

ORDINANCE 2095

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS AMENDING THE CODE OF ORDINANCES BY REVISING CHAPTER 2, ARTICLE III TO CREATE AN INDEPENDENT ETHICS REVIEW BOARD; REVISING CHAPTER 2, ARTICLE IV BY DELETING THE EXISTING RULES OF ETHICAL CONDUCT AND ADOPTING A NEW CODE OF ETHICAL CONDUCT FOR CITY OFFICIALS; AND PROVIDING FOR A PENALTY IN A MAXIMUM AMOUNT OF \$2000 FOR VIOLATIONS THEREOF.

WHEREAS, the City Council appointed a Citizen's Ethics Task Force to review the existing Rules of Ethical Conduct and make recommendations regarding updates or amendments to the existing rules regarding ethical conduct for the city council, members of boards and commissions; and

WHEREAS, the City Council has received and reviewed the Citizen's Ethics Task Force's recommendations and wishes to adopt the recommendations with amendments; NOW THEREFORE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS:

Section 1. That Chapter 2, Article III. Boards and Commissions of the Code of Ordinances is amended by adding a new section 2-54 to read as follows:

Sec. 2-54. Independent Ethics Review Board.

- (a) *Created.* An independent ethics review board is created.
- (b) *Number, appointment, and qualifications.* The board has seven members and two alternates, appointed by the city council to three year terms. All members and alternate members must be residents of the city.
- (c) *Disqualifications.* No members of the board may:
 - (1) have any convictions for a felony or a crime of moral turpitude, or have been found in violation of any provision of the Code of Ethical Conduct.
 - (2) Within the three years prior to appointment be:
 - a. An Official or employee of the City;
 - b. A campaign treasurer, campaign manager, officer or other policy or decision-maker for the campaign of any candidate elected to city council while that candidate is in office;
 - c. A campaign treasurer, campaign manager, officer or other policy or decision-maker for any political action committee as defined in the Texas Election Code;

d. A member of any City board or commission other than the Ethics Review Board;

(d) *Duties.* The board will review and dispose of sworn complaints alleging violations of the city's Code of Ethical Conduct ordinance.

(e) *Term.* A board member will serve until his or her successor has been appointed. Consecutive service on the board may not exceed three full terms, except that a one-term alternate member may thereafter serve three 3 year terms as a regular member, and a two-term alternate member may thereafter serve two 3 year terms as a regular member.

(f) *Removal.* A board member may be removed from office for cause by a majority of the city council only after a public hearing at which the member was provided with the opportunity to be heard. Grounds for removal include:

- (1) Disqualification under subsection (c);
- (2) Substantial neglect of duty;
- (3) Gross misconduct in office;
- (4) Inability to discharge the powers or duties of office;
- (5) Violation of any provision in this Code of Ethical Conduct; or
- (6) A conviction of a felony or crime of moral turpitude.

Section 2. That the term of office of board members is three years and runs from October 1 through September 30, except that, of the regular members first appointed, one member will serve until September 30 of the year in which the Board is established, two regular members and one alternate member will serve until the second September 30, and two regular members and one alternate member will serve until the third September 30.

Section 3. That Chapter 2, Article IV. Rules of Ethical Conduct of the Code of Ordinances is amended to read as follows:

ARTICLE IV. CODE OF ETHICAL CONDUCT

DIVISION 1. STATEMENT OF PURPOSE AND PRINCIPLES

Sec. 2-71. General Statement.

Officials act as fiduciaries entrusted with and responsible for the property and resources of the community and must make governmental decisions, recommendations, and policies free of coercive or other improper influence and must use their position in the

best interests of the city rather than for personal interests, whether their own interests or those of their family, friends, or business associates.

It is important that Officials understand the ethical conflicts they confront every day, appreciate their fiduciary obligations to city residents, and recognize the importance of preventing conflicts from occurring, disclosing conflicts when they arise, and withdrawing from any involvement in a matter where they have a conflict.

Public trust requires that acts which are contrary to the public interest be defined and prohibited; that there be an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged; and that unethical behavior be discouraged and suitably disciplined through a process which is fundamentally fair.

