ORDINANCE NO. 13-023-00

AN ORDINANCE ESTABLISHING AN ETHICS POLICY FOR THE CITY OF LEANDER; PROVIDING STATEMENTS OF POLICY AND PURPOSE; PROVIDING DEFINITIONS AND FOR CONFLICTS OF INTEREST; PROVIDING MINIMUM STANDARDS OF CONDUCT WITH RESPECT TO CERTAIN GIFTS, FINANCIAL INTERESTS, POLITICAL ACTIVITY AND CITY BUSINESS; REQUIRING REGISTRATION BY LOBBYISTS; REQUIRING FINANCIAL DISCLOSURE; PROVIDING FOR THE ETHICS COMMISSION AND LEGAL COUNSEL; PROVIDING FOR COMPLAINTS AND BASELESS COMPLAINTS; PROVIDING FOR HEARINGS, FINDINGS, RECOMMENDATIONS AND SANCTIONS; PROVIDING A PENALTY CLAUSE; PROVIDING OPEN MEETING AND EFFECTIVE DATE CLAUSES; AND PROVIDING FOR RELATED MATTERS.

Whereas, Article 12 of the City Charter requires an Ethics Commission be established and that the City Council shall adopt an ordinance providing an ethics policy and code of conduct applicable to the officers, employees, board and commission members of the City; and

Whereas, the City Council appointed an Ethics Commission and requested the Ethics Commission to draft and propose an ordinance providing an ethics policy and code of conduct for the officers, employees and certain persons doing business with the City;

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

Article 1. Declaration of Policy.

Section 1.1. 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 Leander ("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 Ethics Commission (the "Commission") will apply this ordinance 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.

Section 1.2. 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 of Leander shall at all times strive to avoid even the appearance of impropriety.

Section 1.3. 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.

Article 2: Purpose.

Section 2.1. 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.

Article 3: Present Public Servants.

Section 3.1. Standards of Conduct.

(a) To avoid the appearance and risk of impropriety and self-enrichment, 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.

(b) As used in this Ordinance the word "Gift" means a favor, hospitality, economic benefit, product or item having a value of $250.00, or more within a 12 month period. 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.

(c) The following factors are considered in evaluating whether a gift is prohibited:

(i) The value of the gift, or gifts, does not exceed $250.00, during any twelve (12) consecutive calendar months;

(ii) Any pre-existing relationship between the donor and donee;

(iii) 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 proceeding 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.*

(d) Those items or services that do not constitute prohibited gifts include, but are not limited to, the following:

(i) Political contributions made and reported in accordance with all applicable state laws.

(ii) Awards publicly presented in recognition of public service.

(iii) 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.

(iv) 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 $25.00 or $200.00 during any twelve (12) consecutive calendar months.

(v) Meals, lodging, or transportation in connection with services rendered by the public servant at a conference, seminar or similar event that is more than merely perfunctory.

(vi) Attendance by a public servant at hospitality functions at local, regional, state or national association meetings and/or conferences.

(vii) 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.

(e) In determining whether or not acceptance if prohibited, the intent of the ordinance is to avoid the appearance of self-enrichment by the public servant versus reasonable expenses necessary to conduct City business.

Section 3.2. Personal Financial Interest.

(a) 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.

(b) 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. Any violation of this shall render the contract voidable.

Section 3.3. 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.

Section 3.4 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.

Section 3.5. Conflict of Interest.

(a) 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.

(b) 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 council members appear before the Ethics Commission on their own behalf. A member of any appointed committee or board shall remove himself/herself from deliberation regarding his/her interest.

(c) 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. 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.

Section 3.6. Additional Standards of Conduct.

(a) Conflicting Outside Employment

(i) The purpose of this provision is to prevent conflicts of interest, conflicts of loyalty, and loss of efficiency at work

(ii) 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.

(iii) 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 that results in a conflict of interest with their

duties as an official or employee of the City.

(iv) City employees must inform their supervisor before engaging in off-duty employment. City employees must consider the policy of purpose and must be aware of the policy and general rule as stated above.

(b) Political Activity

(i) 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 following ethical restrictions apply,

(ii) 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 re-election may engage in any activity on behalf of their own campaign efforts. The following is a list of activities that are, except as specifically provided otherwise, permissible within the sole discretion of the individual employees.

