

City of Windcrest



AGENDA ETHICS COMMISSION MEETING 6:00 PM JUNE 17, 2026

**JUDGE STEPHEN P. TAKAS, JR. COURTROOM
CITY HALL - 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 WEDNESDAY, JUNE 17, 2026, STARTING AT 6:00 P.M.

THE ETHICS COMMISSION RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF WEDNESDAY, JUNE 17, 2026, AND TO RECONVENE THE MEETING ON THE FOLLOWING BUSINESS DAY, THURSDAY, JUNE 18, 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) Discuss, review, and possible action on amendments to the City of Windcrest Ethics Commission procedures adopted March 2021.
- b) Discuss, review, and possible action on amendments to the City of Windcrest Ethics Complaint Form.
- c) Discuss, review, and possible action on recommendations regarding amendments to Chapter 2, Article III, Ethics, of the Windcrest Code of Ordinances.
- d) Discuss, review, and possible action on setting the next meeting date for the Ethics Commission.

VII. 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.

VIII. 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); §551.074 (Personnel Matters); and § 551.071 (Consultation with Attorney) 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 three (3) business days prior to the meeting on June 17, 2026.

BY:

A handwritten signature in black ink, reading "Rachel C. Dominguez". The signature is written in a cursive, flowing style.

Rachel C. Dominguez, TRMC
City Secretary

Windcrest Ethics Commission Procedures

ARTICLE I. GENERAL PROVISIONS

(A) Definitions

1. Chair shall mean the chair of the Ethics Commission.
2. City Secretary shall mean the City Secretary of the City of Windcrest.
3.
4. The Commission shall mean the Windcrest Ethics Commission, which is a commission established by the City Council of the City of Windcrest pursuant to Ordinance No. 2019-690(O). The Commission may establish its own rules and procedures, but such are subject to change by City Council resolution or ordinance.
5. Complainant shall mean the person filing an Ethics Complaint Form.
6. Complaint Form shall mean the Ethics Complaint Form on file with the City Secretary's office.
7. Governmental Documents shall mean the types of records and information outlined in Texas Government Code § 552.022.
8. Hearing shall mean a meeting of the Windcrest Ethics Commission wherein the Commission will investigate the Complaint and may consider responses, evidence, and other information provided at this meeting to make a formal recommendation to the City Council or City Manager on whether the Complaint should be sustained or dismissed.
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- 1.
- ~~2.1. City Secretary shall mean the City Secretary of the City of Windcrest.~~
- ~~3.1. Chair shall mean the chair of the Ethics Commission.~~
- ~~4.9. Officers of the Commission shall mean the Chair, Vice-Chair and Secretary of the Ethics Commission.~~
- ~~5.10. Presiding Officer shall mean the officer or commission member presiding over any meeting of the Commission. By default, the Presiding Officer shall be the Chair.~~
- ~~6.1. Vice Chair shall mean the vice chair of the Ethics Commission.~~
- ~~7. Complaint Form shall mean the Ethics Complaint Form on file with the City Secretary's office.~~
- ~~8.1. Complainant shall mean the person filing an Ethics Complaint Form.~~
11. Respondent shall mean the person accused of committing behavior deemed unethical under the City's Ethics Policy.
12. Vice-Chair shall mean the vice-chair of the Ethics Commission.

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9.

~~10. *Hearing* shall mean a meeting of the Windcrest Ethics Commission wherein the Commission will investigate the Complaint and may consider responses, evidence, and other information provided at this meeting to make a formal recommendation to the City Council or City Manager on whether the Complaint should be sustained or dismissed.~~

~~11. *Governmental Documents* shall mean the types of records and information outlined in Texas Government Code § 552.022.~~

(B) Office and Custodian of Records

1. The Commission designates City Hall, located at 8601 Midcrown, Windcrest, Texas 78239, as its office.
2. The Commission further designates the City Secretary as its custodian of records. All records of the Commission shall be filed with the City Secretary. The Commission, through the assistance of the City Secretary, shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The Commission shall keep records of its examinations and other official actions, which shall be stored in the Office of

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the City Secretary.

3. The Commission designates the Chair as the primary officer responsible for communications on behalf of the Commission and interaction with City administration.

