City of Windcrest

CITY COUNCIL MEETING @ 6 P.M.
CITY COUNCIL CHAMBERS & WEBEX TELECONFERENCE
APRIL 06, 2020

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN **6:00 P.M.**
WEBEX VIDEO CONFERENCE MEETING

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST CITY COUNCIL MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 6th DAY OF APRIL 2020, STARTING AT 6:00 P.M.

DUE TO THE GOVERNOR'S SUSPENSION OF CERTAIN PROVISIONS OF THE TEXAS OPEN MEETINGS ACT TO HELP SLOW THE SPREAD OF COVID-19, THIS MEETING WILL BE AVAILABLE TELEPHONIC AND BY VIRTUAL PRESENCE ON WEBEX. MEMBERS OF THE PUBLIC WISHING TO LISTEN TO THE MEETING OR PROVIDE CITIZEN COMMENTS CAN FOLLOW THE INSTRUCTIONS AT THE BOTTOM OF THE AGENDA.

THE CITY COUNCIL RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF APRIL 6, 2020, AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, APRIL 7, 2020, AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

The City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. In compliance with Americans with Disabilities Act, the City of Windcrest will provide reasonable accommodations for persons attending the meeting. To better serve you, requests should be received 48 hours prior to the meeting. Please contact the City Secretary's Office, at 210-655-0022 ext. 2150 or Fax 210-655-8776, or 711 Texas Relay.

DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COUNCIL MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE AND INVOCATION

THE FOLLOWING ITEMS MAY BE CONSIDERED AT ANY TIME DURING THE REGULAR COUNCIL MEETING:

IV. PRESENTATIONS

a) Update from Fire Chief Dan Kramer on COVID-19 and local government awareness efforts.

V. CITIZENS TO BE HEARD/CITIZEN PARTICIPATION

a) Citizens may address the City Council on topics not on the agenda for no more than three (3) minutes. Two-way communication is available through Webex connection. You must sign up through the Webex app for message participation. Messages will be provided to Council and available to the public not in attendance after the meeting. Comments may also be read to the Council during the meeting for no more than three minutes per person.

b) In addition to the foregoing, citizens shall also have the opportunity to address the City Council during consideration of posted agenda items for no more than six (6) minutes. Two-way communication is available through Webex connection. You must sign up through the Webex app for message participation. Messages will be provided to Council and available to the public not in attendance after the meeting. Comments may also be read to the Council during the meeting for no more than six minutes per person.

c) A person will have the opportunity to address City Council in City Hall Council Chambers during the meeting. Only a maximum of 4 public members will be allowed in the Chambers at a time. A web cam has been set up for a person to address City Council. All attendees will be required to be screened for present signs of COVID-19 prior to entering City Hall. Email the city secretary at citysecretary@windcrest-tx.gov to be added to the attendee list.

d) A City Official may make a statement of specific factual information in response to an inquiry made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.

VI. RESOLUTIONS

a) City Council will discuss and take action on Resolution No 2020-515, approving an agreement with San Antonio for future payments and an annual settle-up process which resolves any disputes regarding past payments of tax split funds.

b) City Council will discuss and may take action on Resolution 2020-514, an update to the City of Windcrest Employee Manual on Relationships Dating in the Workplace policy.

VII. ORDINANCE

a) City Council will discuss and take action on Ordinance 2020-009 (O), an ordinance amending Ordinance 2019-702(O), the adopted FY19/20 Fee Schedule, in order to amend current fee schedule. [Rafael Castillo, Jr., City Manager] **2nd Reading**

b) City Council will discuss and take action on Ordinance 2020-010 (O), an ordinance approving an extension for a special use permit granted to WCW Montgomery LLC, approved by City Council on September 20, 2019. [Rafael Castillo, Jr., City Manager] **2nd Reading**

c) City Council will discuss and take action on amendments to the sign codes to impose the same regulations in B-3 zones that exist in B-1 zones by amending Ordinance 2020-011 (O), Chapter 109 Signs, Sec. 109-13 temporary signs and Sec. 109-15 Signs Authorized, in the B-3 Zoning District. [Rafael Castillo, Jr., City Manager] **1st Reading**

VIII. DISCUSSION & ACTION

a) City Council will review, discuss, and may take action on revision the City of Windcrest FY 19/20 investment policy. [Frank Archuleta, Council Member Place 4]

b) City Council will discuss and may take action on the financial impact to the City of Windcrest due to the COVID-19 safety measures and possible responses. [Frank Archuleta, Council Member Place 4]

c) City Council will discuss and may take action on an update to the City of Windcrest Employee Manual for Fire Department sick/vacation accrual. [Rafael Castillo, Jr., City Manager]

d) City Council will discuss and may take action on an update to the City of Windcrest Employee Manual for outside employment policy. [Rafael Castillo, Jr., City Manager]

e) City Council will discuss and may take action on an update to the City of Windcrest Employee Manual on Nepotism. [Rafael Castillo, Jr., City Manager]

IX. CITY MANAGER'S REPORT

X. GENERAL ANNOUNCEMENTS & FUTURE AGENDA ITEMS REQUESTED

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

XI. ADJOURNMENT

The City Council reserves the right to retire into executive session whenever it is considered necessary and legally justified under the Texas Government Code, Subchapter D, Sections 551.071 et. seq. including, but not limited to, consultation with attorney, real property, prospective gifts, personnel matters, exclusion of witness, security devices, and economic development matters.

It is anticipated that members of other city boards, commissions and committees may attend the meeting in numbers that may constitute a quorum of such other city boards, commissions and committees, so that notice is hereby given that the meeting is also a meeting of the other city boards, commissions and committees whose members are in attendance. The members of the other city boards, commissions and committees may participate in discussions which occur at the meeting, but no action will be taken by the other boards, commissions and committees whose members are in attendance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting on April 6, 2020.

By: Rachel C. Dominguez, City Secretary

AGENDA NOTICES:

VIRTUAL PRESENCE AND PARTICIPATION:

NOTICE TO THE PUBLIC TO CALL IN

If you wish to dial in on the meeting/briefing and listen in on the updates, please refer use the call in information below.

CALL IN INFORMATION

- **CALL IN NUMBER: 1-408-418-9388 (US TOLL)**
- **MEETING NUMBER: 626-363-764**
- **MEETING PASSWORD: 04062020**

JOIN ONLINE:

- **GO TO WWW.WEBEX.COM**
- **CLICK ON JOIN MEETING (UPPER RIGHT HAND CORNER)**
- **ENTER MEETING NUMBER: 626-363-764**
- **MEETING PASSWORD: 04062020**

NOTE: THE CALL IN NUMBER IS NOT TOLL FREE FOR CHARGES MAY APPLY DEPENDING ON YOUR PHONE PROVIDER. HOWEVER, IT IS FREE TO LISTEN AND PARTICIPATE IN THE CHAT ROOM, BY FOLLOWING THE INSTRUCTIONS (ON SCREEN PROMPTS) ON THE FREE CISCO WEBEX WEB APPLICATION ON YOUR COMPUTER OR CISCO WEBEX APP ON YOUR MOBILE DEVICE. PARTICIPATION IN THE CHAT ROOM IS CONSIDERED PUBLIC COMMENTS FOR PURPOSES OF THIS MEETING.

DECORUM REQUIRED:

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

ACTION BY COUNCIL AUTHORIZED:

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code § 551.072 (Deliberations about Real Property); § 551.073 (Deliberations about Gifts & Donations); § 551.076 (Deliberations about Security Devices); §551.087 (Economic Development); and, § 551.071to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

EXECUTIVE SESSIONS APPROVED BY CITY ATTORNEY:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

ATTENDANCE BY OTHER ELECTED OR APPOINTED OFFICIALS:

It is anticipated that members of the City Council, or other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

RESOLUTION NUMBER 2020- 514 (R)

A RESOLUTION APPROVING THE AGREEMENT FOR FUTURE SALES TAX PAYMENTS BETWEEN THE CITY OF WINDCREST AND THE CITY OF SAN ANTONIO AND RESOLUTION OF OUTSTANDING DISPUTE

WHEREAS, the City of Windcrest entered into a Mutual Economic Incentive Agreement (hereinafter the "MEIA") and Boundary Change Agreement (hereinafter "BCA") that are being updated and amended separately; and

WHEREAS, there was a dispute regarding the proper calculation for sales and property tax between the City of Windcrest and the City of San Antonio under the agreement; and

WHEREAS, the City of Windcrest asserts proper payments were submitted and the City of San Antonio disputes proper payments were submitted; and

WHEREAS, regardless of the dispute, the two municipalities value the relationship they have developed over the years and have agreed to enter into a separate agreement ("Agreement"), independent of the MEIA and BCA, for future payments over the next five years which account for changes in circumstances and adopts certain annual settle-up procedures in the future; and

WHEREAS, the City of Windcrest and the City of San Antonio agree the attached Agreement resolves any outstanding disputes between the cities regarding payments under the MEIA and BCA, regardless of the validity of any dispute.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the attached Agreement is hereby adopted, approved, and the City Manager is authorized to execute the Agreement and any secondary paperwork necessary to accomplish the intent behind this resolution.

PASSED AND APPROVED this the day of , 2020

_____
Dan Reese, Mayor

ATTEST:

_____
Rachel Dominguez, City Secretary

APPROVED AS TO FORM:

_____
Ryan Henry, City Attorney

PENDING CC APPROVAL

STATE OF TEXAS	§	**AGREEMENT FOR**
	§	**FUTURE OBLIGATION**
	§	**PAYMENTS AND SETTLE-UP**
COUNTY OF BEXAR	§	

This Agreement for Future Obligation Payments Under Boundary Change Agreement (this "Agreement") is made and entered into by and between the City of San Antonio ("CoSA"), a Texas Municipal Corporation, acting by and through its City Manager or designee, pursuant to Ordinance No. 2020-__-__-_____ dated _____ __, 2020, and the City of Windcrest ("CoWC"), a Texas Municipal Corporation, acting by and through its City Manager or designee. CoSA and CoWC may collectively be referred to herein as the "Parties".

