



CITY OF WINDCREST, TEXAS

**JOINT SPECIAL MEETING OF THE
CITY COUNCIL AND THE BOARD OF
DIRECTORS OF THE WINDCREST
ECONOMIC DEVELOPMENT
CORPORATION (WEDC)**

January 23, 2019

Special Joint City Council and WEDC Meeting

5:00 P.M.

AMENDED NOTICE IS HEREBY GIVEN THAT A WINDCREST JOINT SPECIAL CITY COUNCIL MEETING AND MEETING OF THE BOARD OF DIRECTORS OF THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION (WEDC) WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 23rd DAY OF JANUARY 2019 STARTING AT 5:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COUNCIL OR BOARD OR BOTH MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE CITY COUNCIL AND THE BOARD RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF JANUARY 23, 2019 AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, JANUARY 24, 2019 AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

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. [Attorney General Opinion – No. GA-0957 (2012)]

REQUEST ALL PAGERS AND CELL PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL. CITIZENS ARE ASKED TO REFRAIN FROM TALKING DURING COUNCIL PROCEEDINGS.

Ordinance No. 2016-618B(O) establishes certain protocols for City Council meetings. At all City Council, City Commission or City Board meetings, the agenda shall include a "citizens to be heard" item. It is suggested that Citizens wishing to speak during this item sign in on the sign up roster prior to the meeting. During "Citizens to be Heard", citizens may address the City Council 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 City Council during consideration of posted agenda items for no more than six (6) minutes. Each citizen shall therefore have the opportunity to address the City Council for a total of nine (9) minutes. This does not include any responses from the body. The six (6) minutes time limit authorized herein may not be transferred to another speaker in whole or in part. The presiding Officer or his/her designee will assign a Time Keeper to each meeting. The Time Keeper will maintain strict compliance of the six (6) minute rule, stopping speakers who exceed the allotted time. As authorized by Section 551.042 of the Texas Government Code, 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 city policy. Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting. Any question posed by a Citizen, Council Member, Board Member or Commission Member for which an answer is not available at a meeting shall be answered by a member of the staff or Presiding Officer at the next regular meeting of the Body, if an answer is reasonably available and prudent. If the information is sensitive, staff will seek advice from the City Attorney.

Meeting Chair: Please remind each participant in your meeting that they must speak into a microphone; the recording is the Official Minutes of your meeting and all who speak must be recorded. All guest speakers and citizens to be heard must speak from podium. Please interrupt speakers during meeting if you recognize that they are not speaking into microphone and have them do so. Citizens should conform behavior to the City's Rules of Conduct and Decorum for Public Meetings, as adopted by the City Council.

I. Call to Order, Pledge of Allegiance, Invocation

II. PUBLIC HEARING

1. Citizens may address the City Council or Board of Directors or both on topics not on the agenda for no more than three (3) minutes.
2. In addition to the foregoing, citizens shall also have the opportunity to address either or both bodies during consideration of posted agenda items for no more than six (6) minutes.
3. A City or WEDC 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.

III. WEDC Reports/Action

1. Briefing and overview of WEDC activities. (*Mario Hernandez, Executive Director*)

2. Briefing and discussion on Windcrest Master Plan. (*Mario Hernandez, Executive Director*)
3. Briefing and discussion on Street Improvement projects. (*Mario Hernandez, Executive Director*)
4. Consider and take action on legal agreement to share information between the City and WEDC which are aligned in purpose and scope.

IV. Ordinances **"In conjunction with the first reading of an ordinance, a motion should be made to either "reject the proposed ordinance" or "to forward the proposed ordinance to a subsequent City Council meeting for final adoption at its second reading".**

1. City Council will review, discuss and may take action on Ordinance No. 2019-689(O) ordering a Special Election to be held on May 4, 2019 on Proposed Charter Amendments. (First Reading) (*Rafael Castillo, City Manager*)
2. City Council will review, discuss and may take action on Ordinance No. 2019-690(O) re-establishing staggered terms for all boards and commissions. (First Reading) (*Rafael Castillo, City Manager*)
3. City Council will review, discuss and may take action on Ordinance No. 2019-688(O). An Ordinance amending Chapter 14 and 24 of the City of Windcrest Code of Ordinances, adding and discarding of tobacco products to the list of prohibited littering materials, adding a smoking prohibition in public parks and outdoor facilities and imposing civil and criminal penalties. (Second Reading) (*City Council Member Sherilyn Flick*)

V. Resolutions

1. City Council will review, discuss and may take action on Resolution No. 2019-685(R) calling for a Special Election to be held on May 4, 2019 on propositions to decrease the Economic Development (EDC) Type 4B sales tax and increase the sales tax for the municipal general fund. (First Reading). WEDC may comment and take Board action related to the approval of the Resolution. (*City Council Member Frank Archuleta*)
2. City Council will review, discuss and may take action on Resolution No. 2019-686(R) authorizing a legal agreement to share information between the City and WEDC which are aligned in purpose and scope. (*Rafael Castillo, City Manager*)

VI. Discussion and Act

1. The City Council shall consider acceptance of Police Chief's retirement notification. (*Rafael Castillo, City Manager*)

VII. Executive Session

1. City Council and WEDC Board will convene into a closed session as authorized in §551.071 of the Texas Government Code to consult with legal counsel and §551.071, §551.072, §551.087 Consultation with Legal Counsel regarding real estate transactions, discussion regarding purchase, lease or exchange of real property within City of Windcrest and economic development/redevelopment of property.

VIII. Open Session from Executive Session

1. City Council may discuss and take action on any matter addressed in closed session.
2. WEDC Board may discuss and take action on any matter addressed in closed session.

IX. Adjournment

The WEDC Board and 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.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council of the City of Windcrest and Board of Directors of the WEDC 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 hours prior to the meeting on January 17, 2019.

By: _____

In Compliance with the Americans With Disabilities Act, the City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. The City of Windcrest will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please contact David Rodulfo Jr, Assistant City Secretary, at 210.655.0022 ext. 2150 or Fax 210.655.8776.

I certify that the attached notice and agenda of items to be considered by the City Council and WEDC was removed by me from the City Hall bulletin board on the ____ January, 2019.

_____ Title: _____



JOINT MEETING CITY COUNCIL AND WEDC BOARD

January 23, 2019



WEDC Background

- WEDC established by vote of citizens of Windcrest
- Established as a Type B Corporation under state law; Development Corp. Act of 1979
- Funded by $\frac{1}{4}$ of one cent sales tax (of the 2 cents collected by Windcrest) permitted by Local Government Code: Chapter 501, 504 and 505
- WEDC $\frac{1}{4}$ cent sales tax generates approximately \$500,000 per year
- WEDC staff: 2 employees; Executive Director (contract staff 18 hours per week) and ED Coordinator (30 hours per week plus benefits)

WEDC Company Locations (select projects)

- Rackspace Headquarters
- Holiday Inn Express
- In and Out Burger
- Garibaldi
- US Auto Force
- Halfen USA
- Mergeworks

WEDC Recent Company Locations

Retail Operations:

-Tokyo Express, Wash Tub

Commercial and Distribution Companies:

-Nexius, Ferguson, Boral, Greentech CED, Crane Payments Innovation

Expansions and renovations:

-Starbucks, Kentucky Fried Chicken, Drury Inn, Whataburger

Current Economic Development Activities

- Negotiating of Rackspace MEIA
- Four Winds Building Complex change of ownership and renovation
- Eisenhower Point Business Park development
- WEDC land (Rackspace pad sites and Eisenhower/Walzem land sites)
- Senior Living project and site
- BRE program
- Eisenhower Point Industrial Park (buildings 1-9)
- Current active projects – Smoothie King, AALF

Future Challenges

- Increase Windcrest Sales and property tax revenues
- Improve infrastructure / streets for economic development
- New incentive Program for IT / back office operations
- Windcrest Golf Club solution
- Walzem Road revitalization / improve aging retail building inventory
- Retain Rackspace Headquarters and economic impact
- Solidify BRE Program / local business participation

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF WINDCREST
APPROVING A JOINT PRIVILEGE AGREEMENT
BETWEEN THE CITY OF WINDCREST AND THE
WINDCREST ECONOMIC DEVELOPMENT
CORPORATION**

WHEREAS, the City of Windcrest (hereinafter referred to as “City”) has found that it shares common interests with the Windcrest Economic Development Corporation (hereinafter referred to as “WEDC”); and

WHEREAS, a joint meeting between the City and the WEDC has been scheduled to occur on January 23, 2019 to discuss these common interests; and

WHEREAS, the City finds that in order to engage in fruitful discussions, the City and WEDC must discuss information and legal matters that are confined by their respective attorney-client privileges; and

WHEREAS, the City finds a need to protect the free flow of information between the City, WEDC and their respective attorneys; and

WHEREAS, the City has determined that it must enter into an agreement preserving the attorney-client privileges for both the City and the WEDC; and

WHEREAS, the City finds it is in its best interest to enter into a joint privilege agreement with the WEDC to preserve its attorney-client privilege as well as the attorney-client privilege of the WEDC; and

WHEREAS, the City finds the approval of the joint privilege agreement is necessary to preserve its attorney-client.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the City Manager is authorized to enter into the Joint Privilege Agreement between the City of Windcrest and the Windcrest Economic Development Corporation.

DULY PASSED AND APPROVED, on the _____ day of _____, 2019 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:

City Secretary

APPROVED:

Ryan S. Henry, City Attorney

**CITY OF WINDCREST AND CITY OF WINDCREST ECONOMIC DEVELOPMENT
CORPORATION'S JOINT PRIVILEGE AGREEMENT**

This Joint Privilege Agreement ("Agreement"), entered into this ____ day of January, 2019, is made and entered into by each of the undersigned entities (hereinafter, each a "Party", and jointly, the "Parties"), and confirms the Parties' agreement to proceed on a joint privileged and common interest basis made at the outset of their work and communications in connection with the City of Windcrest, by and through their City Attorney, Ryan Henry and the City of Windcrest Economic Corporation (EDC), by and through the EDC's attorney, Joseph Hoffer.

WHEREAS, the Parties agree and confirm that Ryan Henry and his law firm shall continue to serve as lead and sole counsel for the City of Windcrest, Texas, with full authority to control and determine its position(s) pursuant to the directions of the City of Windcrest City Council;

WHEREAS, the Parties agree and confirm that Joseph Hoffer and his law firm shall continue to serve as lead and sole counsel for the City of Windcrest Economic Development Corporation (EDC) with full authority to control and determine its position(s) pursuant to the directions of the City of Windcrest EDC Board;

WHEREAS, the undersigned Parties have certain interests which are allied, common, mutual, and non-adverse in connection with both entities. Those interests are best served by sharing certain documents, factual material, mental impressions, memoranda, interview reports, other information and written and oral communications, hereinafter referred to as "joint privileged materials." Such joint privileged materials also include information and documents directly derived from such shared materials. These joint privilege materials are privileged from disclosure to others as a result of the attorney-client privilege, the work-product privilege, the joint privileged privilege, or other applicable privileges (hereinafter, "privileged or otherwise protected materials"). Other joint materials may include confidential and/or proprietary documents and information maintained or generated internally by each Party to this Agreement in connection with this matter (hereinafter, "confidential and/or proprietary Party materials"). Privileged and other protected materials, communications between the Parties' attorneys, and confidential and/or proprietary Party materials are included within the term "joint privileged materials" as that term is used in this Agreement.

NOW THEREFORE,

1. The Parties agree they will need to exchange certain joint materials and information between them and to further their common interests. It is their mutual understanding that such exchanges or disclosures are not intended to diminish in any way the confidentiality or privileged status of such materials. It is their further understanding that any exchange of joint privileged materials will not constitute a waiver of any otherwise applicable privilege, including, but not limited to, the attorney-client privilege, the work product privilege, the joint defense privilege, or the joint client privilege.

2. No Party to this Agreement may use any joint materials against any other Party to this Agreement which were created after the date of this Agreement and as part of the strategic communication and exchange of ideas or information under this Agreement. But no Party shall be restricted from using its own materials or factual non-privileged materials which the Party would have been entitled to obtain through the discovery process in this Lawsuit.

3. It is intended that all communications made pursuant to this Agreement shall be protected from discovery in order to allow the free exchange of strategies, information and ideas. It is also intended that all communications remain privileged and excepted from disclosure under the Texas Public Information Act to the fullest extent permitted by law.

4. The Parties agree that they and their attorneys have and will continue to take all appropriate measures to maintain the confidentiality of joint privileged materials and information. No Party may waive any joint privilege established under this Agreement without the prior written consent of all existing Parties to this Agreement.

5. Joint privilege materials, and the information contained therein, are to be used only in connection with this matter. Neither the joint privileged materials, nor the information contained therein, may be used for any other purpose.

6. The joint privileged materials, and the information contained therein, shall not be disclosed to any person or entity (other than those identified in the following sentence) except with written consent of the Party producing or generating the materials or information. Access to joint privileged materials is limited to: (a) the Parties to this Agreement, including their counsel and their support staff; (b) independent consultants and/or experts retained by a Party or by Parties to this Agreement; (c) reinsurers of the Parties to this Agreement; and (d) third-parties to whom the Party is legally or contractually obligated to make such disclosure in the ordinary course of business such as risk pools and contract agents, so long as counsel first confirms that any such disclosure will not waive any and all applicable privileges.

