for business.
- (g) *Candidate*. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:
 - 1. The filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution.
 - 2. The filing of an application for a place on a ballot.
 - 3. The making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement.
 - 4. Before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication.
 - 5. The soliciting or accepting of a campaign contribution or the making of a campaign expenditure.
- (h) *City*. "City" means the City of Fair Oaks Ranch
- (i) *City Official*. See definition of "Official" in this Section.
- (j) *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.
- (k) *Complainant*. "Complainant" means an individual who has filed a sworn complaint with the City Secretary as provided in Section 1.10.004 (Complaints).
- (l) *Confidential government information*. "Confidential government information" includes all information held by the city that may be excepted from disclosure to the general public under the Texas Public Information Act and any information distributed during a closed portion of a meeting held to the public pursuant to the Texas Open Meetings Act.
- (m) *Consanguinity*. Relationship by "consanguinity" (by blood) is defined in V.T.C.A., Government Code §§ 573.022 and 573.023.
- (n) *Discretionary contract*. "Discretionary contract" means any contract other than those which by law must be awarded on a low or high qualified bid basis. Discretionary contracts do not include those contracts subject to V.T.C.A., Local Government Code § 252.022(a)(7) or those contracts not involving an exercise of judgment or choice.
- (o) *Economic interest*. "Economic interest" includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than de minimis value. Service by a city official as a participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official an economic interest in the property of the organization.
- (p) *Entity*. "Entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, joint-

venture, or any other entity recognized by law, including non-profits.

- (q) *Ethics Law.* As used herein, Ethics law refers to Section 3.10 Prohibitions of the City Charter, any adopted Code of Ethics for the City, and Local Government Code Chapters 171 and 176.
- (r) *Ethical Violation.* "Ethical violation" includes violations of any of those enactments set forth in 1.10.001(q).
- (s) *Former city official.* A "former city official" is an official whose Council term terminates on or after the effective date of this code.
- (t) *Gift.* "Gift" means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt) unless consideration of equal or greater value is received by the donor.
- (u) *Indirect ownership.* A person "indirectly owns" an equity interest in an entity where the interest is held through a series of entities, some of which own interests in others.
- (v) *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.
- (w) *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.
- (x) *Official.* The term "official" or "city official" includes the mayor and members of the City Council.
- (y) *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
- (z) *Official Information.* "Official information" includes information gathered or created by or on behalf of the City, in the conduct of city business, and under the power and authority of the City as a political subdivision of the State of Texas.
- (aa) *Ownership.* Ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the official owns less than ten (10) percent of the voting stock or shares of the entity and the value of the stock is less than fifteen thousand dollars (\$15,000.00).
- (bb) *Partner.* Someone who engages in an activity or undertaking with another; "partner" includes partners in general partnerships, limited partnerships, and joint ventures. One who shares or takes part with another especially in a venture with shared benefits and shared risks.
- (cc) *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.

- (dd) *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.
- (ee) *Respondent.* An individual identified in a sworn complaint to have allegedly violated the Ethics Code of the City.
- (ff) *Solicitation.* "Solicitation" of subsequent employment or business opportunities includes all forms of proposals and negotiations relating thereto.

II. PRESENT CITY OFFICIALS

Sec. 1.10.023. Conflicts of interest.