WHEREAS, on August 2, 2007, the City Council of CoSA approved the Walzem Road Redevelopment Project Master Economic Incentives Agreement ("MEIA") among CoWC, the Windcrest Economic Development Corporation ("EDC"), Bexar County, Rackspace US, Inc. and the Windcrest Economic Development Company, LLC.; and

WHEREAS, under the MEIA, CoWC, the EDC and Bexar County financially incentivized Rackspace to relocate its corporate headquarters from its location on Datapoint Dr. within the city limits of CoSA to the former site of Windsor Park Mall which was within both the city limits of CoSA and CoWC; and

WHEREAS, the MEIA required Rackspace to commit to relocating 2,000 employees to the Windsor Park Mall site by December 31, 2009, and to expand to a total of 4,500 employees by December 31, 2012, with an average annual salary of not less than $51,000; and

WHEREAS, the MEIA also required the execution of a Boundary Change Agreement ("BCA") between CoSA and CoWC, whereby CoSA would disannex approximately 221 acres of property including the Windsor Park Mall site, surrounding properties and a strip along I-35 from Walzem to Eisenhauer in exchange for an obligation by CoWC to make payments to CoSA based upon the following: 1) reimbursement of a minimum of $137,968 annually for 30 years or fifty percent (50%) of the sales and property taxes collected from the boundary area site, whichever is greater; 2) an equal share of all sales and property taxes from the development along Walzem and Eisenhauer for 30 years; and 3) an equal share in the Rackspace PILOT payments beginning in 2021 and lasting for the remaining 16 years of the term of the BCA; and

WHEREAS, payments have been made by CoWC to CoSA under the BCA since 2008, however, a dispute arose as to whether a miscalculation occurred during some payments; and

WHEREAS, CoSA asserts there were underpayments and CoWC asserts it, in fact, made overpayments at different times; and

WHEREAS, the Parties agree to resolve any dispute or uncertainty that may have existed regarding any prior payments in ad valorem and sales tax under the BCA by entering into this Agreement; and

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WHEREAS, CoWC asserts and CoSA does not object to CoWC's asserting for CoWC's own purposes that it is not under an obligation under the MEIA to make any future payments beyond what is required under the MEIA and BCA; and

WHEREAS, CoWC asserts and CoSA does not object to CoWC's asserting for CoWC's own purposes even though it is not under a legal obligation to make future payments beyond what is contemplated, CoWC values the relationship with CoSA and agrees to make such additional future payments listed in this agreement beyond what is required under the MEIA and BCA in exchange for a resolution of any disputes previously existing; and

WHEREAS, CoSA asserts and CoWC does not object to CoSA's asserting for CoSA's own purposes that it will treat the future payments in this agreement as satisfaction of the disputed amounts. CoSA recognizes that while CoWC is making the payments listed in this agreement, CoWC disputes they are debts owed to CoSA. But because CoSA also values the relationship with CoWC it does not challenge that CoWC designates the payments as future payments; and

WHEREAS, the Parties recognize that while both may classify the payments differently, the relationship between both cities is important enough for the citizens of both communities that its serves the larger community as a whole to simply create this separate agreement, as a standalone and independent agreement with the dispute regarding the MEIA and BCA as context; and

WHEREAS, to assist in resolving potential future problems under the MEIA and BCA, the Parties agree to mutually enter into a procedure for a settle-up process, to be performed on an annual basis, at a minimum.

NOW THEREFORE:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

ARTICLE I. TERM

Term. The "Term" of this Agreement shall be five (5) years commencing upon its "Effective Date" and remaining in effect until February 1, 2024.

ARTICLE II. FUTURE OBLIGATION AMOUNT

2.1 **Amount Owed.** The Parties agree that in exchange for the settle-up process, to be performed annually at a minimum, and for resolution of any prior disputes under the MEIA and BCA, CoWC will pay to CoSA five (5) equal annual payments of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND 0 CENTS ($125,000.00). Such annual payments shall be paid by CoWC to CoSA in accordance with the following Table 1:

Table 1: Installment

Payment Date	Minimum Payment Amount
October 9, 2020	**Payment in the amount of $125,000.00**

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February 1, 2021	**Payment in the amount of $125,000.00**
February 1, 2022	**Payment in the amount of $125,000.00**
February 1, 2023	**Payment in the amount of $125,000.00**
February 1, 2024	**Payment in the amount of $125,000.00**

All payments under this Agreement shall be made by either CoWC check, made payable to the City of San Antonio, with the term "Settle-up Agreement 2020" upon the check, and mailed to City of San Antonio, Finance Department, P.O. Box 839966, San Antonio, TX 78283-3966 or by wire transfer to CoSA Account # _____. Payments are deemed timely submitted if mailed by the date listed in Table 1 or the wire transfer is initiated by such date.

2.2 **Accrued Interest.** Should CoWC fail to make payments in accordance with Table 1, then simple interest shall accrue in the amount of the mid-term applicable federal rate for maturities more than three years and up to nine years published by the Internal Revenue Service (the "AFR"). The AFR shall be determined as of the day following the date when payment was due. However, prior to the imposition of interest on any unpaid amounts, CoSA must provide CoWC written notice and an opportunity to cure such unpaid amount or establish that such amounts were paid prior to receipt of the notice.

2.3 **Sufficient Amounts.** Each payment made pursuant to Section 2.1 shall be sufficient to pay the total amount payable upon that date.

2.4 **Obligation to Pay the Amount Owed.** The obligation of CoWC to make the payment and interest payment required by Sections 2.1 and 2.2 above are required, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against CoSA, for any amounts CoWC may owe CoSA or CoSA may owe CoWC under any other agreements. During the term of this Agreement, CoWC shall pay all payments required to be made on account of this Agreement as prescribed in Sections 2.1 and 2.2 free of any deductions and without abatement, diminution or set-off.

2.5 **Agreement on Settle-Up Process**. The Parties agree that to avoid future disputes between the parties regarding the MEIA and BCA, as well as any amendments to those separate agreements which occur from time to time, the Parties shall utilize the settle-up process attached hereto as Exhibit A to this Agreement and incorporated herein for all purposes.

2.6 **Mutual Release of Any Prior Disputes**. The Parties agree that by executing this Agreement, the Parties mutually release one another from any disputes or perceived disputes arising out of payments to be performed under the MEIA and BCA up to the date of the execution of this Agreement. Such mutual release of all claims and disputes or perceived disputes arising out of payments to be performed under the MEIA and BCA up to the date of the execution of this Agreement are effective immediately upon execution. The Parties agree that any dispute under this Agreement shall not be grounds for setting aside the mutual release but shall be treated as a dispute under this Agreement as an independent agreement between the Parties.

PENDING CC APPROVAL

ARTICLE III. DEFAULT AND REMEDIES

3.1 **Default Events of CoWC**. Any one of the following which occurs and continues shall constitute a Default Event of CoWC:

a. Failure of CoWC to make any payment required by Sections 2.1 and 2.2 when due under this Agreement and failure to cure after receipt of written notice; and/or

b. The dissolution of CoWC or the filing by CoWC of a petition in bankruptcy as authorized by Texas Local Government Code §140.001, and/or

c. The admittance of CoWC, in writing, of its inability to pay its obligations under this Agreement, or a receiver for CoWC is appointed in any legal proceeding and which shall not be discharged within ninety (90) days after such appointment or prior to the next required payment under Table 1, whichever period is longer, and/or

d. The failure to follow the settle-up process adopted in good faith.

3.2 **Remedies to CoSA upon a Default Event**. Should CoWC cause or allow a Default Event to occur and it shall be continuing:

a. CoSA, by written notice to CoWC and resolution of its City Council, shall declare the unpaid balance of the amounts payable under Section 2.1 of this Agreement due immediately; and

b. CoSA may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of CoWC under this Agreement.

c. Prior to having the ability to declare any unpaid balance due under 3.2, CoSA must provide CoWC written notice and a right to cure.

3.3 **Default Events of CoSA**. Any one of the following which occurs and continues shall constitute a Default Event of CoWC:

a. Failure of CoSA to follow the settle-up process adopted in good faith; and/or

b. Any attempt by CoSA to collect under this Agreement on amounts exceeding those listed in Table 1

3.4 **Remedies to CoWC upon a Default Event**. Should CoSA cause or allow a Default Event to occur and it shall be continuing:

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a. CoWC, by written notice to CoSA and resolution of its City Council, shall declare the CoSA in default; and

b. CoWC may take whatever action at law or in equity as may be necessary or desirable to enforce performance and CoSA's obligations under this Agreement.

3.3 **No Remedy Exclusive**. No remedy herein conferred upon or reserved to the Parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

3.4 Notwithstanding any other provision of this Agreement, neither Party is authorized to utilize any remedy under this Agreement or otherwise under the law, without first providing written notice to the offending party of the belief a breach of this agreement or a default exists, the basis for the belief a breach or default exists, and at least sixty (60) days to cure any breach or default or to establish why no breach or default exists.

ARTICLE IV. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or 3 calendar days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for CoSA, to:
City of San Antonio
Finance Department
Attn: Troy Elliot
P.O. Box 839966
San Antonio, TX 78283-3966

If intended for CoWC, to:
City of Windcrest
Attn: City Manager
8601 Midcrown Dr,
Windcrest, TX 78239

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V. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be affected by amendment, in writing, executed by both CoSA and CoWC, and subject to approval by each City Council, as evidenced by passage of an ordinance, if required.

VI. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, or the City of Windcrest, Texas, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

VII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. Such changes must be approved as described in Article V. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Agreement or by law or in equity.

VIII. LAW APPLICABLE

8.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

8.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas and within a court of competent jurisdiction over both Parties.

PENDING CC APPROVAL

IX. LEGAL AUTHORITY

The signer of this Agreement for each Party represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of CoSA and CoWC and to bind each respective party to all of the terms, conditions, provisions and obligations herein contained.

X. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective officers, in such officers' official capacities, successors and assigns, except as otherwise expressly provided for herein. This Agreement is not for the benefit of any third-party and no third-party rights exist under this Agreement.

XI. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XII. MISCELLANEOUS PROVISIONS

12.01 Assignment and Binding Effect. No assignment of this Agreement in whole or in part for any purpose shall be made by either Party without prior written consent of the other Party.

12.02 Interpretation of Agreement. This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon a Party's authorship of the Agreement or any portion thereof.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the final and entire agreement between the Parties and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties, unless same be in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties, in accordance with Article V. Amendments.

Effective Date and Signatures. The effective date of this Agreement shall be the later date in time of the signatory dates set out below. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Facsimile and electronic signatures shall be accepted the same as an original signature. A photocopy of this Agreement may be used in any action brought to enforce or construe this Agreement.

PENDING CC APPROVAL

EXECUTED and **AGREED** to by the Parties on _____ __, 2020 (the "Effective Date").

CIY OF SAN ANTONIO

_____
Erik J. Walsh
City Manager

ATTEST (if necessary)

_____

Approved as to Form:

_____
City Attorney

CITY OF WINDCREST

_____
Rafael Castillo
City Manager

ATTEST (if necessary)

_____

Approved as to Form:

_____
City Attorney

PENDING CC APPROVAL

RESOLUTION NO. 2020-515 (R)

A RESOLUTION OF THE CITY OF WINDCREST CITY COUNCIL TO ADOPT POLICIES AND PROCEDURES TO ADDRESS EMPLOYEE RELATIONSHIPS AND DATING IN THE WORKPLACE

WHEREAS, the City of Windcrest is committed to maintaining a work environment free from conflicts of interest, favoritism, and exploitation; and

WHEREAS, the City already has adopted a policy prohibiting sexual harassment in the workplace; and

WHEREAS, the Windcrest City Council recognizes that to prevent the appearance or existence of conflicts of interest, favoritism, and exploitation, some cities prohibit employees from entering into consensual romantic, intimate or other sexual relationships with other employees; and

WHEREAS, the City Council does not believe such a prohibition is necessary provided that both individual employees mutually and voluntarily consent to the relationship, the relationship does not interfere with the judgment or work performance of either individual, and the relationship does not interfere with the effective functioning of the workplace; and

WHEREAS, the City Council finds that it is in the best interests of the City and its employees that a policy and procedure be established to address employee relationships and dating in the workplace in order to provide guidelines to employees, whether or not involved in the consensual relationship, regarding appropriate workplace behavior, reporting requirements, filing complaints, and disciplinary action,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the attached policy is hereby adopted and the City Manager is instructed to attach the policy and procedure to the appropriate location in the City's personnel manual and to provide a copy and obtain written confirmation from all employees of receipt.

