

City of Windcrest



AGENDA
ETHICS COMMISSION MEETING
6:00 PM
MAY 12, 2025

CITY COUNCIL CHAMBERS - 8601 MIDCROWN

6:00 PM

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST ETHICS COMMISSION MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE MONDAY, MAY 12, 2025, STARTING AT 6:00 P.M.

THE ETHICS COMMISSION RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF MONDAY, MAY 12, 2025, AND TO RECONVENE THE MEETING ON THE FOLLOWING BUSINESS DAY, TUESDAY, MAY 13, 2025, AT 6:00 P.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

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

I. CALL TO ORDER

II. ROLL CALL

III. VOTE TO EXCUSE ABSENT MEMBERS

IV. PLEDGE OF ALLEGIANCE AND INVOCATION

V. CITIZENS TO BE HEARD

- Citizens may address the Commission on topics not on the agenda for no more than three (3) minutes.
- Citizens shall also have the opportunity to address the Commission during consideration of posted agenda items for no more than six (6) minutes.
- A City Official may make a statement of specific factual information in response to an inquiry

made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.

DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE CITY OF WINDCREST ETHICS COMMISSION MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

VI. DISCUSSION AND ACTION

- a) The Ethics Commission will review, discuss, and may act on possible amendments to Chapter 2, Article III, Ethics, of the Windcrest Code of Ordinances.
- b) The Ethics Commission will review, discuss, and may act on amending the commission's protocols and procedures adopted by Resolution 2021-001-EC.

VII. EXECUTIVE SESSION

The Windcrest Ethics Commission of the City of Windcrest reserves the right to adjourn into executive session at any time during course of the meeting to discuss any matter listed below:

VIII. GENERAL ANNOUNCEMENTS & FUTURE AGENDA ITEMS REQUESTED

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

IX. ADJOURNMENT

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

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

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

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

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Ethics Commission of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting on May 12, 2025.

BY:

A handwritten signature in black ink, reading "Rachel C. Dominguez". The signature is written in a cursive, flowing style with a large, prominent "R" and "D".

Rachel C. Dominguez, City Secretary

ARTICLE III. ETHICS¹

Sec. 2-50. Code of ethics and conduct.

(a) *Statement of Purpose.*²

- (1) The citizens and businesses of the City of Windcrest are entitled to have fair, ethical and accountable local government that earns the public's full confidence for integrity. The purpose of the code of ethics and conduct is to establish guidelines for ethical standards of conduct for all elected and appointed officials and employees of the City of Windcrest by setting forth those acts or actions that are incompatible with the best interests of the City of Windcrest by prohibiting conduct incompatible with the city's best interests and minimizing the risk of any appearance of impropriety, this code of ethics and conduct furthers the legitimate interests of democracy.
- (2) The strong desire of the City of Windcrest to fulfill this expectation therefore requires that city officials, both elected and appointed, and employees:
 - a. Comply with both the letter and spirit of the City of Windcrest Code of Ethics and Conduct; and
 - b. Be independent, impartial and fair in their judgment and actions; and
 - c. Act in their respective positions for the public good, not for personal gain.
- (~~4~~3) The Windcrest City Council has adopted this code of ethics and conduct for all of its city officials and employees to assure public confidence in the integrity of local government and its effective and fair operation.
- (4) The City recognizes that stewardship of the public interest must be one of its primary concerns. Its officials should work for the common good of the citizens of Windcrest.

(b) *Definitions.* The following words, terms and phrases, when used in this Code, shall have the meanings subscribed to them.

Business. A corporation, partnership, association, sole proprietorship, firm, holding company, joint stock company, receivership, trust or any other for profit or non-profit entity, company or association.

City council. The legislative and governing body of the City of Windcrest consisting of the mayor and city council ~~city~~ members.

² Official Comment: The statement of purpose expresses intentions of the City Council, but is not a regulation or enforcement provision. Nothing in this subsection creates a violation of this code.

City official. Any member of the city council and any appointed member of a board, commission, or committee of the city set up by ordinance, charter, state law or otherwise, on a temporary or permanent basis.

Complainant. A person who files a formal written ethics complaint.

Confidential Information. Any information obtained by a city official or employee because of their position with the city and that is not available to the public under the Texas Public Information Act. Such information also includes any discussions which occur in executive session.

Employee. Any person employed by the City of Windcrest on a full-time or part-time basis, including only independent contractors hired by the city for repetitive performance of services that are in furtherance of necessary operation and function of the city, and not independent contractors engaged for occasional services that are not repeated on a consistent basis.

Ethics code. This term shall mean the code of ethics and conduct identified in section 2-50 of the Windcrest Code of Ordinance and any other code provision designating itself as an ethical code.