- (a) *General rule.* To avoid the appearance and risk of impropriety, a city official shall not take any official action that he or she knows is likely to affect the economic interests of:
 - 1. The official;
 - 2. His or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
 - 3. His or her outside client;
 - 4. A member of his or her household;
 - 5. The outside employer of the official or of his or her parent, child (unless the child is a minor), spouse, or member of the household (unless member of household is a minor);
 - 6. An entity in which the official knows that any of the persons listed in subsections (a)(1) or (a)(2) holds an economic interest as that term is defined in section 1.10.022;
 - 7. An entity which the official knows is an affiliated or partner of an entity in which any of the persons listed in subsections (a)(1) or (a)(2) holds an economic interest as defined in section 1.10.022;
 - 8.
 - a. An entity for which the city official serves as an officer or director or in any other policy making position; or
 - b. A non-profit board to which the official is appointed by the City Council or city management to represent the best interests of the City, if the action by the city official as a member of the board is related to an item pertaining to the City, and the city official would be involved in the negotiation, development, or implementation of that item on behalf of the City; or
 - 9. A person or entity with whom, within the past twelve (12) months:
 - a. The official, or his or her spouse, directly or indirectly has:
 - 1. Solicited an offer of employment for which the application is still pending;
 - 2. Received an offer of employment which has not been rejected; or
 - 3. Accepted an offer of employment; or
 - b. The official, or his or her spouse, directly or indirectly engaged in negotiations pertaining to business opportunities, where such negotiations are pending or not terminated.
- (b) *Recusal and disclosure.* A city official whose conduct would otherwise violate subsection (a) must recuse himself or herself. From the time that the conflict is, or should have been

recognized, he or she shall:

1. Immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and
2. Promptly file an affidavit as prescribed by LGC 171 with the City Secretary.

(c) *Definitions.* For purposes of this Section:

1. An action is likely to affect an economic interest if it is likely to influence that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof; and
2. The term client includes any business, financial or professional relationship to which a duty of care, confidence, trust, or privilege applies.

Sec. 1.10.024. Unfair advancement of private interests.

- (a) *General rule.* A city official may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official who represents to a person that he or she may provide an advantage to that person based on the official's position on Council violates this rule.
- (b) *Special rules.* The following special rules apply in addition to the general rule:
1. *Acquisition of interest in impending matters.* A city official shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the City.
 2. *Appointment of relatives.* A city official shall not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees if the individual is related to the city official within the third degree of consanguinity or within the second degree by affinity or any member of his or her household to any office or position of employment within the city.
- (c) *Recusal and disclosure.* A city official whose conduct would otherwise violate this section shall adhere to the recusal and disclosure provisions provided in subsection 1.10.023(b) (Conflicts of interest).

Sec. 1.10.025. Gifts.

- (a) *General rule.*
1. A city official shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:
 - a. That reasonably tends to influence or reward official conduct; or
 - b. That the official knows or should know is being offered with the intent to influence or reward official conduct.

A city official may accept a public award or reward for meritorious service of professional achievement, provided that the award or reward is reasonable considering the occasion, and it is not prohibited under V.T.C.A., Penal Code § 36.08.

2. A city official shall not solicit, accept, or agree to accept any gift or benefit, from:

- a. Any individual or entity doing or seeking to do business with the City; or
- b. Any registered lobbyist or public relations firm; or
- c. Any person or entity seeking action or advocating on zoning or platting matters before a city body, save and except for:
 1. Items received that are of nominal value; or
 2. Meals or entertainment in an individual expense of fifty dollars (\$50.00) or less at any occurrence, and no more than a cumulative value of five hundred (\$500.00) in a single calendar year from a single source.

Doing business with the City includes, but is not limited to, individuals and entities that are parties to a discretionary contract, individuals and entities that are subcontractors to a discretionary contract, and partners and/or parents and/or subsidiary business entities of any individuals and entities that are parties to a discretionary contract and individuals or entities that seek or have low-bid contracts with the City.

(b) *Special applications.* Subsection (a2) does not include:

1. A gift to a city official relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and recipient;
2. A public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion, and it is not prohibited under V.T.C.A., Penal Code § 36.08;
3. Any solicitation for civic or charitable causes;
4. Admission to an event in which the city official is participating in connection with his or her spouse's position;
5. Ceremonial and protocol gifts presented to city officials from another government or international or multinational organization and accepted for the City;
6. Admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, offered by the sponsor of the event, and unsolicited by the city official, if attending or participating in an official capacity, including:
 - a. The official participates in the event as a speaker or panel participant by presenting information related to matters before the City;
 - b. The official performs a ceremonial function appropriate to that individual's position with the City; or
 - c. Attendance at the event is appropriate to the performance of the official duties or representative function of the official;
7. Admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the city official;
8. Admission to training or education program or other program, including meals and refreshments furnished to all attendees, if such training is related to the official's official duties and the training is in the interest of the City.