DULY PASSED AND APPROVED, on the _____ day of _____, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

_____
Dan Reese, Mayor

PENDING CC APPROVAL

ATTEST:

_____
Rachel Dominguez, City Secretary

APPROVED:

_____
Ryan S. Henry, City Attorney

PENDING CC APPROVAL

Relationships and Dating in the Workplace

The City is committed to maintaining a work environment free from conflicts of interest, favoritism, and exploitation. To that effect, the City has adopted a policy prohibiting sexual harassment in the workplace.

The City does not believe a prohibition on consensual romantic, intimate or other sexual relationships with co-employees is necessary, provided that certain City policies are effective. The employees engaged in a consensual relationship must:

- both mutually and voluntarily consent to the relationship;
- understand that the relationship must not interfere with the judgment or work performance of either individual; and
- understand that the relationship must not interfere with the effective functioning of the workplace.

Employees who engage in consensual relationships should be aware of their professional responsibilities and will be responsible for assuring that the relationship does not create or give an appearance of creating any conflicts of interest, favoritism, bias, ethics violations, or possibility of exploitation.

Definitions.

1. Consensual Relationship – a romantic, intimate or sexual relationship with another employee where the parties to the relationship have engaged in the relationship of their own free will and intent.
2. Intimate Conduct – cuddling, kissing, fondling, touching, or other physical contact of a romantic or sexual nature.
3. Working Areas/Workplace – the place where most of an employee's working time is spent, including all city premises.
4. Working Hours – in general, the scheduled working hours or shifts for employees as approved by the department head. Also includes any overtime or other time spent working outside of scheduled working hours or shifts on behalf of the city.

General.

1. During working hours and in working areas, employees are expected to conduct themselves in an appropriate and professional manner for the workplace that does not interfere with other employees or with overall productivity.
2. Employees are strictly prohibited from engaging in intimate contact that would in any way be deemed inappropriate by a reasonable person while on city premises or in working areas, whether during working hours or off duty.
3. Employees who are in a consensual relationship and work under a department in which working hours are divided into shifts shall not work on the same shift.

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4. Employee conduct outside of working hours and working areas is generally regarded as private, so long as such conduct does not create conflict within the workplace. An exception to this is consensual relationships between supervisors and subordinates.
5. Employees who allow consensual relationships with other employees to adversely affect the workplace will be subject to the City's disciplinary policy, including counseling for minor problems up to and including potential termination. Failure to change behavior and maintain expected work responsibilities is deemed a serious disciplinary matter.

Reporting Requirement.

Notwithstanding any other provision in this policy, consensual relationships between employees where one individual is a supervisor, manager, or is employed in a sensitive or influential position over the other are inappropriate and are prohibited. These relationships, even if consensual, ultimately might result in conflict, tension or difficulties in the workplace. If such a relationship currently exists or develops, both individuals have a duty to immediately disclose the existence of the relationship to their appropriate department head. Such duty exists, even if the relationship ceases prior to reporting. Failure to disclose such a relationship is grounds for discipline. The City reserves the right to reassign or move employees to different work areas, positions, or employment status in order fulfill the objective of this policy. The City Manager will utilize his best efforts to reassign the affected employees shifts, hours of work, etc. in order to prevent a prohibited supervisory or influential situation from existing or continuing while still continuing to employ the affected employees. However, the City Manager retains all levels of discretion in order to address any human resource issues under this policy.

Conflicts Created by Consensual Relationship.

Where problems or potential risks resulting from the consensual relationship are identified, the department head will work with the individuals involved to consider options for resolution.

Complaint Reports.

If an employee, whether or not involved in a consensual relationship, believes that he or she has been or is being adversely affected by a consensual relationship between employees, the aggrieved employee must report such complaint to his or her immediate supervisor. It is recognized, however, that there may be occasions where the use of the established reporting chain of command may not be effective. If a complaint involves an immediate supervisor or other supervisor within the same department, the employee may report to the department head or a representative of the Department of Human Resources.

Investigation and Discipline.

1. Complaints concerning violations of this policy will be investigated by the department head or appropriate City official.
2. Disciplinary action will be handled under the City's Non-Discrimination and Anti-Harassment Policy. Disciplinary actions may include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and termination.
3. If, after investigating any complaint, it is determined that the complaint was not made in good faith or that a complainant has provided false information regarding the complaint,

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disciplinary action may be taken against the individual who filed the complaint or who gave the false information.

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ORDINANCE NO. 2020-009(O)

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS AMENDING THE BUILDING AND BUILDING CODE SECTION OF ORDINANCE 2019-702(O), THE ADOPTED FY 19/20 SCHEDULE OF FEES, BY AMENDING THE FEE AMOUNTS PROVIDED UNDER RESIDENTIAL AND COMMERCIAL PERMITS AND REPEALING ALL PRIOR FEES THAT ARE IN CONFLICT.

WHEREAS, the City of Windcrest has adopted numerous ordinances that provide for various fees and charges subject to change from time to time; and

WHEREAS, the Windcrest City Council has determined that the fees and charges specified herein are reasonable, necessary, fair, and designed to fund various services, activities, events, materials, and supplies to which they pertain; and

WHEREAS, the City Council has determined that the fees set forth herein will promote the health, safety, and welfare of the citizens of Windcrest; and

WHEREAS, this ordinance was adopted at a meeting of the Windcrest City Council held in strict compliance with the Texas Open Meeting Act at which a quorum of the City Council was present and voting.

I.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the Building and Building Code Section of Ordinance 2019-702(O), also known as the "Master Fee Schedule," is hereby amended as follows:

SECTION 1. New Rates Imposed.

The City Council hereby adopts the Master Fee Schedule attached as Exhibit "A" hereto and imposes the fees set forth therein upon the services, activities, events, materials, and supplies that are described therein. All prior fees for the services, activities, events, materials, and supplies from prior fee schedules that conflict with those listed in Exhibit "A" are hereby repealed. The newly adopted rates shall be collected by the City in accordance with the various City ordinances that more particularly describe each of the fees.

SECTION 2. Ordinances Amended.

Each City ordinance that originally provided a fee, charge, or fine that is listed on Exhibit "A" is hereby amended as shown on Exhibit "A."

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II.
CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of the Windcrest Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

III.
SEVERABILITY

That it is hereby declared to be the intent of the City Council of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

IV.
PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meetings at which this Ordinance was approved and adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government.

V.
EFFECTIVE DATE

This ordinance shall be effective upon passage and publication as required by state and local law.

VI.
READINGS

FIRST READING approved by the City Council of the City of Windcrest this the _____ day of _____, 2020.

SECOND READING DULY PASSED AND APPROVED, on the _____ day of _____, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

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CITY OF WINDCREST, TEXAS

_____
Dan Reese, Mayor

ATTEST:

_____
Rachel Dominguez, City Secretary

APPROVED:

_____
Ryan Henry, City Attorney

Pending CC Approval

EXHIBIT "A"
City of Windcrest
Master Fee Schedule
Ordinance 2019-702

ANIMAL CONTROL

Deposits	
Rabies Vaccination	$50.00
Sterilization:	
Male Cat	$75.00
Female Cat	$90.00
Male Dog	$75.00
Female Dog	$90.00
Pet Tags	
Sterilized and Microchipped	Free
Sterilized	$5.00
Not Sterilized	$25.00
Duplicate Pet Tag	$2.00
Reclamation	
1st time dog is reclaimed instance per resident, one dog	$0.00
2nd time dog is reclaimed instance per resident, per dog	$0.00
3rd time dog is reclaimed instance per resident, per dog in 12 month period	$75.00
4th time & subsequent times dog is reclaimed instance per resident, per dog	$200.00
Citations and Fines	
Animal Cruelty	Citation
Dog Off Leash	Citation
Improper Animal Transport	Citation
Inadequate Care and Shelter	Citation
Each instance per residence per cat outside not sterilized	$50.00
Rabies immunization for reclaimed animals without current proof of vaccination	$10.00
Fine for animals in violation of Windcrest Code of Ordinances, Sec. 6-59(b), requiring identification tags or microchip	

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	$25.00
Violation of Windcrest Code of Ordinances, Sec. 6-62, requiring leashing or containment of dogs when under owner's control but outside of owner's fenced premises (The owner will also pay all boarding fees)	$100.00
Dogs captured who have not been registered with the City, an additional (No proof of vaccination cost will be paid by owner)	$100.00

BUILDING AND BUILDING CODE

A. RESIDENTIAL PERMIT FEES

Building and Building Code	
New Construction	
Single-Family Residential	$950.00 plus $0.52 per square foot of living space
Curb Cuts/Driveways	$50.00
Certificate of Occupancy (non-refundable)	$100.00
Variance Request	$150.00
Moving Permit	$100.00
Demolition Permit	$200.00
Dumpster Permit	$100.00
Plan Review Fee	475.00
Revised Plan Review Fee	$100.00
Non-Compliance Fee (work started or performed without a permit)	$100.00 plus 2x the permit cost. Payment of the double fee shall not relieve any person from fully complying with the requirements of the Code in the execution of the work, nor from any other penalties prescribed herein.
Re-Inspection Fee (for failed inspections)	$75.00 per failed inspection
Failure to Correct Fee (Code violations)	$100.00
Residential Remodels/Maintenance	
Foundation	$5.00
Driveways	$5.00
Sidewalks	$5.00
Re-roofs	$5.00
Fences	$5.00

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Windows Installation/Replacement (Frame)	$50.00
Accessory Buildings	$5.00
Variance Request	~~$5.00~~ $35.00
Demolition Permit	$100.00
Dumpster Permit	$50.00
Plan Review Fee	$55.00
Revised Plan Review Fee	$55.00
Non-Compliance Fee (work started or performed without a permit)	$100.00 plus 2x the permit cost. Payment of the double fee shall not relieve any person from fully complying with the requirements of the Code in the execution of the work, nor from any other penalties prescribed herein.
Re-Inspection Fee (for failed inspections)	$75.00 per failed inspection
Failure to Correct Fee (Code violations)	$100.00
Plumbing Permits	
New Construction	$250.00
Remodel	$200.00
Issue Permit (Base Fee)	$50 +
Water Softener	$5.00
House Sewer	$5.00
Water Heater	$5.00
Water Piping	$5.00
Water Line	$5.00
Gas Test	$5.00
Lawn Irrigation/Sprinklers	$100.00
HVAC/Mechanical Permits	
New Construction	$200.00
Replace Unit	$100.00
A/C Air Duct Replacement	$150.00
Issue Permit (Base Fee)	$50.00
Electrical Permits	
New Construction	$200.00
Remodels	$150.00
Temporary Meter Loop	$50.00
Issue Permit (Base Fee)	$50.00
Fire Related Permits	
Fire Sprinkler System	

Pending CC Approval

Installation	$240.00
Repair	$180.00
Plan Review	$100.00
Fire Alarm	
Installation	$240.00
Repair	$180.00
Plan Review	$100.00
False Alarm Fees	
3 or less False Alarms within preceding 12 months	$0.00
4 or 5 False Alarms within preceding 12 months	$50.00
6 or 7 False Alarms within preceding 12 months	$75.00
8 or more False Alarms within preceding 12 months	$100.00
Miscellaneous Permits	
Swimming Pool/Hot Tub/Spa	$160.00, includes 3 feet wide deck. Electrical permit also required.
Decks, Gazebos, Pergolas, Pool Decks	$100.00

