

ORDINANCE NO. 2018-08-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF CHAPTER 2, ENTITLED "ADMINISTRATION," BY ADOPTING A NEW ARTICLE VII, ENTITLED "CODE OF ETHICAL CONDUCT AND PROCEDURES" AS SET FORTH HEREIN BELOW; REPEALING ALL CONFLICTING ORDINANCES; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council of the City of McKinney, Texas enacted Chapter 2 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), adopting various provisions for the administration of the City; and

WHEREAS, the City Council of the City of McKinney, Texas finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to amend Chapter 2, entitled "Administration," of the McKinney Code to address certain ethical considerations and procedures as provided herein below.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 2, "Administration," of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by adopting a new Article VII, entitled "Code of Ethical Conduct and Procedures" to read as follows:

"ARTICLE VII. - CODE OF ETHICAL CONDUCT AND PROCEDURES

DIVISION 1. - STATEMENT OF PURPOSE AND PRINCIPLES

Sec. 2-250. - General statement.

Officials act as fiduciaries entrusted with and responsible for the property and resources of the community and must make governmental decisions, recommendations, and policies free of coercive or other improper influence. Officials must use their position in the best interests of the city rather than for personal interests, whether their own interests or the interests of their family, friends, or business associates.

It is important that officials understand the ethical conflicts they confront every day; appreciate their fiduciary obligations; and recognize the importance of preventing conflicts from occurring, disclosing conflicts when they arise, and withdrawing from any involvement or participation of any kind in a matter where they have a conflict.

Public trust requires that acts which are contrary to the public interest be defined and prohibited; that there be an orderly procedure for raising and addressing ethical questions; that ethical behavior be encouraged; and, that unethical behavior be discouraged and suitably addressed through a process which is fundamentally fair.

Although this article is necessary to identify standards below which an official's conduct cannot fall without the risk of penalty, it is understood that a healthy ethical environment for the provision of public service cannot be achieved or maintained by mere adherence to standards and that all officials should strive to achieve the highest possible level of ethical conduct.

Sec. 2-251. - Ethical values.

It is the official policy of the city that:

- (a) Officials must be independent, impartial, and responsible to the residents of the city;
- (b) Officials must not have a financial interest, and must not engage in any business, transaction, or professional activity, or incur any obligation that conflicts with the proper discharge of their duties for the city in the public interest.
- (c) The principles of personal conduct and ethical behavior that should guide the behavior of officials include:
 - (1) A commitment to the public welfare;
 - (2) Respect for the value and dignity of all individuals;
 - (3) Accountability to the residents of the city;
 - (4) Truthfulness; and,
 - (5) Fairness.
- (d) Under such principles of conduct and ethical behavior, officials should:
 - (1) Conduct themselves with integrity and in a manner that merits the trust and support of the public;
 - (2) Be responsible stewards of the taxpayers' resources; and,
 - (3) Take no official actions that would result in personal benefit in conflict with the best interests of the city.
- (e) To implement the purpose and principles set out in this division, the council has determined that it is advisable to enact a code of ethical conduct and procedures to govern officials. It is the purpose and intent of council to ensure a fair opportunity for all of the city's residents to participate in government, to adopt standards of disclosure and

transparency in government, and to promote public trust in government.

Sec. 2-252. - Purpose.

The purposes of this code of ethical conduct and procedures are:

- (a) To establish standards of ethical conduct for elected and appointed officials;
- (b) To provide clear, consistent guidance with respect to such standards by clarifying which acts are allowed and which acts are not allowed;
- (c) To promote public confidence in the integrity of our city's governance;
- (d) To provide for the consideration of potential ethical problems before they arise, to minimize unwarranted suspicion and to enhance the accountability of our city's government to residents; and,
- (e) To provide for the fair and effective administration and enforcement of this code of ethical conduct and procedures.

DIVISION 2. - CODE OF ETHICAL CONDUCT

Sec. 2-260. - Definitions.

In this article:

Board or Commission means a body appointed, in whole or in part, by the council, as well as the council itself.

City means the City of McKinney, Texas.

Council means the governing body of the City of McKinney, Texas, which governing body is comprised of a mayor and six members.

Council member means the mayor and any other member of council.