7. If any third-party requests or demands access to any joint privileged materials by subpoena or any other compulsory process directed to a Party or any person who has received information under this Agreement from or on behalf of a Party, the Party will: (a) promptly notify all other Parties and provide them with a copy of the request or demand; (b) take all reasonable steps necessary to prevent the disclosure of such information by asserting all applicable defenses/privileges; and (c) cooperate fully with the other Parties to this Agreement in any judicial or arbitration proceeding related to their possible disclosure. It is the Parties intent that communication and documents created under this Agreement are for litigation purposes and are not public records or are excepted from disclosure under the Texas Public Information Act.

8. If at any time a Party concludes that its interests preclude it from continuing in good faith to participate in this Agreement, then that Party (the “withdrawing party”) shall promptly notify other Parties and counsel of its intent to terminate participation. The withdrawing party shall no longer be subject to the rights and obligations created by this Agreement except that the withdrawing party shall continue to be subject to all obligations created by this Agreement to protect the joint privileged materials and the derived information exchanged under this

Agreement from disclosure to third parties. The withdrawing party shall, within fifteen (15) calendar days: (a) use commercially reasonable efforts to return all written, electronic, or other documents received by the withdrawing party or any representative of the withdrawing party under this Agreement to the Party who initially provided such documents, and (b) destroy all other documents containing information received under this Agreement and confirm such destruction by written notification to all other Parties. This Agreement shall be terminated, as to the withdrawing party and its counsel, only upon receipt of written notification to all other Parties. This Agreement shall continue to be in full force and effect with respect to all Parties other than the withdrawing party and its counsel.

9. The confidentiality obligations under this Agreement shall survive the termination of this Agreement and shall remain in full force and effect until such Agreement is withdrawn by either Party in writing.

10. Nothing contained within this Agreement shall be construed as a waiver of any right, claim, interest, or cause of action of any Party.

11. This Agreement does not create any obligation for any Party to exchange any information with any other party to the City or EDC. Any Party may, for whatever reason, choose to place additional restrictions on the use or dissemination of any specific information provided pursuant to this Agreement. Nothing contained in this Agreement shall limit the right of any Party to disclose information originating with that Party, obtained by that Party totally independently of this Agreement, or that could have been obtained by that Party totally independent of this Agreement, to anyone it wishes.

12. No Party is obligated to share any confidential information to each other, but if such information is disclosed, it shall be subject to the confidentiality restrictions of this Agreement. The Parties consent to the sharing of confidential information to each other pursuant to this Agreement. The Parties are currently unaware of any conflicts, positional or otherwise, between them with respect their representations. However, if the Parties develop a conflict or otherwise become adverse and such conflict or adversity cannot be resolved amicably, the Parties will not seek to disqualify Ryan Henry or Joseph Hoffer from continuing to represent their respective clients on the sole basis that information was exchanged pursuant to this Agreement, or any other present or future matter on the ground that the Parties or their attorneys received or had access to confidential information pursuant to this Agreement.

13. As a prerequisite to entering into this Agreement, through the waivers and consents set forth below, the Parties agree that they intend to eliminate any disqualification of counsel based solely on the Parties entering into a joint privileged agreement, as discussed in *National Medical Enterprises, Inc. v. Godbey*, 924 S.W.2d 123 (Tex. 1996) and/or *Wilson P. Abraham Constr. Corp. v. Armco Steel Corp.*, 559 F.2d 250 (5th Cir. 1977). Accordingly, in the event that the Parties later becomes adverse to each other, each Party, being fully informed through advice of its own independent counsel, expressly:

- (a) consents to both: (i) the City of Windcrest, Texas' continued use of Ryan Henry (and his law firm) as counsel and (ii) the City of Windcrest, Texas' use of Ryan Henry (and his law firm) as counsel in any adverse matter; and
- (b) (i) City of Windcrest Economic Development Corporation's continued use of Joseph Hoffer (and his law firm) and (ii) the City of Windcrest Economic Development Corporation's use of Joseph Hoffer (and his law firm) as counsel in any adverse matter; and
- (c) waives any claim arising out of or any objection to the adverse Party's use of such counsel on the grounds that:
 - (i) such counsel received confidential or privileged communications from a non-client party to this Agreement, or
 - (ii) the other Party's counsel's participation in this Agreement may give rise to a conflict of interest as to a non-client party.
- (d) Notwithstanding any statements herein to the contrary, the Parties retain the right to object or seek disqualification of opposing Party's counsel for reasons other than the information exchanged pursuant to this Agreement.

14. The Parties agree to return or destroy any and all confidential material obtained under this Agreement following the withdrawal of any Party from this Agreement.

15. Each Party retains the right to make its own independent judgments in all matters and on all issues. There is no requirement or understanding among the Parties that any such judgments shall be discussed with or subject to the consent of any other Party.

16. This Agreement may be executed in any number of counterparts and shall be fully binding upon such execution. Each Party shall be provided with copies of all executed counterparts, each of which shall take effect as an original, and each Party shall have access to the original executed counterparts which shall be maintained by Ryan Henry and Joseph Hoffer.

17. Other parties may be permitted to join this Agreement at a future time, but only with the prior written consent of all of the then-existing Parties to this Agreement. However, information previously exchanged pursuant to this Agreement may not be disclosed to any future additional party without the express prior written consent of the Party by or on whose behalf such information was initially provided.

18. The wording of this Agreement has been reviewed and accepted by legal counsel for the Parties to this Agreement prior to it being signed by the Parties. None of the Parties shall be entitled to have any wording of this Agreement construed against the other Party in the event that any dispute arises between the Parties in connection with this Lawsuit.

19. This Agreement is entered into in the State of Texas and shall be construed and interpreted in accordance with the laws of Texas. For any dispute regarding this Agreement or its subject matter, venue is proper in Bexar County, Texas, in a court of competent jurisdiction.

20. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force and effect as if the invalid or unenforceable provision had not been a part of this Agreement.

21. Any modifications to this Agreement shall be in writing and signed by all Parties.

Signed and Agreed:

For: The City of Windcrest, Texas

Rafael Castillo
City Manager of Windcrest, Texas
Authorized representative for the
City of Windcrest

Date

For: The City of Windcrest Economic Development Corporation

Mario Hernandez
Executive Director, City of Windcrest
Economic Development Corporation

Date

Approved as to Form:

By: Counsel of Record, Ryan Henry
Law Offices of Ryan Henry, PLLC
1380 Pantheon Way, Suite 110
San Antonio, Texas 78232
210-257-6357
210-569-6494 (Facsimile)
ryan.henry@rshlawfirm.com

RYAN S. HENRY
State Bar No. 24007347

Date

By: Counsel of Record, Joseph Hoffer
Schulman, Lopez & Hoffer, LLP
517 Soledad St.
San Antonio, Texas 78205
210-538-5385
210-538-5384 (Facsimile)
jhoffer@slh-law.com

JOSEPH HOFFER
State Bar No. 24049462

ORDINANCE NO. 2019-_____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS TO ORDER A SPECIAL ELECTION TO BE HELD ON MAY 4, 2019 TO CONSIDER AMENDMENTS TO THE CHARTER OF THE CITY OF WINDCREST; MAKING PROVISIONS FOR THE CONDUCT OF SUCH SPECIAL ELECTION; AND RESOLVING OTHER MATTERS RELATED TO THE CONDUCT OF SUCH SPECIAL ELECTION

WHEREAS, Section 9.004 of the Texas Local Government Code authorizes the governing body of a municipality to submit proposed charter amendments to the qualified voters of the municipality for their approval at an election to be held on the first authorized uniform election date prescribed by the Election Code; and

WHEREAS, the City Council has determined that it would be in the public interest for the citizens of the City to consider certain amendments to the City of Windcrest Charter.

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

SECTION 1. A special election shall be held on May 4, 2019, a uniform election date, in the City of WINDCREST, Texas, which date is not less than seventy-eight (78) days from the date of the adoption of this ordinance, for the purpose of considering adoption of the charter amendment propositions attached hereto in Exhibit "A".

SECTION 2. The official ballots shall be prepared in accordance with the Texas Election Code, as amended, so as to permit electors to vote FOR or AGAINST the aforesaid charter amendment propositions.

SECTION 3. Voting on election day and during early voting shall be done on Election Systems & Software, Inc. (ES&S) iVotronic Touch Screen Voting Unit with ballot tabulation performed by the Bexar County Elections Administrator. Voting by mail ballot and provisional voting shall be done by paper ballot.

SECTION 4. The polling place designated for Windcrest voting precincts 4050, 4051, 4107, 4192 and 4195 for voting in the May 4, 2019, special election shall be at a location determined by the Bexar County Elections Administrator and such polling place shall be open on the election day from 7:00 a.m. to 7:00 p.m.

SECTION 5. The polling places for WINDCREST voting precincts 4050, 4051, 4107, 4192 and 4195 for early voting for the May 4, 2019 special election shall be determined by the Bexar County Elections Administrator, and the hours are currently scheduled as follows:

Monday, April 22, 2019 through Thursday, April 25, 2019- 8:00 a.m. to 6:00 p.m.
Friday, April 26, 2019- Closed
Saturday, April 27, 2019- 8:00 a.m. to 6:00 p.m.
Sunday, April 28, 2019- Closed
Monday, April 29, 2019 and Tuesday April 30, 2019 –8:00 a.m. to 8:00 p.m.

SECTION 6. Applications for ballots by mail shall be mailed to Jacquelyn F. Callanen, Bexar County Elections Administrator, at 203 W. Nueva, Suite 361, San Antonio, Texas 78207. Applications for ballots by mail must be received by the Early Voting Clerk no later than the close of business on the date required by the Texas Election Code.

SECTION 7. The City Council authorizes the City Manager, or his designee, to negotiate and enter into an election agreement or agreements with the Bexar County Elections Administrator in accordance with the provisions of the Texas Election Code, and to pay the charges for such election services. The City Manager may also enter into a contract for the conduct of a joint election with other governmental entities in Bexar County, Texas.

SECTION 8. Jacquelyn F. Callanen, Bexar County Elections Administrator, is designated as the election officer to conduct the special election on May 4, 2019, and early voting for said election.

SECTION 9. Notice of the May 4, 2019 special election shall be posted and published in accordance with the Texas Election Code.

SECTION 10. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this ordinance for all purposes and are adopted as a part of the judgment and findings of the City.

SECTION 11. All ordinances, or parts thereof, which are in conflict or inconsistent with any provision of this ordinance are hereby repealed to the extent of such conflict, and the provisions of this ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 12. This ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 13. If any provision of this ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the city council hereby declares that this ordinance would have been enacted without such invalid provision.

SECTION 14. It is officially found, determined, and declared that the meeting at which this ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 15. This ordinance shall be in force and effect from and after its final passage, and it is so resolved.

SECTION 16. If a majority of the votes are cast for any charter amendment proposition, the city council shall declare the proposition passed so that the City of Windcrest charter will be amended accordingly.

PASSED on first reading on the 23rd day of January, 2019 at a special 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 February, 2019 at a special 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.

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A

PROPOSITION I

SHALL SECTIONS 3.07, 3.08, 3.09, 3.12, AND 10.3 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE ETHICAL STANDARDS IMPOSED UPON COUNCIL MEMBERS, CHANGE THE PROCEDURE FOR CONSIDERING COMPLAINTS AGAINST COUNCIL MEMBERS, INVESTIGATIONS INTO COMPLAINTS, REMOVAL FROM OFFICE FOR MEMBERS OF THE CITY COUNCIL AND FILLING VACANCIES ON THE CITY COUNCIL?

Proposition I would amend the specifically listed sections to read as follows:

Sec. 3.07. - City Council to Judge Qualifications of Members

The City Council shall be the sole judge of the qualifications of its members under Section 3.04, and the grounds for forfeiture of their office under Section 3.08. In order to exercise these powers, the City Council shall have power to subpoena witnesses, administer oaths, and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published one (1) time in the designated official newspaper of the City at least one (1) week in advance of the hearing.

Sec. 3.08. - Removal of Elective Officers; Grounds for Removal

A. *Causes.* The Mayor or any City Council member shall be subject to investigation, censure, or removal from office for any one (1) or more of the following causes:

- (1) Incompetence, misfeasance or malfeasance in office;
- (2) Conviction of a crime involving moral turpitude;
- (3) Failure at any time to possess any of the qualifications of office as provided by this Charter or by state law;
- (4) Willful violation of any express prohibition of this Charter;
- (5) Abandonment of office or neglect to perform the duties thereof;
- (6) Failure for any other cause to perform the duties of office as required by this Charter or by law; or
- (7) Any of the grounds listed under Texas Local Government Code Section 21.022 and Section 21.025 [V.T.C.A., Government Code §§ 21.022 and 21.0245].

B. *Initiation.* Removal proceedings shall be initiated when a sworn written complaint charging a member of the City Council with an act or omission that is a cause for removal is presented to the Mayor or, if the complaint is against the Mayor, to the Mayor *Pro Tempore*. To be a valid complaint, such complaint must specify the section or sections of the Charter or law the charged member of the Council is alleged to have violated and the specific factual basis for

the belief a violation has occurred. The Mayor or Mayor *Pro Tempore*, may not dismiss a complaint based on the factual allegations but must present the complaint to the City Council. The Mayor or Mayor *Pro Tempore* receiving the complaint shall file it with the City Secretary within three (3) working days, who then shall provide a copy to the member complained against and all other Council Members within three (3) working days. The Mayor or the Mayor *Pro Tempore* shall set a time and date for a hearing on the complaint within sixty (60) days of the presentation of the sworn complaint.

If the City Attorney believes, in his/her sole discretion, that independent legal advice is required for the City Council, the City Attorney may appoint and retain independent outside legal counsel to represent the City Council for purposes of the complaint and hearing.