ARTICLE II. OFFICERS

- (A) As specified by City Ordinance, the Commission shall have at least three (3) officers: Chair, Vice-Chair, and a Secretary and may appoint such other officer positions as the Commission deems proper. Each officer position is for a term of one (1) year. Elections for officer positions are to be held annually ~~for officer positions~~, even if the positions were filled due to vacancy at a time prior to the annual election. The election of officers shall occur by the Commission membership by majority vote.

ARTICLE III. PROCEDURES

- (A) **Authority:** The Commission may establish, amend, and rescind rules and procedures governing its own internal operations, consistent with its authority provided by the City's Code of Ordinances.
- (B) **Meetings:** The Commission shall generally follow the below procedures. Such procedures are subject to policies and ordinances adopted by the City Council by resolution or ordinance. In the absence of an express procedure, the Presiding Officer is responsible for the orderly progression of any meeting. Meetings of the Commission are held at the call of the Presiding Officer and at other times as determined by the Commission.
 1. *Call to Order.* Call the meeting to order.
 2. *Roll Call.* Acknowledge the presence of members in the room for the purposes of quorum.
 - 2.3. *Vote to Excuse Absent Commissioners*
 - 3.4. *Pledge of Allegiance and Invocation*
 - 4.5. *Citizens to be Heard.* If applicable.
 - 5.6. *Items for Discussion/Action.* The Commission shall hear and discuss items on the agenda, and, if necessary, take action on the listed agenda items. Should the Commission hold a hearing in response to a properly filed Ethics Complaint, it will be identified as an item for discussion and action.
 - 6.7. *A Motion.* A motion must be made for each agenda item that is to be discussed. For example, "Motion to approve (or deny) [item as stated on the posted agenda]."
 - 7.8. *Second to Motion.* A second to the motion must be made before discussion can occur on an agenda item. Seconding an item does not mean the member offering the second agrees with the motion. The second is an acknowledgement that the motion should be discussed. If no second is made within a reasonable time of the motion as determined by the Presiding Officer, the motion will not be discussed.
 - 8.9. *Discussion.* Members may discuss the motion on an agenda item once seconded.

Discussion and deliberation are considered one-in-the-same for purposes of these

rules.

~~9.10.~~ Call for Vote. Once a motion has been made and seconded and discussion, if any, ~~and~~ has been held, any member of the ~~Board Commission~~ may call for a vote on the motion. The Presiding Officer shall restate the motion and call for a vote of the members on the motion. The ~~Board-Commission~~ members shall vote on the motion. A motion passes by a majority vote of the Commission.

~~10.11.~~ Adjournment. Once no other business is present for a particular meeting, the Presiding Officer will adjourn the meeting and state the time for the record. No motion or second is necessary for adjournment. If business is still present from the agenda, any Commission member may still move to adjourn at any time, which would require a second and majority vote to pass.

(C) **Ethics Complaint Intake Process and Hearing Procedures**

1. The rules applicable to courts of law are not applicable to the Commission; the procedures contained herein shall apply.
2. As the majority of the Commission's functions are reactions to filed complaints, the Commission is not expected to meet on a regular basis but can meet at the discretion of the Chair or by majority vote of the Commission. However, the ~~Board-Commission~~ shall meet as needed based on the proper filing of a Complaint Form.
3. If a person, the Complainant, requests an investigation by the Commission into a complaint, the person shall fill out a Complaint Form and file it with the City Secretary's Office as directed by the City's Code of Ordinances.
4. A Complaint Form is only considered filed if the Complaint Form contains no defects as defined in the City's Code of Ethics and Conduct, is complete, signed, sworn, and filed with the City Secretary's office within one-hundred and eighty (180) calendar days year-of the alleged unethical act.
5. Once the Complaint Form has been filed, the City Secretary will submit it to the Ethics Compliance Officer for review. Once the Ethics Compliance Officer has ~~determined the allegations asserted in the Complaint Form are proper, and meet the minimum requirements for a complaint brought under the City's Code of Ethics and Conduct, the forwarded the Complaint to the~~ Chair of the Ethics Commission, ~~will be provided with the Complaint Form~~ the Commission will be notified. The Respondent will also be provided a copy of the Complaint Form within a reasonable time after this determination is made being forwarded to the Commission. If the Complaint is dismissed, either by the Commission or the Ethics Compliance Officer, the Respondent shall be given a copy of the Complaint and notified, in writing, of the dismissal. The Complainant shall also be notified promptly of any dismissal, in writing.
6. Respondent may, but is not required to, provide a sworn statement in response to the allegations contained in the Complaint Form. ~~however, the period to provide such response must be received by the City Secretary's office within ten (10) days from the date in which the Respondent is provided the Complaint Form. A Complainant may not amend the Complaint after the Complaint has been provided to the Respondent. Any amendments to the Complaint Form made~~

Commented [RD1]: Define reasonable time: What does the Commission what to define as?

