

ORDINANCE NO. 23-03-16-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, AMENDING ORDINANCE 09-05-21-01 ESTABLISHMENT OF AN ETHICS POLICY, CHAPTER 1 GENERAL PROVISIONS OF THE CODE OF ORDINANCES, ARTICLE 1.1800 ETHICS POLICY, PROVIDING CODIFICATION AND PUBLICATION, AN EFFECTIVE DATE, REPEALER, SEVERABILITY, PROPER NOTICE AND OPEN MEETINGS CLAUSES.

WHEREAS, the City of Lago Vista, Texas is a Home Rule City; and

WHEREAS, the City Council of the City of Lago Vista adopted the Ethics Policy on May 21, 2009; and

WHEREAS; the City Council finds that there are conflicts in the policy that need to addressed and amended; and

WHEREAS, the City Council desires to amend Chapter 1, Article 1.1800, Ethics Policy, as set out in the attached Exhibit "A."; and

WHEREAS, the City Council finds that it is necessary and proper for the purpose of promoting effective and efficient government of the City to adopt the proposed amendments to the Ethics Policy of the City of Lago Vista Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. All of the above and foregoing recitals are hereby found to be true and correct legislative findings of the City and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT. The City Council of the City of Lago Vista, Texas, does hereby amend Article 1.1800 Ethics Policy, as shown in Exhibit "A". Underlined language shall be added and language to be deleted is signified by strike-through. All unedited Sections of the Code of Ordinances remain in effect as currently written.

SECTION 3. REPEALER. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Lago Vista, Texas, are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.

SECTION 4. SEVERABILITY CLAUSE. If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5. CODIFICATION AND PUBLICATION. The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.013 of the Texas Local Government Code.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication in accordance with the Texas Local Government Code.

SECTION 7. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required 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.

AND, IT IS SO ORDERED.

PASSED AND APPROVED this 16th day of March, 2023 by a vote of the City Council of the City of Lago Vista, Texas.



Ed Tidwell, Mayor

ATTEST:



Lucy Aldrich, City Secretary



On a motion by Councilor Hunt, seconded by Councilor Prince, the above and foregoing ordinance was passed and approved.

EXHIBIT A

ETHICS – ARTICLE 1.1800 ETHICS POLICY

ARTICLE 1.1800 ETHICS POLICY

Sec 1.1801 Declaration Of Policy

- (a) It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. To promote confidence in the government of the City of Lago Vista ("the city"), and thereby enhance the city's ability to function effectively, this code of ethics is adopted. Although codes of ethics can provide instruction on what to do in various situations, the situations will always be more varied than the rules can anticipate. Recognizing this, the city manager and the city council will apply this article to not only enforce regulations, but also to enhance and promote virtue in public servants who are its officers, city officials or employees, paid or unpaid, elected or appointed, as well as members of any standing committee or board.
- (b) Furthermore, it is declared to be the policy of the city that proper operation of democratic government requires that public servants be independent, impartial and responsible to the people of the city; that no public servants shall permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity to conflict with the proper discharge of their duties in the public interest; that public office not be used for illegal or improper personal gain; and that the city council at all times shall be maintained as a nonpartisan body. To implement such a policy, the city council deems it advisable to enact a standard of conduct for all public servants to serve not only as a guide for official conduct, but also as a basis for discipline for those who refuse to abide by its terms. The overriding interest being that public servants of the city shall at all times strive to avoid even the appearance of impropriety.
- (c) The city further recognizes that public servants are also members of society and, therefore, cannot and should not be without any personal and economic interest in the decisions and policies of government; that public servants retain their rights as citizens to interests of a personal or economic nature, and their rights to publicly express their views on matters of general public interest. By prohibiting conduct incompatible with the city's best interests and minimizing the risk of any appearance of impropriety, this code of ethics will further legitimize the interests of democracy.
- (d) Persons reviewing and considering the requirements of this code of ethics are cautioned to consider that Chapter 171 and Chapter 176, Tex. Loc. Gov't. Code, are also applicable. In addition, a material volume of state law directly applicable to issues involving public ethics and reporting is applicable to the city and each employee and officer of the city. It is the policy of the city to rely primarily on those laws in lieu of unnecessary duplication and incurring the costs and expense required to administer areas of a program that in fact duplicate state law.