C. *Hearing and decision.* The remaining members of the City Council shall conduct a hearing to hear and review evidence regarding the sworn complaint.

1. The member complained against shall have a right to representation at the hearing and to question and cross-examine all witnesses but may not vote on the question of removal;
2. All hearings held under this subsection shall be conducted in open session, except (a) that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act or (b) the member complained against requests the deliberations be conducted in executive session;
3. The member complained against and subject to any investigation and/or hearing under this section shall be entitled to written notice of the allegations of removal or forfeiture and/or the alleged violation of this Charter as applicable;
4. A member of City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote;
5. The City Council may adopt by ordinance rules of procedures to be followed during a hearing under this section;
6. At the beginning of the hearing, while in open session, the presiding officer shall state the nature of the hearing and the allegations to be considered;
7. The City Council shall be provided the results of any investigation and a presentation of the evidence against the member complained against including, but not limited to, testimony from individuals. Such results are confidential during the pendency of the charges and shall not be released while a complaint is pending;
8. The individual who is subject to the hearing shall be provided an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals;

9. The City Council may ask questions of any individual and demand the production of documents;
10. For purposes of a hearing under this section, no public comment shall be allowed unless agreed to by a majority vote of the members of the City Council present;
11. In the case of a violation of this section of the Charter or Section 3.085, City Council shall vote on the removal from office as an individual item. If the City Council determines by at least an eighty (80%) percent affirmative vote of the City Council present at the hearing, excluding the accused member, that removal is warranted, it shall declare a forfeiture, declare the office holder removed and the position vacant. A vacancy shall be filled consistent with this Charter;
12. The City Council may, for any violation which is not a qualification for office, impose a censure or other penalty upon a determination the charged member is in violation of this section of the Charter;
13. Any decision of the City Council shall be voted on in open session. After a vote on whether a violation has occurred, the City Council shall set out, in a subsequent meeting and in a written resolution, its decision. As each remaining member of the City Council may have different reasons for a specific vote, the collective grounds for the vote need not be set out in the resolution. Such resolution shall be issued regardless of whether the vote was for or against a determination a violation occurred;
14. The decision of the City Council shall be final and binding.

Sec. 3.09. - Vacancies on the City Council

- A. The office of a City Council member or office of the Mayor shall become vacant upon death, resignation, recall, or removal from office in any manner authorized by law or this Charter, or forfeiture of office.
- B. A City Council member or the Mayor shall forfeit office if they lack, at any time during the term of office, any qualifications for the office prescribed by this Charter or law, or failure to attend three (3) consecutive City Council meetings, whether they be regular or special meetings, without being excused by the City Council. The City Council shall be the final judge in matters involving forfeiture of office by a City Council member. An assertion a City Council member has three (3) consecutive unexcused absences from regular meetings may be brought by any member of the public or the City government, which will trigger the hearing requirements set forth in section 3.08.
- C. If for any reason a vacancy exists on the City Council, the remaining members of the City Council shall select a person qualified for the position, as described in the Charter, within thirty (30) days of the occurrence of the vacancy. An official who has been recalled or removed may not be reappointed to any immediate vacancy. Once appointed, the person shall serve until the position can be filled at the next regular

election date. Notwithstanding subsection (D), if more than one vacancy exists on the City Council, the remaining members shall select persons qualified for the vacant positions in the order the vacancies occurred. Such selection must be made consistent with state law.

D. In the event that a legal quorum of the elected City Council cannot be convened due to a disaster resulting in multiple injuries, deaths, or forfeiture of offices, the surviving City Council members and the Board chairs, and, if necessary, in order of succession, the (1) Board Vice Chairs of the Economic Development Corporation, (2) Planning and Zoning Commission and (3) Board of Adjustment, in numbers sufficient to constitute an interim City Council shall quorum, within fifteen (15) days of such disaster, or as provided in the Texas Election Code, call for an election to fill all vacant City Council positions. Such constituted interim City Council shall serve until the requested election occurs.

Sec. 3.12. - Investigations by City Council

The City Council shall have the power to inquire into the affairs of the City and the conduct of any City department, office, agency, officer, or employee of the City and to make investigations as to municipal affairs, and for these purposes may subpoena witnesses, administer oaths, take testimony, and compel the production of reports, papers, and other documentary evidence. Failure or refusal to produce evidence, to comply with a subpoena, or to obey a lawful order issued in the exercise of these powers by the City Council shall be enforced through all criminal, civil, and administrative means available under state law and set out in the City's Code of Ordinances.

Sec. 10.3. - Ethics, Standards of Conduct, and Conflicts of Interest

The City Council shall develop and adopt a City Code of Ethics within one (1) year of approval of this Charter.

10.3.1. *Conduct of administrators and elected officials.* The conduct of City administration will comply with all state laws and restrictions in this Charter. The conduct of elected and appointed officials must be of the highest moral and ethical standards.

10.3.2. *Financial interests to comply with Texas law.* The Mayor, the City Council, and all City officials, elected or appointed, shall comply with the rules and regulations regarding personal financial interests as set out in State law.

10.3.3. *Anti-Discrimination laws apply.* There shall be no discrimination in the administration of the City's business based on race, religion, national origin, sex, age, or political affiliation by any elected or appointed official or City employee except to the extent exceptions are expressly authorized by state or federal law.

10.3.4. *Annual review of Code of Ethics.* The City Council will annually review and amend the Code of Ethics as needed.

The proposition on the ballot shall state as follows:

PROPOSITION I

“SHALL SECTIONS 3.07, 3.08, 3.09, 3.12, AND 10.3 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE ETHICAL STANDARDS IMPOSED UPON COUNCIL MEMBERS, CHANGE THE PROCEDURE FOR CONSIDERING COMPLAINTS AGAINST COUNCIL MEMBERS, INVESTIGATIONS INTO COMPLAINTS, REMOVAL FROM OFFICE FOR MEMBERS OF THE CITY COUNCIL AND FILLING VACANCIES ON THE CITY COUNCIL?”

FOR

AGAINST

PROPOSITION II

SHALL SECTIONS 7.01, 7.02, 7.03, 7.04, 7.05, AND 7.06 OF THE CITY CHARTER BE AMENDED TO CHANGE THE STANDARDS AND PROCEDURES FOR RECALL PETITIONS AGAINST MEMBERS OF THE CITY COUNCIL, FOR INITIATIVES AND FOR REFERENDUMS?

This proposition would amend the designated sections to read as follows:

Sec. 7.01. - Powers.

A. *General.* The people of the City of Windcrest reserve the power to direct legislation by initiative, to reject any legislation enacted by the City Council by referendum, and to recall the Mayor and any or all members of the City Council. However, such power shall not extend to the granting of franchises, budget, or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates, and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to initiative as provided by state statute or common law. The powers of initiative and referendum are limited to legislative acts.

The Council is authorized to conduct non-binding elections. With the exception of submitting a recall petition as a ballot measure, nothing in this Article should be construed as preventing the City Council from having the authority to submit an ordinance, the repeal of an ordinance, or any other legislative matter to the citizens of Windcrest to consider as a measure at an election.

B. *Initiative.* The registered voters of the City shall have power to direct legislation by the passage of ordinances through initiative, subject to the limitations set forth in Section 7.01(A).

C. *Referendum.* The registered voters of the City shall have power to require reconsideration of any adopted ordinance, subject to the limitations set forth in Section 7.01(A).

D. *Recall.* The registered voters of the City shall have the power to petition for recall of the Mayor or any Council Member.

Sec. 7.02. - Commencement of Petition; Petitioners Committee; Affidavit

Any three (3) qualified voters may commence initiative, referendum, or recall proceedings by filing with the City Secretary an affidavit stating that they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form as provided in this Charter and under Texas law, stating their names, mailing addresses, physical addresses, e-mail addresses, phone numbers, and specifying the mailing address to which all notices to the petitioners committee are to be sent. Such affidavit shall set out in full the proposed initiative ordinance, or citing the ordinances sought to be reconsidered by referendum, or the name of the Mayor or City Council member to be recalled.

Sec. 7.03. - Petition Form, Content, and Process

All papers and pages of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature on the petition shall comply with the provisions of Section 277.002, Validity of Petition Signatures, Texas Election Code.

No signature on said petition shall have been affixed prior to the filing of the affidavit of petitioners committee.

Petitions shall be returned to the Office of the City Secretary for filing within ninety (90) calendar days after filing of the affidavit of petitioners committee.

To the extent authorized by state law, petitions shall be accompanied by a verification for signatures for the petition and shall be verified by oath in the following form to be affixed on the bottom of each page of the petitions:

“Date: _____, 20_____

STATE OF TEXAS

COUNTY OF BEXAR

I, _____, being first duly sworn, and under the penalty of perjury, on oath depose and say that I am one of the signers of the above petition, and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person it purports to be.

Signature

Sworn and subscribed before me this day of 20__ .

NOTARY PUBLIC, STATE OF TEXAS

My commission expires:_____”

Noncompliance with the verification shall not be grounds to invalidate the petition but may subject the petitioners committee or the affiant to other disciplinary measures.

Sec. 7.04. - Recall Petition

The residents of the City reserve the power to recall the Mayor and any or all members of the City Council. Before the question of a recall shall be submitted to the registered voters of the City, a petition demanding such question to be so submitted shall first be filed with the City Secretary’s Office. Said petition must be signed by registered voters in the City in a number not less than twenty-five percent (25%) of the number of voters who cast a vote in the last Mayoral election in the City of Windcrest.

Recall petitions shall contain the name of the City Official who is the subject of recall. The petition shall be addressed to the City Council of the City and shall state distinctly and specifically the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the official subject to the recall petition that warrant the reason for the recall. Such

statement shall give the individual sought to be removed notice of the matter(s) and thing(s) with which the individual's recall is predicated. If there be more than one (1) reason, said petition shall distinctly and specifically state each reason upon which such petition for removal is predicated and shall distinctly and specifically state the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the individual that warrant the recall as to give the individual sought to be removed notice of the matter(s) and thing(s) on which the recall is predicated.

The statement of charges or grounds for recall shall **be least** two hundred fifty (250) but **no more** than four hundred (400) words. The petition bearers or carriers shall give each potential signer of the recall petition time to read the statement of charges before signing the petition. Within five (5) working days of receipt of a recall petition, or as soon as practicable, the City Secretary shall serve the City official who is subject of the recall a copy of the recall petition charges or allegations. Within five (5) working days after the City official is served a copy of the recall petition charges or allegations, the City official may file a written response with the City Secretary's Office.

Sec. 7.04.1. - Basis for Recall

Specific acts of malfeasance, incompetence, moral turpitude, or ethical failures, as defined by Texas law, conviction of violations of criminal law, excluding Class C misdemeanors and traffic violations, or failure to comply with the provisions of this Charter constitute basis for a recall. The basis for recall shall be specifically stated in the petition and be in sufficient detail so as to allow the official who is the subject of the recall petition to be informed as to the allegations against him or her. A separate petition is required for the recall of each elected official.

Sec. 7.04.2. - Two-Year Recall Limitation and Consecutive Term Exception

Elected officials shall not be subject to recall during the first six (6) months of that official's elected term of office. The final six (6) months of an elected official's term of office shall be exempt from recall.

Sec. 7.04.3. - Review of Petition

The recall petition, with the required number of signatures of registered voters of the City, and all papers and documents supporting the allegations in the petition, shall be filed with the City Secretary. The City Secretary and the City Attorney shall review the petition for recall to determine that it meets the requirements of this Charter and state law. The City Attorney shall certify the petition to the City Secretary that the petition meets the minimum legal requirements under this Charter and state law or shall list any non-compliance contained within the petition. The City Attorney's review shall assume, for purposes of certification, the grounds for recall stated in the petition are true and the City Attorney shall not review the factual merits of the grounds for recall. The City Secretary shall certify the petition, or return a petition found not in compliance with this Charter to the petitioners committee with the written findings of noncompliance clearly stated within ten (10) calendar days of submission. The petitioners committee may correct errors or omissions in the petition and may resubmit the corrected petition to the City Secretary within ten (10) calendar days. The City Secretary shall provide one copy of the certified petition to the petitioners committee and one to the City Council.

Sec. 7.04.4. - Procedure After Certification

Upon certification of the petition, the elected official made the subject of the petition may resign. If the official chooses not to resign, the official may, within five (5) working days of the petition's certification, request, in writing to the City Secretary, a special meeting. In this event, the City Council shall order such special meeting to be held, **no more** than thirty (30) days and **no less** than fifteen (15) days before early voting.

At any special meeting held under this Section, the individual whose removal is sought shall have a thirty (30) minute period to state their response to the recall petition. There shall be no public participation in the special meeting and no other items of business shall be a part of the special meeting.

This special meeting is not a trial. A separate special meeting must be allowed, if requested, for each elected official who is the subject of a recall petition. If, at the conclusion of the special meeting, the official who is the subject of the recall petition chooses not to resign, the City Council shall order a recall election for the next regular election date.

Sec. 7.04.5. - Recall Ballot

Ballots prepared and used in the recall election shall read as follows: "Shall _____ Be Removed From the Office of _____ By Recall?" The ballot shall also provide two (2) options, both printed on the ballot; one for removal by the term "YES", the other against removal by the term "NO". The City Secretary and the Election Judge shall count the ballots.