Former city official. Any person who has been a member of the city council and any appointed member of a board, commission, or committee set up by ordinance, charter, state law or otherwise, on a temporary or permanent basis.

Former employee. Any person who has formally been employed by the City of Windcrest, on a full- or part-time basis, including independent contractors hired by the city for repetitive performance of services that are in furtherance of necessary operation and function of the city, and not independent contractors engaged for occasional services that are not repeated on a consistent basis.

Impropriety. Behavior that is:

- 1) dishonest, or
- 2) physically abusive, or
- 3) brought about by public drunkenness while performing official acts of an office or position.

Personal Interest. An interest specific to the individual or individuals' family, is private as opposed to public in nature, and does not advance a public purpose.

Respondent. A person who is the subject of a formal written ethics complaint.

Undue influence. This term includes when a person or persons intentionally or knowingly exercise a level of control over another that the person's assertion of control becomes the dominant decision maker, subverting or overpowering the mind or will of the person over which the influence is being exerted.

(c) *Standards of Conduct*

1. *Act in the public interest.* ~~Recognizing that stewardship of the public interest must be their primary concern, e~~City officials and employees will ~~work for the common~~

~~good of the citizens of Windcrest and~~ not work for any private or personal interest, and will ~~assure~~ promote fair and equal treatment of all persons, claims and transactions coming before the Windcrest City Council, boards, commissions, and committees.

2. Conduct of Public Meetings. City officials have an obligation to not interfere with the orderly conduct of meetings.
3. Executive Session. All discussions of a city council, board, or commission which occur in an executive session are considered confidential. No city official or employee shall disclose the discussion which occurred in executive session unless such is made to another member of the body, the city council, the city manager, or city attorney.
4. Comply with the law. ~~City officials and employees shall comply with the laws of the nation, the State of Texas, and the City of Windcrest in the performance of their public duties. These laws include but are not limited to the United States and Texas constitutions, laws and statutes pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, open processes of government, and city ordinances and policies. When performing their official duties, City officials shall comply with mandatory requirements of the United States and Texas constitutions, laws and statutes pertaining to conflicts of interest, financial disclosures, employer responsibilities, open processes of government, and the city charter.~~
5. Conduct of city officials and employees. The professional and personal conduct of city officials and employees must ~~be above reproach and~~ avoid even the appearance of impropriety. ~~The~~ City officials and employees shall further refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other city officials, employees, and members of the public.
6. Information contained on personal devices or electronic accounts. City officials and employees are prohibited from intentionally or knowingly deleting, altering, or hiding public information (i.e., information related to city business) that is sent or received on a personal device or electronic account. Individuals who have public information stored on their personal devices or electronic accounts must save such information or forward such information to the city's officer for public information.
7. Communications with members of the general public. City officials and employees shall be aware of the public perception held by their office or position with the city when communicating with members of the general public. Although city officials and employees have the right to express personal opinions on any issue, ~~it such city officials and employees~~ must ~~be made~~ make it expressly clear that when speaking to members of the general public that they are speaking for themselves, and not speaking in an official capacity for the city or on behalf of city council.
8. Promises, obligations, and commitments. City officials and employees shall refrain from unilaterally promising, obligating, committing, or otherwise obligate, either directly or indirectly, any action on behalf of the city, which has not been previously

authorized by the city council, city manager, or any of the boards, commissions, and committees depending on the authority required to make such promise, obligation, or commitment.

9. *Respect for process.* City officials and employees shall perform their duties in accordance with the processes and rules of order established by the city council and its boards, commissions, and committees governing the public deliberation of public policy issues, meaningful involvement of the public, and employees' implementation of the city council's policy decisions.
10. *Conduct of public meetings.* City officials have an obligation to attend meetings and be prepared for public issues, listen courteously and attentively to all public discussions before the body, and focus on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfere with the orderly conduct of meetings.
11. *Decisions based on merit.* ~~It is expected that city officials and employees review material, participate in discussion and~~ City officials shall base their decisions on the merits and substance of the matter at hand when conducting any business in their official capacities in the furtherance of the best interests of the City of Windcrest.
12. ~~*Deliberating-Communication.*~~ Prior to taking final action on a matter under consideration, city officials ~~and employees~~ should publicly share information, which they may have received from sources outside the public decision-making process, that is relevant, reasonably related, or may impact any action by the city council, boards, commissions, or committees.
13. *Conflicts of interest, disclosure, and recusal.*
 - (1) Whenever a disclosure or recusal is required under this article, such disclosure or notice of recusal shall be submitted to the city secretary on a form approved by the city council.
 - (2) To avoid the appearance and/or risk of impropriety, a city official or employee shall not take any action that he or she knows is likely to affect the economic interests of:
 - a. The city official or employee;
 - b. His or her parent, child, spouse, or other family member within the third degree of affinity or within the third degree of consanguinity;
 - c. His or her outside client;
 - d. A member of his or her household; and
 - e. Any outside employer of the city official or employee or of his or her parent, child, spouse, or member of the household.