B. COMMERCIAL PERMIT FEE SCHEDULE

Permit Fees Related to Construction, Remodel, Installation, and Replacement	
$500 or less of total value	$75.00
$501 to $2,000 of total value	$75.00 + $3.05 for each hundred or fraction thereof over $500.00
$2,001 to $25,000 of total value	$75.00 + $14.00 for each thousand or fraction thereof over $2,000.00
$25,001 to $50,000 of total value	$391.75 + $10.10 for each thousand or fraction thereof over $25,000.00
$50,001 to $100,000 of total value	$643.75 + $7.00 for each thousand or fraction thereof over $50,000.00
$100,001 to $500,000 of total value	$993.75 + $5.60 for each thousand or fraction thereof over $100,000.00

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$500,001 to $1,000,000 of total value	$3,233.75 + $4.75 for each thousand or fraction thereof over $500,000.00
$1,000,000 and higher of total value	$5,608.75 + $3.65 for each thousand or fraction thereof over $1,000,000.00
Dumpster Permit	$100.00
Plan Review Fee	$475.00
Revised Plan Review Fee	$100.00
Variance Request	$150.00
Non-Compliance Fee (work started or performed without a permit)	$100.00 plus 2x the permit cost. Payment of the double fee shall not relieve any person from fully complying with the requirements of the Code in the execution of the work, nor from any other penalties prescribed herein.
Re-Inspection Fee (for failed inspections)	$75.00 per failed inspection
Failure to Correct Fee (Code violations)	$100.00
Plumbing Permit	$500.00
Repair/Replacement/Remodel	$50.00
HVAC/Mechanical Permit	$400.00
Repair/Replacement/Remodel	$50.00
Electrical Permit	$400.00
Repair/Replacement/Remodel	$50.00
Temporary Meter Loop	$50.00

CHARGES FOR PUBLIC INFORMATION REQUESTS

Materials onto Which Information is Copied	
Standard paper copy	$0.10
Nonstandard copy	
Diskette	$1.00
Magnetic tape	Actual cost
Data cartridge	Actual cost
Tape cartridge	Actual cost
Rewritable CD	$1.00
Non-rewritable CD	$1.00
Digital Video Disc (DVD)	$1.00

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JAZ drive	Actual cost
Other electronic media	Actual cost
VHS video cassette	$2.50
Audio cassette	$1.00
Oversize paper copy (e.g., 11x17, greenbar, etc . . .)	$0.50

CIVIC CENTER FEES

Resident	
Deposit	$100.00 Refundable after event
Rental	$50.00 per hour minimum 4 hours rental
Cleaning	$100.00
Sound system	$100.00
*Security	$35.00 per hour
Optional set up fee by Civic Center Tech	$25.00 per hour (this can be deducted from deposit)
Non-Resident	
Deposit	$300.00 Refundable after event
Facility use, kitchen use, audio system use, and clean-up – 4 hours minimum Additional hours	$1,500.00 $250.00 per hour
*Security	$35.00 per hour
Schools and Churches	
Resident rate	
Civic Clubs	
Usage fee (per meeting)	$25.00 per meeting
Usage fee (per banquet/fundraising event)	$50.00 for banquet/fundraiser event
No cleaning fee	
*Security	$35.00

*Security fee is paid only when an event will be serving alcohol.

GARAGE AND ESTATE SALES

Pending CC Approval

Garage Sale Permit	$10.00
Estate Sale Permit	$25.00

NOTARY FEES

Acknowledgements	
Taking the acknowledgement or proof of any deed or other instrument in writing, for registration, including certificate and seal:	$0.00
(1) for the first signature	$0.00
(2) for each additional signature	$0.00
Administering an oath or affirmation with certificate and seal	$0.00
All certificates under seal not otherwise provided for	$0.00
Copies of all records and papers in the Notary Public's Office, per page	$0.00
Taking the depositions of witnesses, per each 100 words	$0.00
Swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition	$0.00
Protests	
Protesting a bill or for non-acceptance or non-payment, register & seal	$0.00
Each notice of protest	$0.00
Certificate and seal to a protest	$0.00
Protesting in all other cases	$0.00
Miscellaneous	
All other notarial acts not provided for	$0.00

SWIMMING POOL FEES

Daily Fee	$3.00
Pool Passes	
Resident	
Single	$60.00
Couple	$90.00

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Family	$120.00
Swim lessons, 2x/week, 1-hour daily sessions	$40.00
Non-Resident	
Single	$125.00
Couple	$145.00
Family	$170.00
Swim lessons, 2x/week, 1-hour daily sessions	$50.00
Swim Team	
1 participant in family	$86.00
Each additional member of the family	$76.00
Pool Parties	
Party time length: minimum of 3 hours	
10-25 guests Additional hours (per hour)	$100.00 $30.00
26-50 guests Additional hours (per hour)	$125.00 $30.00
51-75 guests Additional hours (per hour)	$197.50 $37.50
76-100 guests Additional hours (per hour)	$245.00 $45.00
Camps, Daycares, Other Organizations	
Per person	

VEHICLE STORAGE FEES

Deposit	$50.00
Small (size 8'x15')	$240.00
Medium (size 10'x20')	$360.00
Large (size 12'x33')	$480.00
Large (size 12'x33') with electricity	$600.00
X-Large (size 12'x40')	$624.00
X-Large (size 12'x40') with electricity	$744.00

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Historical Data – FY 18/19 Residential Permit Fees

Building and Building Code

Residential Remodels

Foundation	$5.00
Driveways	$5.00
Sidewalks	$5.00
Re-roofs	$5.00
Fences	$5.00
Assessory Buildings	$5.00
Other remodel not listed below	$5.00

Building Permit Fees

$500 or less of total value of construction	$24
$501 to $2,000 of total value of construction	$23.50 + $3.05 for each hundred or fraction thereof over $500.00
$2,001 to $25,000 of total value of construction	$69.25 + $14.00 for each thousand or fraction thereof over $2,000.00
$25,001 to $50,000 of total value of construction	$391.75 + $10.10 for each thousand or fraction thereof over $25,000.00
$50,001 to $100,000 of total value of construction	$643.75 + $7.00 for each thousand or fraction thereof over $50,000.00
$100,001 to $500,000 of total value of construction	$993.75 + $5.60 for each thousand or fraction thereof over $100,000.00
$500,001 to $1,000,000 of total value of construction	$3,233.75 + $4.75 for each thousand or fraction thereof over $500,000.00
$1,000,000 and higher of total value of construction	$5,608.75 + $3.65 for each thousand or fraction thereof over $1,000,000.00

Fees were eliminated in accordance with new legislation.

Historical Data – Permit Base Fee

FY 18/19	FY 19/20	Proposed Amended Fee FY 19/20
$30 +	$0	$50

Proposed Amended Permit Base Fee

	Balcones Heights	Alamo Heights	Schertz	Adopted FY18/19	Adopted FY19/20	Proposed Amended Fees FY19/20	Inspection Fee Paid by City
Plumbing					$0	$50	$50
Residential Issue Permit (Base Fee)	$50 + 3% of Value	Tiered Fee x SQ Ft	$50	$30 +	$0	$50 +	$50
Commercial Repair/Replacement/Remodel	$50 + 3% of Value	Tiered Fee x SQ Ft	$50	$30 +	$0	$50	$50
Electrical							
Temporary Meter Loop	$75	Tiered Fee x SQ Ft	$50	-	$0	$50	$50
Residential Issue Permit (Base Fee)	$50 + 3% of Value	Tiered Fee x SQ Ft	$50	$30 +	$0	$50	$50
Commercial Repair/Replacement/Remodel	$50 + 3% of Value	Tiered Fee x SQ Ft	$50	$30 +	$0	$50	$50
HVAC/Mechanical							
Residential Issue Permit (Base Fee)	$50 + 3% of Value	Tiered Fee x SQ Ft	$50	$30 +	$0	$50	$50
Commercial Repair/Replacement/Remodel	$50 + 3% of Value	Tiered Fee x SQ Ft	$50	$30 +	$0	$50	$50
Windows Insulation/Replacement Frame	$75 for the 1st + $5 for each additional	$150	$150	$5	$0	$50	$50
Residential Variance Hearing Request - Set by Ordinance# 58, 8-14-1967	N/A	N/A	N/A	$35	$5	$35	N/A

City is currently absorbing the inspection fee cost.

ORDINANCE NO. 2020-010(O)

AN ORDINANCE GRANTING AN EXTENSION ON THE TERMINATION OF A SPECIAL USE PERMIT TO ALLOW A CAR WASH, A BUSINESS NOT SPECIFICALLY LISTED IN THE USE REGULATIONS OF ARTICLE III – DISTRICTS, GENERAL ZONING, DIVISION 5, SECTION 113-190 USE REGULATIONS OF THE CITY OF WINDCREST'S CODE OF ORDINANCES

WHEREAS, the City Council of Windcrest has the authority to grant a special use permit and did so on September 20th, 2019, by the second reading of ordinance 2019-712(O) on a special use permit for the car wash; and

WHEREAS, the City Council of Windcrest has determined that the 180-day deadline for application of a permit will expire and no permits have been applied for and has the authority to grant an extension on termination of a special use permit; and

WHEREAS, the City Council of Windcrest has determined that and extension on that special use permit is reasonable and approves such extension according to Chapter 113, Section 326; and

WHEREAS, the City Council desires that the City's appearance remain well kept, healthy, and safe for public use; and

WHEREAS, the City Council has determined that certain businesses are beneficial to the commerce and overall betterment of the City;

WHEREAS, the City Council finds that granting an extension on the termination of the special use permit for the car wash does not cause any detriment to the City's appearance and the safety of citizens, including both real and personal property; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that this ordinance grants an extension on the termination of the special use permit pursuant Chapter 113-326 as long as the designated work shall not exceed 365 days after the date of approval for the special use permit to WCW Montgomery, LLC, for construction of a car wash in a B-1 zoning district, Neighborhood Business District, at 6001 Montgomery, Windcrest, Texas as an authorized use.

Pending CC Approval

I.

CUMULATIVE CLAUSE

That this Ordinance shall be cumulative of all provisions of the City of Windcrest except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

II.
SEVERABILITY

That it is hereby declared to be the intent of the City of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

III.
PROPER NOTICE AND MEETING

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

IV.
EFFECTIVE DATE

This ordinance shall be effective upon passage and publication as required by state and local law. As an amendment to the City's Code of Ordinances, this ordinance is effective immediately upon passage. The criminal penalties are effective upon the proper publication requirements being accomplished under state law.

Pending CC Approval

DULY PASSED ON FIRST READING, on the 16th day of March, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

DULY PASSED AND APPROVED, on the day of , 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

_____

Dan Reese, Mayor

ATTEST:

_____

Rachel C. Dominguez, City Secretary

APPROVED:

_____

Ryan S. Henry, City Attorney

Pending CC Approval

Watershed Car Wash

9237 E Via De Ventura
Suite 110
Scottsdale, AZ 85258

March 10, 2020

Mr. Rafael Castillo Jr
City Manager
City of Windcrest
8607 Midcrown Drive
Windcrest, TX 78239

RE: Watershed Car Wash Request for SUP and Setback Variance Extension
6001 Montgomery Drive, Windcrest, TX 78239

Dear Mr. Castillo;

Pursuant to our recent email communication with you we are in need of an extension for our Carwash SUP and Setback Variance. It was approved by the City Council on September 20, 2019 and we understand that an extension is required if we have not started Plan Check or Construction before the 180-day period comes to an end.