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by the Complainant will extend the time or Respondent to respond. Amendments to the Complaint Form may not be filed with less than ten (10) days before a hearing is set without the hearing being reset for a later date.

7. ~~As provided by the City's Code of Ordinances, the Ethics Compliance Officer shall dismiss the complaint if: the Complaint Form does not allege a violation of the City's Code of Ethics and Conduct or does not meet the minimum requirements set forth by City's Code of Ordinances or these rules. However, should the Complaint Form be defective in form only, the Ethics Compliance Officer shall advise the Complainant of the defect(s) and provide a reasonable opportunity to correct the defect(s) noted. If the defect(s) are not corrected as directed by the City's Code of Ordinances or these rules, the complaint shall be dismissed.~~
8. ~~If the Complaint Form is properly completed and the minimum requirements are met, the Chair shall set a hearing within sixty (60) days of the filing of the Complaint Form to allow the Commission to investigate the allegations asserted.~~
7. ~~If the Complaint Form is properly completed and the minimum requirements are met, the Chair shall set the Complaint on an agenda for initial evaluation within sixty (60) days of the date the Ethics Compliance Officer forwards the filing of the Complaint Form to the Chair, allow the Commission to internally investigate for consideration by the Commission the allegations asserted. At this time the Commission may internally investigate the Complaint allegations, but such internal investigation will not be used to determine if a violation occurred, but rather to determine if the complaint is factually supported and may take any action authorized by the Ethics Code.~~
8. ~~At the first meeting on the Ceomplaint, the Commission shall perform an internal review-initial evaluation of the Complaint, without a hearing, to determine if it should move forward to a public hearing, if it is to be dismissed, or further investigated on the complaint. During this initial evaluation, the Commission shall have the authority to investigate the Complaint to determine if, by the face of the Complaint, or when the Complaint is compared to Governmental body public documents, the Complaint is sufficiently supported. If the Complaint is not supported based on a facial review, or based upon comparison with Public Governmental Documents, or if the Complaint is withdrawn in writing by the Complainant, the Commission shall have authority to dismiss the Complaint, before a public hearing on whether a violation occurred.~~
9. ~~If, after an initial evaluation, the Commission determines that a Ceomplaint is factually supported, then the Commission shall should move forward to a public hearing, the Chair shall set a public evidentiary hearing on for the Complaint.~~
10. ~~At the evidentiary hearing, the Complainant shall be put under oath and may make a presentation of information supporting the alleged violations of the City's Code of Ethics and Conduct. The information presented shall be limited to the allegations contained in the Complaint Form. New allegations shall not be introduced at the hearing. If the Complainant fails to appear in-person at the evidentiary hearing, the Commission Chair may immediately, upon a finding that the Complainant was not present at the evidentiary hearing at the time the Complainant was to be put under oath, dismiss the complaint and end the hearing.~~

Commented [RD3]: At this time the complainant and respondent will be notified of the next steps?

At least seven (7) calendar days prior to the evidentiary hearing, the Complainant or Respondent may request in writing, to the City Secretary,—that the Commission allow Complainant or Respondent to appear via videoconference which may be allowed by the Commission in its sole discretion. The Complainant or Respondent may have an attorney, or other authorized representative, present for any hearing, but the presence of any such authorized representative does not satisfy the Complainant’s duty to appear in-person as outlined in this paragraph.