- (23) Should a conflict arise, the city official or employee who is in conflict shall recuse him or herself from the time that the conflict is, or should have been recognized, if applicable, he or she shall:
- a. Immediately refrain from further participation in the matter, including discussions with persons likely to consider or participate in the matter;
 - b. File the appropriate form with the external auditor within three business days disclosing the nature and extent of the prohibited conduct;
 - c. Promptly bring the conflict to the attention of his or her supervisor who will then, if necessary, reassign responsibility for handling the matter to another employee; and
 - d. Promptly disclose the conflict to other members of the council, board, commission, or committee in which he or she serves and shall not be present during the discussion of, or voting on, the matter.
- (34) City officials and employees shall familiarize themselves with and abide by the following conflicts of interest and disclosure statutes and principles:
- a. ~~V.T.C.A., Texas~~ Local Government Code Ch. 171, which requires city council members and city officials to file an affidavit disclosing a substantial interest in a business or property that would be beneficially affected by a decision of the city council and thereafter abstaining from participation in discussion and voting on the matter. Once the disclosure is made, the city official is to remove themselves from the meeting area to ensure their presence does not hinder the discussion of the item or influence the vote.
 - b. ~~V.T.C.A., Texas~~ Local Government Code ~~ch.Ch.~~ 176, which requires city council members and the city manager to file a conflict of interest disclosure statement disclosing any business relationship with a person or business doing business with the city or being considered by the city for a business relationship and requires the disclosure of gifts of an aggregate value of more than \$100.00 in the 12 month period preceding a transaction described in Code ~~ch.Ch.~~ 176, other than gifts of food, lodging, transportation, or entertainment accepted as a guest.
 - c. ~~V.T.C.A., Texas~~ Government Code ~~ch.Ch.~~ 553, which requires the filing of an affidavit before the date the city will acquire a property in which city officials or employees have a legal or equitable interest.
 - d. City employees shall disclose potential conflicts of interest to their supervisor and avoid participation in the handling of matters wherein employees have a personal interest.

- e. In order to assure their independence and impartiality on behalf of the public good, city officials and employees are prohibited from using their positions to influence government decisions in which they have a personal interest.
 - f. In order to avoid a potential conflict of interest or the appearance of a potential conflict of interest, no person related to a member of the city council or city manager within the second degree by affinity (marriage) or third degree by consanguinity (blood relationship) as defined by V.T.C.A., Texas Government Code Chapter 573, shall be appointed to serve or remain in service on any city board, commission, or committee set up by ordinance, charter, state law or otherwise, on a temporary or permanent basis.
14. *Corruption.* City officials and employees shall familiarize themselves with and abide by the State of Texas Penal Code mandates concerning corruption under V.T.C.A., Penal Code ~~ch.~~Ch. 36.
15. *Political advocacy.*
- (1) Unless performed as part of their official duties, City officials and employees shall not utilize the city's name or logo, either verbally or in writing, to:
 - a. ~~Publically~~Publicly for purposes of endorsing any political candidate, or
 - b. ~~Publically~~Publicly endorse a business in such a way it gives the appearance to a reasonable person that the city is endorsing such business.³
 - (2) City employees shall not engage in electioneering while on the job. "Electioneering" means working for the election of a candidate to political office, whether local, state, or national.
 - (3) City employees shall not be hired, retained, or terminated on the basis of their political beliefs, opinions, or support of a particular candidate for office whether local, state, or national. City employees shall not engage in political activities relating to a campaign for elected office while in uniform or in the performance of their respective duties with the City of Windcrest. City employees elected ~~or appointed~~ to city offices shall be required to resign their employment upon acceptance of the office. No city employee

³ Official Comment: City officials can privately endorse candidates and businesses but cannot associate the city's name or log or the position they hold with such endorsement. Elected officials may utilize the city's name and logo as an incumbent during an election but only in relation to their office held (i.e. councilmember place 1) or specific actions they performed while in office as part of their official duties (i.e. Councilmember Smith, place 1, voted for the city's contract with XYZ corporation).

can be required to sit on a city board or commission, unless required as part of their job duties by ordinance.

- (4) City employees are prohibited from using their municipal title or position in any advertisement or endorsement of products, persons or activities, without previous written authorization by the city council.