Sec. 7.04.6. - Results of a Recall Election

A simple majority vote shall decide the issue of recall. If less than a majority of the votes favor a recall, the elected official shall continue to serve. If a majority of votes are cast in favor of a recall, the City Council shall declare the position vacant, and ensure the filling of the vacancy in accordance with the provisions of this Charter. The recalled official is considered removed from the position and does not sit in any holdover capacity unless otherwise authorized by this Charter. An official who has been recalled may not be reappointed to any immediate vacancy.

Sec. 7.04.7. - Recall Resulting in Less Than a Quorum

Should multiple successful recall petitions reduce the number of serving City Council members to less than a quorum, the remaining City Council members, including the Mayor, shall have the authority to continue to conduct City business, including filling vacancies and scheduling elections. In the event the entire City Council, including the Mayor, is recalled, the recalled officials shall remain in a holdover position for the singular and ministerial purpose of calling a special election consistent with state law. The calling of the special election shall occur at the first council meeting where an election may be called under state law.

Sec. 7.05. - Initiatives and Referendum.

A. General. Initiative or referendum may be initiated under this Charter by submitting a petition to the City Secretary stating that the purpose of the petition is to initiate an ordinance, or, to request repeal of an ordinance passed by the City Council.

The petition must contain the verified signatures in a number of at least twenty percent (20%) of the number of voters who cast a vote in the last Mayoral election in the City of Windcrest.

B. Initiative. In addition to the required number of signatures, a petition for initiative shall have a copy attached of the full text of the proposed legislation in the form of an ordinance, including a descriptive caption. Each page of the petition shall have, at the top of the page, the full descriptive caption of the proposed ordinance. No ordinance on the same subject as an initiated ordinance which has been defeated at any election may be initiated by the voters within four (4) years from the date of such election. Any ordinance adopted by initiative shall not be subject to repeal or substantial modification by action of the Council for a period of four (4) years from the date of the election, except by referendum election called by the Council or by referendum petition submitted by registered voters in accordance with this Charter. Notwithstanding the four (4) year prohibition, the City Council may make required modifications of an ordinance passed by initiative if such modifications are required to bring the ordinance in conformity with state or federal law.

C. Referendum. In addition to the required number of signatures, a petition for referendum shall have the specific ordinance to be repealed. A petition for referendum on the same subject matter may only be submitted once every four (4) years. Any ordinance repealed by referendum shall not be reinstituted in whole or substantial part by action of the Council for a period of four (4) years from the date of the election, except by initiative election called by the Council or by initiative petition submitted by registered voters in accordance with this Charter.

Sec. 7.05.1. - Form and Review of the Petition

The petition for initiative or referendum shall be readable, understandable, and clearly state the action being requested. Within ten (10) calendar days of the filing of the petition, the City Secretary and the City Attorney shall determine if the petition meets the requirements set forth in this Charter. If so, the City Secretary shall submit it to the City Council at the next regularly scheduled meeting. If the petition fails to meet the requirements of this Charter, the City Secretary shall, within ten (10) calendar days, return it to the petitioners committee stating reasons for its return. Insufficiencies may be corrected within ten (10) working days of notice.

Sec. 7.05.2. - Submission to the Voters

A. Initiative. Upon presentation to the City Council, it shall become the duty of the City Council, within forty-five (45) calendar days after the date the petition is finally determined sufficient, to pass and adopt such ordinance without alteration as to meaning or effect, or to call for an election, to be held on the soonest date allowed under the Texas Election Code. If a majority of the registered electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon the canvassing of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

B. Referendum. Upon presentation to the City Council, it shall become the duty of the City Council, within forty-five (45) calendar days after the date the petition is finally determined sufficient, to repeal such ordinance or to call for an election, to be held on the soonest date allowed under the Texas Election Code.

Sec. 7.05.3. - Ballot Form and Results

Ordinances submitted to the electorate in accordance with the initiative and referendum provisions of this Charter shall be submitted on a ballot which contains the substance of the ordinance to be adopted or repealed. More than one ordinance may be placed on a single ballot and be voted upon at the same election. The vote shall consist of a simple "for" or "against" each proposed ordinance. Any measure receiving a majority of the votes in favor shall be deemed to have passed. Any measure which is not approved by a majority of the votes shall be deemed defeated. If conflicting measures are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Sec. 7.06. - Non-Binding Elections

The City Council, upon its own motion and by the affirmative vote of a majority of the full membership of the City Council, may submit to popular vote at an election for adoption or rejection any proposed ordinance, resolution, or measure, or may submit for repeal any existing ordinance, resolution, or measure. The results of said election shall not have a binding effect on the City Council.

The proposition on the ballot shall state as follows:

PROPOSITION II

“SHALL SECTIONS 7.01, 7.02, 7.03, 7.04, 7.05, AND 7.06 OF THE CITY CHARTER BE AMENDED TO CHANGE THE STANDARDS AND PROCEDURES FOR RECALL PETITIONS AGAINST MEMBERS OF THE CITY COUNCIL, FOR INITIATIVES AND FOR REFERENDUMS?”

FOR	_____
AGAINST	_____

PROPOSITION III

SHALL SECTIONS 3.02 AND 5.02 OF THE CITY CHARTER BE AMENDED TO CHANGE THE AUTHORITY OF THE CITY MANAGER AND MAYOR, REMOVING THE MAYOR AS AN OPERATING OFFICER, AND DESIGNATING THE CITY COUNCIL AS THE DIRECT SUPERVISOR OF THE CITY MANAGER?

This proposition would amend the designated sections to read as follows:

Sec. 3.02. - Mayor

The person elected Mayor shall be the ceremonial head of the City government. The Mayor shall preside over all meetings of the City Council. The Mayor may debate and discuss any matters before the City Council and shall vote only to break a tie vote of the City Council. The Mayor shall be recognized as the head of the City government for all emergency management purposes, and by the governor for purposes of military law.

Sec. 5.02. - City Manager

5.02.1. *Qualifications, appointment.* The City Council shall appoint and may remove the City Manager upon the affirmative vote of a majority of the City Council and shall supervise the City Manager by majority vote. The City Manager shall be chosen and compensated solely on the basis of experience, education, training, ability, and performance. The City Council shall require the City Manager to reside within a reasonable distance as determined by the City Council. The City Council shall establish compensation for the City Manager and review performance on an annual basis. No member of the City Council shall, during the term of office for which they are elected or for one (1) year after leaving office, be appointed City Manager. The City Council shall perform a review of the City Manager's performance at least annually, but no more than twice in any fiscal year.

5.02.2. *Direction and supervision of employees, department heads.* The City Manager shall be responsible to the City Council for the proper administration of all the affairs and business of the City. Except for the purpose of inquiry, the City Council and its members shall deal with the City staff through the City Manager, and neither the City Council nor any member not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager either publicly or privately.

5.02.3. *Specific powers and duties.* The City Manager shall be required to:

- (a) Ensure the enforcement of all state laws and City ordinances;
- (b) Hire, suspend, or remove any employee of the City, except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. The City Manager may authorize any employee who is subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that employee's department, office or agency;
- (c) Provide employees with an annual written performance review;

- (d) Attend all City Council meetings except when excused. May participate in all discussions but may not vote;
- (e) Prepare and submit the proposed annual budget and be responsible for the administration of the adopted budget;
- (f) Keep the City Council advised of the financial condition and needs of the City and make such recommendations as seem desirable;
- (g) Prepare and submit to the City Council at the end of each fiscal year a complete report on the finances and administrative activities of the City for such preceding fiscal year;
- (h) Make such other reports as the City Council may require concerning the operations of the City;
- (i) Meet with, discuss with, confer with, and advise the Mayor and/or any member of the City Council regarding the business of the City;
- (j) May delegate to City employees nondiscretionary ministerial and administrative tasks to carry out his duties;
- (k) Shall direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law;
- (l) Approve contracts and budget line items not to exceed \$25,000.00, unless authorized by the City Council;
- (m) Shall have the authority to execute on behalf of the City, standard form documents including, but not limited to, deeds, releases of liens, rental agreements, easements, right-of-way agreements, joint use agreements, and other similar documents as authorized by the City Council;
- (n) Perform such other duties as may be prescribed in this Charter or required by the City Council.

5.02.4. *Acting City Manager.* The City Manager may designate an officer of the City to serve as acting City Manager when the City Manager is temporarily absent or on leave, subject to the approval of the City Council. If the City Manager is unable to appoint an officer to serve as acting City Manager, the City Council may designate a qualified person to perform the duties of the office of City Manager when the office is vacant or during the City Manager's extended absence or disability and may set the compensation paid to such person during such time. The City Council may revoke such designation at any time and appoint another individual, including an employee of the City, to serve until the City Manager shall return or his disability shall cease.

The proposition on the ballot shall state as follows:

PROPOSITION III

“SHALL SECTIONS 3.02 AND 5.02 OF THE CITY CHARTER BE AMENDED TO CHANGE THE AUTHORITY OF THE CITY MANAGER AND MAYOR, REMOVING THE MAYOR AS AN OPERATING OFFICER, AND DESIGNATING THE CITY COUNCIL AS THE DIRECT SUPERVISOR OF THE CITY MANAGER?”

FOR

AGAINST

PROPOSITION IV

SHALL SECTIONS 3.01, 3.03, 3.05, AND 3.10 OF THE CITY CHARTER BE AMENDED TO DESIGNATE PLACE POSITIONS FOR MEMBERS OF THE CITY COUNCIL, ADJUST THE AUTHORITY OF THE COUNCIL OVER THE CITY MANAGER AND DEPARTMENT HEADS, AND CLARIFYING QUORUM REQUIREMENTS.

This proposition shall amend the designated sections to read as follows:

Sec. 3.01. - City Council [Composition]

The City Council shall be comprised of a Mayor and five (5) City Council members. The council member positions shall be labeled as Place 1, Place 2, Place 3, Place 4, and Place 5.

Sec. 3.03. - Powers of the City Council

The City shall have the power of local self-government to the fullest extent permitted by law. All powers of the City and the determination of all matters of policy shall be vested in the City Council. Except where in conflict with and otherwise expressly provided by this Charter, the City Council shall have all powers authorized to be exercised by the City Council in accordance with the laws of the State of Texas. Among the exclusive powers that may be exercised by the City Council, the following are hereby enumerated for greater certainty, but are not intended as limitations:

- (1) Appoint and remove the City Manager, and other such city officers as designed by this Charter;
- (2) Establish other administrative departments;
- (3) Establish the City's organizational chart and the number and position of employees;
- (4) Adopt the City budget;
- (5) Authorize the issuance of bonds by a bond ordinance and other debts allowed by law;
- (6) Hear complaints of nonfeasance, malfeasance, and misfeasance, and inquire into the conduct of any office, department, or agency of the City and make investigations as to municipal affairs. For this purpose, the City Council shall have the power to administer oaths, subpoena, witnesses, and to compel the production of books, papers, and other evidence material to the inquiry. The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence, and shall have the power to punish any such contempt in the manner provided by the ordinance;
- (7) Appoint all commissions, boards, committees, task forces, and/or appointed groups to assist the City Council in the performance of its duties and responsibilities;
- (8) Set and fix the salaries and compensation for the non-elective City officers and employees;
- (9) Adopt and modify the zoning plan and the building code of the City;

- (10) Compromise and settle any and all claims and lawsuits of every kind and character in favor or against the City;
- (11) Adopt plats;
- (12) Adopt and amend the Comprehensive Plan;
- (13) Adopt parliamentary procedures and amend such rules as necessary for the orderly operation of government; and
- (14) Adopt and modify the official map of the City;
- (15) Determine and adopt policies of the City;
- (16) Adopt and impose taxes;
- (17) The City shall have all the powers granted to cities by other state, federal and local law together with all of the implied powers necessary to carry into execution those powers and those express and implied powers necessary for the government, interests, health, welfare and good order of the City and its inhabitants.

Sec. 3.05. - Terms of Office

The Mayor's term of office shall be for a period of two (2) years. The five (5) City Council members shall have a term of two (2) years each. At an election held on a uniform election date the Mayor, Council Place 4 and Council Place 5 shall be elected on odd numbered years, and Council Place 1, Council Place 2, and Council Place 3 shall be elected on even numbered years. Such designated terms do not prohibit special elections due to resignation, forfeiture of office, death or other vacancy requiring a special election under state law.

Sec. 3.10. - Meetings/Quorum

Regular meetings of the City Council shall be held at such times as may be prescribed from time to time by resolution of the City Council. Special meetings shall be called by the City Secretary upon the written request of the Mayor, the City Manager, or two (2) members of the City Council. Notice of any regular or special meetings of the City Council shall state the subject(s) to be considered at the meeting and shall be posted to the public in accordance with the laws of the State of Texas. A quorum shall consist of three (3) City Council members, unless otherwise provided for by state law. The City Council may sanction its members for misconduct and may compel the attendance of absent members. Items may be placed on the agenda by the request of the Mayor, the City Manager, or a City Council Member. Posted agendas will provide for "Citizens to be Heard" allowing citizens the opportunity to address the City Council on topics not on the agenda for no more than three (3) minutes. Citizens shall also have an opportunity to address the City Council during consideration of the posted agenda items for no more than six (6) minutes. These opportunities for citizens to speak will be included in the agendas of all Council Meetings, Special Council Meetings and Workshops. Citizens to be Heard shall be placed on the agenda after calling the meeting to order and invocation, if any. This rule applies to all boards and City commissions.