Although this Ordinance is necessary to identify standards below which an Official's conduct cannot fall without the risk of penalty, it is understood that a healthy ethical environment for the provision of public service cannot be achieved or maintained by mere adherence to standards and that all Officials should strive to achieve the highest possible level of ethical conduct.

Sec. 2-72. Ethical values.

It is the official policy of the city that:

- (a) Officials must be independent, impartial, and responsible to the residents of the city;
- (b) Officials must not have a financial interest, and must not engage in any business, transaction, or professional activity, or incur any obligation, that conflicts with the proper discharge of their duties for the city in the public interest.
- (c) The principles of personal conduct and ethical behavior that should guide the behavior of Officials include:
 - (1) A commitment to the public welfare;
 - (2) Respect for the value and dignity of all individuals;
 - (3) Accountability to the residents of the city;
 - (4) Truthfulness; and
 - (5) Fairness.
- (d) Under such principles of conduct and ethical behavior, Officials should:
 - (1) Conduct themselves with integrity and in a manner that merits the trust and support of the public;
 - (2) Be responsible stewards of the taxpayers' resources; and
 - (3) Take no official actions that would result in personal benefit in conflict with the best interests of the city.
- (e) To implement the purpose and principles set out in this division 1, the city council has determined that it is advisable to enact a code of ethical conduct to govern Officials.

It is the purpose and intent of city council to ensure a fair opportunity for all of the city's citizens to participate in government, to adopt standards of disclosure and transparency in government, and to promote public trust in government.

Sec. 2-73. Purpose.

The purposes of this Code of Ethical Conduct are:

- (a) To establish standards of ethical conduct for Officials, candidates, and those who do business with the city;
- (b) To provide clear, consistent guidance with respect to such standards by clarifying which acts are allowed and which are not;
- (c) To promote public confidence in the integrity of our city's governance;
- (d) To provide for the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of our city's government to city residents; and
- (e) To provide for the fair and effective administration and enforcement of this Code of Ethical Conduct.

Sec. 2-74. Reserved.

DIVISION 2. CODE OF ETHICAL CONDUCT

Sec. 2-75. Definitions.

In this article:

Administrative board means a board that, by law, has final decision-making authority on matters within its jurisdiction.

Advisory board means a board that is charged with making recommendations to the city council on matters within its jurisdiction, but has no final decision-making authority.

Customer or client means:

- (a) any person or entity to which a person or entity has supplied goods or services during the previous twelve months, having, in the aggregate, a value greater than \$50,000; or
- (b) any person or entity to which an Official's outside employer or business has supplied goods or services during the previous twelve months, having, in the aggregate, a value greater than \$50,000 but only if the Official knows or has reason to know the outside employer or business supplied the goods or services.

Domestic partner means an adult, unrelated by blood, with which an unmarried or separated Official has a committed relationship, maintains a mutual residence, and shares basic living expenses.

Financial benefit means any money, service, license, permit, contract, loan, travel, entertainment, hospitality, gratuity, or promise of any of these, or anything else of value to the Official or an Official's Relative. The term does not include campaign contributions authorized by law.

Gift means a financial benefit received or given without equivalent compensation. The term includes lodging, transportation, entertainment, and food. The term does not include a financial benefit received or given on the same terms available to the general public or an election campaign contribution.

Interest in a contract means a relationship to a contract such that a direct or indirect financial or other material benefit has been, or will be received as a result of that contract. Indirect benefit includes a benefit to the Official's Relative or outside business or employer.

Official means a member of city council, an administrative board, or advisory board.

Outside employer or business includes:

- (a) any substantial business activity other than service to the city;
- (b) any entity, other than the city, of which the Official is a member, official, director, or employee, and from which the Official receives compensation exceeding 10% of the Official's gross income for the previous year; or
- (c) any entity in which the Official has an ownership interest of 10% or more of the voting stock or shares or more than \$15,000 of the fair market value.

Personal benefit includes benefits other than those that are directly financially advantageous. These include non-financial benefits such as enhanced reputation and success of one's career.

Personal interest means a relationship to something such that a personal benefit has been or will be obtained by taking certain action or inaction with respect to it.

Relative means a spouse, domestic partner, child, step-child, brother, sister, parent or step-parent, niece or nephew, aunt or uncle, or grandparent or grandchild of the Official.

Sec. 2-76. Covered officials.