Sec 1.1802 Purpose

This code of ethics has four purposes:

- (a) To encourage high ethical standards in official conduct by public servants;
- (b) To establish minimum guidelines for ethical standards of conduct for all such public servants by setting forth those acts or actions that are incompatible with the best interests of the city;
- (c) To require disclosure by public servants and candidates of private financial or property interests in matters affecting the city; and
- (d) To provide minimum standards of ethical conduct for the city's public servants, provide procedures regarding complaints for violations of such standards, and provide a mechanism for disciplining violators of such standards.

Sec 1.1803 Present Public Servants

(a) Standards of Conduct.

- (1) To avoid the appearance and risk of impropriety, public servants shall not solicit or accept any gift, personal favor or benefit from any person doing business with, seeking to do business with, or being regulated by the city; and shall not take any action on behalf of any person or business entity from which he or she has received a prohibited gift, or in which he or she has a substantial interest. Except in the sole interest of the public and the performance of the duties of their position, public servants shall not take any action that he or she knows might reasonably tend to influence any other public servant to not properly perform their official duty, nor shall any public servant grant any improper favor, service or thing of value to any person.
- (2) As used in this article the word gift means a favor, hospitality, economic benefit, product or item having a value of \$50.00, or more. A gift does not include campaign contributions reported as required by state law, money, items, or benefits received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an inter vivos or testamentary trust established by a spouse or ancestor.
- (3) The following factors are considered in evaluating whether a gift is prohibited:
 - (A) The value of the gift, or gifts, does not exceed \$50.00, or \$200.00 during any twelve (12) consecutive calendar months;
 - (B) Any preexisting relationship between the donor and donee;
 - (C) Whether the benefit of the gift is transferred to the city or to the public servant and whether any consideration is given in exchange for the gift; and
 - (D) Whether the person or entity giving the gift, or on whose behalf the gift is made, has done business with or has been regulated by the city within the immediate preceding twenty-four (24) calendar months, or is seeking to do business with the city, or does business with or is regulated by the city during the subsequent twelve (12) months.
- (4) Those items or services that do not constitute prohibited gifts include, but are not limited to, the following:
 - (A) Political contributions made and reported as required by applicable law.
 - (B) Awards publicly presented in recognition of public service.
 - (C) Entertainment, meals or refreshments furnished in conjunction with public events, appearances, or ceremonies related to official city business, if furnished by the sponsor of such public event, and meals and refreshments having a value of less than \$50.00 when furnished or provided to the public servant during the conduct of public business.
 - (D) Any item received by a public servant and donated to a charitable organization or presented to the city within one (1) business day from the date of receipt; any item(s) other than money the value of which does not exceed \$50.00 or \$200.00 during any twelve (12) consecutive calendar months.
 - (E) Pens, pencils, calendars, T-shirts, caps and similar items containing logos, slogans, company names or other marketing material and commonly given out for advertising purposes.

(b) Personal Financial Interest.

- (1) Public servants of the city shall not participate in a vote or decision in which they have a direct substantial financial interest. Ownership in an amount in excess of one percent (1%) of an entity or property shall constitute substantial interest. Where members of the city council have a substantial interest in business or in real property which is affected by a proposed city council action and where any conflict of interest may arise, they shall file an affidavit of disclosure provided by the city secretary prior to the vote and abstain from voting on such matters.
- (2) No officer or employee of the city shall have a financial interest direct or indirect, or by reason of ownership of stock in a corporation, in a contract with the city, or be financially interested directly or indirectly in the sale to the city of land, materials, supplies or services except on behalf of the

city as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one (1%) percent of the total capital stock of the corporation, or the city's taking of an interest in land by use of its eminent domain authority. Any violation of this shall render the contract voidable. (Ordinance 09-05-21-01 adopted 5/21/09)

