

City of Windcrest



AGENDA

ETHICS COMMISSION MEETING

FEBRUARY 6, 2020

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN

6:00 P.M.

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST ETHICS COMMISSION MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 6th DAY FEBRUARY 2020, STARTING AT 6:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COMMISSION MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE ETHICS COMMISSISON RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF FEBRUARY 6, 2020, AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY FEBRUARY 7, 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 is 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.

- I. Call to Order**
- II. Roll Call**
- III. Pledge of Allegiance & Invocation**
- IV. Citizens to be Heard.**
 - Citizens may address the Ethics Commission on topics not on the agenda for no more than three (3) minutes.
 - In addition to the foregoing, citizens shall also have the opportunity to address the Ethics Commission during consideration of posted agenda items for no more than six (6) minutes.
 - 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.
- V. Items for Discussion/Action**
 - a) The Ethics Commission will review, discuss, and take action on a proposed amendment to Chapter 2, Article III, Ethics, of the Windcrest Code of Ordinances, to provide additional authority to the Ethics Commission to investigate and enforce ethical violations and the ability to institute certain civil penalties. [Michael McCann, City Attorney]
 - b) The Ethics Commission will receive an update and status of the City of Windcrest Ethics Policy. [Michael McMcCann, City Attorney]

VI. 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.

VII. Adjournment

The Ethics Commission 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 Ethics Commission 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 February 6, 2020.

By: /s/ Rachel C. Dominguez, City Secretary

ORDINANCE NO. 2020-_____

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE III – ETHICS - OF
THE WINDCREST CODE OF ORDINANCES TO PROVIDE
ADDITIONAL AUTHORITY TO THE ETHICS COMMISSION TO
INVESTIGATE AND ENFORCE ETHICAL VIOLATIONS AND THE
ABILITY TO INSTITUTE CERTAIN CIVIL PENALTIES**

WHEREAS, the City of Windcrest previously created an ethics commission; and

WHEREAS, the City Council of the City of Windcrest finds it is necessary to adjust the ordinance based on recommendations from the ethics commission; and

WHEREAS, the City Council of the City of Windcrest finds the recommendations are proper clarifications of the regulations and allow for better enforcement by the ethics commission.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the following sections of the Windcrest Code of Ordinances shall be amended and shall read as indicated below. All sections of Chapter 2 not specifically amended below remain intact and in effect:

Section 2-50 – Ethics Commission - Creation.

The City of Windcrest Ethics Commission is hereby established under this Code of Ordinances. Any reference hereinafter to the term Commission shall mean the City of Windcrest Ethics Commission.

Section 2-51 – Organization and Qualifications

- A. **Members of Commission:** The City of Windcrest Ethics Commission shall consist of five (5) members and two (2) alternate members of the community appointed by the City Council who shall be citizens of Windcrest. Each appointed member shall be appointed for a two (2) year term by the City Council. Due to the nature and role of the Ethics Commission, an appointed member of the Commission can be removed by an affirmative vote of no less than four (4) City Council members. Members of the Ethics Commission may be removed with or without cause. The City Council may vote to fill an unexpired term by an affirmative vote of three (3).
- B. **Officers of Commission:** The Commission shall have at least three (3) officers: Chair, Vice-Chair, and a Secretary. The Chair shall preside over all meetings. In the absence of the Chair,

the Vice-Chair shall assume the duties of presiding officer. In the absence of both the Chair and Vice-Chair at a meeting, any one of the present members may preside over a meeting so long as a quorum can be constituted. The member with the longest tenure on the Commission shall be the presiding officer unless changed by an affirmative vote of those members present and voting at a particular meeting. The Secretary shall keep minutes or may designate a minute keeper to record commission business. The Commission may appoint such other officer positions or assign such subcommittees as the Commission deems proper. The Commission shall elect its officers from amongst its appointed members.

C. **Qualifications:** Members of the Commission shall have good moral character and shall be residents of the City of Windcrest for at least six (6) months prior to being appointed. No member of the Commission shall be:

1. Any salaried city official or employee;
2. Any elected public official;
3. Any candidate for elected public office;
4. Any official of a political party;
5. Any campaign treasurer, campaign manager, official or other policy or decision-maker for the campaign of any candidate for elected public office;
6. Any campaign treasurer, campaign manager, official or other policy or decision-maker for any political action committee as defined in the Texas Election Code;
7. Any member of any city board or commission other than the Ethics Commission; or
Convicted of a felony or any crime involving moral turpitude or have been found by the Ethics Commission to have previously violated any provision of the City Code of Ethics.

D. **Removal:** A member of the Commission shall be removed immediately from office for the failure to satisfy or continue to satisfy the qualifications and restrictions set out above. The Commission shall be the judge of the qualifications of its members. The Commission's ability to determine qualifications does not affect the City Council's ability to remove and replace a commission member, with or without cause, by an affirmative vote of at least four (4) councilmembers.