A. The placement of campaign signs on premises owned by the city employee

B. 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.

C. 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.

D. The donation of a political contribution that does not exceed the statutory limit for non-reportable contributions; provided that a candidate for, and the occupant of, an elective city office is prohibited from soliciting contributions from city employees.

This Section 3.6(b)(ii) 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 this Section 3.6.

(iii) Other Interests

A. Non-profit board membership: While membership is encouraged a council member who serves on the board of a public or private non-profit 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.

Article 4: Former City Officials and Employees.

Section 4.1. Continuing Confidentiality.

(a) A former public servant shall not use or disclose confidential government information acquired during service as a public servant, as provided in Section 3.3. This does not prohibit:

(i) Any disclosure that is no longer confidential by law; or

(ii) The confidential reporting of illegal or unethical conduct to authorities designated by law; or

(iii) As required by court order or appropriate agency.

Section 4.2. Subsequent Representation.

(a) Representation by a Former Member of a City Body. For the purpose of this section, "City Body" is intended to be the City Council or any commission or board created by the City Council. A person who was a member of any City Body shall not represent for pay, profit, compensation, financial gain or benefit, any person, group or entity, other than himself or herself, his or her immediate family members, or the City, for a period of one (1) year after the termination of his or her official duties, except by permission of the City Council:

(i) Before that body;

(ii) Before city staff having responsibility for making recommendations to, or taking any action on behalf of, that body, unless the body in question

is only advisory in nature; or

(iii) Before any other City Body, or any state or federal agency, court or entity that has appellate jurisdiction over the body of which the former member served, if any issue relates to his or her former duties.

(b) Representation Before a City Body.

(i) A former paid city employee shall not represent for compensation any person, group or entity, other than himself or herself, or his or her immediate family members, before any City Body for a period of one (1) year after termination of his or her official duties, except by permission of the City Council.

(ii) In connection with the representation of private interests before any City Body, a former public servant shall not state or imply that he or she is able to influence city action on any basis other than the merits.

(c) Representation in Litigation Adverse to the City.

(i) A former city public servant shall not, absent consent from the City, 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 for a period of ten (10) years following the termination of his or her official duties, if the interests of that person, group or entity are adverse to the interests of the City and the matter is one in which the former public servant personally and substantially participated prior to termination of his or her official duties.

Article 5. Contracts.

Section 5.1. 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.

Section 5.2. Except on behalf of the City, a former city council member, official, or employee may not, within one (1) year 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 one (1) year 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.

Article 6. Persons Doing Business With the City

Section 6.1. Persons Seeking Discretionary Contracts.

(a) For the purpose of assisting the City in the enforcement of provisions contained in this Code of Ethics, 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 Articles 3 and 4 of this Code of Ethics. Further, the individual or business entity agree to abide by the same ethical standards as set forth for public servants in this Code of Ethics.

(b) Section 6.1 of this Code of Ethics will become a permanent footnote on documents contained in City bid packets for discretionary contracts.

Section 6.2. 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:

(a) An employee or officer of the City that advises or makes presentations to the board or city body; or

(b) Any member of the board of 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 Ordinance, if he or she were to participate in the processing or consideration of the subject matter.

Article 7. Lobbyist.

Section 7.1. Purpose. For the purpose of minimizing the risk of improper lobbying, while at the same time recognizing that not all forms of lobbying are improper, the following rules are adopted.

Section 7.2. Registration Requirements.

(a) Lobbying, except as provided below, means any oral or written communication (including an electronic communication) to a city official, made directly or indirectly by any person working for pay or profit for any third party in an effort to influence or persuade an official to favor or oppose, recommend or not recommend, vote for or against, or take or refrain from taking any action on any municipal question. A lobbyist is an individual or group of individuals who, for compensation, work to influence the opinions of any city body or its members in support of the interests of another individual, group, business, group of businesses, political or

apolitical organization.