(c) *Campaign contribution exception.* The general rule stated in subsection (a) does not apply to a campaign contribution made pursuant to the Texas Election Code.

(d) *Gifts to closely related persons.* A city official shall take reasonable steps to persuade:

1. A parent, spouse, child, or other relative within the second degree of consanguinity or

- affinity, or
2. An outside business associate not to solicit, accept, or agree to accept any gift or benefit:
 1. That reasonably tends to influence or reward the city official's official conduct, or
 2. That the official knows or should know is being offered with the intent to influence or reward the city official's discharge of official duties.

If a City official knows that a gift or benefit meeting the requirements of subsections (d)(3) or (d)(4) of this rule has been accepted and retained by a person identified in subsections (d)(1) or (d)(2) of this rule, the official shall promptly file a report with the City Secretary disclosing the donor, the value of the gift or benefit, the recipient, and the recipient's relationship to the official.

(e) *Definitions.*

1. For purposes of this rule, a person is an "outside business associate" if both that person and the city official own, with respect to the same entity:
 - a. Ten (10) percent or more of the voting stock or shares of the entity, or
 - b. Ten (10) percent or more of the fair market value of the entity.
2. For purposes of this rule, a "sponsor" of an event is the person or persons primarily responsible for organizing the event or sponsoring a table or tables. A person who simply contributes money or buys tickets to an event is not considered a sponsor.
3. A "source" is the individual or entity that funds an expenditure or series of expenditures. Expenditures made by multiple agents of the same source are deemed to be expenditures from a single source.
4. An item of "nominal value" is an item with a fair market value of fifty dollars (\$50.00) or less.

Sec. 1.10.026. Confidential information.

- (a) *Improper access.* A city official shall not use his or her position to obtain official information about any person or entity for any purpose other than the performance of official duties.
- (b) *Improper disclosure or use.* A city official shall not intentionally, knowingly, or recklessly disclose any confidential information gained by reason of that official's position concerning the property, operations, policies, or affairs of the city. This rule does not prohibit:
 1. Any disclosure that is no longer confidential by law; or
 2. The confidential reporting of illegal or unethical conduct to authorities designated by law.

Sec. 1.10.027. Representation of private interests.

- (a) *Representation of private interests before the city as a member of a board.* A city official who is a member of a board or other city body shall not represent any person, group, or entity:
 1. Before that board or body;
 2. Before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
 3. Before a board or other city body which has appellate jurisdiction over the board or body of which the city official is a member, if any issue relates to the official's official duties.
- (b) *Representation of private interests before the city-by-city officials.*

1. *General rule.* A city official shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- (c) *Prestige of office and improper influence.* In connection with the representation of private interests before the city, a city official shall not:
 1. Assert the prestige of the official's position for the purpose of advancing private interests; or
 2. State or imply that he or she can influence city action on any basis other than the merits.
- (d) *Representation in litigation adverse to the city.*

A city official shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city.

Sec. 01.10.028. Conflicting outside employment.

- (a) *General rule.* A city official shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (b) *Special application.* The following special rule applies in addition to the general rule: A city official shall not provide services to an outside employer related to the official's city duties.
- (c) *Other rules.* The general rule stated above applies in addition to all other rules relating to outside employment of city officials, including requirements for obtaining prior approval of outside employment as applicable.

Sec. 01.10.029. Public property and resources.

A city official shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies or time while on city duty for private purposes (including political purposes), except:

1. Pursuant to duly adopted city policies, or
2. To the extent and according to the terms that those resources are lawfully available to the public.

Sec. 01.10.030. Political activity.

Limitations on the political activities of city officials are imposed by state law and the City Charter and are incorporated into this provision by reference. In addition, the following ethical restrictions apply:

1. *Influencing subordinates.* A city official shall not, directly, or indirectly, induce or attempt to induce any city employee:
 - a. To participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue, or
 - b. To refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this rule.