16. *Confidential information.*

- (1) A City official or employee shall not use his or her position to obtain official information about any person or entity for any purpose other than the performance of official duties.
- (2) A city official or employee shall not intentionally, knowingly, or recklessly disclose any confidential information gained by reason of said official or employee's position concerning the property, records, operations, policies or affairs of the city, including those items discussed in closed or executive session. This rule does not prohibit any reporting of illegal or unethical conduct to authorities as a result of a court order.
- (3) City officials and employees shall respect the confidentiality of information concerning city property, personnel or proceedings, of the city. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their or any other person's personal interests.

17. *Use of public resources.* A city official or employee shall not use, request, or permit the use of city resources, facilities, equipment, supplies or staff time for private gain or personal purposes (including political purposes), except:

- (1) For a public purpose that is directly related to the governmental responsibilities of the city; or,
- (2) When those resources are lawfully available to the public.

18. *Representation of private interests.* A city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city its boards, commissions, and committees. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.

19. *Representation in litigation adverse to the city.*

- (1) City officials or employees, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to those of the city.
- (2) A person who is classified as a city official only because he or she is an appointed member of a board, commission, or committee shall not represent any person, group, or entity, other than himself or herself, or his or her

spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city and the matter is substantially related to the official's duties to the city.

- (3) Former city officials or employees shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are, or could be adverse to the interests of the city, and the matter is one in which the former city official or employee personally participated prior to termination of his or her official duties.

20. *Former city officials and employees.*

- (1) Former city officials or employees shall not use or disclose confidential government information acquired during service as a city official or employee. This rule does not prohibit any disclosure that is no longer confidential by law, or the confidential reporting of illegal or unethical conduct to authorities designated by law.
- (2) Former city officials or employees shall not represent for compensation any person, private group, or private entity, other than himself or herself, or his or her spouse or minor children, before the city for a period of two years after termination of his or her official duties. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- (3) A person who was classified as a city official only because he or she was an appointed member of a board, commission, or committee shall not represent any person, group, or entity for a period of one year after the resignation or termination of his or her official duties: before that board, commission, or committee in which he or she served; before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board, commission, or committee, unless the board, commission, or committee is only advisory in nature; or before a board, commission, or committee which has appellate jurisdiction over the board, commission, or committee of which the former city official was a member, if any issue relates to his or her former duties.

~~*Advocacy: City officials and employees shall represent the official policies or positions of the city council, board, commission, or committee to the best of their ability in the performance of their official duties. While in the performance of their official duties and when presenting their individual opinions and positions, city officials and employees shall explicitly state that such opinion or position do not represent that of the City of Windcrest, nor will they allow the inference that they do.*~~

21. *Policy role of city officials and employees.* City officials and employees shall respect and adhere to the City of Windcrest's governmental structure as outlined in the city's charter, policies and procedures. ~~*In this structure, the city council determines the*~~

~~policies of the city with the advice, information and analysis provided by the public, boards, commissions, committees and employees of the city.~~ Except as provided by city ordinance, city officials ~~therefore~~ shall not interfere with the administrative functions of the city or the performance of the employees' official duties; nor shall they impair employees' ability to implement city council policy decisions.

22. *Independence of city council, boards, commissions, and committees.* In order to safeguard the independence of the city council, boards, commissions, and committees in the public decision-making process, members of city council and other city officials shall refrain from applying undue influence on the deliberations or outcomes of city council, board, commission, and committee proceedings. This ~~sub~~section does not prohibit city officials from voicing their concerns or opinions while deliberating and discussing matters at public meetings ~~that have brought before the city council or any other board, commission, and committee.~~
23. ~~*Representation of title.*~~~~City officials shall not represent they serve in a different role than the role to which they are appointed or elected. *Positive workplace environment.* City officials shall support the maintenance of a positive and constructive workplace environment for city employees and for citizens and businesses dealing with the city. City officials shall recognize their special role in dealing with city employees and refrain from creating the perception of inappropriate direction to city employees. When dealing with employees, city officials must adhere to the restrictions prescribed in this article, and must be cognizant of the weight and perception of their position as a city official.~~
24. *Implementation.* As an expression of the standards of conduct for city officials and employees expected by the city, the code of ethics and conduct is intended to be self-enforcing. It therefore becomes most effective when city officials and employees are thoroughly familiar with it and embrace its provisions. Ethical standards shall be included in the regular orientations for candidates for city council, applicants to boards, commissions, and committees and newly elected and appointed officials and new city employees. City officials entering office, including those appointed to boards, commissions and committees and city employees shall sign a statement affirming they have read and understood the code of ethics and conduct. In addition, the code of ethics and conduct shall be reviewed annually by the ethics commission, and the city council shall consider recommendations from the ethics commission and may consider recommendations from other city officials, employees, and citizens for revision as necessary.
25. ~~*Compliance and enforcement*~~ *Duty to Report.*
 1. The code of ethics and conduct expresses standards of ethical conduct expected for city officials and employees. ~~City officials and employees have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.~~ City officials or employees who have knowledge of an actual and clear violation of any of the provisions of this ethics code shall use his or her best effort to report the violation as soon as possible ~~but not more than three business days from the date in~~

~~which city official or employee has acquired knowledge of the violation.~~ A city official or employee shall not delegate to, or rely on, another person to make the report. Failure to report can subject the city official or employee to a violation of this code but does not invalidate any complaint raising such violation.