The Code of Ethical Conduct contained in this article apply generally to all Officials and in certain defined circumstances to candidates for city council and former Officials.

Sec. 2-77. Conflicts of interest.

(a) An Official must not use, or attempt to use, his or her official position or office, or take or fail to take any action, or influence, or attempt to influence, others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal or financial benefit, not shared with a substantial segment of the city's population, for any of the following persons or entities:

- (1) The Official;
- (2) The Official's Relative, or the employer or business of the Relative;
- (3) A person with which the Official has a financial or business relationship, including but not limited to:
 - a. An outside employer or business of the Official, or the Official's spouse or domestic partner, or someone who works for such outside employer or business; or
 - b. A client or substantial customer
- (4) A publicly traded company if the Official or his or her spouse, parent or child owns the stock or instruments of debt greater than 10 percent of the value of the company;
- (5) Real property if the Official or his or her spouse, parent or child holds an equitable or legal ownership with a fair market value of \$2,500 or more;
- (6) A nongovernmental civic group, social, charitable, or religious organization of which the Official, or the Official's spouse or domestic partner, is an officer or director; or
- (7) A public or private business entity for which the Official, or his or her Relative serves as a director, general partner, or officer, or in any other policy-making position except when so appointed to the position by the city.

(b) An Official must file a Conflict Disclosure statement pursuant to Local Government Code chapter 176 with respect to a vendor if the vendor has an employment relationship with the Official or a Relative that results in the Official or Relative receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date the city enters into a contract with the vendor. Such Conflicts Disclosure statement must be filed with the City Secretary no later than 5 p.m. on the seventh business day after the Official becomes aware of the facts that require the filing of a statement.

(c) It is a violation for an Official to, within two years of entering city service, award a contract or participate in a matter benefiting a person or entity that formerly employed the Official.

Sec. 2-78. Disclosure of Gifts.

(a) An Official who receives gift(s) of lodging, transportation, or entertainment from a person or vendor that reasonably appear to exceed \$100.00 in aggregate value for the previous twelve months must file with the City Secretary a Conflict Disclosure statement pursuant to Local Government Code chapter 176 containing the following information:

- (1) The date the gift was received and who received it;
- (2) A description of the gift;
- (3) The fair market value of the gift;
- (4) The name, address and employer of the person who provided the gift;
- (5) The name of any organization or individual represented by the person or on whose behalf the person was acting in providing the gift;
- (6) A statement that the aggregate value of the gift(s) are believed to exceed the sum of \$100.00.

(b) An Official who receives gift(s) of food from a person or vendor that reasonably appear to exceed \$100.00 in aggregate value for the previous twelve months if received as a gift, or \$500.00 in individual value if received as a guest, must file with the City Secretary a Conflict Disclosure statement pursuant to Local Government Code chapter 176 containing the following information:

- (1) The date the gift was received and who received it;
- (2) A description of the gift;
- (3) The fair market value of the gift;
- (4) The name, address and employer of the person who provided the gift;
- (5) The name of any organization or individual represented by the person or on whose behalf the person was acting in providing the gift;
- (6) A statement that the aggregate value of the gift(s) are believed to exceed the sum of:
 - a. \$100.00 if received as a gift; or
 - b. \$500.00 if received as a guest.

(c) A Conflicts Disclosure statement required by (a) or (b), above, must be filed no later than 5 p.m. on the seventh business day after the date on which the Official becomes aware of the facts that required the filing of the statement.

(d) A Conflicts Disclosure statement required by (a) or (b), above, is required to be filed by an Official for gifts received by a Relative pursuant to the requirements of Local Government Code Chapter 176.

(e) The requirements of (a) and (b), above, do not apply to a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the status of the recipient as an Official.

(f) This section does not apply to any gift that is required to be and is reported under any other state law, including a required election campaign filing.

Sec. 2-79. Abstention from Participation

(a) An Official must abstain from participation in, discussion of, and any vote on a matter before the city, if:

- (1) Acting on the matter, or failing to act on the matter may personally or financially benefit the Official or the Official's Relative; or
- (2) Within the 12 months preceding the date of the vote, the Official has filed a Conflict Disclosure statement pursuant to Local Government Code chapter 176 relating to the matter to be discussed.