(b) The term lobbying does not include a communication:

(i) Merely requesting information or inquiring about facts or status of any municipal question, matter or procedure, and not attempting to influence a city official;

(ii) Made by a public official or employee (including, but not limited to, any employee of the City) acting in his or her official capacity;

(iii) Made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(iv) Made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, or any other medium of mass communication;

(v) Made at a meeting open to the public under the Open Meetings Act;

(vi) Made in the form of a written comment filed in the course of a public proceeding or any other communication that is made on the record pursuant to established city procedures;

(vii) Made in writing as a request or petition for official action and required to be a public record pursuant to established city procedures;

(viii) Made in writing to provide information in response to an oral or written request by a city official for specific information;

(ix) The content of which is compelled by law;

(x) Made in response to a public notice soliciting communications from the public and directed to the official specifically designated in the notice to receive such communications;

(xi) made on behalf of an individual with regard to that individual's employment or benefits;

(xii) made by a fact witness or expert witness at an official proceeding; or

(xiii) made by a person solely on behalf of himself or herself, his or her spouse, of his or her immediate family;

(xiv) made by an employee or representative of an economic development prospect and potential future employer within the City, which prospect is not at the time of the contact located within the City; or

(xv) a licensed attorney or engineer to assist of aid any person with respect to a matter in which the City is exercising its regulatory authority, and which representation is a matter of public record.

(c) No person shall engage in lobbying without registering as a lobbyist with the City. A person engaged to lobby, including any employee of a third party that is assigned the duty of lobbying, within the City shall register as a lobbyist no later than three (3) days after first contacting any public servant or employee regarding the subject matter for which such person is engaged or assigned to lobby the City.

(d) The lobbyist must file a separate registration form (Exhibit A) for each client for whom they are lobbying; provided that a lobbyist that has a current registration on file with the City may add additional clients to such registration by filing an updated list of such clients to be added to the registration.

Article 8. Financial Disclosure

Section 8.1. Disclosure Deadlines for City Officials and Candidates.

(a) Existing City Officials. "City official" means the mayor, every member of the city council, the city manager, the city attorney, the city secretary, the director of planning and community development (if any), the director of public works (if any), the director of finance (if any), the city engineer, and persons acting in the capacity of the aforementioned officers or employees. No later than April 30th of each year, or thirty (30) calendar days after notice of such requirement is mailed by the city secretary, whichever date is later, each city official shall file a sworn financial disclosure statement (See Exhibit B) with the city secretary in a form prepared by the city secretary reflecting the financial situation of the city official as of December 31of the previous year.

(b) New City Officials. A newly employed, elected, or appointed city official shall file a sworn financial disclosure statement (Exhibit B) with the city secretary in a form prepared by the city secretary within thirty (30) days from the date the position with the City is assumed. Said statement shall reflect the financial situation as of the date of employment, election, or appointment and for the previous twelve months, provided, however, such city official shall not be required to include in such

statement the requirements of paragraphs 8.2(a)(vii) of this section.

(c) Candidates. Each candidate shall file a sworn financial disclosure statement with the city secretary within fifteen (15) days of filing for office, reflecting the financial situation of the candidate as of December 31 of the year previous to the election date.

Section 8.2. Use of Financial Disclosure Reporting Form.

(a) Each person required to file a financial disclosure statement shall do so on a form (Exhibit B) supplied by the City which shall include the following information:

(i) The person's name, residence address, business address (if any), telephone number, name of all immediate family members, i.e., husband or wife, children, father, mother, brothers or sisters, and all names or titles under which the person or family member does business.

(ii) Identification by street address and legal description of all real property located within the City or its extraterritorial jurisdiction in which the person has a substantial interest.

(iii) Identification of each business entity owning property or doing business within the City or its extraterritorial jurisdiction in which the person has a substantial interest.

(iv) Identification of each person or business entity to whom the person or family member owed a debt of ten thousand dollars ($10,000) or more during the reporting period, but not including debts owed to persons related within the second degree of consanguinity or affinity and excluding loans to a political campaign which were reported as required by law; if repaid during the reporting period, the date of repayment shall be stated.

(v) Identification of each source of income amounting to ten (10) percent or more of the person's or family member's gross annual income as defined by the United States Internal Revenue Code.

(vi) Identification of the donor of each gift of more than two hundred dollars ($200.00) in value received by the person or family member, including the value of the gift, where such donor has appeared before and requested action of the City Council during the reporting period.

(vii) Identification of all individuals or business entities that:

A. He or she, or a business entity in which he or she has substantial interest has had business dealings involving one or more transactions

of five hundred dollars ($500.00) or more each quarter, or for a total of twenty-five hundred dollars ($2,500.00) or more within the immediately preceding 12-month period; and

B. Have appeared before and requested action of the City Council during the reporting period.

(viii) Identification shall also be required of all individuals who have an ownership interest of twenty-five percent (25%) or more in a business entity as described in 8.2(a)(vii)(A) above and who appears before and requests some action on the part of the City Council, even though the action does not concern such business entity.