Customer or Client means:

- (a) Any person or entity to which a person or entity has supplied goods or services during the previous 12 months, having, in the aggregate, a value greater than \$50,000.00; or
- (b) Any person or entity to which an official's outside employer or business has supplied goods or services during the previous 12 months, having, in the aggregate, a value greater than \$50,000.00 but only if the official knows or has reason to know the outside employer or business supplied the goods or services.

Domestic Partner means an individual of the same or opposite gender as the city official, who is 18 years of age or older, unrelated by blood or marriage, who has lived in the same household as the city official for at least six months and shares

resources of life, including but not limited to basic living expenses, in a close, personal intimate relationship with the city official.

Financial Benefit means any money, service, license, permit, contract, loan, travel, entertainment, hospitality, gratuity, or promise of any of these, or anything else of value to the official or an official's relative. The term does not include campaign contributions authorized by law.

Gift means a financial benefit having a value of \$100 or more that is received or given without equivalent compensation as defined by the Texas Local Government Code.

Interest in a Contract means a relationship to a contract such that a direct or indirect financial or other material benefit has been, or will be, received as a result of that contract. An indirect financial or other material benefit includes a benefit to the official's relative or outside business or employer.

Official or City Official means a current or former member of council and any current or former member of an Administrative Board or Advisory Board. For the purpose of "Division 4. – Civil Complaint Procedures" of this article the terms *official* or *city official* also mean and include candidates for election to the council.

Outside Employer or Business includes:

- (a) Any business activity other than service to the city;
- (b) Any entity, other than the city, of which the official is a member, official, director, or employee, and from which the official or the official's relative receives compensation exceeding ten percent of his or her gross income for the previous year; or
- (c) Any entity in which the official or the official's relative has an ownership interest of ten percent or more of the voting stock or shares of stock as defined by the Texas Local Government Code.

Relative means a spouse, domestic partner, child, step-child, brother, sister, parent or step-parent, niece or nephew, aunt or uncle, or grandparent or grandchild of the official.

Resident means any individual who resides within the corporate limits of the City of McKinney.

Sec. 2-261. - Covered officials.

The code of ethical conduct and procedures contained in this article applies generally to all elected and/or appointed officials of the City of McKinney during their respective terms of office and for a period of one (1) year following the date on which their successor takes office.

Sec. 2-262. – Comply with laws.

- (a) City officials shall comply with the laws of the nation, the State of Texas, and the city in the performance of their public duties. These laws include, but are not limited to, the United States and

Texas Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open government; and, the city's home-rule charter, ordinances, and policies.

- (b) City officials acknowledge that all information provided to or created by a city official, regardless of whether it is created on, received on, and/or stored on a city-owned or privately-owned personal computer, personal electronic device or by and through a personal email account that is related to city business is presumed to be subject to public disclosure under the Texas Public Information Act.

Sec. 2-263. – Civility.

The professional and personal conduct of city officials must be above reproach and avoid even the least appearance of impropriety. City officials shall refrain from abusive conduct, personal charges, or verbal attacks upon the person, character or motives of members of the public or other city officials and employees. Each official should strive to promote and maintain courtesy, civility, and collegiality.

Sec. 2-264. – Mayor-Council Relations.

(a) Mayor's Responsibilities

- (1) The mayor shall be the presiding officer at all meetings. The mayor pro-tem shall preside in the absence or disability of the mayor as provided by the city charter. (All references to "mayor" herein-below shall also mean and include the mayor pro-tem when the mayor pro-tem is presiding as mayor.)
- (2) The mayor shall have a voice in all matters before the council and may make or second motions and vote on all agenda items requiring council action.
- (3) The mayor shall preserve order and decorum and shall require council members engaged in debate to limit discussion to the question then under consideration.
- (4) The mayor will encourage all council members to participate in council discussion and give each council member an opportunity to speak before allowing any council member the opportunity to speak again on the same subject. The mayor, at the mayor's discretion, may limit each speaker's comments regarding a particular agenda item to a specific amount of time to ensure efficient use of time, so long as the mayor announces the time limit in advance and applies it equally to all council members.
- (5) The mayor is responsible for keeping the meetings orderly by recognizing each council member for discussion, limiting speaking time, and keeping discussion focused on the agenda item being considered.
- (6) Should a conflict arise among council members, the mayor serves as mediator. If the mayor is a party to the conflict the mayor pro tem, or a council member not involved in the

conflict, will serve as mediator. Any mediation that may be required will be scheduled by the city manager or his designee.