- (3) In keeping with current case law, when a member of the city council has a substantial interest in business or in real property which is affected by a proposed city council action and such member is required to abstain from voting on such matter after filing his or her affidavit of disclosure, such abstention shall count as a ineligibility for that matter only and the number of votes required for passage of such matter shall be reduced by the number of ineligible members. In instances where a supermajority of the members of the governing body is required for passage, such supermajority number or fraction shall be based on the number of eligible voting members of the governing body and shall not count any ineligible members. (Ordinance 13-09-12-02 adopted 9/12/13)
- (c) Confidential Information. Public servants shall not disclose confidential or proprietary information, or any information they have acquired or obtained in the course of any fiduciary capacity or relationship, that could adversely influence the property, government, or affairs of the city, nor directly or indirectly use his or her position to secure official information about any person or entity, for the financial benefit or gain of such public servant or any third party. Public servants shall not release confidential, proprietary, or privileged information for any purpose other than the performance of official responsibilities. It shall be a defense to any complaint under this section that the release of information serves a legitimate public purpose, as opposed to the private financial or political interest of the public servant or any third party or group.
- (d) Use of City Property. Public servants shall not use, request or permit the use of city facilities, personnel, equipment, or supplies for any purpose other than to conduct city business unless otherwise provided by law, ordinance or written city policy; or as specifically authorized by the city manager as a convenience to the city, or by terms of employment, e.g., assigned use of a city vehicle.
- (e) Conflict of Interest.
 - (1) Public servants shall not for pay, profit, compensation, financial gain or benefit represent or appear on behalf of themselves or on behalf of the private interests of others before the city council or other city board, commission, or committee, or represent the private interest of others in any action or proceeding involving the city.
 - (2) No current members of the city council shall personally appear on their own behalf before the city council or any board, commission or committee but may designate and be represented by a person of their choice in any such personal business matter. This prohibition does not apply where a councilmember appears before the council on their own behalf, with respect to an issue arising under the city charter or this article. A member of any appointed committee or board shall remove himself/herself from deliberation regarding his/her interest.
 - (3) No current board or commission member shall personally appear on their own behalf before the board or commission upon which they serve but may designate and be represented by a person of their choice in any such business matter.
 - (4) Board or commission members are prohibited from engaging in private discussions with any applicant or owner regarding issues to be considered by their board or commission or from seeking to influence the outcome of any decision outside of a public meeting.
- (f) Additional Standards of Conduct.
 - (1) Conflicting Outside Employment.
 - (A) The purpose of this provision is to prevent conflicts of interest, conflicts of loyalty, and loss of efficiency at work.
 - (B) This provision does not prevent employees or officials from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of their public duties, provided that the employees comply with all applicable city requirements.

- (C) A city official or paid city employee shall not solicit, accept or engage in concurrent outside employment or enter into any contract which could impair independence of judgment in, or the faithful performance of, their official duties, or those results in a conflict of interest with their duties as an official or employee of the city.
 - (D) City employees must inform their supervisor before engaging in off-duty employment and obtain written authorization from the city manager or their department head prior to accepting outside employment. Employees must consider the policy purpose and be aware of this policy and rule.
- (2) Political Activity.
- (A) Limitations on the political activities of city officials and employees are imposed by state law, the city charter, and city personnel rules. In addition, the ethical restrictions listed below shall apply.
 - (B) No employee shall solicit or receive contributions to the campaign funds of any candidate for city office or take part in the management, affairs, or political campaign of any city candidate. Current members of the city council who are seeking reelection may engage in any activity on behalf of their own campaign efforts. However, the mayor and councilmembers are prohibited from taking part in the management, affairs, or political campaign of any other city candidate. The following is a list of activities that are, except as specifically provided otherwise, permissible within the sole discretion of the individual employees and City Council:
 1. The placement of campaign signs on premises owned by the public servant.
 2. The placement of bumper stickers on personal vehicles, except those vehicles supported in whole or in part by a car allowance provided by the city.
 3. Off-duty or assigned duty attendance at a political rally or function for a city council candidate, so long as there is no active participation by the city employee; provided that an employee that is off-duty shall not wear any city uniform, item or clothing that identifies the employee as an employee of the city.
 4. The donation of a political contribution that does not exceed the statutory limit for nonreportable contributions; provided that a candidate for, and the occupant of, an elective city office is prohibited from soliciting contributions from city employees.