2. *Paid campaigning.* A City official shall not accept anything of value, directly or

indirectly, for political activity relating to an item pending on the ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a City body that contributed to the development of the ballot item. Anything of value does not include a meal or other item of nominal value the city official receives in return for providing information on an item pending on the ballot.

Limitations on the use of public property and resources for political purposes are imposed by Section 1.10.029 (Public property and resources).

Sec. 01.10.031. Actions of others.

- (a) *Violations by other persons.* A city official shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate any provision in this Code of Ethics.
- (b) *Using others to engage in forbidden conduct.* A city official shall not violate the provisions of this Code of Ethics through the acts of another.

Sec. 01.10.032. Prohibited interests in contracts.

- (a) *Financial interest.* A city official is presumed to have a prohibited "financial interest" in a contract with the City, or in the sale to city land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
 - 1. The official;
 - 2. His or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - 3. An entity in which the official, or his or her parent, child, or spouse, directly or indirectly owns:
 - a. Ten (10) percent or more of the voting stock or shares of the entity, or
 - b. Ten (10) percent or more of the fair market value of the entity; or
 - 4. An entity of which any individual or entity listed in subsection (1), (2) or (3) is:
 - a. A subcontractor on a city contract;
 - b. A partner; or
 - c. A parent or subsidiary entity.
- (b) Any contract or transaction already in place at the time the individual becomes an official may remain in place until the contract expires or the transaction is completed without creating a prohibited financial interest for the employee.

Sec. 01.10.033. Persons required to report; time to report; place to report.

- (a) A city official who has knowledge or a reasonable belief of a violation including a self-violation, of any of the provisions of this Ethics Code shall report this violation as provided below within a reasonable time after the person has knowledge of a violation. A city official shall not delegate to, or rely on, another person to make the report. Any city official who has knowledge or a reasonable belief that a violation including a self-violation, of the Ethics Code has been committed and intentionally fails to report such violation is subject to the penalties herein.
- (b) A report made under this section shall be made to the City Council and shall state:
 - 1. The name of the city official who believes that a violation of a provision of the Ethics Code has been or may have been committed;
 - 2. The identity of the person or persons who allegedly committed the violation;

3. A statement of the facts on which the belief is made; and
 4. Any other pertinent information concerning the alleged violation.
- (c) Notice of all reports shall be provided to the City Council and the City Attorney's Office within three (3) business days of receipt by the City Secretary.
- (d) If the City Council determines a violation of the Ethics Code has occurred, the Council may take appropriate action on the matter, including, but not limited to, recommending a waiver of the code provision(s) violated, or the filing of a complaint for a hearing.

III. FORMER CITY OFFICIALS

Sec. 01.10.034. Continuing confidentiality.

A former city official shall not use or disclose confidential government information acquired during service as a City official. This rule does not prohibit:

- (a) Any disclosure that is no longer confidential by law; or
- (b) The confidential reporting of illegal or unethical conduct to authorities designated by law.

Sec. 01.10.035. Subsequent representation of private interests.

- (a) *Representation of private interests before the city by former City officials.* A former city official shall not represent someone before the City on a matter that previously came before he or she or that he or she worked on behalf of the city during their tenure.
- (b) *Improper representation of influence.* In connection with the representation of private interests before the City, a former city official shall not state or imply that he or she is able to influence City action on any basis other than the merits.

Sec. 01.10.036. Prior participation in the negotiation, award, or administration of contracts.

A former city official shall not, within two (2) years of the termination of official duties from the city, perform work on a compensated basis relating to a discretionary city contract, if he or she personally and substantially participated in the negotiation, award, or administration of the contract. A former city official within two (2) years of termination of official duties must disclose to the City Secretary immediately upon knowing that he or she will perform work on a compensated basis relating to a discretionary city contract for which he or she did not personally and substantially participate in its negotiation, award, or administration.

Sec. 01.10.037. Prohibited interest in discretionary contracts.