E. **Term Periods:** The terms of the Commission shall be staggered terms as follows:

- A. Place 1 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
- B. Place 2 Term - Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a two-year term from March 1, 2020 forward in time with the term expiring on March 1st in even numbered years;
- C. Place 3 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;

- D. Place 4 Term - Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a two-year term from March 1, 2020 forward in time with the term expiring on March 1st in even numbered years;
- E. Place 5 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
- F. Alternate Place A1- Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a two-year term from March 1, 2020 forward in time with the term expiring on March 1st in even numbered years;
- G. Alternate Place A2 – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years.

Section 2-52 – Duties and Authority

- A. **General Authority:** The City of Windcrest Ethics Commission has the authority and duty to investigate written complaints of alleged violations of the ethics code by a member of the City Council, a member of a City-appointed board, commission or committee, a petitioner committee under the City's charter, a statutory municipal officer, a city official or any city department head. Following its investigation into an ethics complaint, the Commission shall impose a penalty, make a recommendation to the City Council or to the City Manager on the complaint, or impose a penalty and make a recommendation for further action. The determination of whether the Commission's recommendation is sent to the City Council or the City Manager shall be based on the whether the individual made the subject of the complaint reports to the City Manager or City Council. Nothing in this article prevents the City Council from exercising its authority under the City charter even if such overlaps with the authority granted to the Ethics Commission.
- B. **Limitation on Investigation and Complaints:**
 - 1. **Employees:** Other than department heads, the Ethics Commission shall have no authority to investigate complaints against city employees as such authority is reserved for the City Manager.
 - 2. **Municipal Judge:** The Ethics Commission has no authority to investigate complaints against the municipal judge, as such authority rests with the State Commission of Judicial Conduct.
 - 3. **Termination or Forfeiture:** The Ethics Commission shall have no authority to make a final determination on a written complaint or impose a penalty of forfeiture of office or termination. Such limitation does not prevent the Commission from making recommendations or referrals.
 - 4. **Limitations Period:** The Commission shall not consider any alleged ethics code violation that occurred more than one (1) year prior to the date of the filing of the complaint. The termination, resignation, or forfeiture of a member of the City Council, any member of a City-appointed board, commission or committee, or any city department head does not

affect the jurisdiction of the Ethics Commission to investigate and act upon any alleged violations occurring prior to the date of said termination, resignation, or forfeiture.

- C. **Written Complaint Required:** In order to consider whether a violation of the ethics code has occurred, the Commission must receive a formal written complaint. Any person may file an appropriate complaint. Before a written complaint is considered by the Commission regarding alleged violations of the ethics code the person bringing the complaint shall first submit a completed and sworn complaint to the Office of the City Secretary on a form adopted by the Commission. An ethics complaint form is available at the Office of the City Secretary. Following the submission of a complaint, the City Secretary shall provide the complaint to the Ethics Compliance Officer for review. Once the ethics complaint has been accepted as compliant under the ethics code by the Ethics Compliance Officer, the ethics complaint shall be submitted to the Chair for the Commission's consideration.
- D. **Commission Initiated Investigation:** The Ethics Commission may direct the Ethics Compliance Officer to determine if a complaint is appropriate against any official subject to the City's ethics code and may initiate an investigation. In the absence of a formal written complaint, the Commission may consider whether a violation of the ethics code has occurred only after it has provided written notice to the individual subject to the investigation which must include the nature of the alleged violation, the specific ethics code provision believed to have been violated, the facts describing the alleged violation and an opportunity for the official to respond. Such notice shall serve as a formal written complaint.
- E. **Annual Review:** The Ethics Commission shall also have the authority to annually review the City's ethics policies and code and submit recommendations to the City Council.
- F. **Adoption of Procedural Rules:** The Ethics Commission shall have the authority to establish, adopt, and amend any procedural rules and regulations necessary to properly execute Commission business
- G. **Member Initiated Complaints and Recusal:** An Ethics Commission member may not deliberate or vote on any complaint that the member filed. A member of the Ethics Commission shall recuse himself or herself from any case in which, because of familial relationship, employment, any economic interest, or because of any reason his or her impartiality might reasonably be questioned. If the number of Commission members recused from a case is so large that a quorum of the Ethics Commission cannot be constituted, as provided for in Section 2-51, the City Manager shall nominate a sufficient number of ad hoc members to constitute a quorum. Ad hoc members of the Ethics Commission must be confirmed by a majority vote of the City Council and serve only for the nominated case.