This subsection shall be narrowly construed and in no event shall this section be construed or interpreted to prevent any officer, employee, councilmember, mayor or public servant from expressing his or her personal opinion regarding any candidate for office, or any other matter of public interest; provided that city employees shall not, while in uniform or on duty, make public comments or statements concerning any candidate for elective city office. Private statements or comments made by any officer or employee of the city to any other officer or employee of the city concerning any candidate for elective city office are not subject to subsection (f).

- (C) Nonprofit Board Membership. While membership is encouraged a councilmember who serves on the board of a public or private nonprofit organization shall have a voice but no vote on any funding request or contract with the city by that organization, unless the organization has a board of directors or trustees appointed in whole or in part by the city council, commission or board members.

Sec 1.1804 Former City Officials And Employees (Reserved)

[Reserved]

Sec 1.1805 Contracts

- (a) No officer or employee of the city shall have a financial interest direct or indirect, or by reason of ownership of stock in any corporation, in a contract with the city, or be financially interested directly or indirectly in the sale to the city of land, materials, supplies or services except on behalf of the city as an officer or employee; provided, however, that if the direct or indirect interest results from the ownership of stock the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one (1) percent of the total capital stock of the corporation. Any violation of this section shall render the contract voidable. This section shall not apply or be applicable to employment agreements approved by the city manager and/or the city council, or instances in which the city is acquiring property by eminent domain.
- (b) Except on behalf of the city, a former city councilmember, official, or employee may not, within two (2) years of the termination of official duties, perform work for any person or entity other than the city on a compensated basis relating to a discretionary contract, if he or she personally and substantially participated in the negotiation of awarding of the contract. A former city official or employee, 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 contract.

Sec 1.1806 Persons Doing Business With The City

a. Persons Seeking Discretionary Contracts.

- 1. An individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract any conflict of interest. This is set forth in Sections 1.1803 and 1.1804 of this code of ethics. The individual or entity must agree to abide by the same ethical standards as set forth for public servants in this code of ethics.
- 2. Subsection (a) above will become a permanent footnote on documents contained in city bid packets for discretionary contracts.
- 3. All prospective vendors shall comply with Chapter 176, Tex. Loc. Gov't. Code.

b. Disclosure of Conflicts of Interest by Persons Appearing Before a Board or City Body. A person appearing before any city board or other city body for the purpose of doing business with the city shall disclose to that board or body any facts known to such person which may show or establish that:

- 1. An employee or officer of the city that advises or makes presentations to the board or city body; or
- 2. Any member of the board or city body;

has or may have a conflict of interest pursuant to Chapter. 171, Tex. Loc. Gov't. Code, or an interest which would violate the ethical standards set forth in this article, if he or she were to participate in the processing or consideration of the subject matter.

Sec 1.1807 Lobbyist (Reserved)

[Reserved]

Sec 1.1808 Financial Disclosure

Chapter 176, Tex. Loc. Gov't. Code, requires every person, firm or entity proposing to sell any product to the city, or to contract with the city, to file documents identifying business connections or relationships they or their employees may have with officers and employees of the city. Upon any such document identifying an officer of the city that officer must complete and file a document prescribed by state law. Chapter 171, Tex. Loc. Gov't. Code,

requires members of the governing body and boards and commissions to publicly announce if they have a conflict, business or investment interest in the person or subject matter coming before that body. In addition to the public announcement, the officer is required to complete an affidavit specifying the conflict and file that document with the city secretary. These requirements obviate any need for the city to incur the expense to establish the required administrative procedures, obtain, store and make available financial statements from the officers of the city. The avoidance of the requirements for financial statements encourages public service because it permits officers from being required to report personal financial information and information that intrudes on the privacy of third parties that have no business dealings with the city.