The proposition on the ballot shall state as follows:

PROPOSITION IV

“SHALL SECTIONS 3.01, 3.03, 3.05, AND 3.10 OF THE CITY CHARTER BE AMENDED TO DESIGNATE PLACE POSITIONS FOR MEMBERS OF THE CITY COUNCIL, ADJUST THE AUTHORITY OF THE COUNCIL OVER THE CITY MANAGER AND DEPARTMENT HEADS, AND CLARIFYING QUORUM REQUIREMENTS?”

FOR

AGAINST

PROPOSITION V

SHALL SECTION 3.07 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE
AUTHORITY TO INDEMNIFY PUBLIC OFFICERS

This proposition would amend the designated section to read as follows:

Sec. 3.07. - Compensation

Members of the City Council may receive compensation as set by City ordinance, except that City Council members shall be entitled to reimbursement of all necessary and reasonable expenses incurred in the performance of their official City Council duties, upon approval of such expenses by the City Council. The City Council may indemnify the Mayor or any City Council member consistent with the terms of this Charter and state law.

The proposition on the ballot shall state as follows:

PROPOSITION V

“SHALL SECTION 3.07 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE
AUTHORITY TO INDEMNIFY PUBLIC OFFICERS?”

FOR

AGAINST

PROPOSITION VI

SHALL THE CITY CHARTER BE AMENDED BY ADDING SECTION 3.085 TO IMPOSE EXPRESS PROHIBITIONS ON THE CITY COUNCIL AND MAYOR?

This proposition would amend City Charter by adding Section 3.085, which reads as follows:

Sec. 3.085 – Prohibitions

- A. No member of City Council shall accept or admit liability or pay any claim for damages asserted against the City. City Council shall not accept or admit liability without first obtaining a written opinion from the City Attorney regarding the City's liability therein and only then upon a majority vote of the City Council.
- B. No member of City Council shall be employed in or appointed to the positions of City Manager, City Attorney, or Department Head until three (3) years after the expiration of the term for which he/she was elected to the City Council and for any other compensated City position until one (1) year after the expiration of the term for which he/she was elected to the City Council unless approved by the City Council. This subsection shall not apply to a volunteer who receives a stipend that is the same as the stipend received by other similarly situated volunteers.
- C. Except for the purpose of inquiries and investigations, unless otherwise provided in this Charter, the City Council as a whole and its individual members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Council nor its individual members shall give orders to any such officer or employee, either publicly or privately.
- D. Neither the City Council nor any of its members shall dictate to the City Manager the appointment of any person to office or employment. No member of City Council shall interfere with the City Manager in the performance of the duties of that office or prevent the City Manager from exercising the City Manager's own judgment in the appointment of officers and employees whose employment, appointment, and supervision are reserved by this Charter for the City Manager. Except for the purpose of inquiry and investigations, the City Council and its members shall deal with the City Staff solely through the City Manager, and neither the City Council, as a body or any individual member, nor any individual not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager, either publicly or privately.
- E. It shall be unlawful for the Mayor or a Council Member to release any attorney-client privileged communication. The City Council as the governing body of the City solely holds and is entitled to the attorney client-privilege and it may only be waived by an affirmative vote of two-thirds ($\frac{2}{3}$) of the City Council.

The proposition on the ballot shall state as follows:

PROPOSITION VI

“SHALL THE CITY CHARTER BE AMENDED BY ADDING SECTION 3.085 TO IMPOSE EXPRESS PROHIBITIONS ON THE CITY COUNCIL AND MAYOR?”

FOR

AGAINST

PROPOSITION VII

SHALL SECTIONS 3.13 AND 3.14 OF THE CITY CHARTER BE AMENDED TO CHANGE THE PROCESS FOR PASSAGE OF ORDINANCES AND RESOLUTIONS AND PROVIDING FOR LIMITED PASSAGE OF SPECIFIC ORDINANCES UPON ONE READING?

The proposition on the ballot shall state as follows:

Sec. 3.13. - Procedures for Passage of Ordinances and Resolutions

A. *Passage.* Ordinances shall be introduced to the City Council only in written or printed form. The subject or subjects of all ordinances shall be clearly expressed in the title. Except as may otherwise be prescribed in this Charter, an ordinance shall not be finally passed at the meeting of the City Council at which it is first introduced, but it shall then be read, and the City Council will determine whether it shall be rejected or further considered at a subsequent meeting of the City Council. If rejected, no further action shall be required. Upon second reading, the ordinance may be adopted and enacted. The affirmative vote of three (3) or more members of the City Council is required to enact any ordinance, unless otherwise provided for by state law.

B. Ordinances passed upon one reading. Notwithstanding section 3.13(A) above, ordinances which may be passed upon first introduction include ordinances canvassing an election, ordinances calling an election, ordinances required by state law to approve a contract, annexation ordinances where such annexation first requires at least two (2) public hearings, ordinances setting a tax rate as required by state law, and ordinances adopting a budget if at least two (2) budget workshops or public hearings have occurred to discussed the pending budget. Any ordinance necessary to protect the public's peace, health, safety and general welfare may be passed as an emergency and become effective at once upon one (1) reading of the City Council, upon the approval of a majority vote of the City Council members that it is an emergency at said reading and the finding of an emergency shall be stated within the ordinance.

C. *Penalty and franchise ordinances.* Caption or title and penalties of every ordinance imposing any penalty, fine, or forfeiture shall, as soon as practical after passage thereof, be published one (1) time in the designated official newspaper of the City of Windcrest. All ordinances granting, confirming, extending, renewing, or amending a franchise shall be accepted in writing by the grantees and shall be published as otherwise provided in this Charter.

D. *Resolutions and ordinances.* The City Council shall evidence its official actions by written ordinances, resolutions, or oral motions. The style of all ordinances shall be: "Be it Ordained by the City Council of the City of Windcrest, Texas;" and the style of all resolutions shall be: "Be it Resolved by the City Council of the City of Windcrest." Every Ordinance shall be authenticated by the signature of the Mayor, or in the Mayor's absence

the Mayor Pro Tempore. The City Secretary shall attest all signatures. All ordinances and resolutions passed by the City Council shall become effective immediately from and after passage except where publication of a caption is required or where the ordinance, state law, or other provisions of this Charter provide otherwise, in which case the effective date shall be as prescribed in the ordinance.

Sec. 3.14. - Code of Ordinances

The City Council shall have the power to cause the ordinances of the City to be printed, in code form, and shall have the same arranged and digested, as often as the City Council may deem advisable, provided that failure to print the ordinance shall not affect its validity. The City Council shall have power to cause the ordinances of the City to be corrected, amended, revised, codified and printed in code form as often as the Council deems advisable, and such printed code, when adopted by the Council, shall be in full force and effect without the necessity of publishing the same or any part thereof in a newspaper. Such printed code shall be admitted in evidence in all courts and places without further proof.

The proposition on the ballot shall state as follows:

PROPOSITION VII

“SHALL SECTIONS 3.13 AND 3.14 OF THE CITY CHARTER BE AMENDED TO CHANGE THE PROCESS FOR PASSAGE OF ORDINANCES AND RESOLUTIONS AND PROVIDING FOR LIMITED PASSAGE OF SPECIFIC ORDINANCES UPON ONE READING?”

FOR

AGAINST

PROPOSITION VIII

SHALL SECTIONS 4.01, 4.02, 4.03, 4.07, AND 4.08 OF THE CITY CHARTER BE AMENDED TO CHANGE THE PROCEDURE FOR CITY ADMINISTRATION OF ELECTIONS?”

This proposition would amend the designated sections to read as follows:

Sec. 4.01. - City Elections

The general City election shall be held annually on a uniform election date in November, or the date nearest thereto as may be required by state law. Each qualified voter shall be entitled to vote. Candidates for each seat, including the Mayor, shall be elected at large.

Sec. 4.02. - Regulation of Elections

All City elections shall be conducted in accordance with the applicable provisions of the Texas Election Code and other state and federal law. The City Council shall appoint the clerks, judges and other election officials and shall provide for their compensation and other expenses incurred in holding said election. The City Council may adopt such permitted additional regulations for the conduct of individuals which is not inconsistent with state or federal law.

Sec. 4.03. - Special Elections

The City Council, by ordinance or resolution, may call such special elections as are authorized by state law or this Charter, fix the time and place of holding the same, and provide all means for holding such special elections. Every special election shall be called and held according to the state provisions governing elections.

Sec. 4.07. - Elections Determined by Plurality

A plurality vote for an elected office is that number which is greater than the number cast for any other candidate for the respective position. The candidate who receives a plurality vote shall be declared elected. In the event of a tie, a runoff election shall be held in accordance with the Texas Election Code.

Sec. 4.08. - Oath of Office

All City of Windcrest elected and appointed officers shall take and sign the Oath of Office prescribed for state elective and appointed offices, respectively, by the Constitution of the State of Texas and by the laws of this state. Every officer of the City shall, before entering upon the duties of the office, take and subscribe to the oaths required by state law, filed and kept in the office of the City Secretary.

The proposition on the ballot shall state as follows:

PROPOSITION VIII

“SHALL SECTIONS 4.01, 4.02, 4.03, 4.07, AND 4.08 OF THE CITY CHARTER BE AMENDED TO CHANGE THE PROCEDURE FOR CITY ADMINISTRATION OF ELECTIONS?”

FOR

AGAINST

PROPOSITION IX

SHALL SECTION 5.03 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE AUTHORITY OF THE CITY ATTORNEY AND PROVIDE THE PROCEDURE FOR REMOVAL OF THE CITY ATTORNEY?

This proposition would amend the designated section to read as follows:

Sec. 5.03. - City Attorney

5.03.1. *Appointment.* There shall be a department and office of City Attorney. The City Council shall appoint a competent and licensed attorney who shall have not less than five (5) years' experience practicing municipal law in Texas. The City Council may retain special counsel or appoint Assistant City Attorneys at any time it deems appropriate and necessary. The City Attorney can be removed with or without cause by an affirmative vote of three members of the City Council. Unless a legal conflict of interest exists, all legal counsel of the City shall be responsible for reporting information to the City Attorney regarding any representation of the City. Pursuant to state law, the City Attorney is the designated attorney for the state in municipal court and any designated prosecutors hold such positions subject to the City Attorney's direction. The City Attorney may designate such special counsel and special prosecutors as he/she deems appropriate to properly represent the interest of the City, or the state in municipal court. All City Attorney designations are subject to funding provided for in the budget or by the City Council. The City Attorney may be appointed or terminated by an affirmative vote of three Council Members at a properly called public meeting.

The proposition on the ballot shall state as follows:

PROPOSITION IX

“SHALL SECTION 5.03 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE AUTHORITY OF THE CITY ATTORNEY AND PROVIDE THE PROCEDURE FOR REMOVAL OF THE CITY ATTORNEY?”

FOR

AGAINST

PROPOSITION X

SHALL SECTIONS 5.06 OF THE CITY CHARTER BE AMENDED CHANGE THE AUTHORITY OF THE OFFICE OF CITY SECRETARY AND CHANGE THE PROCEDURE FOR APPOINTMENT?

This proposition would amend the designated section to read as follows:

Sec. 5.06. - City Secretary

5.06.1. *Appointment and compensation.* The City Council shall appoint the City Secretary. The City Secretary shall receive compensation as may be fixed by the City Council. If the City Secretary is temporarily unable to perform appointed duties, the City Manager or City Council may designate an alternate.

5.06.2. *Duties.* The City Secretary shall:

- (a) Give notice of City Council meetings;
- (b) Attend all City Council meetings and keep accurate records of all actions taken by the City Council;
- (c) Maintain the official records and files of the City;
- (d) Administer oaths required by law;
- (e) Attest contracts, assessment certificates, ordinance resolutions, and other legal instruments when executed by the authorized officers of the City;
- (f) Serve as the election official for all City elections;
- (g) Hold and maintain the City seal and affix it to all appropriate documents as required;
- (h) Supervise the administrative staff as directed by City Council;
- (i) Serve as Assistant Court Administrator;
- (j) Perform such other duties as may be required by the City Manager, this Charter, or the laws of the State of Texas.

The proposition on the ballot shall state as follows:

PROPOSITION X

“SHALL SECTIONS 5.06 OF THE CITY CHARTER BE AMENDED CHANGE THE AUTHORITY OF THE OFFICE OF CITY SECRETARY AND CHANGE THE PROCEDURE FOR APPOINTMENT?”

FOR

AGAINST

PROPOSITION XI

SHALL SECTION 5.07.3 OF THE CITY CHARTER BE AMENDED TO CLARIFY APPOINTMENT AND DUTIES OF THE MUNICIPAL COURT CLERK?

This proposition would amend the designated sections to read as follows:

5.07.3. *Clerk of the Court.* The Clerk of the Municipal Court of Record shall be appointed as provided for by state law. The City Manager may appoint such deputy clerks as such become necessary. The Clerk of the Court and any deputies appointed by the City Manager shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court as necessary and required by law, and do and perform any and all acts usual and necessary to be performed by clerks and deputy clerks of municipal courts of the State of Texas. The clerk and other court personnel perform their duties under the direction and control of the presiding judge.

The proposition on the ballot shall state as follows:

PROPOSITION XI

“SHALL SECTION 5.07.3 OF THE CITY CHARTER BE AMENDED TO CLARIFY APPOINTMENT AND DUTIES OF THE MUNICIPAL COURT CLERK?”

FOR

AGAINST

PROPOSITION XII

SHALL SECTION 8.05 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE AUTHORITY TO GRANT AND REGULATE FRANCHISES AND PERMITS UNDER THE TEXAS TRANSPORTATION CODE?

This proposition would amend the designated section to read as follows:

Sec. 8.05. - Power to grant franchises.