(b) Council Responsibilities

- (1) Any two council members may, in accordance with Section 2-28 of this Code, request in writing directed to the city manager, with a copy to the mayor, that an item be placed on the council agenda for discussion at a work session meeting or regular meeting.
- (2) Each council member is encouraged to attend at least one Texas Municipal League sponsored conference each year in order to stay informed regarding issues facing municipalities.
- (3) It is the responsibility of a council member who misses a meeting to become informed about the deliberations and action taken by the council in their absence. In the case of absence from a workshop session where information is given, the individual council member is responsible for obtaining this information prior to the council meeting when said item is to be further deliberated and/or voted upon by the council.
- (4) When addressing an agenda item, a council member shall first be recognized by the mayor, confine him or herself to the question under debate, avoid reference to personalities, abusive conduct and personal charges, and refrain from verbal attacks upon the person or verbal attacks on the integrity or motives of members of the public or any other council member or staff member in said council member's motion, discussion or vote.
- (5) In the absence of a ruling by the mayor on any procedural matter, a council member may move to change the order of business or make any other procedural decision deemed appropriate. The affirmative vote of a majority of the council members present and voting shall be necessary to approve the motion.
- (6) Any council member may appeal to the council as a whole from a ruling by the mayor. If the appeal is seconded, the person making the appeal may make a brief statement and the mayor may explain his/her position, but no other council member may speak on the motion. The mayor will then put the ruling to a vote of the council.
- (7) Any council member may ask the mayor to enforce the rules established by the council. Should the mayor fail to so act, a majority vote of the council members present shall require the mayor to enforce such rules.
- (8) When a council member is appointed to serve as liaison to a board, the council member is responsible for keeping all council members informed of significant board activities.

Therefore, regular attendance to the assigned board is of great importance. In the event a council member is absent from three meetings in a twelve-month period that are considered unexcused, by definition, unless the absenteeism is for: (1) vacation; (2) illness; (3) family emergency; (4) court order; (5) jury duty; or (6) business out of town, the city secretary shall notify the council member by letter requesting an explanation for the absences. Unexcused absences include failure to notify the Chair or Board Secretary of a valid reason or good cause for absence prior to a scheduled meeting. After reviewing the explanation for absences, if the mayor finds that the absences are unexcused, the mayor may choose to remove the council member from the assigned board for non-attendance at the board meetings.

(c) Code of Conduct for Mayor and Council Members

- (1) During council meetings, council members shall preserve order and decorum, shall not interrupt or delay proceedings, shall cooperate with the requests of the mayor directed at maintaining order and decorum, and shall obey the rules of procedure adopted by the council. Council members shall demonstrate respect and courtesy to each other, to city staff members, and to members of the public appearing before the council.
- (2) The mayor and council members shall refrain from making rude or derogatory remarks and shall not engage in personal attacks upon or otherwise impugn the integrity and motives of or belittle staff members, other council members, or members of the public.
- (3) The mayor and council members shall not use their position to secure special privileges and should avoid situations that could cause any person to believe that they may have brought bias or partiality to a question before the council.
- (4) Members of the council will not condone any unethical or illegal activity. All members of the council agree to uphold the intent of this policy and to govern their respective actions accordingly.
- (5) Any member of the council may raise a point of order if the rules in this Section 2-264(c) appear to have been broken. This point of order may be raised at any time when a council member notices a violation and is raised by the council member stating "Point of order, Mayor." When recognized, the council member raising the point of order states their reasons for thinking these rules have been broken.
 - i. It is the mayor's duty to make a decision, or ruling, on the point of order.
 1. The point of order is usually ruled on in one of two ways: The point is declared either "Well-taken," or "Not well-taken," and a short explanation of the ruling is given by the mayor.