(b) The Official must leave the room while the matter is being discussed.

(c) Abstention of an Official will be recorded in the minutes or audio recording of the meeting of the respective board or council on which he or she serves.

(d) Affidavits of conflict of interest must be filed with the City Secretary before any vote on the matter and as soon as possible after the Official becomes aware of the need to file the affidavit. An Official need not make a disclosure pursuant to this section if he or she, with respect to the same matter, has already made such a disclosure.

(e) An Official whose outside employment or other outside activity or relationship can reasonably be expected to require more than sporadic abstention must resign or cease such outside employment or activity. If the ongoing conflict involves a relationship, the Official must resign. An Official should not begin employment or an activity or relationship that can reasonably be expected to require more than sporadic abstention. If a prospective Official is in such a situation, he or she should not accept the position.

(f) Rule of Necessity: If abstention would leave a board with less than a quorum capable of acting, members must disclose their conflicts on the public record, but they may then vote.

Sec. 2-80. Council member prohibited from doing business with the city.

(a) Except as provided below, no council member may have a financial interest in any significant contract or transaction involving the sale or lease of goods, real estate, or services, or the lending of credit, to the city.

(b) For the purposes of this section, the ownership by a council member or his relative of the stock or instruments of debt of a publicly traded company does not give the council member a financial interest in any contracts or transactions that company has with the city, provided that the value of the interest held is less than five percent of the value of the company.

(c) For the purpose of this section, a contract or transaction is significant only if the total payments made by the city pursuant to the contract or transaction exceed \$1,000.00 in the aggregate.

(d) This section does not apply to the city's acquisition by eminent domain proceedings of an interest in land owned by a council member.

Sec. 2- 81. Representations.

(a) An Official must not represent any other person or entity before the city, nor in any matter not before the city, but against the interests of the city. However, it is acceptable for elected Officials to represent constituents without compensation in matters of public advocacy.

(b) For a period of two years after the termination of his or her city service, an Official must not, on behalf of any other person, for compensation, directly or indirectly, formally or informally, act as agent, attorney, lobbyist, or other sort of representative, to or before his or her former board, or commission. For the purposes of this provision, the mayor and council members are deemed to have worked for every city department, board, and commission. Acting indirectly includes action by a partner, associate, and other professional employee of an entity in which the former Official is a partner, associate, or professional employee, as well as acting by a member of the former Official or employee's immediate family.

Sec. 2-82. Appearances.

An Official must not appear before any board or commission, except on his or her own behalf. Any time an Official appears before the meeting of any City board or commission, or when he or she writes a letter to the editor or other publicly distributed writing including the use of the internet, he or she is required to clearly disclose at the beginning

of the speech or writing whether he or she is appearing in an official capacity or as a private citizen. If the speech or writing is in response to criticism or other communication directed at or regarding his or her official role, the Official must respond only in his or her official role.

Sec. 2-83. Misuse and disclosure of official information.

An Official or a former Official, must not use confidential information, including information obtained during a closed meeting as defined by Government Code section 551, obtained formally or informally due to his or her position with the city, for his or her own benefit or for the benefit of any other person or entity, or make such information available in a manner where it would be reasonably foreseeable that a person or entity would benefit from it.

Sec. 2- 84. Restrictions on political activity and political contributions.

An Official or candidate must not knowingly request, or authorize anyone else to request, that any city employee participate, or not participate, in any political activity, including the making of a campaign contribution.

Sec. 2- 85. Restrictions applicable to former officials.

(a) A former member of city council must not use or disclose confidential government information acquired during the member's service on the city council. A former member of city council is not prohibited from disclosing information if:

- (1) The information is no longer confidential;
- (2) The information involves reports of illegal or unethical conduct and is disclosed to a law enforcement agency; or
- (3) The disclosure is necessary to further public safety and is not otherwise prohibited by law.

(b) No former member of city council may have a financial interest in a significant contract with the city, within the meaning of section 2-80 of this article within 13 months following the expiration of the former member's most recent term of office.

Sec. 2- 86. Misuse of city property.

An Official must not use, or permit others to use, any city funds, property, or personnel for profit or for personal convenience or benefit, except when available to the public generally, or to a class of residents, on the same terms and conditions.

Sec. 2- 87. Ethics advisory opinions issued by the City Attorney's Office.