The Council shall have the power, subject to the provisions hereof, by ordinance to confer upon any person, firm, corporation, or other legal entity, the franchise or right to use the public property of the City for the purpose of furnishing to the public any general public service or benefit, including, but not limited to, heat, light, power, telephone service, transportation, or other telecommunication providers for compensation or hire. The City shall have the power by ordinance to grant, renew, and extend all franchises of all public utilities of every character operating within the City. A grant cannot be exclusive of other franchises, nor granted for an indeterminate term.

The Council shall have the power to confer upon any person, firm, corporation, or other legal entity a franchise, permit, or license authorized by Texas Transportation Code §316.021 or any other state or federal law for the purposes authorized by such laws.

The proposition on the ballot shall state as follows:

PROPOSITION XII

“SHALL SECTION 8.05 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE AUTHORITY TO GRANT AND REGULATE FRANCHISES AND PERMITS UNDER THE TEXAS TRANSPORTATION CODE?”

FOR

AGAINST

PROPOSITION XIII

SHALL SECTIONS 10.01 AND 10.02 OF THE CITY CHARTER BE AMENDED TO CHANGE THE LEGAL PROCESS PROCEDURE, LEGAL NOTICE PROVISIONS, CHARTER CONSTRUCTION AND TO CONFORM THE SECTIONS TO CURRENT STATE LAW?

This proposition would amend the designated sections to read as follows:

Sec. 10.1. - General legal considerations.

10.01.1. *Property not subject to garnishment or execution.* No property owned or held by the City shall be subject to garnishment or execution of any kind or nature except as provided by state law.

10.01.2. *Municipal acquisition of property.* The City shall have the power to acquire property within or without its boundaries, subject to limitations within this Charter or state law, for any public purpose, by purchase, gift, devise or lease.

10.01.3. *Indemnification of officers, employees and officials.* The City Council shall, by appropriate ordinance, provide for the indemnification and legal defense of the officers and employees of the City, including the City Council, Boards, Commissions, Committees, and volunteers approved by the Mayor (or City Manager) against any cost, loss, or expense, including court costs and attorney's fees, to the extent allowed by state law, arising out of any action based upon alleged negligent act or acts of such person during the discharge of that person's duties, committed within the scope of such person's services. Indemnification under this Article shall not be provided for knowing, willful, or intentional violations of any statute or ordinance.

10.1.4. *Bond or security not required.* It shall not be necessary in any action, suit or proceeding in which the City is a party, for any bond or other security to be executed on behalf of the City. Any action will proceed as if such bond or security had been given. The absence of such bond or security shall not negate the liability of the City established in such proceedings, and in any finding against the City, it shall be liable as if such security had been given.

10.01.5 *Construction of the Charter.* The Charter shall not be construed as a mere grant of enumerated powers but shall be construed as a general grant of power and as a limitation of power on the government of the City of Windcrest in the same manner as the Constitution of Texas is construed as a limitation on the powers of the Legislature. Except where expressly prohibited by this Charter, each and every power under Article XI, Section 5 of the Constitution of Texas, which it would be competent for the people of the City of Windcrest to expressly grant to the City, shall be construed to be granted to the City by this Charter.

10.01.6. *Severability.* If any chapter, article, section, paragraph, sentence, clause or phrase of this Charter shall be held unconstitutional or invalid for any reason by a court of competent jurisdiction, such holding shall not affect the remainder of the Charter nor the context in which such provision so held invalid may appear.

10.01.7 *Judicial Notice.* This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places provided that the City Secretary certifies the most current City Charter with any amendments.

10.01.8 *Service of Process Against the City.* All legal process against the City shall be served upon the City Manager.

Sec. 10.02. - Claims Against the City

10.02.1. *Notice of claim.* No action may be filed in any court of competent jurisdiction seeking damages for personal injury or property loss or damage based upon the alleged liability of the City of Windcrest unless and until notice of such alleged loss or damage claimed is first provided to the City Secretary. Such claim must be filed within 180 calendar days of the alleged occurrence of loss or damage. Such notice shall be in writing and shall provide a sworn statement of alleged facts, the date and location of the alleged facts asserted as a basis for such liability, the nature and extent of any and all damage or injury asserted by the claimant, the basis for the alleged liability of the City, and shall demand compensation in a specific dollar amount.

10.02.2. *Thirty (30) day waiting period.* No action may be filed in a court of competent jurisdiction prior to the expiration of thirty (30) calendar days from the date notice of the claim was provided. During this thirty (30) calendar day period, the City may deny the claim, ask for additional information, or make an offer of settlement on the claim. Offers of settlement may not be made without the concurring opinion of the City Attorney that the facts establish the liability of the City, and that the amount of the offer is supported by the evidence available. Negotiations and discussions toward settlement of the claim may continue beyond the thirty (30) calendar day period.

10.02.3. *Nonwaiver of rights.* Nothing contained in this Article shall be construed to mean that the City of Windcrest waives any rights, privileges, defenses, or immunities in tort actions which are provided in common law, the Texas Constitution, the U.S. Constitution or the general laws of the State of Texas.

10.02.4 *Power to Settle Claims.* The City Council shall have the power to compromise and settle any and all claims and lawsuits of every kind and character, in favor of, or against, the City, including suits by the City to recover delinquent taxes after consulting with the City Attorney

The proposition on the ballot shall state as follows:

PROPOSITION XIII

“SHALL SECTIONS 10.01 AND 10.02 OF THE CITY CHARTER BE AMENDED TO CHANGE THE LEGAL PROCESS PROCEDURE, LEGAL NOTICE PROVISIONS, CHARTER CONSTRUCTION AND TO CONFORM THE SECTIONS TO CURRENT STATE LAW?”

FOR

AGAINST

PROPOSITION XIV

SHALL SECTIONS 1.03, 1.04 AND 1.05 OF THE CITY CHARTER BE AMENDED TO CHANGE THE POWER OF THE CITY TO ESTABLISH, ALTER, EXPAND, AND CONTRACT IT BOUNDARIES?

This proposition would amend the designated sections to read as follows:

Sec. 1.03. - Boundaries

The boundaries and limits of the City of Windcrest shall be those established and described in ordinances duly passed by the City Council of the City of Windcrest in accordance with state law. The City shall prepare a map that shows the boundaries of the municipality. A copy of the map shall be kept in the office of the City Secretary. If the City annexes or disannexes territory, then the map shall be immediately corrected to reflect the new territory. Further, the map must reflect all shared territory with another local government, territory under a development agreement which includes a territory, and all extraterritorial jurisdictions of the City.

Sec. 1.04. - Adjustment of Boundaries (Annexation)

1. The boundaries and limits of the City may be enlarged and extended by the acquisition of additional territory, irrespective of size and configuration, by the methods hereinafter set forth. The City may also reduce its boundaries by the methods contained hereinafter.
2. The City Council shall have the power by ordinance to fix the boundary limits of the City and to provide for the alteration, retraction and extension of said boundary limits and the acquisition of additional territory, lying adjacent to the City, in any manner provided by law. Such alteration includes the ability to exchange territory with another municipality or enter into any agreement for territory authorized by law.
 - a. Before the City may disannex an area, acquire an area or extend its extraterritorial jurisdiction, the City Manager must present a written report on the financial impact of the proposed acquisition or extension and the adoption of any proposed service plan to the City Council.
 - b. Action to acquire an area or extend the City's extraterritorial jurisdiction shall be initiated by ordinance as required under state law.
3. When any additional territory has been so acquired, the same shall be part of the City of Windcrest and the property situated therein shall bear its pro rata part of the taxes levied by the City. The inhabitants thereof shall be entitled to all the rights and privileges of other citizens of the City and shall be bound by the acts, ordinances, resolutions and regulations of the City.
4. The extraterritorial jurisdiction of the boundaries may be altered by the City Council as provided by state law.

Sec. 1.05. - Contraction of Boundaries (Disannexation)

Notwithstanding Section 1.04, when the City Council determines there exists within the corporate limits of the City a territory not suitable or necessary for City purposes, the City Council may disannex the territory as part of the City by ordinance after notice, a public hearing, and vote of the City Council of Windcrest.

The proposition on the ballot shall state as follows:

PROPOSITION XIV

“SHALL SECTIONS 1.03, 1.04 AND 1.05 OF THE CITY CHARTER BE AMENDED TO CHANGE THE POWER OF THE CITY TO ESTABLISH, ALTER, EXPAND, AND CONTRACT IT BOUNDARIES?”

FOR

AGAINST

PROPOSITION XV

SHALL SECTIONS 10.4 AND 11.01 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE PROCEDURES AND CHANGE THE TRANSITION PROVISIONS UPON PASSAGE OF CHARTER AMENDMENTS?

This proposition would amend the designated sections to read as follows:

Sec. 11.01. - Amendment of this Charter

Amendments to this Charter shall be framed, proposed, and adopted in the manner provided by Texas Local Government Code as now or hereafter amended. Nothing in this section prohibits the City Council from forming a Charter Review Committee at any time or from submitting any amendments to the Charter to election on its own initiative at any time in compliance with state law.

Sec. 10.04. - Transitional Provisions Upon Passage of Charter Amendments

10.4.1. *Validation of ordinances.* All ordinances, resolutions, rules, contracts, and regulations of the City heretofore ordained, passed, adopted, or enacted, that are in force at the time this Charter becomes effective, and which are not in conflict with such Charter, shall remain in full force until altered, amended, or repealed after such Charter takes effect.

10.4.2. *City elections.* The Mayor and Council Members shall be elected for a term of two years according to the election cycle currently established. The Mayor's term of office shall be for a period of two (2) years. The five (5) City Council members shall have a term of two (2) years each. At an election held on a uniform election date the Mayor and Council Members shall be elected for a term of two years according to the election cycle currently established (i.e. November of even numbered years the Council Members for Places 1, 2, and 3 shall be elected. In November of odd numbered years the Office of Mayor and Council Members for Places 4 and 5 shall be elected). Such designated terms do not prohibit special elections due to resignation, forfeiture of office, death or other vacancy requiring a special election under state law.

10.4.3. *Existing officials and employees retain positions.* Nothing in this Charter except as specifically provided herein, shall affect or impair the rights and privileges of persons who are City officers or employees at the time of its adoption. All persons holding elected offices that are retained under this Charter will continue to fill those offices for the terms to which they were elected.

10.4.4. *Existing City business continue.* All rights, claims, actions, orders, contracts, franchises, and legal or administrative proceedings in existence at the time of the adoption of this Charter shall continue until completion. All renewals or new rights arising after the adoption of the Charter shall be conducted pursuant to the Charter.

The proposition on the ballot shall state as follows:

PROPOSITION XV

“SHALL SECTIONS 10.4 AND 11.01 OF THE CITY CHARTER BE AMENDED TO CLARIFY THE PROCEDURES AND CHANGE THE TRANSITION PROVISIONS UPON PASSAGE OF CHARTER AMENDMENTS?”

FOR

AGAINST

ORDINANCE NO. 2019-_____

**AN ORDINANCE RECONSTITUTING THE WINDCREST BOARD OF
ADJUSTMENT, PLANNING AND ZONING COMMISSION, AND PARKS
AND RECREATION COMMISSION BY AMENDING SECTION 113-68,
SECTION 113-62, SECTION 26-21 AND CREATING CHAPTER 2, ARTICLE
III – ETHICS - OF THE WINDCREST CODE OF ORDINANCES IN ORDER
TO ESTABLISH STAGGERED TERMS**

WHEREAS, the City of Windcrest previously created a board of adjustment, a planning and zoning commission, an ethics commission, and a parks and recreation commission; and

WHEREAS, the appointed members to each board and commission are appointed for staggered terms; and

WHEREAS, the appointments and term designations have become offset over time; and

WHEREAS, uniform term dates are determined to be of assistance in keeping track of terms and who holds such terms; and

WHEREAS, membership of the Windcrest Board of Adjustment, Planning and Zoning Commission, and Parks and Recreation Commission and terms of office need to be clarified and appropriate appointments and removals need to be made; and

WHEREAS, the City Council did not set the terms for those appointed to the Ethics Commission as of the date of this ordinance; and

WHEREAS, the City Council of the City of Windcrest finds it is necessary to reconstitute the Board of Adjustment, Planning and Zoning Commission, Parks and Recreation Commission and establish the organization of the Ethics Commission; and

WHEREAS, this ordinance is meant to resets the terms to allow for staggering of terms; and

WHEREAS, the City Council for the City of Windcrest finds that a “term” of appointment runs and was always intended to run from a unified appointment date for a designated time period. Each appointed member takes the position pursuant to the designated term slot, regardless of when the member is appointed or takes office; and

WHEREAS, in order to prevent future confusion by members and the public, all appointed members must take their oath of office within thirty (30) calendar days of the effective date of their appointment; and

WHEREAS, the failure of an appointee to take their oath of office within thirty (30) calendar days of the effective date of appointment results in the automatic revocation of the appointment and the position must be brought back to the City Council for appointment.

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 as follows:

I. Section 113-68 of the Windcrest Code of Ordinances is hereby repealed and the City Council adopts the following as the amended Code which shall read as follows:

Section 113-68 Board of Adjustment - Reconstituted.

- a. Effective March 1, 2019, the Board of Adjustment is dissolved and simultaneously reconstituted with staggered terms as follows:
 - i. Place 1 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - ii. 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - iii. Place 3 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - iv. Place 4 Term - Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - v. Place 5 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - vi. Alternate Place A1 Term - Begins March 1, 2019 with a term expiring March 1st in odd numbered years;
 - vii. Alternate Place A2 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - viii. Alternate Place A3 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years.
- b. All undecided matters pending before the Board of Adjustment on February 28, 2019 are abated for purposes of the dissolution of the Board and said abatement is lifted automatically by this reconstitution of the Board. All issues in any undecided matter carries forward under the reconstituted Board just as if no dissolution or reconstitution had occurred.