- ~~2. Any city official who has knowledge that a violation of the ethics code has been committed and intentionally fails to report such violation within the above stated deadline is subject to an ethics complaint and investigation by the ethics commission.~~
- ~~3. Any city employee who has knowledge that a violation of the ethics code has been committed and intentionally fails to report such violation within the above stated deadline is subject to discipline or termination as determined by the city manager.~~

Sec. 2-51. Ethics commission structure

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

(a) *Organization and qualifications.*

- (1) *Members of commission.* The City of Windcrest Ethics Commission shall consist of five members and two alternate members of the community appointed by the city council who shall be citizens of Windcrest. Each appointed member shall be a voting member and are appointed for a two 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 city council members. Members of the ethics commission may be removed with or without cause. The city council may vote to fill an unexpired term by an affirmative vote of three.⁴
- (2) *Officers of commission.* The ethics commission shall have at least three officers: Chair, vice-chair, and a secretary. The Chair shall preside over all meetings. In the absence of the chair, the vice-chair shall assume the duties of presiding officer. In the absence of both the chair and vice-chair at a meeting, any one of the present members may preside over a meeting so long as a quorum can be constituted. The member with the longest tenure on the commission shall be the presiding officer unless changed by an affirmative vote of those members present and voting at a particular meeting. The secretary shall keep minutes or may designate a minute keeper to record commission business. The ethics commission may appoint such other officer positions or assign such subcommittees as the commission deems

⁴¹—Official Comments: The Commission has the authority to investigate members of the City Council. The Council finds this to be authorized and willingly imposes this authority on the Commission. However, in order to limit or reduce political influence from affecting actions of the Commission, members of the Commission need to be secured in their positions by requiring no less than four votes for removal. However, the Council must also be cautious of Commission members who exceed their authority, individually. So, the Council must retain a certain, but limited, ability to remove and make appointments.

proper. The ethics commission shall elect its officers from amongst its appointed members. Whomsoever presides over a meeting shall retain their ability to vote on any motion or matter.⁵

- (3) *Qualifications.* Members of the ethics commission shall have good moral character and shall be residents of the City of Windcrest for at least six months prior to being appointed. To be qualified to sit on the commission, each member shall.⁶
- a. NOT be any salaried city official or employee;
 - b. NOT be an elected or appointed public official for any governmental body;
 - c. NOT be a candidate for any elected public office;
 - d. NOT be an official of a political party;
 - e. NOT be a campaign treasurer, campaign manager, official or other policy or decision-maker for the campaign of any candidate for elected public office;
 - f. NOT be a campaign treasurer, campaign manager, official or other policy or decision-maker for any political action committee as defined in the Texas Election Code;
 - g. NOT have a conviction of a felony or any crime involving moral turpitude or have been found by the ethics commission to have previously violated any provision of the city code of ethics.
- (4) *Removal.* A member of the ethics commission shall be removed immediately from office by the remaining members for the failure to satisfy or continue to satisfy the qualifications and restrictions set out above. The ethics commission shall be the judge of the qualifications of its members and shall call a meeting to review any alleged violation of this section. A member of the ethics commission who is asserted to be in violation of this section must recuse themselves from any deliberation or vote on the assertion. The commission's ability to determine qualifications does not affect the city council's ability to remove and replace a commission member, with or without cause, by an affirmative vote of at least four councilmembers.^{4,6 7}

⁵2—Official Comments: All appointees to the Commission are appointed only as members. By accepting an officer role on the Commission, such members do not lose their right, ability, or duty to vote, even if they must preside over a meeting.

⁶3—Official Comments: Prior wording caused confusion. This amendment does not change the substance of the qualification. It simply makes it easier for a member of the public to read the provision and know what is prohibited and what is allowed for qualifications.

⁷4—Official Comment: The Commission is expected to regulate its own members and has been granted the ability to pass reasonable rules and regulations for its own operation. In order to limit or minimize political influence as well as the appearance of improper influence from the Council, the Commission is given the ability to remove its own members for failing to meet the mandatory qualifications.