Sec.1.1809 – Duty to Report Ethical Violations

- (a) Except as permitted in paragraphs (c) or (d), a public servant or other city employee having first hand or documentary knowledge that an elected or appointed official, has committed a violation of an applicable rule of ethics under this Chapter that raises a substantial question as to that elected or appointed official's honesty, trustworthiness or fitness as an elected or appointed official in other respects, shall have a duty to inform City Council.
- (b) Except as permitted in paragraphs (c) or (d), a public servant or other city employee having first hand or documentary knowledge that a city employee has committed a violation of an applicable rule of ethics under this Chapter that raises a substantial question as to that city employee's honesty, trustworthiness or fitness as a city employee in other respects, shall have a duty to inform the City Manager.
- (c) This rule does not require disclosure of knowledge or information otherwise protected as confidential information.
- (d) This rule does not require disclosure of information that the reporter does not have first-hand knowledge of or that requires conjecture or supposition.

Sec 1.1810 Jurisdiction And Hearing Of Complaints

- (a) City Manager. The city manager shall receive and hear all complaints filed against any city official or employee that is appointed by the city manager. The fact that the city manager has received a complaint, or is hearing a complaint, filed under this code of ethics, shall not deprive or lessen the authority of the city manager to take disciplinary action against such city official or employee without regard to the complaint or hearing. When hearing a complaint, the city manager may adopt such process and procedures as he/she finds suitable to the complaint. The hearing may be conducted informally or as a hearing in which witnesses may be produced.
- (b) City Council. The city council shall receive and hear all complaints filed against any city official, board, committee or commission member that is appointed by the city council. The fact that the city council has received a complaint, or is hearing a complaint, filed under this code of ethics, shall not deprive or lessen the authority of the city council to take any discretionary action it finds appropriate, or to take any disciplinary action against such city official, without regard to the complaint or hearing. When hearing a complaint, the city council may adopt such process and procedures as the council finds suitable to the complaint. The hearing may be conducted informally or as a hearing in which witnesses may be produced.
- (c) Violations of Chapter 171 or Chapter 176. Complaints alleging a violation of Chapter 171 or Chapter 176, Tex. Loc. Gov't. Code, shall be referred to the appropriate court and prosecutor. Such referral shall not deprive the city manager or the city council, as applicable, from exercising their respective discretionary authority, or any authority granted by local or state law.
- (d) Advisory Opinions and Recommendations. The city attorney shall render advisory opinions and make recommendations to the city manager and city council, as applicable, on potential conflicts of interest or potential violations of this code of ethics at the request of a public servant. Such advisory opinions and recommendations shall be rendered thirty (30) days after a request or complaint is received, unless the city attorney requests, and is granted one thirty (30) day extension by the city council or city manager, as

applicable. This subsection shall not be applicable to complaints that have been filed with the city council or the city manager.