Section 8.3. Retention of Financial Disclosure Statements. The city secretary shall log and maintain all financial disclosure statements required to be filed herein as public records and retain them for a period of three (3) years after which statements shall either be returned to the person filing them or be destroyed.

Section 8.4. Immediate Public Identification by Public Servants.

(a) All public servants of the City shall immediately publicly identify, either verbally at an open meeting or in writing, all individuals or business entities that:

(i) he or she, or a business entity in which he or she has a substantial interest which has had business dealings involving one or more transactions of five hundred dollars ($500.00) or more each quarter, or for a total of twenty-five hundred dollars ($2,500.00) or more within the immediately preceding twelve (12) month period; and

(ii) Have appeared before and requested action of the City Council during the reporting period.

(b) Such immediate identification shall also be required of all individuals who have an ownership interest of twenty-five percent (25%) or more in a business entity as described in 8.4(a)(i) above and who appear and request action by the City Council, even though the action does not concern such business entity. Such identification shall be made prior to any decision or determination of the matter or immediately upon discovery of such business dealings.

Section 8.5. Planning and Zoning Commission Members. Within thirty (30) days of being appointed to the Planning and Zoning Commission and on each anniversary of that date, each member of such commission shall file with the city secretary a sworn statement identifying by street address and legal description all real property located within the City or its extraterritorial jurisdiction in which the member has a substantial interest.

Section 8.6. Disclosure by Persons Appearing Before a City Body. Any person who appears before any city body who has had business dealings within the preceding twelve (12) month period involving one or more transactions of five hundred dollars ($500.00) or more each quarter, or for a total of twenty-five hundred dollars ($2,500.00) or more, within the preceding 12-month period with a council member, commissioner, or business entity in which a council member or commissioner has a substantial interest, shall disclose such business dealings at the time of the appearance. Any person who shall intentionally or knowingly fail to make the aforesaid disclosure shall be guilty of a misdemeanor and shall be fined in accordance with this Ordinance.

Article 9. Ethics Commission

Section 9.1. Establishment of an Ethics Commission. The Ethics Commission established by Section 12.01 of the City Charter shall be composed of seven (7) members, all of whom shall reside in the City.

Section 9.2. Enumeration. Each Commission member shall be appointed by the City Council and shall occupy a position on the Commission, such positions being numbered 1 through 7. Commission members serve at the will of City Council and may be removed by the City Council upon five (5) members of the Council, or more, voting for removal .

Section 9.3. Terms of Office. The Commission members shall be appointed to three (3) year staggered terms, such terms corresponding in duration with the terms of the members of the City Council by place, with the Commission member for position 7 serving for a term corresponding in duration to that of the Mayor. The City Council may appoint an advisory committee to review and recommend to the City potential candidates for vacant Commission positions.

Section 9.4. Vacancies. All vacancies shall be filled by the City Council for the unexpired term. A member shall hold office until his successor has been appointed by the City Council.

Section 9.5. Election of Chairperson and Vice-chairperson. The Commission shall elect a chairperson and a vice-chairperson to one (1) year terms. The vice-chairperson shall act as chairperson in the absence of the chairperson. In the event the chairperson or vice-chairperson vacates their position then an election to fill the vacancy shall occur at the next meeting when the full board is seated.

Section 9.6. Quorum. Four (4) or more members of the Commission shall constitute a quorum, but no action of the Commission shall be of any force or effect unless it is adopted by the favorable vote of four (4) or more members.

Section 9.7. Annual Review of Ethics Ordinance. The Commission shall meet at least once a year to review this Ethics Ordinance and may make recommendations to the City Council for amendments thereto.

Section 9.8. Advisory Opinions and Recommendations. The Commission shall render advisory opinions and make recommendations to the City Council on potential conflicts of interest or violations of this Ethics Ordinance 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 by the Commission, unless the Commission requests, and is granted one thirty (30) day extension by the City Council. This Section 9.8 shall not be applicable to complaints filed with the Commission.