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- (5) *Term periods.* The terms of the ethics commission shall be staggered terms as follows:
- a) Place 1 Term - Began March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - b) Place 2 Term - Began March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a two-year term from March 1, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - c) Place 3 Term - Began March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - d) Place 4 Term - Began March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a two-year term from March 1, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - e) Place 5 Term - Began March 1, 2019 with a two-year term expiring March 1st in odd numbered years;
 - f) Alternate Place A1- Began March 1, 2019 with a term expiring March 1, 2020 as a one-year term, then being a two-year term from March 1, 2020 forward in time with the term expiring on March 1st in even numbered years;
 - g) Alternate Place A2 - Began March 1, 2019 with a two-year term expiring March 1st in odd numbered years.

Sec. 2-52. Reserved.

Sec. 2-53. Duties and authority.

- (a) *General authority.* The ethics commission has the authority and duty to investigate written complaints of alleged violations of the code of ethics and conduct by a member of the city council, a member of a city-appointed board, commission or committee, a petitioner committee under the city's charter, a statutory municipal officer, a city official or any city department head. Following its investigation into an ethics complaint, the ethics commission shall impose a penalty, make a recommendation to the city council or to the city manager on the complaint, or impose a penalty and make a recommendation for further action. The determination of whether the commission's recommendation is sent to the city council or the city manager shall be based on the whether the individual made the subject of the complaint reports to the city manager or city council. Nothing in this article prevents

⁶—Official Comment: This provision allows the Commission the ability to begin an investigation on its own without a formal written complaint from a third party. However, in order to provide constitutional due process to the individual subject to the investigation, written notice of the grounds for the investigation and the ability to respond must be provided.

the city council or city manager from exercising its authority under the City Charter even if such overlaps with the authority granted to the ethics commission.⁸

(b) *Limitation on investigation and complaints.*

- (1) *Employees.* Other than the city manager, a statutory city officer or department head, the ethics commission shall have no authority to investigate complaints against city employees as such authority is reserved for the city manager. Notwithstanding this provision, the city manager may request an ethics opinion from the ethics commission which may be used by the city manager in making any determinations.
- (2) *Municipal judge.* The ethics commission has no authority to investigate complaints against the municipal judge, as such authority rests with the State Commission on Judicial Conduct.
- (3) *Termination or forfeiture.* The ethics commission shall have no authority to impose a penalty of forfeiture of office or termination of employment. Such limitation does not prevent the ethics commission from making recommendations or referrals for termination or forfeiture to the city council.
- (4) *Limitations period.* The ethics commission shall not consider any alleged ethics code violation that occurred more than one year prior to the date of the filing of the complaint. The termination, resignation, or forfeiture of a member of the city council, any member of a city-appointed board, commission or committee, or any city department head does not affect the jurisdiction of the ethics commission to investigate and act upon any alleged violations occurring prior to the date of said termination, resignation, or forfeiture.
- (5) *Charter.* The ethics commission has neither the authority nor the duty to consider, and/or investigate any complaints of alleged violations of the City's Charter. Such authority resets solely with the city council.

(c) *Written complaint required.* In order to consider whether a violation of the ethics code has occurred, the ethics commission must receive a formal written complaint. Any person may file an appropriate complaint. Before a written complaint is considered by the ethics commission regarding alleged violations of the ethics code, the person bringing the complaint shall first submit a completed and sworn complaint to the office of the city secretary on a form adopted by the commission. An ethics complaint form is available at the office of the city secretary. The ethics complaint form and any accompanying exhibits

⁸5—Official Comments: The intent of this general authority is to allow the Commission the ability to investigate and enforce the Ethics Code against those individuals appointed by the Council or those individuals who interact with the City as part of a commission, committee or board. The City Council believes the Ethics Commission's time and efforts are better spent handling complaints against appointees or committee/commission members, especially those who report to the Council, instead of all employees. Employees who can be directly and quickly disciplined by their supervisor or the City Manager are not subject to the authority of the Ethics Commission. However, when exercising his/her discretion regarding an employee, if the City Manager desires guidance on how the Ethics Code might apply, the City Manager may request an opinion from the Commission. Such opinion is advisory in nature and does not constitute a determination or decision of the Commission.

or documentation submitted by complainant shall not exceed ### pages, and all pages exceeding this page limit shall not be considered as part of the complaint. Following the submission of a complaint, the city secretary shall provide the complaint to the ethics compliance officer for review. The ethics compliance officer shall have thirty days to review a complaint. If the ethics compliance officer is unable to review the complaint within that time period, such complaint shall be forwarded to the chair of the commission. If, prior to forwarding to the commission, a complainant withdraws their complaint, the ethics compliance officer may dismiss the complaint. Should the ethics compliance officer determine the complaint is defective, the ethics compliance officer shall notify the complainant, in writing, of the defect and provide them ten calendar days to correct the defect. Once the ethics complaint has been accepted as compliant under the ethics code by the ethics compliance officer, the ethics complaint shall be submitted to the chair for the commission's consideration.