- c. The appointment for the positions of the reconstituted Board of Adjustment, effective March 1, 2019, are as follow:

Place No.	Position	Term Assigned	Term Expires
1	Elizabeth Dick	3/1/2019	3/1/2021
2	Allen Thompson	3/1/2019	3/1/2020
3	Veronica Dixon	3/1/2019	3/1/2021
4	Norma Wetherspoon	3/1/2019	3/1/2021
5	Lidia Oliveres	3/1/2019	3/1/2020
	<u>Alternates:</u>		
A1	Gwen Wilson	3/1/2019	3/1/2021
A2	Robert Rohlender	3/1/2019	3/1/2020
A3	Vacant	3/1/2019	3/1/2020

- d. All future appointments, either for full terms or partial terms, shall be appointed for the designated terms of two (2) years as listed in Section I(a). The dates of the designated terms shall not change in order to preserve the staggered nature of the appointments. The date on which the individual is appointed or takes their oath of office shall not alter the term time period listed above, but shall only serve as the period the person takes office.

II. Section 113-62 of the Windcrest Code of Ordinances is hereby repealed and the City Council adopts the following as the amended Code which shall read as follows:

Section 113-62 - Planning and Zoning Commission - Reconstituted.

- a. Effective March 1, 2019, the Planning and Zoning Commission is reconstituted with staggered terms as follows:
- Place 1 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - Place 3 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - Place 5 Term – Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;

- vi. Place 6 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - vii. Place 7 Term - Begins March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - viii. Alternate Place A1 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - ix. Alternate Place A2 Term - Begins March 1, 2019 a two-year term expiring March 1st in odd numbered years;
 - x. Alternate Place A3 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 12, 2020 forward in time with the term expiring on March 1st in even numbered years.
- b. All undecided matters pending before the Planning and Zoning Commission on February 28, 2019 carries forward under the reconstituted Commission just as if no reconstitution had occurred.
- c. The Commission shall be composed of seven (7) resident citizens who are taxpayers, real property owners and qualified voters of the City of Windcrest who shall hold no other position in city government with compensation for services set by the City Council. Members are appointed by the City Council upon recommendation from the mayor and serve at the will of the City Council pursuant to state law. Vacancies occurring in the Commission shall be filled by the City Council for the unexpired term period. The city secretary and mayor shall be ex-officio members of this commission
- d. The Commission shall select from its membership a chairman, a vice chairman, and other officers as deemed necessary by the Planning and Zoning Commission. The chairman and vice-chairman shall serve for a period of one (1) year, and thereafter until their successors are duly appointed by the Commission. The Commission shall adopt rules for the transaction of business, and shall keep a record of its resolutions, transactions, findings, and determinations, of which the record shall be a public record. At least one (1) meeting per month shall be held, and additional meetings may be held from time to time upon the call of the chairman. On occasion, it may be necessary for the Commission to hold joint meetings with the City Council to provide for the expeditious handling of planning and zoning matters. When these joint meetings are held, the mayor of the City of Windcrest will be in charge of the meeting, in accordance with Texas Law.

- e. The appointment for the positions of the reconstituted Planning and Zoning Commission, effective March 1, 2019, are as follow:

Place No.	Position	Appointment	Term Expires
1	Ron Armes	3/1/2019	3/1/2021
2	Nikki Walker	3/1/2019	3/1/2020
3	Rainbeau Presti	3/1/2019	3/1/2021
4	Majie Takas	3/1/2019	3/1/2020
5	Steven Hall	3/1/2019	3/1/2021
6	Ronda Rolland	3/1/2019	3/1/2020
7	Mathew Halbert	3/1/2019	3/1/2021
	Alternates:		
A1	Vacant – term running	3/1/2019	3/1/2020
A2	Vacant – term running	3/1/2019	3/1/2021
A2	Vacant - term running	3/1/2019	3/1/2020

III. Section 26-21 of the Windcrest Code of Ordinances is hereby repealed and the City Council adopts the following as the amended Code which shall read as follows:

Section 26-21 – Recreation and Parks Commission - Reconstituted.

- a. Effective March 1, 2019, the Recreation and Parks Commission is reconstituted with staggered terms as follows:
- A. Place 1 Term – Begins March 1, 2019 with a three-year term expiring March 1st on the third anniversary of this term’s creation;
 - B. Place 2 Term - Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a three-year term from March 12, 2020 forward in time with the term expiring on March 1st on the third anniversary;
 - C. Place 3 Term – Begins March 1, 2019 with a three-year term expiring March 1st on the third anniversary of this term’s creation;
 - D. Place 4 Term - Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year, term then being a three-year term from March 12, 2020 forward in time with the term expiring on March 1st on the third anniversary;
 - E. Place 5 Term – Begins March 1, 2019 with a three-year term expiring March 1st on the third anniversary of this term’s creation;
 - F. Place 6 Term - Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a three-year term from March 12, 2020 forward in time with the term expiring on March 1st on the third anniversary;

- G. Place 7 Term - Begins March 1, 2019 with a three-year term expiring March 1st on the third anniversary of this term's creation;
 - H. Alternate Place A1 Term - Begins March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a three-year term from March 12, 2020 forward in time with the term expiring on March 1st on the third anniversary;
 - I. Alternate Place A2 Term - Begins March 1, 2019 with a three-year term expiring March 1st on the third anniversary of this term's creation;
- b. All undecided matters pending before the Commission on February 28, 2019 carries forward under the reconstituted Commission just as if no reconstitution had occurred.
 - c. The appointment for the positions of the reconstituted Recreation and Parks Commission, effective March 1, 2019, are as follow:

Place No.	Position	Appointment	Term Expires
1	Jeannette Lynch	3/1/2019	3/1/2022
2	Mary Lee Seal	3/1/2019	3/1/2020
3	Jay Eldridge	3/1/2019	3/1/2022
4	Bill Zulaica	3/1/2019	3/1/2020
5	Tom Gest	3/1/2019	3/1/2022
6	Betty Riggs	3/1/2019	3/1/2020
7	Robin Alva	3/1/2019	3/1/2022
	<u>Alternate:</u>		
A1	Arthur Flinn	3/1/2019	3/1/2020
A2	Bob Sanders	3/1/2019	3/1/2022

IV. Chapter 2, Article III – Ethics is hereby created in the Windcrest Code of Ordinances and the City Council adopts the following as the Code which shall read as follows:

Article III – Ethics

Section 2-50 – Ethics Commission - Creation.

The City of Windcrest Ethics Commission is hereby established under this Code of Ordinances.

Section 2-51 - Organization

Effective March 1, 2019, the City of Windcrest Ethics Commission shall consist of five (5) 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. The City Council may vote to fill an unexpired term by an affirmative vote of three (3). Members of the Commission may be removed with or without cause.

Section 2-52 – 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 12, 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 12, 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;

The appointment for the positions of Ethics Commission, effective March 1, 2019, are as follow:

Place No.	Position	Appointment	Term Expires
1	Rose Marie Caballero	3/1/2019	3/1/2021
2	Jill S. Vogel	3/1/2019	3/1/2020
3	Carol Hobough	3/1/2019	3/1/2021
4	Mary Hatch	3/1/2019	3/1/2020
5	Jim McClain	3/1/2019	3/1/2021

For purposes of the first meeting of the Ethics Commission after passage of this ordinance, the mayor shall assign a presiding officer from the members. The first order of business shall be the election of a chair, vice-chair, and secretary by the members of the Commission. The elected chair shall preside over all meetings. In the absence of the chair, the vice-chair shall assume the duties of presiding officer. The secretary shall keep minutes or designate a minute keeper.

Section 2-53 – Duties and Authority

The City of Windcrest Ethics Commission has the authority and duty to investigate written complaints of alleged unethical behavior by a member of the City Council or a

member of a City-appointed board, commission or committee and to make a recommendation to the City Council on the complaint and potential action, if any.

Before a complaining person may file a written complaint with the City Council regarding alleged unethical behavior by a member of the City Council or a member of a City-appointed board, commission or committee, the complaining person must first file the written complaint with the Ethics Commission by submitting the written complaint to the chair.

The Ethics Commission shall also have the authority and duty to review the City's ethics policies and ordinance and submit recommendations to the City Council for policy adjustments.

The Ethics Commission may adopt procedural rules and regulations to properly execute Commission business. However, the Ethics Commission shall have no authority to make a final determination on a written complaint or impose a penalty. The Ethics Commission must submit a written report to the City Council detailing any recommendations on a written complaint, or a policy or an ordinance.

PASSED on first reading on the 23rd day of January, 2019 at a special 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 February, 2019 at a special 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:

City Secretary

APPROVED AS TO FORM:

Ryan Henry, City Attorney

ORDINANCE NO. 2019-688(O)

**AN ORDINANCE AMENDING ORDINANCE 2019-688(O)
AMENDING CHAPTERS 14 and 24 OF THE CITY'S CODE
OF ORDINANCES, ADDING THE DISCARDING OF
TOBACCO PRODUCTS TO THE LIST OF PROHIBITED
LITTERING MATERIALS, ADDING A SMOKING
PROHIBITION IN PUBLIC PARKS AND OUTDOOR
FACILITIES AND IMPOSING CIVIL AND CRIMINAL
PENALTIES**

WHEREAS, the City Council of Windcrest has several parks and outdoor facilities available to the public; and

WHEREAS, the City Council desires the parks and outdoor facilities remain well kept, clean, and healthy for the public's use; and

WHEREAS, the City Council has determined that some individuals who utilize tobacco products in City parks and outdoor facilities cause an increase in littering, health hazards and potential fire hazards when discarding used and partially used tobacco products; and

WHEREAS, the City Council finds discarded used and partially used tobacco products are accumulating in locations on the City parks and outdoor facilities in places small children and animals can easily obtain and potentially ingest them; and

WHEREAS, the City Council has determined that some individuals who utilize the City parks and outdoor facilities cause an increase in littering and health hazards when discarding used and partially used products and materials in addition to tobacco products; and

WHEREAS, the City Council finds amendments to its Code of Ordinances is necessary to address these increases and for the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Ordinance 2019-____(O) is hereby adopted, which amends Chapters 14 & 24 of the City's Code of Ordinances to read as follows:

SECTIONS OF CHAPTER 14 OF THE CITY OF WINDCREST CODE OF ORDINANCES ARE AMENDED AS FOLLOWS:

Sec. 14-2. - Littering.

- (a) Definition.** The term "litter," as used in this section, means for a person to place, caused to be placed, or facilitate the placement on any public property of any material falling within the following categories:

(1) Decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial byproducts; or

(2) Nondecayable solid waste, except ashes, that consists of:

a. Combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

b. Noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1,800 degrees Fahrenheit or less; and

c. Discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(3) Smoking and chewing tobacco products, portions of smoking or chewing tobacco products, including partially used portions, and any waste from smoking or chewing tobacco products. This includes waste products created by “vaping” or electrical or mechanical smoke products, such as canisters, packing or container materials. Such definition is inclusive of any overlap in definition with subsections (a)(2) and (a)(3) above of this section.

(4) Any illegal smoking material, including any paraphernalia of illegal smoking material, as those terms are defined under Windcrest Code of Ordinances §24-59.

(b) Prohibition. It shall be unlawful for any person, firm or corporation to dump, throw, place, deposit or cause to be dumped, thrown, placed, deposited or left any litter into, upon or about any public street, roadway, walkway, easement, park, outdoor facility, alley or drainage ditch within the corporate limits of the city. It shall also be unlawful for any person to commit an act prohibited by Texas Health & Safety Code §365.012 (a-1), (b), (c) (known as portions of the Texas Litter Abatement Act) which are incorporated herein. An offense under this chapter may be prosecuted without alleging or proving any culpable mental state. Any person who violates this prohibition shall be subject to the general penalty provision contained in §1-5 of the Windcrest Code of Ordinances. It is an affirmative defense to this prohibition that the person placed or caused to be placed any litter in an authorized waste disposal receptacle, even if the receptacle is on public property or public controlled property.

(c) Adjacent owners and occupants. It shall be the duty of the owners and occupants of the property fronting on any street, roadway, sidewalk, easement, alleyway or drainage ditch in the city to keep such streets, roadways, sidewalks, easements, alleyways and drainage ditches, which have been, and may hereafter be laid down adjacent to their respective premises, free of all litter. This definition does not include the City of Windcrest as an adjacent owner or occupant.

...

Sec. 14-3. - Waste material disposal control.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Grease trap waste means any organic, inorganic, greasy, fatty liquid, semi-liquid, and/or solid wastes collected by and ultimately removed from a grease trap for proper disposal.

Grit trap waste means petroleum based oil and grease wastes and inorganic solids generated by automotive or machinery repair and/or washing facilities that are collected by and ultimately removed from a grit trap for disposal.

Hazardous waste means any liquid, semi-liquid or solid waste which because of its characteristics poses a hazard to human health or the environment.

Liquid waste means water-borne solids and liquids containing dissolved or suspended waste materials, including, but not limited to, seepage and wastes from grease traps and grit traps.

Manhole means a hole secured by a removable cover providing physical access to a sanitary or storm sewer or any other underground utility line or facility.

Sanitary sewer means a pipe or conduit which collects and transports sanitary sewage and to which stormwaters, surface waters, and groundwaters are not intentionally or normally admitted.