Section 9.9. Defense to Alleged Violations. It shall be a defense to an alleged violation of this Ethics Ordinance that the person accused previously requested, and received, an advisory opinion and recommendation from the Commission, and acted on such opinion or recommendation in good faith, unless material facts were omitted or misstated by the person requesting the opinion. Such advisory opinion and recommendation shall also be binding on the Commission in any subsequent charges concerning the person who requested the opinion and recommendation.

Section 9.10. Disposition of Alleged Ethics Violations.

(a) A sworn complaint (Exhibit C) based on personal knowledge alleging a violation(s) of this ordinance shall specify the provision(s) of this ordinance-alleged to have been violated, and shall name the public servant being charged.

(b) Upon the aforesaid sworn complaint of any person being filed with the city secretary's office, or on its own initiative, the Commission shall consider possible violations of this ordinance by any public servant. A complaint shall not be deemed to be filed on the initiative of the Commission, save and except the complaint be signed and sworn by two (2) members of the Commission, one of which is the chairperson of the Commission, after consultation with the legal counsel of the Commission. A complaint filed by an individual member of the Commission shall be deemed to have been filed in the Commission member's capacity as a private citizen and, in such event, the member of the Commission filing the complaint shall not thereafter participate in a Commission meeting at which such complaint is considered save and except the Commissioner filing the complaint may participate as a complainant at such meeting.

(c) A complaint alleging a violation of this ordinance must be filed with the city secretary within two (2) years from the date of the action alleged as a violation, and not afterward.

(d) 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 independent counsel, the Commission Chair, and the person against whom the complaint was alleged. The Commission Chair with advice of the Commission's legal counsel shall review the complaint to ensure compliance with Section 9.10(a) within five (5) days of receipt of the complaint. If the complaint does not comply with the requirements of Section 9.10(a) it shall be returned to the complainant with a written explanation of non-compliance. If the complainant does comply it shall be accepted by the Commission. Not later than ten (10) working days after receipt of a complaint, the Commission 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 Commission 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 the complainant the appropriate notification.

(e) The Commission may consider possible violations on its own initiative. Within seven (7) working days of the Commission's decision to consider a possible violation of this the Commission shall draft a written complaint specifying the provision(s) of this ordinance alleged to have been violated and shall file a copy with the city secretary, and provide a copy to the city attorney, the independent counsel, and the person against whom the complaint was alleged. Not later than fifteen (15) days after the drafting of the complaint, the Commission shall notify in writing the person against whom the complaint was alleged of the date for the preliminary hearing.

(f) After a complaint has been filed, and during the pending hearing of a complaint before the Commission, a member of the Commission 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 Commission; provided that the Chairperson may consult and coordinate with independent legal counsel.

(g) As soon as reasonably possible, but in no event more than sixty (60) days after receiving a complaint, the Commission shall conduct a preliminary hearing.

(i) The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of this ordinance has occurred. The person filing a complaint, or the independent counsel in cases considered upon the Commission's 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 Commission may question the complainant, the public servant named in the complaint, or consult with the independent counsel for the Commission in executive session.

(ii) 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 Commission may consider the appropriate sanction.

(iii) The complainant and the public servant named in the complaint shall have the right to representation by counsel.

(iv) At the conclusion of the preliminary hearing, the Commission shall decide whether a final hearing should be held. If the Commission determines that there are reasonable grounds to believe that a violation of this ordinance has occurred, it shall schedule a final hearing. If the Commission does not determine that there are reasonable grounds to believe that a violation has occurred, the complaint shall be automatically dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.

(v) The Commission, 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 ordinance. Before a complaint is dismissed for failure to allege a violation, the complainant shall be permitted one opportunity, within ten (10) working days of such a preliminary hearing, to revise and resubmit the complaint.

(vi) The complainant, the independent counsel, and public servant named in the complaint may ask the Commission at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.

(h) Final Hearing.

(i) The final hearing shall be held as expeditiously as possible following the determination by the Commission that there are reasonable grounds to believe that a violation of this ordinance has occurred. In no event shall the hearing be held more than thirty (30) days after said determination. The Commission may grant two (2) postponements, not to exceed fifteen (15) days each, upon the request of the public servant named in the complaint.

(ii) The issue at a final hearing shall be whether a violation of this ordinance has occurred. The Commission shall make its determination based on clear and convincing evidence in the record. All witnesses shall make their statements under oath.