- (a) *Impermissible interest in discretionary contract or sale.* This subsection applies only to contracts or sales made on a discretionary basis and does not apply to contracts or sales made on a competitive bid basis. Within one (1) year of the termination of official duties, a former city official shall neither have a financial interest, direct or indirect, in any discretionary contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of land, materials, supplies, or service. Any violation of this section, with the knowledge, expressed or implied, of the individual or entity contracting with the Council shall render the contract involved voidable by the City Manager or the City Council, as appropriate. A former City official has a prohibited "financial interest" in a discretionary contract with the City, or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

1. The former official;

2. His or her parent, child, or spouse;
 3. An entity in which the former officer, or his or her parent, child, or spouse, directly or indirectly owns:
 - a. Ten (10) percent or more of the voting stock or shares of the entity, or
 - b. Ten (10) percent or more of the fair market value of the entity; or
 4. An entity of which any individual or entity listed in subsection (1), (2) or (3) is:
 - a. A subcontractor on a city contract;
 - b. A partner; or
 - c. A parent or subsidiary entity.
- (b) *Exception: Prior status.* Notwithstanding subsection (a) and section 1.10.036 (Prior participation in negotiation, award, or administration of contracts), a former city official may upon leaving official duties return to other status enjoyed immediately prior to commencing official city duties.

IV. PERSONS DOING BUSINESS WITH THE CITY

Sec. 01.10.038. Disclosure of parties, owners, and closely related persons.

- (a) For assisting the City in the enforcement of provisions contained in the City Charter and this Code of Ethics, this section applies to an individual or entity seeking:
1. A discretionary contract;
 2. A housing or retail development incentive from the city;
 3. To purchase, sell or lease, real estate to or from the city;
 4. City Council appropriation of funds for the Fair Oaks Ranch Municipal Development District and any future entities created by the city; or
 5. A zoning change.
- (b) An individual or entity seeking action on any matter listed above is required to disclose no later than 72 hours prior to City Council action on a form provided by the City Secretary's office:
1. The identity of any individual who would be a party to the transaction;
 2. The identity of any entity that would be a party to the transaction;
 3. The identity of any attorney or consultant employed for purposes relating to the transaction being sought by any individual or entity who would be a party to the transaction.
- (c) *Disclosure of Political Contributions.* Any individual or entity seeking City Council action on a matter listed in subsection (a) above must disclose on a form provided by the city, all political contributions within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, by any individual or entity whose identity must be disclosed under subsection (b)

Indirect contributions by an individual include, but are not limited to, contributions made by an individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made by the officers, owners of the entity seeking the contract, and attorneys, consultants or registered lobbyists of the entity hired or retained to assist an individual or entity in seeking a contract.

Political contributions made in the preceding twenty-four (24) months to any individual who is a former Councilmember must be disclosed, unless:

1. The contributions were made in connection with a campaign or officeholder account not associated with a city office;
 2. The former officeholder has terminated the campaign treasurer appointment and filed the final campaign finance report with the City Secretary at the time the contract was in the solicitation process or under consideration for approval by the city; and
 3. The former member is not or was not serving in a city office at the time the contract was in the solicitation process or under consideration for approval by the city.
- (d) *Briefing papers and open records.* Briefing papers prepared for the City Council concerning any of the matters listed in (a) above shall reveal the information disclosed in compliance with subsection (b) and is an open record available to the public.

V. MEMBERS OF THE PUBLIC AND OTHERS

Sec. 01.10.039. Forms of responsibility.

No person shall intentionally or knowingly induce, attempt to induce, conspire with, aid, or assist, or attempt to aid or assist another person to engage in conduct violative of the obligations imposed by Divisions II (Present City officials and employees), III (Former City officials and employees), and IV (Persons doing business with the City) of this Ethics Code.

This applies to current and former city officials, and persons doing business with the City, as well as to members of the public and any other person (including entities).

The following divisions were adopted under Ordinance 2020-03 and is being provided for reference.