Section 2-53 - Ethics Compliance Officer

- A. **Designation:** The City Attorney or his attorney designee, shall serve as the Ethics Compliance Officer for the City. The Ethics Compliance Officer shall act as legal counsel to the Ethics Commission on matters related to Commission business. As legal counsel to the Ethics Commission, the Ethics Compliance Officer shall not represent any person or party in any proceeding before the Ethics Commission.
- B. **Authority and Duty:** The Ethics Compliance Officer shall also have the duty to review alleged ethics complaints to ensure the written complaint meets the required form and substance as stated in this article prior to the submission to the Ethics Commission. In reviewing alleged ethics complaints, the Ethics Compliance Officer shall not determine the truth of the matters alleged but shall determine whether the act or actions alleged could constitute an ethics code violation under the ethics code, if proven true. Should the Ethics Compliance Officer determine that the act or action alleged would not constitute an ethics violation, even if true, the ethics complaint shall be dismissed by the Ethics Compliance Officer.
- C. **Notice of Defects in Form:** If the Ethics Compliance Officer determines an alleged complaint is defective in form, the complainant must be advised of the defect and given a reasonable opportunity to correct any defects in the form of the complaint. Should the complainant refuse to correct or fail to correct any defects in form, the Ethics Compliance Officer shall dismiss the complaint as non-compliant.
- D. **Appointment of Independent Outside Attorney:** Should a conflict arise wherein the City Attorney cannot perform the duties required of the Ethics Compliance Officer, an independent outside attorney, who does not otherwise represent the city, shall be appointed by the City Manager and shall have the same duties and authority under Section 2-54 and shall be entitled to reasonable compensation as determined by the City Manager for the duties performed in the particular case. A conflict shall be deemed to have arisen when a complaint is filed relating to an alleged violation of the ethics code by the City Manager, Mayor, a member of the City Council, City Attorney or an Assistant City Attorney; or when requested by the City Attorney due to a potential conflict of interest. Should the City Manager not be able or willing to appoint an independent outside attorney, then such appointment shall be made by the Mayor.

Section 2-54 – Written Ethics Complaint

- A. A complaint filed under this article shall be submitted by filling out the ethics complaint form adopted by the Ethics Commission which can be obtained at the Office of the City Secretary. A complaint shall contain the following minimum requirements:
 - (1) The name, mailing address, and telephone number of the person submitting

the complaint;

- (2) The name of the person(s) whom is/are alleged to have committed a violation of the ethics policy and their position and/or title held or formerly held;
 - (3) The date of the alleged ethics violation; including the facts supporting specific provision(s) of the ethics code that are alleged to have been violated; and
 - (4) The ethics complaint form is sworn to before a notary public or other person authorized by law to administer oaths under penalty of perjury.
- B. The Ethics Commission may adopt additional minimum requirements for the complaint as it deems necessary, but may not lessen the requirements established by this section of the Code.

Section 2-54 – Penalties and Recommendations

- A. **Commission Imposed Penalties:** Should the Commission find a violation of the ethics code, the Commission may directly impose the following penalties:
1. A civil penalty of not more than \$500.00 per violation;
 2. A letter of admonition when the violation was determined to be unintentional or inadvertent;
 3. A letter of reprimand when the violation was determined to be intentional or knowingly committed; and
 4. A command to attend specific training.
- B. **Recommendations:** In addition to assessing the above penalties, the Commission may also recommend action be taken by the City Council or City Manager, including but not limited to termination or forfeiture of office. Further, the Commission may refer any matter to the appropriate criminal prosecutor to determine the existence of any criminal conduct and whether criminal prosecution may be warranted. However, the absence of a referral from the Commission shall not preclude any prosecutor from exercising his or her discretion in handling matters he or she deems to constitute criminal conduct.

Section 2-55 – Appeal and Disposition

- A. **Determination with Penalties:** If the Commission makes a determination a violation of the ethics code occurred and imposes a penalty, such decision may be appealed by the person subject to the penalty to the City Council. Such appeal shall be submitted,

- in writing, to the Office of the City Secretary within ten (10) calendar days from the date that the penalties are imposed. The appeal shall state the reasons why the decision is unwarranted and should be dismissed. Following the submission of a written appeal, penalties shall be stayed until the City Council either upholds or dismisses the penalties imposed by the Ethics Commission. Alternatively, the City Council, at its discretion, may impose a lesser penalty than what has been imposed by the Ethics Commission.
- B. **City Council Consideration:** The City Council may consider the appeal based on a review of the Ethics Commission records or may hold its own investigatory hearing. The appellant is entitled to written notice of the council meeting at which the appeal will be considered for action.
- C. **Recommendations Not Appealable:** With the exception of complaints filed against a City Council member or the City Manager, no appeals may be taken if the Commission makes a recommendation but imposes no penalty. If the Commission makes a recommendation to the City Council, the person subject to the recommendation is entitled to written notice of the council meeting at which the recommendation will be considered.

III. SEVERABILITY

That it is hereby declared to be the intent of the City Council for 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.

IV. 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.

V. EFFECTIVE DATE

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

PASSED on first reading on the__day of _____, 2020 at a regular meeting of the City Council of the CITY of WINDCREST, Texas which meeting was held in compliance with the Open Meetings Act, Tex. Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

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

Dan Reese, Mayor

ATTEST:

Rachel C. Dominguez, City Secretary

APPROVED AS TO FORM:

Ryan Henry, City Attorney