(iii) If the Commission determines that a violation has occurred, it shall state its findings in writing, shall violated, the particular provision(s) of this ordinance which have been violated, and within five (5) working days shall deliver a copy of the findings to the complainant, if any, the public servant named in the complaint, and the city secretary.

(iv) If a complaint proceeds to a final hearing, the Commission 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 Commission's duties or exercise of its powers, including its duties and powers of investigation.

(i) Sanctions.

(i) If the Commission determines that a violation of this ordinance has occurred, it shall proceed directly to determination of the appropriate sanction(s), if any. Save and except for a violation of Section 3. 6(b)(ii)(D), Section 7.2 or Section 8.6 of this Ordinance, a violation of this ordinance shall not be subject to criminal penalties. The Commission 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 Commission shall consider that fact.

(ii) If the Commission determines that a violation of this ordinance has occurred, it may recommend that the City Council impose one of the following sanctions:

A. 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.

B. A letter of admonition shall be the appropriate sanction in those cases in which the Commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.

C. A reprimand shall be the appropriate sanction when the Commission finds that a violation has been committed intentionally or through disregard of this ordinance. A reprimand directed to a city official, council member, Commission member shall be sent to the City Council. A reprimand directed to an employee of the City shall be sent to the city manager and 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 sent to the City Council, and thereafter published in the official newspaper of the City.

D. 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 Commission finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by city employees. A recommendation of suspension of city employees shall be directed from the Commission to the city manager. In most cases, the final authority to carry out such recommendations to suspend from employment and the length of suspension shall be with the city manager.

E. A letter of censure shall be the appropriate sanction when the Commission finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by an elected city official. A letter of censure directed to an elected city official shall be transmitted to the city secretary, and shall be sent to the City Council, and thereafter published in the official newspaper of the City.

Article 10. Independent Legal Counsel.

Section 10.1. Independent legal counsel shall be utilized to advise the Commission and participate in hearings. The City Council shall annually designate and retain independent counsel who shall be a duly licensed attorney in the State of Texas.

Article 11. Baseless Complaints

Section 11.1. In the event a complaint is received by the Commission that is subsequently found to be baseless, and the Commission deems that the complaint was filed with the intent to:

(a) Harass the person named in the complaint; or

(b) Damage the respondent's reputation; or

(c) Benefit the person filing the complaint either personally, professionally, or politically; or

(d) Damage a related third party.

Section 11.2. The Commission may recommend to the City Council to take disciplinary action(s) against the individual who filed the complaint including but not limited to referral to law enforcement for investigation and filing of legal charges as outlined in Section(s) 11.3, 11.4 or 11.5 of this Article. The Commission may also make recommendations for what other action(s) should be taken up to and including barring from the filing of further ethics complaints on the same or similar subject matter or event.

Section 11.3. A person commits an offense if he knowingly initiates, communicates or circulates a report of a violation of this ordinance by a public servant that he knows is false or baseless and that would ordinarily cause an official proceeding be held by the Ethics Commission in response to the complaint. An offense under this section is punishable by fine not to exceed the sum of five hundred dollars ($500.00).

Section 11.4. Any person who knowingly files a false sworn statement under this chapter is subject to criminal prosecution for perjury under the laws of the State of Texas. Penal Code Sec. 37.02.

Section 11.5. Any person who knowingly testifies under oath before the Commission and knowingly makes a false statement material to the proceedings is subject to criminal prosecution for aggravated perjury under the laws of the State of Texas. Penal Code Sec. 37.03.

Article 12. General Provisions.

Section 12.1. Definitions. The words "public servant" when used in this Ordinance, 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 commissions of the City. 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 Ordinance. The word "regulations" means the provisions of any applicable ordinance, rule, regulation or policy.

Section 12.2. Penalties. Any person who shall violate Section 7.2 or Section 8.6 of this Ordinance, 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.

Section 12.3. Reservations and Exceptions. Notwithstanding any other term or provision of this Ordinance, this Ordinance: (a) 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 Ordinance; (b) does not waive the authority and discretion of the City Council 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; and (c) 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 Council.

Section 12.4. Effective Date. This Ordinance shall be in force and effect from and after its passage on the date shown below.

Section 12.5. Open Meetings. It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, Chapter 551, Texas Government Code.

ADOPTED on this the 7th day of March 2013.

Attest:

Christopher Fielder, Mayor

Debbie Haile TRMC, City Secretary