- (d) *Commission-initiated investigation, evaluation and hearing.* The ethics commission shall perform an initial evaluation of the complaint forwarded to the commission prior to holding any hearings on such a complaint. After this initial review, the commission may dismiss the complaint without a hearing, may request the complainant submit additional or clarifying information, may institute an investigation, or may set the complaint for a public hearing. The commission may not decide that a violation has occurred without either a public hearing or a written acknowledgment of a violation from the city official. If a complainant withdraws their complaint, the commission may dismiss the complaint. The ethics commission may direct the ethics compliance officer to determine if a complaint is appropriate against any official subject to the city's ethics code ~~and may initiate an investigation.~~ In the absence of a formal written complaint, the ethics commission may consider whether a violation of the ethics code has occurred only after it has provided written notice to the individual subject to the investigation which must include the nature of the alleged violation, the specific ethics code provision believed to have been violated, the facts describing the alleged violation and an opportunity for the official to respond. Such notice shall serve as a formal written complaint.⁹
- (e) *Annual review.* The ethics commission shall also have the authority to annually review the city's ethics policies and code and submit recommendations to the city council.
- (f) *Adoption of procedural rules.* The ethics commission shall have the authority to establish, adopt, and amend any procedural rules and regulations necessary to properly execute commission business.
- (g) *Member initiated complaints and recusal.* An ethics commission member shall not deliberate or vote on any complaint that the member filed. A member of the ethics commission shall recuse himself or herself from any case in which, because of familial

⁹⁶—Official Comment: This provision allows the Commission the ability to begin an investigation on its own without a formal written complaint from a third party. However, in order to provide constitutional due process to the individual subject to the investigation, written notice of the grounds for the investigation and the ability to respond must be provided.

relationship, employment, any prohibited economic interest, or because of any reason his or her impartiality might reasonably be questioned. If the number of commission members recused from a case is so large that a quorum of the ethics commission cannot be constituted, as provided for in section 2-51, the city manager shall nominate a sufficient number of ad hoc members to constitute a quorum. Ad hoc members of the ethics commission must be confirmed by a majority vote of the city council and serve only for the nominated case.

Sec. 2-54. Ethics compliance officer.

- (a) *Designation.* The city attorney or his attorney designee, shall serve as the ethics compliance officer for the city. The ethics compliance officer shall act as legal counsel to the ethics commission on matters related to commission business. As legal counsel to the ethics commission, the ethics compliance officer shall not represent any person or party in any proceeding before the ethics commission.^{7 10}
- (b) *Authority and duty.* The ethics compliance officer shall also have the duty to review alleged ethics complaints to ensure the written complaint meets the required form and substance as stated in this article prior to the submission to the ethics commission. In reviewing alleged ethics complaints, the ethics compliance officer shall not determine the truth of the matters alleged but shall determine whether the act or actions alleged could constitute a violation under the code of ethics and conduct, if proven true. However, the ethics compliance officer shall have the authority to review or reference any document or record of a governmental body or in the public domain as part of his/her compliance officer review. In so doing, the compliance officer shall have discretion to dismiss a complaint if the document or record establishes facts contrary to those asserted in the complaint and such facts establish no violation could have occurred. Should the ethics compliance officer determine that the act(s) or action(s) alleged would not constitute a violation of the code of ethics and conduct, even if true or if established by a governmental document or record, the complaint shall be dismissed by the ethics compliance officer. Should the ethics compliance officer determine that the complaint submitted contains alleged violations of the City Charter, such complaints shall be forwardeded to the city council.
- (c) *Notice of defects in form.* If the ethics compliance officer determines an alleged complaint is defective in form, the complainant must be advised of the defect and given a reasonable opportunity to correct any defects in the form of the complaint. Complainant must correct any defects in form within 10 calendar days of written notice of such defects. Should the

¹⁰⁷—Official Comment: The Commission needs a screening officer with skill in determining whether certain conduct could potentially violate the Ethics Code. The intent is not for the screening officer to decide the validity of each complaint. The intent is for the screening officer to assume all alleged facts are true for initial evaluation purposes, and if true, would such facts violate a provision of the Ethics Code. If such allegations, if proven true, would not violate the Ethics Code, then the complaint is not a proper complaint. If the allegations could violate the Ethics Code, the screening officer is required to determine the complaint is complaint and to forward it to the Commission. The Commission is the body which determines the factual accuracy of any complaint, the credibility of any statements or testimony, and the validity of any evidence.

complainant refuse to correct or fail to correct any defects ins form, the ethics compliance officer shall dismiss the complaint as non-compliant. Should the ethics compliance office determine the complaint falls outside the commission's authority but within the purview of the city manager, the ethics compliance officer shall forward the complaint to the city manager's office.