DIVISION 1. ETHICS HEARING RULES OF PROCEDURES

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

Sec. 1.10.001. 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.
- (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 Fair Oaks Ranch
- (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 in section 1.10.004 (Complaints).
- (f) *Confidential government information*. "Confidential government information" includes all information held by the city that may be excepted from disclosure to the general public under the Texas Public Information Act and any information distributed during a closed portion of a meeting held pursuant to the Texas Open Meetings Act.
- (g) *Ethics Law*. As used herein, Ethics law refers to Section 3.10 Prohibitions of the City Charter, any adopted Code of Ethics for the City, and Local Government Code Chapter 171 and 176.
- (h) *Ethical Violation*. "Ethical violation" includes violations of any of those enactments set forth in 1.01(g).
- (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.
- (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. 1.10.002. Function of the City Council

- (a) In accordance with Article III of the City Charter, the City Council has the powers and duties specified in City Charter, 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.

When a majority of Council members share a conflict, they shall disclose the conflict by filing an affidavit and then proceed with the case at hand.

Sec. 1.10.003. Jurisdiction and powers.

- (a) Jurisdiction. The Fair Oaks Ranch City Council has jurisdiction to investigate and make findings and conclusions concerning:
 - 1. An alleged violation of the city's Ethics Code enacted from time to time by ordinance; and,
 - 2. An alleged violation of Sections 3.09, 3.10, 7.01, and 7.92 of the City Charter.
- (b) The City Council shall not consider any alleged violation that occurred more than six (6) months 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 addressed by another governmental agency 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 civil fines and other 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. 1.10.004. 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 (see section 1.10.008(g) (Criminal prosecution)).
- (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.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is both 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) of this section 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) of this section 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) of this section 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 return all 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.

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 and 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 may 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
 - 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 by section 1-06(d) (Ex parte communications).
 1. The Council shall not communicate any information about a pending sworn complaint, including whether 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. 1.10.005. 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 in section 1.10.004;
 3. Review complaints for legal sufficiency;
 4. Request additional information from complainant as needed; and
 5. Issue advisory opinions to City Council 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. 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. 1.10.006. 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 that a violation of a particular rule, the respondent must be on notice that compliance with that rule is in 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 section; 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 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.
City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any subpoena or to produce any such books, papers, or other evidence.
The City Council shall have the power to punish any such contempt in an amount not to exceed one hundred dollars (\$100.00).
- (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. 1.10.007. Hearing Process for Forfeiture of Office and Prohibitions.

- (a) All hearings for forfeiture of 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 as follows:
 - a. Comment at the beginning of the meeting under the same guidance as the city's Council Meeting Rules of Procedures found in the City Secretary's Office
 - b. Sworn to speak as witnesses shall only speak as witnesses under oath.

(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 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. 1.10.008. Disposition.

- (a) *Violation of City Charter Section 3.09.* City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of City Council to declare the office of said office holder to be forfeited and vacant.
- (b) *Violation of City Charter Section 3.10.* 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 section 7.15B of the City Charter;
 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 declare the office of said office holder to be forfeited and vacant.
- (c) *Violation of City Charter Section 7.01 or 7.02.* City Council may take any of the following actions:
1. Direct further investigation;
 2. Request further information;
 3. Vote to enforce a penalty pursuant to section 7.15B of the City Charter;
 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 declare the office of said office holder to be forfeited and vacant.
- (d) *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 these rules; or
 - c. State why no remedial action is imposed or recommended.
- If the Council determines that a violation has occurred, the opinion shall identify in writing the 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.
- (e) *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.
- (f) *Recommendations.* A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency.
- (g) *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.
- (h) *Factors relevant to sanctions.*
1. *General violations (non-reporting 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 consider 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.