11. Respondent shall be put under oath and may make a counter presentation to rebut the information presented by the Complainant.
12. The Respondent may call a maximum of three (3) witnesses. The Commission may allow additional witnesses if requested and good cause is shown for the need by the Respondent. While the Complainant may not call witnesses, the Complainant may submit a witness list with ~~and~~ a brief summary of each witness’ basis of knowledge as it relates to the allegation contained in the Complaint Form. The Commission can determine if it needs to hear testimony from such witness.
13. Any witnesses who ~~testifies~~ testify shall be placed under oath. Witness testimony shall be limited to the allegations contained in the Complaint Form. No cross examination shall be allowed by Complainant or Respondent. Only the Commission may ask questions of the witnesses.
14. The Commission may call any other witness it deems necessary in conducting its investigation.
15. Following the presentation by both the Complainant and Respondent, the Commission may convene into executive session when appropriate by state law to deliberate. ~~h~~However, the Commission shall vote in open session to determine whether the allegation(s) contained in the Complaint Form should be sustained or dismissed.
16. The Commission further has the ability to determine if the Complainant filed the Complaint in good faith. If the Commission determines a Complainant acted in bad faith in filing the Complaint, including but not limited to acting with an intent to harass and/or harm the Respondent without a proper basis for the Complaint, the Commission may find the Complaint to be frivolous and impose a fine on the Complainant. Any fine shall not exceed \$500 per frivolous complaint.
17. After such determination is made, the Ethics Commission may: impose a penalty as prescribed under the City’s Code of Ordinances; make a recommendation on the Complaint to the City Council or to the City Manager; or impose a penalty and make a recommendation to the City Council or the City Manager for further action.
18. The results of the hearing shall be submitted in a written report containing the Commission’s findings, recommendations, and shall identify penalties, if any, imposed by the Commission, no later than the 5th business day after the hearing. ~~Though the Office of the City Secretary~~ The written report is submitted to the City Council or City Manager, depending on who has control over the Respondent, for a final determination on any recommendations made by the Commission.

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19. Penalties imposed by the Commission are subject to the appeals process contained in the City's Code of Ordinances. Recommendations are not subject to appeal.

ETHICS COMPLAINT FORM

Please PRINT or TYPE all information requested on this form

PART A – COMPLAINANT INFORMATION (this identifies YOU as the Complainant)

Full Printed Name: _____
LAST FIRST M.I. (optional)

Home Address: _____
NUMBER STREET CITY ZIP

Alt. Address (opt.): _____
NUMBER STREET CITY ZIP

Contact Phone Number (PRIMARY): _____ (OTHER): _____

Email Address: _____

PART B – COMPLAINANT DECLARATION

I HEREBY DECLARE that I, _____, have a complaint against
(Print Name)

the following person: _____
(Print Name(s))

Provide Department and Title Information

_____ Elected Official / Title: _____

_____ Appointed Official / Title: _____

_____ Employee / Department & Title: _____

PART C – PERSONS WITH RELEVANT KNOWLEDGE OF THE ALLEGED VIOLATION

(Named witnesses must have knowledge of being named a witness) – For Legal Discussion

Person #1:

Name: _____

Address: _____

Phone: _____

Knowledge: _____

Person #2:

Name: _____

Address: _____

Phone: _____

Knowledge: _____

Person #3:

Name: _____

Address: _____

Phone: _____

Knowledge: _____

Person #4:

Name: _____

Address: _____

Phone: _____

Knowledge: _____

(Continued on Next Page)

Provide a statement of the facts upon which your complaint is based. Describe the events in the order in which they occurred. Keep dates of the events in sequence. Include any witnesses present when the alleged violation(s) took place. Be factual; the information you provide in this statement must be based on facts and not on personal conjecture. Try to answer the questions, “who”, “what”, “where”, and “when”. Attach extra sheets if more space is required.

[illegible]

PART E – ETHICS ORDINANCE CODE VIOLATIONS

List the sections and paragraphs of the Code of Ethics you believe have been violated:

PART F – SOURCE OF EVIDENCE

Identify sources of evidence, if any, you believe should be considered by the Ethics Commission and attach copies/flash drives/media sources of any pertinent information you have to support your allegation(s). All evidence must be submitted at the time the complaint is filed.

STATE OF TEXAS

§

COUNTY OF BEXAR

§

BEFORE ME, the undersigned authority, on the ____ day of _____, 20 __, personally appeared, _____, known to me to be the person whose name is subscribed hereto, and being duly sworn stated that he/she has personal knowledge:

“I certify that I have read this complaint, and that I fully understand its contents, and I declare under penalty of perjury under the laws of the State of Texas (Texas Penal Code § 37.02), that the foregoing statements and photocopies of attached documents and/or all evidence submitted are true and correct. I understand that a copy of this complaint will be sent to the Ethics Compliance Officer for review. Should the Ethics Compliance Officer determine, as prescribed by ordinance, the act or actions alleged could constitute a violation under the Code of Ethics and Conduct, the complaint will be sent to the Chair of the Ethics Commission and to the individual charged in this complaint and that all papers and communications relating to this complaint must be treated as confidential to the extent allowed by law.”