We needed to hire a new Architect and Subconsultants during the delay as our original Architect became too busy to take on additional work. We are now well into our drawings and anticipate that they will be complete in the first or second week of April at which time we will be submitting them for Plan Check. There are no revisions to the site plan that you approved in our original submittal and approval.

Therefore, we are formally asking for a six-month extension of the SUP and Setback Variance pursuant to your ordinance and further ask that you take this to the City Council at their next scheduled meeting.

We look forward to serving the community for many years to come.

Sincerely.

Craig McDowell
WCW Montgomery LLC

ORDINANCE NO. 2020-011(O)

AN ORDINANCE AMENDING CHAPTER 109 – SIGNS, SECTION 109-13 TEMPORARY SIGNS IN B-1 AND B-2 AND SECTION 109-15 SIGNS AUTHORIZED IN THE B-1 AND B-2 ZONING DISTRICTS TO INCLUDE B-3 ZONING DISTRICT

WHEREAS, the City of Windcrest created B-3 zoning district; and

WHEREAS, the City of Windcrest had existing B-1 and B-2 zoning districts that were included in the sign chapter regarding temporary signs and authorized signs in said business districts; and

WHEREAS, the City of Windcrest B-3 zoning ordinance under its use regulations allows any use under B-2 Business District; and

WHEREAS, the City of Windcrest finds the same sign regulations that apply for B-1 and B-2 should include the B-3 district; and

WHEREAS, the Windcrest City Council finds this ordinance is necessary in order for the City's sign ordinance to be applied to those business zones.

I.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Chapter 109, Section 109-13 is amended as indicated with cross-through text being deletions and underlined text being additions and shall read as follows:

Sec. 109-13. - Temporary signs in B-1, B-2 and B-3 zoning districts.

The following apply to temporary signs in B-1, B-2 and B-3 zoning districts:

(1) *Lease or sale of property.* Permits may be issued, upon application, by the building official, for one sign not exceeding 32 square feet in area and pertaining to the lease or sale of a building, premises, or lot, and not to exceed nine months after the date of approval of the permit, for temporary use in B-1, B-2 and B-3 zoning districts of the city; provided the sign is immediately removed upon the lease or sale of such building, premises or lot.

(2) *Construction.* Permits may be issued upon application by the building official for signs relating to significant business construction activities.

a. Such signs shall be limited to 32 square feet each in area and limited in subject to:

1. The principle contractor for the construction;

2. The architect for the construction; and

3. The future business to be located on the construction site.

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b. The number of signs at each construction site shall be limited to one contractor sign, one architect sign and one identification sign for each business to be located on the site. Contractor and architect signs shall be removed within one week following final inspection approval. Business signs shall be removed upon installation of permanent signs.

(3) *New business.* A temporary sign permit may be issued for a temporary sign announcing the opening of a newly established commercial activity. This permit is limited to one per newly established commercial activity, and the sign shall be removed on or before the expiration of 30 days after the issuance of the permit. This sign may not exceed 32 square feet or a mobile sign of similar size as approved by the building official. Signs mounted on or attached to a motor vehicle and advertising a business located nearby are specifically prohibited unless subject vehicle is operational, properly registered, inspected and relocated at least every 24 hours. Should any of the provisions pertaining to temporary signs be violated, in addition to the penalties set out in the city zoning ordinance, the city may remove and impound such sign upon three days' notice to the violator (and to the owner of the sign if they are different) and hold it for the reasonable storage and removal costs, to be levied against the violator.

(4) *Seasonal signs.* Temporary sign permits may be issued for holiday or franchise activities. Generally such permits shall be limited to 30 days per calendar quarter.

(5) *Inflatable devices.* Inflatable devices may be used as seasonal signs as long as the following additional provisions are complied with:

a. The inflatable devices shall be spherical in shape or conforming to a logo, mascot, or product associated with the business, or conforming to recognized United States holidays;

b. An inflatable device shall not exceed a height of 30 feet above the building to which it is anchored;

c. The entity installing and maintaining the inflatable device shall provide proof of a minimum of $300,000.00 liability insurance;

d. Applications for the use of such inflatable devices shall be submitted to the permits office for review by the building official or city manager for review and action; and

e. Each permit approved shall be limited to 30 days.

(6) *Restrictions.* The height of temporary signs, other than inflatable devices, from the ground to the top of sign shall not exceed eight feet. Signs shall not be placed on rights-of-way or in areas that obstruct the view of motorists. Signs placed on corner lots shall not be placed in the triangular area formed by the street curblines and a line connecting them at points 25 feet from the intersection of the curblines.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Chapter 109, Section 109-15 is amended as indicated with cross-through text being deletions and underlined text being additions and shall read as follows:

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Sec. 109-15. - Signs authorized in the B-1, B-2 and B-3 zoning districts.

(a) *General provisions.* The provisions outlined herein detail the advertising signs which are authorized for use in the B-1, B-2 and B-3 zoning districts, the limitations upon the size, location, height, lighting, and appearance of authorized signs, and the construction specifications required for such signs.

(b) *Individual business signs.* Individual business establishments may submit building permit applications in accordance with the provisions of this chapter; provided, however, all applications shall be considered in the light of the exposure now enjoyed by the premises of the applicant.

(c) *Signs attached to buildings.* One or more signs, when the same are permanently attached to a building and advertise only identity, services, articles, or products which are offered within the building to which such sign is attached, shall be permitted. (Illustrations of all proposed external advertising signs, drawn to scale as to size and placement, and with reasonable accurate detail, shall be submitted in duplicate with a request for a building permit.)

(d) *Freestanding signs.* Pursuant to section 109-8, applications for building permits for freestanding signs shall be prepared by the applicant with two copies of applicable plans and specifications. Upon the request of the city inspector, plans and specifications shall be submitted to the building permit officer, prepared by a state registered engineer, bearing his seal and a signature, prepared no more than 30 days prior to the application for the permit and attesting that the plans and specifications were prepared in accordance with sound engineering principles, Uniform Sign Code of the ICBO, current practices, and state of the art. Freestanding signs shall be designed and constructed in accordance with the following specifications:

(1) *Height and width.* Specifications differ according to location:

a. *Within I-35 Corridor.* Within the I-35 Corridor, the height and width of freestanding signs is not restricted but will be limited to the need of the individual businesses and the compatibility of that need with the surrounding area. Height and width must be commensurate with each other, and meet or exceed the wind-load requirements established herein.

b. *Outside the I-35 Corridor.*

1. *Pole signs.* Permitted for businesses with limited visibility and not represented on a multi-tenant sign. Maximum height shall not exceed 35 feet. Maximum width shall not exceed 15 feet.

2. *Monument signs.* Monument signs of seven feet or less in height and 70 square feet or less in area are permitted for businesses with no other sign.

3. *Multi-tenant signs.* A group of business establishments may be permitted to erect, construct, or site a sign if they are under a common roof and/or collectively could be identified as a shopping center or shopping mall, multi-unit or multi-story professional building, without which singularly or collectively, their identity to the general public could be considered as non-existent or insignificant. There shall be a minimum of four separate and distinct business enterprises in the unit to qualify for a multi-tenant sign.

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(i) *Advertising space.* A maximum of 48 inches in height and a maximum of 72 inches in width may be allocated to each business entity which elects to be represented on the multi-tenant sign.

(ii) *General apppearance.* The overall appearance of a multi-tenant sign shall reflect the motif of the center in which the advertisers are located. The address of the center will be reflected on the area of sign assigned to the center or anchor business. The sign shall include all addresses assigned to the center. (Example: 5000-5024.)

(2) *Foundation.* The foundation shall be constructed so as to adequately support the structure above it, and the area at the base of the sign shall be landscaped and irrigated.

(3) *Ground clearance.* Pole signs and multi-tenant signs shall have a minimum of nine feet clearance between the bottom of the sign and the surrounding ground.

(4) *Lighting.* Exterior or interior lights may be used to illuminate signs.

(5) *Wind-load.* The sign and foundation shall be designed for a wind-load factor of 120 miles per hour or pounds per square foot as published by the state department of transportation.

(e) *Post construction certification.* Within ten days after the installation of a freestanding sign, the applicant shall submit to the building permit officer a letter from an engineer and/or architect currently licensed/registered by the state, wherein he certifies that the sign was built substantially in accordance with the plans and specifications approved by the city.

(f) *Schematic illustration.* In accordance with section 109-8, one copy of a schematic rendering or illustration, made in the form referenced in subsection (g) of this section, shall be submitted with the building permit application for a freestanding sign.

(g) *Multi-tenant (group of business establishments).* See diagram on file at city hall.

II.
CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of the Windcrest Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

III.
SEVERABILITY

That it is hereby declared to be the intent of the City Council of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

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IV.
PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meetings at which this Ordinance was approved and adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government.

V.
EFFECTIVE DATE

This ordinance shall be effective upon passage and publication as required by state and local law.

VI.
READINGS

FIRST READING approved by the City Council of the City of Windcrest this the _____ day of _____, 2020.

SECOND READING DULY PASSED AND APPROVED, on the _____ day of _____, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

_____
Dan Reese, Mayor

ATTEST:

_____
Rachel Dominguez, City Secretary

APPROVED:

_____
Ryan Henry, City Attorney

PENDING CC APPROVAL

WINDCREST CITY COUNCIL MEMBER FRANK ARCHULETA, PLACE 4
AGENDA ITEM SUBMISSION

DEPARTMENT: CCM **REQUESTOR:** Frank Archuleta

DEPARTMENT HEAD: NA **DATE: 20 March 2020**

IMPACTED DEPARTMENT/'S: NA:

SUMMARY:
Mandated Investment Policy annual review.

BACKGROUND INFORMATION:

This a systemic annual review process mandated by the City of Windcrest Investment Policy.

ISSUE:

That the Investment Committee should review and discuss possible revisions or updates to the 2019 Investment Policy

ALTERNATIVES:
NA

FISCAL IMPACT:

This is administrative action.

RECOMMENDATION:

That City Council members be given a copy of the Investment policy for review.

Agenda item:

City Council will review, discuss, and may take action to for annual approval the City of Windcrest Investment Policy. By Investment Committee member Frank Archuleta

CITY COUNCIL MEMBER PLACE 4

DEPARTMENT: CCM **REQUESTOR:** Frank Archuleta

DEPARTMENT HEAD: NA **DATE: 20 March 2020**

IMPACTED DEPARTMENT/'S: NA:

SUMMARY:
That on 4 February 2020, City Council voted to hire seven (7) new full-time positions. (Note: CCM Archuleta voted against both Ordinances)

BACKGROUND INFORMATION:

The Finance Officer stated these actions would NOT result in a rise in Taxes for the citizens of Windcrest

That CCM Archuleta requested action on these two ordinances be delayed till the June 2020 Budget process.

That the new hires where partially funded by a windfall in sales tax, and funds were transferred from the WCCP account to General Revenue to support the funding.