2. If the point being raised is not clear, the mayor may respond, “The chair is in doubt on the member’s point. All those who consider the rules being violated will say aye . . . Opposed, no . . . The [ayes or nays] have it and [state the action to be followed].”
 - ii. A point of order (1) can interrupt a speaker who has the floor; (2) does not need to be seconded; (3) is not debatable; (4) cannot be amended; (5) is decided by the mayor; and (6) cannot be reconsidered.
 - iii. The ruling of the Mayor on a point of order may be appealed. The appeal is asserted by stating “I appeal the Mayor’s decision.” The appeal requires a second, is debatable, and requires a simple majority to overturn the Mayor’s decision.

Sec. 2-265. – Council and Staff Relations.

- (a) In order to ensure proper presentation of agenda items by staff, questions arising from council members after receiving their information packet should, whenever possible, be presented to the city manager or his designee for staff consideration prior to the council meeting. This pre-meeting submission allows staff time to research and respond to the council member’s questions and provide all council members with the answer to assist the council’s decision-making process.
- (b) The city manager shall designate the appropriate staff member to address each agenda item and shall see that each presentation is prepared and presented in order to inform and educate the council on the issues which require council action. The presentation should be professional, timely, and allow for discussion of options for resolving the issue. The city manager shall direct the staff member making the presentation to make it clear that no Council action is required, or present the staff recommendation, or present the specific options for council consideration.
- (c) The city manager is directly responsible for providing information to all council members concerning any inquiries by a specific council member. If the city manager or the city manager’s staff’s time is being dominated or misdirected by a council member, it is the city manager’s responsibility to inform the mayor of the concern.
- (d) The city manager will be held responsible for the professional and ethical behavior of himself/herself and the discipline of city staff members. The city manager is also responsible for seeing that city staff receives the education and information necessary to address the issues facing municipal government.

- (e) The mayor will inform the city manager of any conflicts arising between the city staff and the council and the city manager will address and attempt to resolve any such conflicts.
- (f) The city manager shall direct all staff members to show respect and courtesy to each other, each council member, and the public at all times. The city manager shall also hold staff members responsible for making objective, professional presentations to ensure public confidence in the process.
- (g) The city manager, after an election, will make sure that staff has prepared information needed for the orientation of new council members and inform them of any Texas Municipal League conferences and seminars available. The city manager will also be responsible for meeting personally with new council members and informing them about city facilities and procedures.

Sec. 2-266. – Council and Media Relations.

- (a) During the conduct of official business, the media shall occupy places designated for them by and through the city's media relations staff or such other places as may be available that are designated for the general public.
- (b) All media members will receive an agenda in advance and will be furnished support material needed for clarification if requested.
- (c) In order to preserve the decorum and professionalism of council meetings, the media are requested to refrain from conversing privately with other people in the audience and to conduct any interviews with the public outside the council chambers while council is in session.
- (d) On administrative matters, the city manager is the city's spokesperson unless the city manager has appointed a media relations person to present staff information on the agenda.
- (e) The mayor, or the mayor's designee, is the primary spokesperson for the city on matters regarding policy decisions or any council information pertaining to issues on the agenda. In order to ensure fair treatment of an issue, any clarifications requested by the media on the issue should be addressed after the meeting.
- (f) The McKinney City Council is made up of six council members and a mayor, each elected by the citizens of McKinney. In respect to each council member and their constituents, each council member's views as presented on an issue before the council should provide equitable representation from all seven council members.

Sec. 2-267. - Official prohibited from doing business with the city.

- (a) No official shall have a financial interest in any contract or transaction involving (i) the sale or lease of goods, real estate, or services, or (ii) the lending of credit to the city.
- (b) For the purposes of this section, the ownership by an official of the stock or instruments of debt of a publicly traded company does not give the official a financial interest in any contracts or transactions between that company and the city, provided that the value of the interest held by the official in such stock or instruments of debt is less than ten percent of the voting stock or shares of the company and/or less than 10 percent or \$15,000 of the fair market value of the company. For purposes of this section the ownership interests of an official's relative, as the word "relative" is defined in this article, are deemed to belong to the official.
- (c) This section does not apply to the city's acquisition of an interest in land owned by an official when the land is acquired through or under the threat of the city's exercise of eminent domain authority.

Sec. 2-268. – Official prohibited from representing others.