- (e) Defense to Alleged Violations. It shall be a defense to an alleged violation of this code of ethics that the person accused previously requested, and received, a written advisory opinion and recommendation from the city attorney and acted on such opinion or recommendation in good faith, unless material facts were omitted or misstated by the person requesting the opinion. Absent, omitted or misstated facts, such written advisory opinion and recommendation shall be binding with respect to subsequent charges based on the same issue and facts concerning the person who requested the opinion.
- (f) Disposition of Alleged Ethics Violations.
 - (1) A sworn complaint based on personal knowledge alleging a violation(s) of this article shall specify the provision(s) of this article alleged to have been violated and shall name the public servant being charged.
 - (2) Upon the aforesaid sworn complaint of any person being filed with the city secretary's office, or on its own initiative, the city manager or city council, as applicable, shall consider possible violations of this article by any public servant. A complaint shall not be deemed to be filed on the initiative of the city council, save and except the complaint be signed and sworn by two (2) members of the city council, one of which is the mayor, after consultation with the city attorney. A complaint filed by an individual member of the city council shall be deemed to have been filed in the councilmember's capacity as a private citizen and, in such event, the member of the city council filing the complaint shall not thereafter participate in a city council meeting, or discuss the same with the city manager if applicable, at which such complaint is considered save and except the councilmember filing the complaint may participate as a complainant at such meeting.
 - (3) A complaint alleging a violation of this article must be filed with the city secretary within two (2) years from the date of the action alleged as a violation, and not afterward.
 - (4) Not later than three (3) working days after the city secretary receives a sworn complaint, the city secretary shall acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the city attorney, the city council or city manager as appropriate, and the person against whom the complaint was alleged. Not later than ten (10) working days after receipt of a complaint, the city secretary shall notify in writing the person who made the complaint and the person against whom the complaint was alleged, of a date for a preliminary hearing. If the city manager or city council does not hold a preliminary hearing within twenty (20) days of receipt of the complaint, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give further appropriate notification.
 - (5) The city council or the city manager may consider possible violations of this article on their own initiative. Within seven (7) working days of the decision to consider a possible violation of this article, a draft written complaint specifying the provision(s) of this article alleged to have been violated shall be filed with the city secretary, and provided to the city attorney and the person against whom the complaint was alleged. Not later than fifteen (15) days after the drafting of the complaint, the city secretary shall notify in writing the person against whom the complaint was alleged of the date for the preliminary hearing.
 - (6) After a complaint has been filed, and during the pending of a complaint before the city council, a member of the city council may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the city council; provided that the mayor may consult and coordinate with the city attorney.
 - (7) As soon as reasonably possible, but in no event more than sixty (60) days after receiving a complaint, the city manager or city council, as applicable, shall conduct a preliminary hearing:
 - (A) The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of this article has occurred. The person filing a complaint, or the city attorney in cases considered upon the city manager's or city council's, as applicable, own initiative, shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violations stated in the

written complaint. Statements at a preliminary hearing shall be under oath, but there shall be no cross examination or requests for persons or evidence issued for the hearing. Members of the city council or the city manager, as applicable, may question the complainant, the city attorney or the city manager, as applicable, or the public servant named in the complaint.

- (B) The public servant named in the complaint shall have the opportunity to respond but is not required to attend or make any statement. The public servant may describe in narrative form the testimony and other evidence that would be presented to disprove the alleged violation. If the public servant agrees that a violation has occurred, he or she may so state and the city manager or city council, as applicable, may consider the appropriate sanction.
- (C) The complainant and the public servant named in the complaint shall have the right to representation by counsel.
- (D) At the conclusion of the preliminary hearing, the city manager or city council, as applicable, shall decide whether a final hearing should be held. If the city manager or city council, as applicable, determines there are reasonable grounds to believe that a violation of this article has occurred, a final hearing will be scheduled. If the city manager or city council, as applicable, does not determine that there are reasonable grounds to believe that a violation of this article has occurred, the complaint shall be dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.
- (E) The city manager or city council, as applicable, at any time during the preliminary hearing, may also dismiss a complaint if the complaint does not allege conduct which would be a violation of this article. Before a complaint is dismissed for failure to allege a violation, the complainant may be permitted one opportunity, within ten (10) working days of such preliminary hearing, to revise and resubmit the complaint.
- (F) The complainant, the city attorney or the public servant named in the complaint may ask the city manager or city council, as applicable, at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.

(8) Final Hearing on Complaints.

- (A) The final hearing shall be held as expeditiously as possible following the determination by the city manager or city council, as applicable, that reasonable grounds exist to believe that a violation of this article has occurred. In no event shall the hearing be held more than thirty (30) days after said determination. The city manager or city council, as applicable, may grant two (2) postponements, not to exceed fifteen (15) days each, upon the request of the public servant named in the complaint.
- (B) The issue at a final hearing shall be whether a violation of this article has occurred. The city manager or city council, as applicable, shall make its determination based on clear and convincing evidence in the record. All witnesses shall make their statements under oath.
- (C) If the city manager or city council, as applicable, determines that a violation has occurred, findings shall be stated in writing identify the particular provision(s) of this article which have been violated, and within five (5) working days a copy of the findings shall be delivered to the complainant, if any, the public servant named in the complaint, and the city secretary.
- (D) If a complaint proceeds to a final hearing, the city manager or city council, as applicable, may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers records, or other evidence needed for the performance of the city manager's or city council's duties, as applicable, or exercise of its powers, including its duties and powers of investigation.

(9) Sanctions.