(a) Any Official may file a written request with the City Attorney for an advisory opinion with respect to whether contemplated action by that person would violate this Code of Ethical Conduct.

(b) Within seven business days of receipt of the request, the City Attorney will issue a written advisory opinion. Opinions that address new issues and that are instructive on the application of the Code of Ethical Conduct will be posted on the ethics webpage in a manner that does not reveal the identity of the individual requesting the opinion.

(c) An Official who reasonably and in good faith acts in accordance with a written advisory opinion issued by the City Attorney may use the advisory opinion as a defense to prosecution, provided that:

- (1) The Official requested the issuance of the opinion;
- (2) The request for an opinion fairly and accurately disclosed all relevant facts; and
- (3) Less than 5 years elapsed between the date the opinion was issued and the date of the conduct in question.

Sec. 2-88. Education.

The City Attorney's Office will provide training and educational materials to Officials on their ethical obligations under state law and this article. Such training must include at least one formal classroom session in each calendar year. All Officials must attend the formal training session offered by the city or equivalent training sessions conducted by the Texas Municipal League or similar organizations. The city will also provide written materials on the subject to each Official at the time of his or her election or appointment to office.

Secs. 2-89 – 2-93. Reserved.

DIVISION 3. PROCUREMENT

Sec. 2-94. Participation in Procurement.

(a) The procurement of goods and services must be accomplished in a manner that exhibits the highest level of ethical behavior so as to protect the integrity of the procurement process and ensure compliance with state and federal laws. To ensure transparency, impartiality, accountability and professionalism, the following process is adopted for the procurements of goods or services exceeding \$50,000 and for the procurement of professional and consulting services:

- (1) The City Manager, or his designee, will acquire and evaluate bids and proposals in accordance with state and federal purchasing laws;

- (2) The City Manager, or his designee, will negotiate a contract with the most responsive and responsible bidder or proposer;
 - (3) Once the terms of the contract have been negotiated, the City Manager, or his designee, will make a recommendation to city council;
 - (4) City council will vote to accept the bid and award the contract to the recommended bidder or proposer, or reject all of the bids.
- (b) The City Manager will maintain and enforce internal purchasing policies and procedures consistent with this section.
- (c) An Official must not, other than as permitted by law, knowingly obtain, disclose, or discuss bid or proposal information or source selection information with prospective bidders, proposers, or contractors before the bids or proposals are received or before voting to award the contract.

DIVISION 4. CAMPAIGN ACTIVITY.

Sec. 2-95. Campaign Activity.

- (a) The requirements set out in this section are inclusive of those in the Texas Election Code, and nothing in this section should be construed to limit obligations imposed by the Texas Election Code.
- (b) Fair Campaign Practices Act. The City Secretary will post a list of all candidates that have signed the Code of Fair Campaign Practices (Texas Election Code chapter 258) on the city's webpage.
- (c) Campaign Contributions.
- (1) An individual may not make a contribution in support of, or opposition to, a candidate for city office under a name other than the name by which the individual is identified for legal purposes.
 - (2) A contribution must be made in the name of the individual who owns and is contributing the thing of value, and the individual may not make a contribution on behalf of another individual.
 - (3) It is unlawful for any person who is an adverse party in any pending litigation against the city, or who has an ownership interest of 10 percent or more in any entity that is an adverse party to the city in any pending litigation to contribute or donate any funds to any candidate for city office if the litigation seeks recovery of an unspecified amount or of an amount in excess of \$25,000, exclusive of costs of court and attorneys' fees. Such

restriction is not applicable to attorneys representing a person or entity in pending litigation against the city. It is the duty of any candidate to refuse to accept any contribution that may be offered by a person who is known to the candidate to have a litigation interest described in this section. If a candidate unknowingly accepts a contribution in contravention of the foregoing provision, then it is the duty of the candidate to return the contribution within 10 calendar days after the candidate becomes aware of the litigation.

(d) Required filings.