It should be noted that approximately $200,000 was transfer from IBC Bank to the general fund. Funds were held in reserve as part of the Ronnie Cain Legal Issue. The liability period has expired, resulting another financial windfall for the city.

That on 16 March 2020, in the City Council Meeting it was indicated that city revenue increased appropriately one (1) million dollars. The city of Windcrest has about a $7 million budget, this additional million dollars is certainly a great news.

That the current Corona Virus Pandemic may significantly reduce sales tax revenue, reflecting on the City, EDC and WCCP budgets.

That there is a Tax Dispute with City of San Antonio, with known debt to be incurred by City of Windcrest for a determined time-period. The Tax Dispute has resulted in a rise in legal fees to the city.

ISSUE:
That based on the financial impact of Corona Virus, City Council should revisit this issue as soon as possible. That a special council meeting should be convened.

CITY COUNCIL MEMBER PLACE 4

ALTERNATIVES:

- Terminate both Ordinances
- Delay Ordinances till the June Budget 2020 process
- Conduct a partial hiring with budget adjustments as directed by a fiscal analysis
- Continue hiring process, however; hire when the impact of financial distress is fully known
- Continue hiring with understanding we may need to use restricted funds and/or a raise Taxes.

FISCAL IMPACT:

Currently, it is unknown what the full impact of the Corona Virus will have on the City Budget. That it is incumbent upon city council to give pause, until a financial analysis is completed.

RECOMMENDATION:

A full impact analysis should be accomplished to ascertain the most appropriate conservative strategy is selected.

Agenda item:

City Council will review, discuss, and may take actions on fiscal constraints resulting from the Corona Virus Pandemic. By CCM Frank Archuleta

Texas Nepotism Laws Made Easy

2016 Editor

Zindia Thomas
Assistant General Counsel
Texas Municipal League
www.tml.org

Updated July 2016

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Texas Nepotism Laws Made Easy

Nepotism laws refer to limitations on governmental entities' authority to hire certain close relatives of public officials. The following questions and answers provide a layperson's explanation of state nepotism laws as they apply to local government officials and are intended to provide general guidance on the issues. Local government officials should consult with their legal counsel regarding the application of the law to the facts of each particular situation.

What is nepotism?

Nepotism is the hiring of family or relatives. Anti-nepotism laws prohibit a governmental entity from hiring certain close relatives of a public official. The nepotism laws are contained in chapter 573 of the Government Code. The nepotism statutes prohibit a public official from appointing, confirming the appointment of, or voting for the appointment or confirmation of the appointment of a close relative to a paid public position.[1] A close relative under nepotism laws is someone who is related to the official within a prohibited degree by consanguinity (relationship by blood) or a prohibited degree by affinity (relationship by marriage).[2]

What types of local government officials are subject to the nepotism laws?

The nepotism statutes apply to any public official[3] who is the final hiring authority or is a member of the governing body that has final hiring authority.[4] If the governing body is the hiring authority, then nepotism limitations would apply to close relatives of any members of the governing body. However, if an employee, such as the city manager, possesses the final hiring authority, then the nepotism limitations relate to persons who are close relatives of that employee. It should be noted that the determination of who is the hiring authority depends on whether an officer may exercise control over hiring decisions.[5] For example, a governing body or public employee would still be considered the hiring authority if either may exercise control over a hiring decision, even though such authority may have been delegated to another individual or entity. See question 13 for further details.

What types of actions are generally prohibited under the nepotism law?

The nepotism statutes prohibit a public official from appointing, confirming the appointment of, or votingfor the appointment or confirmation of the appointment of a close relative of certain public officials to a paid public position or employment.[6]

What relatives of a public official are covered by the statutory limitations on relationships by consanguinity (blood)?

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1 Tex. Gov't Code Ann. § 573.041.

2 *Id.* § 573.002.

3 *Id.* § 573.001(3). ("Public official means: (A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; (B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or (C) a judge of a court created by or under a statute of this state.")

4 *Id.* § 573.041.

5 *Pena v. Rio Grande City Consol. Indep. Sch. Dist*. 616 S.W.2d 658, 659 (Tex. Civ. App.–Eastland 1981, no writ); Op. Tex. Att'y Gen. Nos. GA-226 (2004); GA-73 (2003) at 3; JC-336 (2001) at 4; DM-2 (1991) at 1.

6 Tex. Gov't Code Ann. § 573.041

A public official may not vote on the appointment of an individual who is related to the official within the first, second, or third degree by consanguinity (relationships by blood).[7] Such relationships occur if the official and the potential hire share either a common ancestry or where one is the descendant of the other.[8] The following relatives of a public official would fall within the prohibited first, second or third degree of consanguinity:[9]

Relatives related within the first degree by consanguinity include a public official's mother, father, sons and daughters.

Relatives related within the second degree by consanguinity include a public official's brothers, sisters, grandmothers, grandfathers, grandsons and granddaughters.

Relatives related within the third degree by consanguinity include a public official's great-grandfathers, great-grandmothers, aunts, uncles, nephews, nieces, great-grandsons and great-granddaughters.

A public official's adopted child is considered to be the child of the public official under the nepotism laws.[10]

What relationships by affinity (marriage) are covered by the statutory limitations?

A public official is prohibited from voting on the appointment of an individual who is related to the official within the first or second degree by affinity (marriage).[11] Such relationships occur if the official and the potential hire are related to each other by marrying each other or the spouse of one of the individuals is related blood (consanguinity) to the other individual.[12] The following relatives of a public official would fall within the prohibited first or second degree of affinity:[13]

Relatives related within the first degree by affinity include a public official's husband, wife, father-in-law, mother-in-law, sons-in-law, daughters-in-law, stepsons and stepdaughters.

Relatives related within the second degree include a public official's sisters-in-law (brother's spouse or spouse's sister), brothers-in-law (sister's spouse or spouse's brother), spouse's grandmothers, spouse's grandfathers, spouse's granddaughters, and spouse's grandsons.

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7 *Id.* § 573.002.
8 *Id.* § 573.022.
9 *Id.* § 573.023(c)(1) - (3).
10 *Id.* § 573.022(b).
11 *Id.* § 573.002.
12 *Id.* § 573.024(a).
13 *Id.* § 573.025.

What happens if it takes two marriages to establish the relationship with the public official?

If it takes two marriages to establish a relationship between the public official and the proposed hire, the nepotism laws do not apply.[14] For example, the attorney general concluded that a public entity was not prohibited from hiring the brother-in-law of a public official's wife.[15] In this situation, it takes two marriages to establish the relationship because the public official is related by marriage to his wife, who is related to her brother-in-law by marriage. However, the nepotism laws would prevent a public official from hiring his sister's husband (brother-in-law). In this case, only one marriage separates the two individuals; therefore, nepotism provisions would apply.

What actions must a public official take if he or she has a nepotism conflict?

If a governing body member has a nepotism conflict, neither the governing body nor its members may employ or contract with a close relative of that member, unless there is a specific statutory exception allowing such an action.[16] Similarly, if a city manager or other officer who has final hiring authority has a nepotism conflict, the governing body may not appoint or vote for the individual who is the close relative of that city officer unless there is a specific statutory, or possibly a city charter exception that allows such an action.[17] State law does not require any specific procedural steps or documentation of a nepotism conflict.

Do the nepotism laws apply to cities with a population of less than 200?

No. The nepotism statute does not apply to cities with fewer than 200 people.[18] However, a city may adopt local prohibitions in its home-rule charter, ethics ordinances or personnel policies that would prevent hiring a close relative.

May a close relative be appointed to an unpaid position?

Yes. The nepotism laws apply to paid positions only. A paid position is one that is directly or indirectly *compensated* from public funds or fees.[19] If the individual holding the position is merely reimbursed for actual expenses, it is not a paid position.

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14 Op. Tex. Att'y Gen. Nos. O-119 (1939); O-7424 (1946); Tex. Att'y Gen. LO-88-121.

15 Tex. Att'y Gen. LO-88-121.

16 Tex. Gov't Code Ann. §§ 573.041, .061. *See also* Op. Tex. Att'y Gen. No. JC-184 (2000) at 2 (A municipal utility district's action in employing the spouse of a board member in a paid position violated section 573.041 of the Government Code, even though the related board member abstained from participation in the action).

17 Tex. Gov't Code Ann. §§ 573.041 , .061.

18 *Id.* § 573.061(7).

19 *Id.* § 573.041; Tex. Att'y Gen. LO-96-10.

May other members of a governing body vote to hire a person who is a close relative of a public official if the official with the nepotism conflict abstains from deliberating and/or voting?

No. Other members of the governing body may not vote to hire a person who is a close relative of a public official. The abstention of a public official with the nepotism conflict does not relieve the remaining members from the prohibition against hiring a close relative of another public official.[20]

Who is considered the hiring authority for purposes of potential nepotism violations?

For nepotism purposes, the hiring authority is the individual or entity that may exercise control over the hiring decision.[21] If the governing body is the hiring authority, then nepotism limitations would apply to close relatives of any of the members of the governing body. If an employee, such as the city manager, possesses the hiring authority, then the members of the governing body may not hire persons who are close relatives of that employee.

May a city council or a city manager delegate the power to hire to avoid a nepotism problem?

The "applicability of the nepotism law depends on whether an officer or the governing body may exercise control over hiring decisions."[22] A city council would still be considered the hiring authority if it could exercise control over a hiring decision, even though it delegated the hiring decision to another person or entity by ordinance. In one instance, the attorney general reviewed a city council's attempt, by city ordinance, to delegate the hiring authority for city staff to a city administrator. The attorney general concluded that this delegation did not relieve the members of the city council from being considered the hiring authority for purposes of the nepotism statutes.[23]

Texas law distinguishes between the power of a home-rule city to delegate hiring authority through its city charter versus a delegation that is done by city ordinance.[24] If the delegation of the hiring authority is contained in the city charter, it is recognized for nepotism purposes as a valid delegation of the hiring power. However, if a city simply delegates the hiring authority by ordinance, it would not, for nepotism purposes, change who was considered the hiring authority.[25] This conclusion is based on the fact that the council could amend or repeal an ordinance at any time, while it would take an election to amend a city charter. For example, the attorney general has concluded that the nepotism statutes did not preclude a city from hiring a relative of a city council member where the city charter provided that the city manager was the

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20 Op. Tex. Att'y Gen. No. JC-184 (2000).

21 *Pena*, 616 S.W.2d at 659; Op. Tex. Att'y Gen. Nos. GA-415 (2006); GA-226 (2004); GA-73 (2003) at 3; JC-336 (2001) at 4; DM-2 (1991) at 1.

22 Op. Tex. Att'y Gen. No. DM-2 (1991) at 1.

23 *Id.*

24 *Id.*

25 *Id.*. *See* Op. Tex. Att'y Gen. No. JC-336 (2001).

final hiring authority and the council members reserved no authority to participate in the hiring decision.[26]

If a city has a city manager form of government, may the city manager hire close relatives of city council members?

If a city has a city manager form of government, the city manager may hire close relatives of city council members if the city manager alone possesses the hiring authority. See question 12 above. Such relatives would include persons who are related to city council members within the first, second or third degree by consanguinity or within the first or second degree by affinity.

If a city has a city manager form of government, may the city manager hire his or her own close relatives?