- (A) If the city manager or city council, as applicable, determines that a violation of this article has occurred, they shall proceed directly to determination of the appropriate sanction(s), if any. Save and except for a violation of Section 7.2, Section 8.6 or Section 11.1 a violation

of this article shall not be subject to criminal penalties. The city manager or city council, as applicable, may receive additional testimony or statements before considering sanctions, but is not required to do so. If the public servant named in the complaint acted in reliance upon a written opinion of the city attorney, the city manager or city council, as applicable, shall consider that fact.

(B) If the city manager or city council, as applicable, determines that a violation of this article has occurred, they may impose one of the following sanctions:

- (i) A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the public servant's violation was made in reliance on a written opinion of the city attorney. A letter of notification shall advise the public servant to whom it is directed of any steps to be taken to avoid future violations.
- (ii) A letter of admonition shall be the appropriate sanction in those cases in which the city manager or city council, as applicable, finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.
- (iii) A reprimand shall be the appropriate sanction when the city manager or city council, as applicable, finds that a violation has been committed intentionally or through disregard of this article. A copy of a reprimand directed to a public servant, city official, councilmember, or board or commission member shall be sent to the city council. A reprimand directed to an employee of the city shall be included in said employee's personnel file. A letter of reprimand directed to an elected city official shall be transmitted to the city secretary and shall be published in the official newspaper of the city.
- (iv) A recommendation of removal from employment or a recommendation of suspension from employment, as well as a recommendation for length of suspension, shall be the appropriate sanction when the city manager or city council, as applicable, finds that a serious or repeated violation(s) of this article has been committed intentionally or through culpable disregard of this article by city employees.
- (v) A letter of censure shall be the appropriate sanction when the city council finds that a serious or repeated violation(s) of this article has been committed intentionally or through culpable disregard of this article by an elected city official. A letter of censure directed to an elected city official shall be transmitted to the city secretary and thereafter published in the official newspaper of the city.

Sec 1.1811 Independent Legal Counsel

Independent Legal Counsel. If a complaint is filed against the city manager or any member of the city council independent legal counsel shall be utilized to advise the city council and participate in hearings.

Sec 1.1812 Baseless Complaints

- (a) In the event a complaint is received by the city manager or city council, as applicable, that is subsequently found to be baseless, the city manager, or the city council, may refer the matter to the appropriate court or prosecutor.
- (b) The city manager or city council, as applicable, may take or recommend disciplinary action(s) against the individual who filed the complaint including but not limited to filing legal charges. The city manager or city council, as applicable, may also make recommendations for what other action(s) should be taken.

Sec 1.1813 General Provisions

- (a) Definitions. The words “public servant” when used in this article, shall mean the elected officers of the city, all persons appointed by or by vote of the city council, all department heads of the city, all city employees that have any supervisory authority over other employees, and all employees that have discretionary authority to make recommendations to boards or to the city council. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word “shall” is always mandatory. The word “herein” means in this article. The word “regulations” means the provisions of any applicable article, rule, regulation or policy.
- (b) Penalties. Any person who shall violate this code of ethics, or shall fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.
- (c) Reservations and Exceptions. Notwithstanding any other term or provision of this article, this article: (1) is not applicable to the performance and behavior of officers, employees and public servants that does not violate a standard or provision set forth in this code of ethics; (2) does not waive the authority and discretion of the city council or the city manager, as applicable, to enforce higher standards for, or to supervise, provide oversight, appoint and remove, any officer, employee or public servant that is appointed by the city council or city manager, as applicable; and (3) does not transfer or limit the authority of the city manager to act in his or her discretion to enforce higher standards for, or to supervise, provide oversight, appoint and remove, all officers, employees and public servants of the city that are not appointed and removed by the city council. Further, neither the city manager nor the city council shall be required to file a complaint in order to take action against any employee, public servant or city official under their respective supervision or jurisdiction.
- (d) City Manager Complaint Resolution. If the city council is not satisfied with the actions taken by the city manager with respect to any complaint filed with him/her under this code of ethics, the city council shall consider that matter in the annual evaluation of the city manager.