- (1) Each candidate must file with his or her application, consent and affidavit of candidate, a written statement acknowledging that he or she has received a copy of this Code of Ethical Conduct.
- (2) A political committee which makes contributions or expenditures in connection with advocating or opposing a position or issue in a city election must file with the City Secretary a copy of each contribution and expenditure report filed with the Texas Ethics Commission. The filing date for filing with the City Secretary is the date established under the Texas Election Code for filing with the Texas Ethics Commission.
- (3) The starting and ending dates of reporting periods and the due dates of contribution and expenditure reports by candidates for city elections, officeholders and by political committees is governed by the Texas Election Code.
- (4) Contribution and expenditure reports required to be filed with the City Secretary's office under the Texas Election Code may be filed and updated electronically.
 - a. The city will post the contribution and expenditure reports on the city's website.
 - b. If an individual inadvertently files an incorrect or incomplete report, it is his or her responsibility to file an amended report as soon as possible, though no later than 14 calendar days after discovery of the error or after the error should have reasonably been discovered.

DIVISION 5. COMPLAINT PROCEDURES

Sec. 2-96. Time for filing complaints.

A complaint must be filed within one year of the date the violation is alleged to have occurred or one year after the complainant discovered the alleged violation. Complaints may be filed against Officials who no longer hold office.

Sec. 2-97. Detailed written complaints required.

A complaint alleging a violation of this Code of Ethical Conduct must be made in writing, signed by the complainant, sworn to before a notary public, and filed with the City Secretary and contain the following information:

- (a) The name address, and telephone number of the person making the complaint;
- (b) The name of, and office held by, the person against whom the complaint is directed;
- (c) The specific provision of this article that is alleged to have been violated;
- (d) For each violation alleged, a detailed description of the facts that are alleged to constitute the violation, including the date or dates on which the violation is alleged to have occurred;
- (e) The names, addresses, and telephone numbers of any witnesses to the violations; and
- (f) Copies or descriptions of any documents that substantiate the allegations.

Sec. 2-98. Preliminary review of complaints.

(a) The City Secretary will provide copies of each complaint to the person or persons accused and to the City Attorney, as soon as practicable.

(b) Within seven business days of receiving the complaint from the City Secretary, the City Attorney will take one of the following actions:

- (1) Dismiss the complaint if:
 - a. The deadline for filing a complaint has passed;
 - b. The accused is not subject to this article;
 - c. The conduct alleged is not regulated under this article; or
 - d. The complaint is not signed and sworn to by the person filing the complaint.
- (2) Forward the complaint to the Independent Ethics Review Board with a report. The report will include a copy of any written opinion or opinions from the City Attorney to the accused Official that relate to the conduct at issue and whether, in the City Attorney's opinion, the conduct was undertaken in good faith reliance on a written opinion that concluded the conduct was not in violation of this article. Where the City Attorney concludes that the conduct was undertaken in good faith reliance on a written opinion, the City Attorney will recommend that the Independent Ethics Review Board dismiss the complaint without a hearing.

(c) The city attorney's recommendation that the Independent Ethics Review Board conduct further proceedings does not mean that any of the allegations of the complaint

are true or false or that any current or former Official or candidate for city council has violated or has not violated this article. The Independent Ethics Review Board will make that determination.

Sec. 2- 99. Independent Ethics Review Board procedures.

(a) Within ten business days after the Independent Ethics Review Board receives a report and recommendation from the City Attorney, it will render a decision as to whether the complaint should be:

- (1) Dismissed as frivolous;
- (2) Dismissed because the subject conduct was undertaken in good faith reliance on a formal written opinion of the City Attorney; or
- (3) Investigated.

(b) When deciding if a complaint should be dismissed as frivolous, the Independent Ethics Review Board will consider:

- (1) The nature and type of any publicity surrounding the filing of the sworn complaint and the degree of participation by the person filing the complaint in publicizing the fact that a sworn complaint was filed;
- (2) The existence and nature of any relationship between the accused Official and the person filing the complaint before the complaint was filed;
- (3) Any evidence that the person filing the complaint knew or reasonably should have known that the allegations in the complaint were groundless; and
- (4) Any evidence of the person filing the complaint's motives in filing the complaint.

(c) When the Independent Ethics Review Board determines that an investigation should be made, it will proceed with such investigation using such procedures as are appropriate considering the nature and circumstances of the particular complaint.