If a city has a city manager form of government and the city manager alone possesses the hiring authority, the city manager may not hire his or her own close relatives. See question 13 above. Such relatives would include persons who are related to the city manager within the first, second or third degree by consanguinity or within the first or second degree by affinity.

If a city has a city administrator but has never adopted a city manager form of government, may the city administrator hire close relatives of city council members?

No. If a city has a city administrator, but has never adopted a city manager form of government, the city administrator will generally be unable to hire close relatives of city council members. In an attorney general opinion, the attorney general's office stated the "applicability of the nepotism law depends on whether an officer *may* exercise control over hiring decisions."[27] Since the city council usually exercises control over the hiring decision by a city administrator, the nepotism statute would usually not prevent the city administrator from hiring his or her close relatives.

If a city has a city administrator but has never adopted a city manager form of government, may the city administrator hire his or her own close relatives?

Yes. If a city has a city administrator, but has never adopted a city manager form of government, the city administrator will generally be able to hire his or her own close relatives. Since the city council usually exercises control over the hiring decision by a city administrator, the nepotism laws would not prevent the city from hiring the administrator's own close relatives. If a city administrator did have final hiring authority, the nepotism laws would prevent the hiring of the administrator's close relatives.

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[26] Op. Tex. Att'y Gen. Nos. GA-595 (2008); O-5274 (1943). However, if the city charter reserves a role for the city council such as consultation, the nepotism restrictions still apply. Op. Tex. Att'y Gen. No. GA-226 (2004) at 3. For additional discussion of the delegation issue in regard to school district boards and superintendents, *see* Op. Tex. Att'y Gen. Nos. GA-123 (2003); GA-177 (2004).

[27] Op. Tex. Att'y Gen. No. DM-2 (1991).

Do the nepotism laws apply to the appointment or hiring of an independent contractor by the governing body if the contractor is a close relative of an official?

Yes. The nepotism laws prohibit the appointment or hiring of an independent contractor by the governing body if the contractor is a close relative of one of the members of the governing body. Nonetheless, the nepotism prohibition would not prohibit the governing body from executing a contract with a corporation that employs the close relative unless the corporation is in actuality the "alter ego" of an individual who is closely related to an official.[28]

Do the nepotism laws prohibit close relatives from being hired to work together for the same entity?

The nepotism laws do not generally prohibit close relatives from being hired to work together for the same entity. The nepotism laws do not apply unless either relative has the final hiring authority like a public official. Local governmental entities might prohibit such arrangements by charter, ordinance or policy.

Do the nepotism laws prohibit close relatives from being hired to work together within the same local government department?

The nepotism laws do not generally prohibit close relatives from being hired to work together within the same local entity department. The nepotism laws do not apply unless either relative has the final hiring authority like a public official. Local governmental entities might prohibit such arrangements by charter, ordinance or policy.

Do the nepotism laws apply to the appointment of a public official's close relatives to serve as board or commission members?

The nepotism laws prohibit the appointment of a public official's close relatives to serve as a board or commission member only if the position is a paid position.[29] The term "position" is defined to include "an office, clerkship, employment, or duty."[30] If the local entity paid such appointees, nepotism statutes would become applicable.

Do the nepotism laws apply to the appointment of a public official's close relatives to serve as members of purely advisory committees?

No. Generally, the nepotism law would not apply to the appointment of an official's close relatives to serve as members of purely advisory committees if the members are not compensated. The nepotism law governs the hiring or appointment of an individual to a position that is directly or indirectly compensated from public funds.[31] The term "position" is defined to include "an office, clerkship, employment, or duty."[32] Since an advisory committee is typically

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28 Tex. Att'y Gen. LO-88-44.
29 Tex. Gov't Code Ann. § 573.041.
30 *Id.* § 573.001(2).
31 *Id.* § 573.041.
32 *Id.* § 573.001(2).

not a paid position, the nepotism laws would not apply. However, if the positions were paid positions, the nepotism laws would prevent the appointment of officials' close relatives to purely advisory committees.[33]

Do the nepotism laws apply to the appointment of close relatives of an official to unpaid volunteer positions?

No. The nepotism laws do not apply to the appointment of close relatives of a public official to unpaid volunteer positions. The nepotism law applies only to paid positions.

Do the nepotism laws prohibit close relatives from being elected to serve together on the same governing body?

No. The nepotism laws do not prohibit close relatives from being elected to serve together on the same governing body. The nepotism laws limit actions only by the governing body or the entity's employee with final hiring authority. They do not limit the ability of the electorate to elect close relatives to the same governing body.

Do the nepotism laws prohibit close relatives of a member of a governing body from being appointed by that body to serve on the governing body?

The nepotism laws would prohibit close relatives of a member of a governing body from being appointed by that body to serve on the governing body, but only if the members of the governing body are paid. While the electorate could elect close relatives to the same governing body, the governing body itself could not appoint close relatives of its members to a paid office or employment.

Do the nepotism laws prohibit a person from running for a governing body if the candidate has a close relative who is currently a public employee?

No. The nepotism laws do not prohibit a person from running for a governing body if the candidate has a close relative who is currently an employee of the local entity. Nonetheless, the nepotism law may force the employee to resign if the candidate is elected, depending on how long the employee has worked in his or her present job, as discussed in question 26.

May an employee continue employment if a close relative of the employee is elected or appointed to the governing body?

An employee of a local entity may continue employment if the employee has been continuously employed for a sufficient time period immediately prior to the appointment or election of the close relative.[34] If the employee's close relative was appointed to the governing body, the employee must have been continuously employed by the local entity for at least 30 days prior to the appointment in order to retain his or her job.[35] If the employee's close relative was elected to a non-county local governing body, the employee must have been continuously employed by the

[33] *Id*. § 573.041.
[34] *Id*. § 573.062.
[35] *Id*. § 573.062(a)(1), (2)(A).

local governing body for at least six months before the member assumed office.[36] If the employee's close relative was elected to a state or county office, the employee must have been continuously employed by that state or county office for at least one year before the public official assumed office.[37]

What is considered "prior continuous employment" for purposes of the nepotism law?

Prior continuous employment for purposes of the nepotism law is considered to be immediately prior and uninterrupted employment.[38] Additionally, in counting back the required time period, 30 days, six months or one year, the critical date is the date the public official assumes office (sworn in and qualified to serve).[39] In an attorney general opinion, the attorney general concluded that a teacher who retired from a full-time, certified teacher position had broken her employment with the school district and did not qualify for the prior continuous employment exception to the anti-nepotism statute.[40]

May an employee continue employment if he or she marries a close relative of a member of the governing body?

An employee of a local entity who marries the close relative of an elected member of the governing body must resign if the employee was not continuously employed for the relevant time period (30 days, six months or one year, as appropriate) before the member assumed office.[41]

May an employee receive a pay raise or promotion in the future if the employee kept his or her job under the prior continuous employment exception?

Yes. An employee of a local entity is eligible to receive pay raises and promotions after being permitted to keep his or her job under the prior continuous employment exception.[42] The public official who is a relative of the employee generally may not participate in any deliberation or voting on the employee's status or compensation.[43] Nonetheless, the nepotism laws would not prevent an official from voting on a class or category of employees.[44] For example, an official may participate in a decision to give all employees a cost-of-living raise even though an official's close relative is an employee.[45]

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36 *Id*. § 573.062(a)(1), (2)(B).
37 *Id*. § 573.062(a)(1), (2)(C).
38 *Id*. § 573.062.
39 *Bean v. State*, 691 S.W.2d 773, 775 (Tex. App.–El Paso 1985, pet. ref'd).
40 Op. Tex. Att'y Gen. No. JC-442 (2001). *See also* Op. Tex. Att'y Gen. Nos. GA-1024 (2013); JC-0185 (2000); JM-45 (1983).
41 Op. Tex. Att'y Gen. Nos. DM-132 (1992); GA-121 (2003); Tex. Att'y Gen. LO-93-114.
42 Op. Tex. Att'y Gen. Nos. DM-132 (1992); JM-1188 (1990); GA-121 (2003); Tex. Att'y Gen. LO-93-114.
43 Tex. Gov't Code Ann. § 573.062(b)..
44 *Id.* § 573.062(b). *See* Op. Tex. Att'y Gen. Nos. JC-193 (2000) at 2-3; JC-336 (2001) at 3; JC-442 (2001) at 2; JC-546 (2002); JC-558 (2002).
45 Op. Tex. Att'y Gen. Nos. DM-46 (1991) at 233-234, JM-1188 (1990).

Do nepotism laws apply to hiring close relatives of a former public official or of an official who resigned?

The nepotism laws may apply to the hiring of close relatives of a former public official or of an official who resigned. Under article XVI, section 17 of the Texas Constitution (the holdover provision), an officer continues to serve and have the duties and powers of the office until a successor qualifies for the office. Thus, the nepotism laws would prohibit the hiring of a holdover officer's close relatives to a paid position with the local entity.[46] However, once the local entity has filled the former officer's position and has qualified and sworn this person into office, the local entity may hire a close relative of the former official.

Do nepotism laws apply to hiring persons who are related to a public official's ex-wife or ex-husband?

In certain situations, the nepotism law will prevent the local entity from hiring close relatives of a public official's ex-wife or ex-husband. Specifically, if there is a living child from the former marriage (regardless of the age of the child), the nepotism law will prevent the local entity from hiring persons who are close relatives of the official's ex-wife or ex-husband. Divorce does not end a nepotism relationship if a child of that marriage is still living.[47]

Do the nepotism laws apply to "trading hires," where one jurisdiction hires the close relative of a public official in another jurisdiction in exchange for that jurisdiction hiring his or her close relative?

Yes. Public officials may not trade nepotistic appointments.[48] In other words, a public official may not appoint an individual who is closely related to a neighboring public official, with the understanding that the other official will return the favor by hiring one's own relatives.

May a home-rule city provide more restrictive nepotism limitations?

A home-rule city may generally provide more restrictive nepotism limitations, with one exception. A city is specifically forbidden from adopting a local nepotism provision that would provide a tougher threshold for qualifying under the prior continuous employment exception.[49] For example, the attorney general concluded a home-rule city charter provision could not prohibit a son of a council member who had four years of employment with the city from receiving a promotion. Nonetheless, the related council member could not participate in any deliberation or voting on the promotion of her son.[50]

May a general-law city (Type A, Type B or Type C city) provide further and more restrictive nepotism limitations?

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46 Op. Tex. Att'y Gen. Nos. JM-636 (1987) at 2; DM-2 (1991).
47 Tex. Gov't Code Ann. § 573.024(b).
48 *Id*. § 573.044.
49 Tex. Gov't Code Ann. § 573.062(a).
50 Op. Tex. Att'y Gen. No. JC-546 (2002).

Arguably, a general-law city may pass a more restrictive nepotism limitation provided such an ordinance did not conflict with state law and the authority to do so was fairly implied from some other power of the general law city.[51] No court or attorney general opinion has discussed this question.

Are there other state statutes that may provide stricter nepotism restrictions for particular situations or public officials?

There may be certain state statutes that apply to a particular set of circumstances. Before a public official participates in an official action regarding a close relative, the official may want to consult with legal counsel as to the applicable law.[52]

If a contract would result in a violation of the nepotism laws, is the contract illegal and void?