2. *Reporting requirement violations.* To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the Ethics Code, the Council must determine by a preponderance of the evidence that the person knowingly:
 - a. Failed to file the report on time; or
 - b. Failed to include in the report information that is required to be included; or
 - c. Submitted inaccurate or false information.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the City Secretary or the City Council may be considered evidence of a knowing failure to comply with reporting requirements. Upon finding a second or subsequent untimely, incomplete or inaccurate submission of reports within a two-year period of time, the Council may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

- (i) *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 by the City Council, or by a person or body authorized by law to impose such remedies. 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. *Suit for damages or injunctive relief.* It is the intent of the City that the city's Ethics Code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in the Ethics Code or any other law. The City Council may refer a violation of the Ethics Code to the City Attorney's Office for consideration of a suit by the City for damages or injunctive relief.
 3. *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).
 4. *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.
 5. *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.
 6. *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.
 7. *Referral to ethics training.* Upon finding of violation of the Ethics Code, the City Council may require a City official to attend Ethics Code training.
- (g) *Criminal prosecution.* The City Council may recommend to the appropriate law enforcement agency criminal prosecution under this section or V.T.C.A., Local Government Code Ch.

171. Prosecution of a city official by the City Council for a violation of this Ethics Code shall not be undertaken until a complaint is disposed of in accordance with this section. However, the absence of a recommendation to prosecute from City Council to the City Attorney shall not preclude the City Attorney from exercising his or her prosecutorial discretion to prosecute a violation of the Ethics Code.

- (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 these 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.
- (j) *Appeals.* A decision of the City Council is final unless the person aggrieved by the decision appeals to the State District Court in Kendall County no later than twenty (20) business days after the date the Council renders the decision.

If the decision of the City Council is not supported by substantial evidence, the District Court may reverse or affirm the Council's decision in whole or in part or may modify the Council's decision if substantial rights of the aggrieved person have been prejudiced. Costs of an appeal may not be assessed against the Council, individual Council members, or the City.

Sec. 1.10.009. Petition for declaratory ruling and waiver.

- (a) Any City Official against whom public allegations of ethics have been made in the media or elsewhere shall have the right to file a sworn statement with the City Secretary affirming his or her innocence, and to request the City Council to investigate and make known its findings and make any relevant recommendations concerning the issue.
- (b) Any City Official subject to the Ethics Code who believes they have unknowingly committed an act in violation of a provision of the Ethics Code may submit a sworn request for a waiver of the application of the Code for that past act. The City Council shall investigate and make known its findings and make any relevant recommendations to the City Council concerning the issue. The City Council may only act to waive the application of either code following receipt of the recommendation of the City Council.
- (c) The City Council is authorized to impose the sanctions contained within this Code when making their ruling.

Sec. 1.10.010. Public records and open meetings.

Meetings and other proceedings of the City Council will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.

DIVISION 3. ADMINISTRATIVE PROVISIONS

Sec. 1.10.051. Other obligations.

The Ethics Code is cumulative of and supplemental to applicable state and federal laws and

regulations. Compliance with the provisions of this code shall not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, or any other issue addressed herein. Even if a city official is not prohibited from taking official action by the city's Ethics Code, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

Sec. 1.10.052 Distribution and training.

- (a) Public service is a public trust. All city officials are stewards of the public trust. They have a responsibility to the citizens of the city to enforce the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in city government, each city official must not only adhere to the principles of ethical conduct set forth in the city's Code of Ethics and technical compliance therewith, but they must scrupulously always avoid the appearance of impropriety.
- (b) Within thirty (30) days after entering upon the duties of his or her position, every new city official shall be furnished with a copy of the city's Code of Ethics by the City Secretary's office. The failure of any person to receive a copy of the Code shall have no effect on that person's duty to comply with this code or on the enforcement of its provisions.
- (c) The Code of Ethics shall be posted on the city's webpage.
- (d) The City Manager and the City Secretary, in consultation with City Council, shall develop and implement a comprehensive training program for officials of the city on the provisions of the city's Code of Ethics, the City Charter, and V.T.C.A. Local Government Code Chapter 171. Such materials and programs shall be designed to maximize understanding of the obligations imposed by the ethics laws, as well as to prepare city officials to ensure the good judgment necessary to accomplish their duties.

Sec. 1.10.053. Severability.

If any provision of this code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.

Secs. 1.10.054–1.10.070 Reserved