(d) If the Independent Ethics Review Board determines that there is insufficient cause to proceed with the investigation or proceeding, it will dismiss the complaint and send notification of this dismissal to the complainant and the accused Official, former Official, or candidate. If it determines that there is sufficient cause to proceed, it will send notification of this finding to the complainant and accused Official, former Official, or candidate. In its letter of dismissal or notification of finding, which must be sent within five calendar days after the vote on sufficient cause, the Independent Ethics Review Board must set forth a brief summary of the facts and the reasons for dismissal.

(e) The accused Official, former Official, or Candidate may file with the Independent Ethics Review Board a response to the complaint within 10 calendar days after his or her receipt of the Independent Ethics Review Board's decision to proceed.

(f) At any time after a complaint has been filed, the Independent Ethics Review Board may seek and enter into a settlement agreement with the accused Official, former Official, or candidate against who the complaint was filed. The settlement agreement will include the nature of the complaint, findings of fact, conclusions of law, the Independent Ethics Review Board's reasons for entering into the agreement, an admission of violation by the accused Official, former Official, or candidate, and a waiver of the right to a hearing. It will also, where relevant, include a promise by the accused Official, former Official, or candidate not to do certain actions, the imposition of penalties permitted by this Code of Ethical Conduct, remedial action to be taken, and oral or written statements to be made. If a settlement agreement is breached by the accused Official, Former Official, or candidate, the Independent Ethics Review Board may rescind the agreement and reinstitute the proceeding.

(g) The Independent Ethics Review Board may not sustain a complaint or impose sanctions on an accused Official, former Official, or candidate for city council without holding a public hearing on the complaint.

(h) The Independent Ethics Review Board may conduct hearings and other proceedings on a complaint in closed executive session if permitted by state law, but any decision must be rendered during an open public meeting.

Sec. 2-100. Public Hearing.

(a) After a determination to proceed, the Independent Ethics Review Board will hold a public hearing to determine whether or not a violation of the Code of Ethical Conduct has occurred.

(b) The Independent Ethics Review Board will rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The Independent Ethics Review Board will not consider hearsay unless it finds the nature of the information is reliable and useful. No person may be held to have violated the Code of Ethical Conduct unless four members of the Independent Ethics Review Board so finds by a preponderance of the evidence.

(c) The accused Official, former Official, or candidate has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the Official, former Official, or candidate charged in the complaint may advise that person during the course of the hearing.

(d) The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing. Witnesses may not be presented by the complainant, except with the permission of the Independent Ethics Review Board.

(e) All witnesses will be sworn and all questioning of witnesses will be conducted by the members of the Independent Ethics Review Board. The Independent Ethics Review Board may establish time limits and other rules relating to the participation of any person in the hearing.

Sec. 2- 101. Sanctions for violations of this article.

If the Independent Ethics Review Board determines that a violation has occurred, the Independent Ethics Review Board may impose the following sanctions:

(a) A letter of notification when the violation is clearly unintentional, or when the respondent's conduct complained of was made in reliance on a public written opinion of the City Attorney. A letter of notification may advise the respondent of any steps to be taken to avoid future violations;

(b) A letter of admonition when the violation is minor or may have been unintentional, but calls for a more substantial response than a letter of notification;

(c) A reprimand when the violation has been committed intentionally or through disregard of this article. A reprimand directed to an Official will also be sent to the city council;

(d) A letter of censure when a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an elected Official, former elected Official, or candidate. A letter of censure directed to an elected Official, former Official, or candidate will be transmitted by the Independent Ethics Review Board to the City Secretary, published by the City Secretary in a local newspaper of general circulation, and sent by the Independent Ethics Review Board to the city council; or

(e) Up to \$2000 fine.

(f) If the Independent Ethics Review Board determines that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an appointed Official, the Independent Ethics Review Board may recommend to city council the removal from office or suspension from office, including a recommendation for the length of a suspension. The final authority to carry out a recommendation regarding removal of an appointed Official is the city council.

(g) If the Independent Ethics Review Board determines that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by a current elected Official, the Independent Ethics Review Board may recommend the recall of the elected Official from office. A recommendation regarding the recall of an elected Official will be sent to the local newspaper. The final authority to carry out a recommendation regarding recall of an elected Official rests with the citizens.

Sec. 2- 102. Name clearing proceedings.