Septage means liquid wastes and sludges removed from a portable toilet, chemical toilet, septic tank or cesspool.

(b) Prohibition. It shall be unlawful for any person, firm or corporation to directly or indirectly contribute or cause to be contributed, or deposit or cause to be deposited, any grease trap waste, hazardous waste, liquid waste, or septage, as herein defined, or any other refuse or waste, into or onto any manhole, public street, roadway, walkway,

easement, alley, drainage ditch, public park, public facility, or private property not specially constructed for such disposal within the corporate limits of the city.

Sec. 14-4. - Smoking prohibited in all city-owned buildings, vehicles, parks, and outdoor facilities

It shall be unlawful for any person to be in the possession of a burning tobacco product or to smoke tobacco in any building, vehicle, public park, or facility owned by the city. An offense under this chapter may be prosecuted without alleging or proving any culpable mental state. Any person who violates this prohibition shall be subject to the general penalty provision contained in §1-5 of the Windcrest Code of Ordinances.

...

SECTION 24-60 OF CHAPTER 24 OF THE CITY OF WINDCREST CODE OF ORDINANCES IS AMENDED AS FOLLOWS:

Sec. 24-60. - Penalties.

(a) Any person, or corporation violating a provision of this article shall be guilty of a Class C misdemeanor and shall, upon conviction, be subject to a fine of not less than \$100.00, nor more than \$2,000.00.

(b) In addition to the fine, the city shall be entitled to restitution for expenses incurred by it in connection with the testing of substances related to the fine. The restitution under this subsection (b) and fine under subsection (a) of this section together shall not exceed \$2,000.00.

(c) A violation constitutes a separate offense for each regulated item involved.

(d) A violation constitutes a separate offense for each day a violation continues.

(e) A violation of this section is a separate offense from a violation of §14-2(b) and a person may be prosecuted and convicted of each separate offense.

(e) The penal provisions imposed under this article shall not preclude the city from filing a civil suit to enjoin the violation of this article. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

ANY SECTIONS OF CHAPTERS 14 OR 24 WHICH WERE NOT DESIGNATED IN THIS ORDINANCE SHALL NOT BE CONSIDERED AMENDED, REPLEAD, OR ADJUSTED AND REMAIN IN FULL FORCE AND EFFECT AS WRITTEN.

ANY SECTIONS OF CHAPTER 14 OR 24 EXPRESSLY LISTED IN THIS ORDINANCE SHALL BE CONSIDERED AMENDED AS INDICATED ABOVE AND ANY PROVISION OF EACH SECTION WHICH IS INCONSISTENT WITH THE AMENDMENT IS CONSIDERED REPEALED TO THE EXTENT OF THE INCONSISTENCY.

**THESE AMENDMENTS ARE TO BE CONSTRUED CONSISTENT WITH
CHAPTER 1 OF THE WINDCREST CODE OF ORDINANCES.**

DULY PASSED ON FIRST READING, on the _____ day of _____, 2019 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 _____, 2019 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:

City Secretary

APPROVED:

Ryan S. Henry, City Attorney

RESOLUTION NO. 2019-_____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS TO ORDER A SPECIAL ELECTION TO BE HELD ON MAY 4, 2019 TO CONSIDER REDUCING THE SALES TAX ALLOCABLE TO THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION FROM ONE-HALF PERCENT (1/2 %) TO ONE-FOURTH PERCENT (1/4%) AND CONSIDER INCREASING THE SALES TAX ALLOCABLE TO THE GENERAL SALES TAX OF THE CITY FROM ONE PERCENT (1%) TO ONE AND ONE FOURTH PERCENT (1 1/4%); MAKING PROVISIONS FOR THE CONDUCT OF SUCH SPECIAL ELECTION; AND RESOLVING OTHER MATTERS RELATED TO THE CONDUCT OF SUCH SPECIAL ELECTION

WHEREAS, House Bill No. 157 effective September 1, 2015 permits cities to reduce or increase sales and use tax allocations among authorized sales and use taxes at an election in which a majority of the qualified voters of a city approve the reduction or increase, provided that the action will not result in a combined sale and use tax rate that exceeds two percent (2%); and

WHEREAS, the City Council has determined that it would be in the public interest for the citizens of the City to consider the reallocation of sales and use taxes as authorized in House Bill 157.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS THAT:

SECTION 1. A special election shall be held on May 4, 2019, a uniform election date, in the City of WINDCREST, Texas, which date is not less than seventy-eight (78) days from the date of the adoption of this resolution, for the purpose of considering a proposition which would reallocate one-half (1/2) of the sales and use tax currently dedicated to the Windcrest Economic Development Corporation to the general sales and use tax authorized by Section 321.103 (a) of the Tax Code. The proposition on the ballot shall state as follows:

PROPOSITION 1

“SHALL THE CURRENT WINDCREST ECONOMIC DEVELOPMENT CORPORATION SALES AND USE TAX BE REDUCED FROM ONE-HALF PERCENT (1/2%) TO ONE-FOURTH PERCENT (1/4%) AND SIMULTANEOUSLY THE GENERAL SALES AND USE TAX BE INCREASED FROM ONE PERCENT (1%) TO ONE AND ONE FOURTH PERCENT (1 1/4%)?”

FOR

AGAINST

SECTION 2. The official ballots shall be prepared in accordance with the Texas Election Code, as amended, so as to permit electors to vote FOR or AGAINST the aforesaid charter amendment propositions.

SECTION 3. Voting on election day and during early voting shall be done on Election Systems & Software, Inc. (ES&S) iVotronic Touch Screen Voting Unit with ballot tabulation performed by the Bexar County Elections Administrator. Voting by mail ballot and provisional voting shall be done by paper ballot.

SECTION 4. The polling place designated for Windcrest voting precincts 4050, 4051, 4107, 4192 and 4195 for voting in the May 4, 2019, special election shall be at a location determined by the Bexar County Elections Administrator and such polling place shall be open on the election day from 7:00 a.m. to 7:00 p.m.

SECTION 5. The polling places for WINDCREST voting precincts 4050, 4051, 4107, 4192 and 4195 for early voting for the May 4, 2019 special election shall be determined by the Bexar County Elections Administrator, and the hours are currently scheduled as follows:

Monday, April 22, 2019 through Thursday, April 25, 2019- 8:00 a.m. to 6:00 p.m.

Friday, April 26, 2019- Closed

Saturday, April 27, 2019- 8:00 a.m. to 6:00 p.m.

Sunday, April 28, 2019- Closed

Monday, April 29, 2019 and Tuesday April 30, 2019 –8:00 a.m. to 8:00 p.m.

SECTION 6. Applications for ballots by mail shall be mailed to Jacquelyn F. Callanen, Bexar County Elections Administrator, at 203 W. Nueva, Suite 361, San Antonio, Texas 78207. Applications for ballots by mail must be received by the Early Voting Clerk no later than the close of business on the date required by the Texas Election Code.

SECTION 7. The City Council authorizes the City Manager, or his designee, to negotiate and enter into an election agreement or agreements with the Bexar County Elections Administrator in accordance with the provisions of the Texas Election Code, and to pay the charges for such election services. The City Manager may also enter into a contract for the conduct of a joint election with other governmental entities in Bexar County, Texas.

SECTION 8. Jacquelyn F. Callanen, Bexar County Elections Administrator, is designated as the election officer to conduct the special election on May 4, 2019, and early voting for said election.

SECTION 9. Notice of the May 4, 2019 special election shall be posted and

published in accordance with the Texas Election Code.

SECTION 10. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City.

SECTION 11. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters ordained herein.

SECTION 12. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 13. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the city council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 14. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 15. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

SECTION 16. If a majority of the votes are cast for the proposition, the city council shall declare the proposition passed so that the sales and use taxes payable to the City shall be reallocated at the earliest date permissible.

PASSED AND APPROVED on the 21st day of January, 2019 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.

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION NO. 2019-_____

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS TO ORDER A SPECIAL ELECTION TO BE HELD ON MAY 4, 2019 TO CONSIDER REDUCING THE SALES TAX ALLOCABLE TO THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION FROM ONE-HALF PERCENT (1/2 %) TO ONE-FOURTH PERCENT (¼%) AND SHOULD SUCH DECREASE PASS, THEN INCREASING THE SALES TAX ALLOCABLE TO THE GENERAL SALES TAX OF THE CITY FROM ONE PERCENT (1%) TO ONE AND ONE FOURTH PERCENT (1 ¼%); MAKING PROVISIONS FOR THE CONDUCT OF SUCH SPECIAL ELECTION; AND RESOLVING OTHER MATTERS RELATED TO THE CONDUCT OF SUCH SPECIAL ELECTION

WHEREAS, House Bill No. 157 effective September 1, 2015 permits cities to reduce or increase sales and use tax allocations among authorized sales and use taxes at an election in which a majority of the qualified voters of a city approve the reduction or increase, provided that the action will not result in a combined sale and use tax rate that exceeds two percent (2%); and

WHEREAS, the City Council has determined that it would be in the public interest for the citizens of the City to consider the reallocation of sales and use taxes as authorized in House Bill 157 and Tex. Loc. Gov't Code chapter 505 and Tex. Tax. Code chapter 321 for sales and use tax.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS THAT:

SECTION 1. A special election shall be held on May 4, 2019, a uniform election date, in the City of WINDCREST, Texas, which date is not less than seventy-eight (78) days from the date of the adoption of this resolution, for the purpose of considering a proposition which would reallocate one-half (1/2) of the sales and use tax currently dedicated to the Windcrest Economic Development Corporation to the general sales and use tax authorized by Section 321.103 (a) of the Tax Code. The propositions on the ballot shall state as follows:

PROPOSITION 1

“SHALL THE CURRENT WINDCREST ECONOMIC DEVELOPMENT CORPORATION SALES AND USE TAX BE REDUCED FROM ONE-HALF PERCENT (1/2%) TO ONE-FOURTH PERCENT (1/4%)?”

FOR

AGAINST

PROPOSITION 2

SHOULD PROPOSITUION ONE PASS, THEN SHALL THE GENERAL SALES AND USE TAX BE INCREASED FROM ONE PERCENT (1%) TO ONE AND ONE FOURTH PERCENT (1 ¼%)?

FOR

AGAINST

SECTION 2. The official ballots shall be prepared in accordance with the Texas Election Code, as amended, so as to permit electors to vote FOR or AGAINST the aforesaid charter amendment propositions.

SECTION 3. Voting on election day and during early voting shall be done on Election Systems & Software, Inc. (ES&S) iVotronic Touch Screen Voting Unit with ballot tabulation performed by the Bexar County Elections Administrator. Voting by mail ballot and provisional voting shall be done by paper ballot.

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Monday, April 29, 2019 and Tuesday April 30, 2019 –8:00 a.m. to 8:00 p.m.

SECTION 6. Applications for ballots by mail shall be mailed to Jacquelyn F. Callanen, Bexar County Elections Administrator, at 203 W. Nueva, Suite 361, San Antonio, Texas 78207. Applications for ballots by mail must be received by the Early Voting Clerk no later than the close of business on the date required by the Texas Election Code.

SECTION 7. The City Council authorizes the City Manager, or his designee, to negotiate and enter into an election agreement or agreements with the Bexar County Elections Administrator in accordance with the provisions of the Texas Election Code, and to pay the charges for such election services. The City Manager may also enter into a

contract for the conduct of a joint election with other governmental entities in Bexar County, Texas.

SECTION 8. Jacquelyn F. Callanen, Bexar County Elections Administrator, is designated as the election officer to conduct the special election on May 4, 2019, and early voting for said election.

SECTION 9. Notice of the May 4, 2019 special election shall be posted and published in accordance with the Texas Election Code.

SECTION 10. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City.

SECTION 11. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters ordained herein.

SECTION 12. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 13. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the city council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 14. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 15. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

SECTION 16. If a majority of the votes are cast for the proposition, the city council shall declare the proposition passed so that the sales and use taxes payable to the City shall be reallocated at the earliest date permissible.

PASSED AND APPROVED on the 21st day of January, 2019 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.

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF WINDCREST
APPROVING A JOINT PRIVILEGE AGREEMENT
BETWEEN THE CITY OF WINDCREST AND THE
WINDCREST ECONOMIC DEVELOPMENT
CORPORATION**

WHEREAS, the City of Windcrest (hereinafter referred to as “City”) has found that it shares common interests with the Windcrest Economic Development Corporation (hereinafter referred to as “WEDC”); and

WHEREAS, a joint meeting between the City and the WEDC has been scheduled to occur on January 23, 2019 to discuss these common interests; and

WHEREAS, the City finds that in order to engage in fruitful discussions, the City and WEDC must discuss information and legal matters that are confined by their respective attorney-client privileges; and

WHEREAS, the City finds a need to protect the free flow of information between the City, WEDC and their respective attorneys; and

WHEREAS, the City has determined that it must enter into an agreement preserving the attorney-client privileges for both the City and the WEDC; and

WHEREAS, the City finds it is in its best interest to enter into a joint privilege agreement with the WEDC to preserve its attorney-client privilege as well as the attorney-client privilege of the WEDC; and

WHEREAS, the City finds the approval of the joint privilege agreement is necessary to preserve its attorney-client.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the City Manager is authorized to enter into the Joint Privilege Agreement between the City of Windcrest and the Windcrest Economic Development Corporation.

DULY PASSED AND APPROVED, on the _____ day of _____, 2019 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:

City Secretary

APPROVED:

Ryan S. Henry, City Attorney