(SIGNATURE)

My name is _____, my date of birth is _____, and my address is _____. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, State of Texas, on the ____ day of _____, 20____.

NOTARY SEAL

Signature: _____

Printed Name: _____

My Commission Expires: _____

Upon completion of ALL sections of this Complaint Form, hand-deliver or send by certified mail with any attachments to:

Office of the City Secretary
City of Windcrest
8601 Midcrown Drive
Windcrest, TX 78239

ARTICLE III. - ETHICS

Footnotes:

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Editor's note— Ord. No. 2020-017(O), § I, adopted August 3, 2020, amended Article III in its entirety to read as herein set out. Former Article III, §§ 2-50—2-53, pertained to similar subject matter, and derived from Ord. No. 2019-690(O), § IV, adopted February 4, 2019; Ord. No. 2019-710(O), § I, adopted September 16, 2019.

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

(a) *Statement of Purpose.*

- (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 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.
- (1) 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.
 - 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 council city members.

City official. Any 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 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.

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 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.

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) *Act in the public interest.* Recognizing that stewardship of the public interest must be their primary concern, city officials and employees will work for the common good of the citizens of Windcrest and not for any private or personal interest, and will assure fair and equal treatment of all persons, claims and transactions coming before the Windcrest City Council, boards, commissions, and committees.
- (d) *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.
- (e) *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. City officials and employees shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other city officials, employees, and members of the public.
- (f) *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.

- (g) *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 must be made 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.
- (h) *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.
- (i) *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.
- (j) *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.
- (k) *Decisions based on merit.* It is expected that city officials and employees review material, participate in discussion and 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.
- (l) *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.
- (m) *Conflicts of interest, disclosure, and recusal.*
 - (1) 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.
- (2) 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.
- (3) 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., 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., Local Government Code 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. 176, other than gifts of food, lodging, transportation, or entertainment accepted as a guest.
 - c. V.T.C.A., Government Code 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. 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.
- (n) *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. 36.
- (o) *Political advocacy.*
 - (1) City officials and employees shall not utilize the city's name or logo, either verbally or in writing, for purposes of endorsing any political candidate or business.
 - (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, 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.
 - (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.
- (p) *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.

- (q) *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.
- (r) *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.
- (s) *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.
- (t) *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.
- (u) *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.
- (v) *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.
- (w) *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 section does not prohibit city officials from voicing their concerns or opinions while deliberating and discussing matters at public meeting that have brought before the city council or any other board, commission, and committee.
- (x) *Positive work place 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.

(y) *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.

(z) *Compliance and enforcement.*

- (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 a 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.
- (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.

(Ord. No. 2020-017(Q), § I, 8-3-2020)

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. ¹ [3]

- (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 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. ² [4]
- (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: ³ [5]
- a. NOT be any salaried city official or employee;
 - b. NOT be an elected 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} [6]

(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.

(Ord. No. 2020-017(O), § I, 8-3-2020; Ord. No. 2022-008(O), § I, 3-21-2022)

Footnotes:

--- (3) ---

1—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.*

--- (4) ---

2—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.*

--- (5) ---

3—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.*

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4—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.

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.

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 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. ⁵ [7]

(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 or 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. Following the submission of a complaint, the city secretary shall provide the complaint to the ethics compliance officer for review. 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.* 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.^{6 [8]}
- (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 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.

(Ord. No. 2020-017(Q), § I, 8-3-2020)

Footnotes:

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5—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.

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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.

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 [9]
- (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. Should the ethics compliance officer determine that the act or action alleged would not constitute a violation of the code of ethics and conduct, even if true, 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 forward 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. Should the complainant refuse to correct or fail to correct any defects in form, the ethics compliance officer shall dismiss the complaint as non-compliant. Should the ethics compliance officer 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.

(Ord. No. 2020-017(Q), § I, 8-3-2020)

Footnotes:

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7—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.

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, 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.

(Ord. No. 2020-017(Q), § I, 8-3-2020)

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;
- 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.

(Ord. No. 2020-017(Q), § I, 8-3-2020)

Sec. 2-57. - Appeal and disposition.

(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 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

(Ord. No. 2020-017(Q), § I, 8-3-2020)

Footnotes:

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8—*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.*

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