Where informal allegations of a potential violation of this Code of Ethical Conduct have been made against a current or former Official or candidate and the accused person desires an investigation of such allegations in order to clear his or her name, the accused person may file a written request for declaratory relief, which must contain the information described in section 2-97, and state that the filer denies the allegations and is filing the request for declaratory relief solely for the purpose of clearing his or her name. A request for declaratory relief filed under authority of this section will be handled in the same manner and in accordance with the same procedures as complaints received from third parties and must be filed no later than the 90th calendar day after the Official or candidate first learned of the allegations.

Sec. 2-103. Penalty for filing false complaint or giving false testimony.

It is unlawful for a person to intentionally file a complaint under this article that the person knows contains false information or by making reasonable inquiry should know that it contains false information. It is unlawful for a person to intentionally give false testimony under oath in any hearing before the Independent Ethics Review Board held under this article. Any person found liable of violating this section will be fined not more than \$1000.00 for each offense.

Sec. 2- 104. Public records and open meetings.

Meetings and other proceedings of the Independent Ethics Review Board will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.

Sec. 2- 105. Other obligations.

This Code of Ethical Conduct is inclusive of and supplemental to applicable state and federal laws and regulations including Texas and Federal Whistleblower protections. Compliance with the provisions of this Code of Ethical Conduct does not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, lobbying activities, or any other issue addressed herein.

Section 4. That the provisions of this ordinance are severable and the invalidity of any part of this ordinance will not affect the validity of the remainder of the ordinance.

Section 5. That any person found guilty of violating this ordinance will be fined not more than \$2000.00 for each offense. Notice of the enactment of this ordinance will be given by publishing the ordinance or its descriptive caption and penalty in the City's official newspaper one time within thirty days of passage.

READ IN FULL on first consideration on May 16, 2017.

APPROVED upon second consideration on May 23, 2017.

/S/
Joe R. Zimmerman, Mayor

ATTEST:

APPROVED AS TO FORM:

Meredith Riedel

Glenda Gundermann

Glenda Gundermann, City Secretary



CITY COUNCIL

AGENDA REQUEST

AGENDA OF:	05-23-17	AGENDA REQUEST NO:	II-A
INITIATED BY:	MEREDITH RIEDE CITY ATTORNEY	RESPONSIBLE DEPARTMENT:	CITY ATTORNEY
PRESENTED BY:	MEREDITH RIEDE CITY ATTORNEY	DIRECTOR:	MEREDITH RIEDE <i>YMR</i> CITY ATTORNEY
	DAPHNE MCKINNEY STRATEGIC INITIATIVES MANAGER	ADDITIONAL APPROVAL:	NA
SUBJECT / PROCEEDING:	SECOND READING OF ORDINANCE 2095		
EXHIBITS:	ORDINANCE 2095		
CLEARANCES		APPROVAL	
LEGAL:	NA	EXECUTIVE DIRECTOR:	NA
PURCHASING:	NA	ASSISTANT CITY MANAGER:	STEVE GRIFFITH <i>SMG</i>
BUDGET:	NA	ASSISTANT CITY MANAGER:	NA
		CITY MANAGER:	ALLEN BOGARD
BUDGET			
EXPENDITURE REQUIRED: \$		NA	
CURRENT BUDGET: \$		NA	

ADDITIONAL FUNDING: \$	NA
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RECOMMENDED ACTION

Approve on second reading Ordinance 2095 establishing an Independent Ethics Review Board and adopting revisions to the Rules of Ethical Conduct.

EXECUTIVE SUMMARY

Ordinance 2095 establishes an Independent Ethics Review Board and amends the Rules of Ethical Conduct. These amendments are based on the recommendations from the City Council appointed Citizen's Ethics Task Force and the discussions at City Council workshops held on February 28, 2017, March 27, 2017 and May 2, 2017.

During the May 16, City Council meeting the following revisions were discussed:

Section 2-71: Deletion of "and suitably rewarded"

Section 2-83: Addition of prohibition on disclosing confidential information received during closed executive session.

Section 2-95(d)(4): Revision to make electronic filing optional

These revisions have been made.

There was also discussion regarding Financial Disclosure reports. It was City Council's consensus to implement this requirement in conformity with state law. As such, no language was added to Ordinance 2095 to require an earlier implementation date.

EXHIBITS