- (d) *Appointment of independent outside attorney.* Should a conflict arise wherein the city attorney cannot perform the duties required of the ethics compliance officer, an independent outside attorney, ~~who does not otherwise represent the city~~, shall be appointed by the city manager and shall have the same duties and authority under section 2-54 and shall be entitled to reasonable compensation as determined by the city manager for the duties performed in the particular case. An automatic conflict exists when a complaint alleging the a violation of the ethics code by the city manager, mayor, a member of the city council, city attorney or an assistant city attorney; or when requested by the city attorney due to a potential legal conflict of interest. Should the city manager not be able or willing to appoint an independent outside attorney, then such appointment shall be made by the mayor.

Sec. 2-55. Written ethics complaint.

- (a) A complaint filed under this article shall be submitted on the form adopted by the ethics commission which can be obtained at the office of the city secretary. A complaint shall contain the following minimum requirements:
- a. The name, mailing address, email address and telephone number of the person submitting the complaint;
 - b. The name of the person(s) whom is/are alleged to have committed a violation of the code of ethics and conduct and their position and/or title held or formerly held;
 - c. The date of the alleged ethics violation; including the facts supporting specific provision(s) of the ethics code that are alleged to have been violated; and
 - d. The ethics complaint form is sworn to before a notary public or other person authorized by law to administer oaths under penalty of perjury.
- (b) The ethics commission may adopt additional minimum requirements for the complaint as it deems necessary, but may not reduce the requirements established by this section of the Code.
- ~~(c) The ethics complaint form including any exhibits and supporting documents shall not exceed ## pages total.~~

Sec. 2-56. Penalties and recommendations.

- (a) *Commission imposed penalties.* Should the ethics commission find a violation of the ethics code, the ethics commission may directly impose the following penalties:
- a. A civil penalty of not more than \$500.00 per violation;

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- b. A letter of admonition when the violation was determined to be unintentional or inadvertent;
 - c. A letter of reprimand when the violation was determined to be intentional or knowingly committed; and
 - d. A command to attend specific training.
- (b) *Recommendations.* In addition to the authority to assess the above penalties, the ethics commission may also recommend action be taken by the city council or city manager, including but not limited to termination or forfeiture of office. Further, the ethics commission may refer any matter to the appropriate criminal prosecutor to determine the existence of any criminal conduct and whether criminal prosecution may be warranted. However, the absence of a referral from the ethics commission shall not preclude any prosecutor from exercising his or her discretion in handling matters he or she deems to constitute criminal conduct.

Sec. 2-57. Appeal and disposition.¹¹

- (a) *Determination with penalties.* If the ethics commission makes a determination a violation of the ethics code occurred and imposes a penalty, such decision may be appealed by the person subject to the penalty to the city council. Such appeal shall be submitted, in writing, to the office of the city secretary within ten calendar days from the date that the penalties are imposed. The appeal shall state the reasons why the decision is unwarranted and should be dismissed. Following the submission of a written appeal, penalties shall be suspended until the city council either upholds or dismisses the penalties imposed by the ethics commission. Alternatively, the city council, at its discretion, may impose a lesser penalty than what has been imposed by the ethics commission.
- (b) *City council consideration.* The city council may consider the appeal based on a review of the ethics commission records or may hold its own investigatory hearing on the appeal. The appellant is entitled to written notice of the council meeting at which the appeal will be considered for action and whether the council will be conducting its own investigation or simply reviewing the appeal from the commission.
- (c) *Recommendations not appealable.* With the exception of complaints filed against a city council member or the city manager, no appeals may be taken if the ethics commission makes a recommendation but imposes no penalty. If the ethics commission makes a

¹¹8—Official Comments: From a technical standpoint, if no penalty is present, a recommendation does not impose an obligation upon the person subject to Commission's recommendation. The recommendation is therefore not an appeal in the normal sense. A recommendation without a penalty is simply a report to the City Council or City Manager on a respondent. Council's consideration should not be thought of as an appeal, but as the Council being the body to take initial action. However, because the members of the City Council and the City Manager positions are more prone to perception, political influence and indirect injury in the eyes of the public, such respondents are given the ability to formally challenge the recommendation prior the Council taking action. But the end result is the same in that no direct penalty is imposed by the recommendation and the City Council must or City Manager must still take action before a determination is final.

recommendation to the city council, the person subject to the recommendation is entitled to written notice of the council meeting at which the recommendation will be considered.⁸

Secs. 2-58, 2-59. Reserved.

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