Yes. The nepotism law addresses the hiring of an individual person by a governmental body. If a contract when signed is an employment contract of an individual who is related within a prohibited degree, the nepotism law would apply and the contract is void from its inception. Attorney General Opinion GA-177 (2004) contains examples of such contracts of employment. On the other hand, several attorney general opinions have held that when a relationship covered by the nepotism statutes arises during the course of an individual's employment, the individual may serve out the term of his or her contract.[53] The reasoning behind this rule is that a violation of the nepotism laws would not occur until the employing body or officer had to take action to renew the individual's contract.[54] In the absence of a valid contract for a specified period of employment or with respect to an employee who is an "at will" employee, an individual could remain until the end of the pay period. At the end of the pay period, the individual would have to resign to avoid a violation of the nepotism laws.[55] The above discussion assumes that the individual does not qualify for the prior continuous employment exception.

May a person be charged with a crime if he or she violates the nepotism laws?

Yes. An official who violates the nepotism laws commits official misconduct and a misdemeanor punishable by a fine of not less than $100 or more than $1000.[56]

Must a public official be removed from office if he or she has violated the nepotism laws?

Yes. An official must be removed immediately from office if he or she is convicted of violating the nepotism laws and the conviction becomes final.[57] State law provides "the removal from the position shall be made immediately and summarily by the original appointing authority" when a

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51 Tex. Loc. Gov't Code Ann. § 51.012.

52 *See generally* Tex. Health & Safety Code Ann. §§ 534.0065(e)(5), 534.0115; Tex. Tax Code Ann. § 6.05(f); Tex. Transp. Code Ann. § 68.038(c); Tex. Water Code Ann. §§ 49.059(d)(1), 57.262.

53 Op. Tex. Att'y Gen. Nos. MW-286 (1980); V-785 (1949); O-1408 (1939).

54 *Bean*, 691 S.W.2d at 775.

55 Op. Tex. Att'y Gen. Nos. MW-286 (1980); V-785 (1949); O-1408 (1939).

56 Tex. Gov't Code Ann. § 573.084.

57 *Id.* § 573.081.

criminal conviction becomes final.[58] If the official is not removed within 30 days after the conviction becomes final, a proceeding by the local prosecutor may be brought to remove the official.[59]

Are board members of a municipal utility district subject to the nepotism laws?

Yes. Nepotism laws do apply to board members of a municipal utility district (MUD).[60] The nepotism laws apply to "an officer or member of a board of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state."[61] A MUD is a political subdivision created under Texas Constitution article XVI, section 59.[62] Board members of MUDs may not participate in the employment or appointment of any individual related to any board member within the third degree by consanguinity or the second degree by affinity.[63]

Does a city council member violate the nepotism laws by appointing a close relative to the board of an economic development corporation?

No. A city council member does not violate chapter 573 of the Government Code when appointing a close relative to the board of an economic development corporation (EDC).[64] A public official is forbidden to appoint, confirm the appointment of, or vote for the appointment or confirmation of an individual to a position that is to be directly or indirectly compensated from public funds or fees if the individual and the public official are related within the third degree by consanguinity or within the second degree by affinity.[65] However, the Development Corporation Act states that members of the board of directors of an EDC shall serve without compensation except for being reimbursed for their actual expenses incurred in the performance of their duties.[66] The statutory reimbursement for member's actual expenses incurred are not considered compensation for purposes of section 573.041.[67] Thus, the nepotism law would not apply.

May a public official make final approval of reassignments of close relatives who have been continuously employed in his or her department?

A public official's relative who is within the third degree of consanguinity or second degree of affinity may not be employed in a position that the public official may appoint.[68] However, an employee whose close relative is elected or appointed to office may retain employment if, prior to the relative's election or appointment, the employee has been continuously employed in the position for a certain period of time.[69] The public official may not deliberate or vote on "the

58 *Id.* § 573.081(b).
59 *Id.* §§ 573.081(a), .082.
60 Op. Tex. Att'y Gen. No. JC-184 (2000).
61 Tex. Gov't Code Ann. § 573.001(3)(B).
62 Op. Tex. Att'y Gen. No. JC-184 (2000).
63 TEX. GOV'T CODE ANN. §§ 573.002, .041.
64 Tex. Att'y Gen. LO-96-010.
65 Tex. Gov't Code Ann. § 573.041.
66 Tex. Loc. Gov't Code Ann. § 501.062(d).
67 Tex. Att'y Gen. LO-96-010; Op. Tex. Att'y Gen. No. JM-195 (1984).
68 Tex. Gov't Code Ann. §§ 573.002, .041; Op. Tex. Att'y Gen. Nos. JC-193 (2000); JC-336 (2001).
69 Tex. Gov't Code Ann. § 573.062(a).

appointment, reappointment, confirmation of the appointment or reappointment, employment, re-employment, change in status, compensation, or dismissal of" such continuously employed relative.[70] The public official may take action with respect to his or her relative only if the action is "based in objective criteria" and may not take any such action that allows "for the preference or discretion of the officeholder."[71] For example, a police chief who has final approval of employment and reassignments within the police department is prohibited from approving the transfers of his son or nephew because the approval requires an exercise of the chief's discretion.[72]

[70] *Id.* § 573.062(b).
[71] Op. Tex. Att'y Gen. Nos. DM-46 (1991); JC-193 (2000); JC-336 (2001).
[72] Op. Tex. Att'y Gen. Nos. JC-193 (2000); JC-336 (2001).

Nepotism Chart

Consanguinity Kinship Relationship by Blood			Affinity Kinship Relationship by Marriage	
First Degree	**Second Degree**	**Third Degree**	**First Degree**	**Second Degree**
Father Mother Son Daughter	Grandfather Grandmother Grandson Granddaughter Brother Sister	Great-Grandfather Great-Grandmother Great-Grandson Great-Granddaughter Uncle Aunt Nephew Niece	Spouse Father-in-law Mother-in-law Son-in-law Daughter-in-law Stepfather Stepmother Stepson Stepdaughter	Stepbrother Stepbrother's Spouse Brother's Spouse Stepsister Stepsister's Spouse Sister's Spouse Step-Grandfather Step-Grandmother Step-Grandson Step-Granddaughter Spouse's Sister Spouse's Stepsister Spouse's Brother Spouse's Stepbrother Spouse's Grandfather Spouse's Step-Grandfather Spouse's Grandmother Spouse's Step-Grandmother Spouse's Grandson Spouse's Step-Grandson Spouse's Granddaughter Spouse's Step-Granddaughter

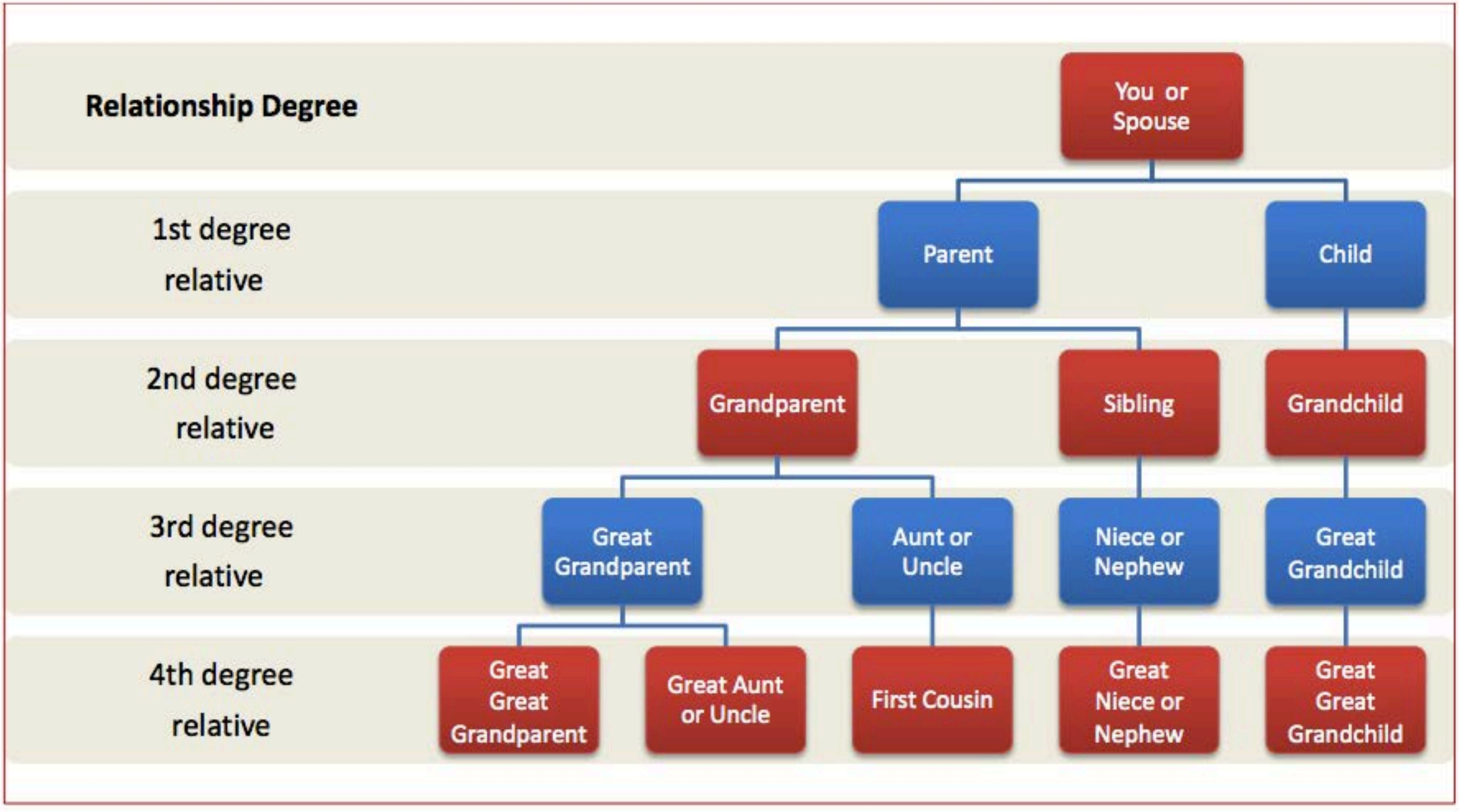
Half-blood relationships fall within the same degree as those of full blood.

Step relationships by affinity (marriage) fall within the same degree as those by consanguinity (blood). For example, a stepson would be considered the same as a son.

An adopted child is considered the child of the adoptive parents.

In cases where a marriage has ended by divorce, an employee continues to be related by affinity to the former spouse and the former spouse's relatives indicated on this chart as long as a natural or adopted child of the former marriage is living. In cases where a marriage has ended by death of a spouse, an employee continues to be related by affinity to the deceased spouse's relatives indicated on this chart as long as a natural or adopted child of the former marriage is living. If the employee remarries, these rules continue to apply for all former marriages.

An employee who claims to be married via an informal marriage for health insurance or any other benefit entitlement will be considered married via informal marriage for the purpose of a nepotism violation.


Relationship Degree
1st degree relative
2nd degree relative
3rd degree relative
4th degree relative
You or Spouse
Parent
Child
Grandparent
Sibling
Grandchild
Great Grandparent
Aunt or Uncle
Niece or Nephew
Great Grandchild
Great Great Grandparent
Great Aunt or Uncle
First Cousin
Great Niece or Nephew
Great Great Grandchild