An official shall not represent any other person or entity before the city, nor in any lawsuit against the interests of the city. However, it is acceptable for elected officials to represent constituents, generally, without compensation in matters of public advocacy.

Sec. 2-269. – Former official prohibited from representing others for one year.

For a period of one year after the conclusion of their service with the city, an official shall not, on behalf of any other person, for compensation, directly or indirectly, formally or informally, act as agent, attorney, lobbyist, or other sort of representative, to or before their former board, or commission. For the purposes of this provision, the mayor and council members are deemed to have worked with every city department, board, and commission.

Sec. 2-270. - Official prohibited from making certain appearances.

- (a) An official shall not appear before any board or commission on which the official is a voting member, ex-officio member, or liaison.
- (b) Any time an official appears before any city board or commission of which they are not a voting member, ex-officio member or liaison, or when they write a letter to the editor or other publicly distributed writing including the use of the internet regarding any city business or activity, the official is required to clearly disclose whether they are appearing in an official capacity or as a private citizen.

Sec. 2-271. - Misuse and disclosure of official information.

An official or a former official shall not use or disclose confidential information, including information obtained during a “closed meeting” as defined by Texas Government Code Chapter 551, obtained formally or informally due to their position with the city, for their own benefit or for the benefit of any other person or entity, or make such information available in a manner where it would be reasonably foreseeable that a person or entity would benefit from it, or the city could potentially suffer a detriment as a result of such disclosure.

Sec. 2-272. - Restrictions on political activity and political contributions.

An official or candidate shall not knowingly request, or authorize anyone else to request, that any city employee participate, or not participate, in any political activity, including the making of a campaign contribution.

Sec. 2-273. – No special right to use city property.

- (a) An official shall not use, or permit others to use, any city funds, property, or personnel for profit or for personal convenience or benefit, except when available to the public generally, or to a class of residents, on the same terms and conditions.
- (b) Officials do not have a right to use the City Council Chamber or any other offices and conference rooms that are not generally open to and available for the use of the public generally. Further, an official’s right or ability to use city property and facilities that are available for use to the public generally is not superior to the right of the public generally and is subject to the same terms and conditions of use required of the public generally.
- (c) Notwithstanding the foregoing, officials may use the City Council Chamber (as well as other offices and conference rooms that are generally open to and available for the use of the public) to host “Town Hall Meetings” subject to the availability of the City Council Chamber and scheduling its use with the city manager or his designee. However, officials shall not have the right to use the City Council Chamber during the last six (6) months of their term of office and/or for any electioneering.

DIVISION 3. - CAMPAIGN ACTIVITY

Sec. 2-280. - Campaign activity.

Contribution and expenditure reports required to be filed with the city secretary's office under the Texas Election Code may be filed and updated electronically.

- a. The city will post the contribution and expenditure reports on the city's website.
- b. If an individual inadvertently files an incorrect or incomplete report, it is the individual’s responsibility to file an amended report as soon as possible, though no later than 14 calendar days after discovery of the error or after the error should have reasonably been discovered.

DIVISION 4. – CIVIL COMPLAINT PROCEDURES

Sec. 2-290. - Time for filing complaints.

- (a) A complaint must be filed within one year of the date the violation is alleged to have occurred or ninety (90) days after the complainant discovered the alleged violation.
- (b) Notwithstanding subparagraph (a), above, no complaints will be accepted for filing by the city secretary during the time period beginning one hundred twenty (120) days before the date of a municipal election and extending until that date thirty (30) days after the date on which the council formally “canvasses” the election.
- (c) Notwithstanding subparagraphs (a) and (b), above, if an election results in or requires a run-off election no complaints relating in any way to the run-off election will be accepted for filing by the city secretary during the time period beginning one hundred twenty (120) days before the date of the municipal election and extending until that date thirty (30) days after the date on which the council formally “canvasses” the run-off election.
- (d) Notwithstanding subparagraphs (a) and (b), above, if an election gives rise to an election contest no complaints relating in any way to the contested election will be accepted for filing by the city secretary during the time period beginning one hundred twenty (120) days before the date of the municipal election and extending through the latter of the date (i) the results of the election contest become final, or (ii) that is thirty (30) days after the date on which the council formally “canvasses” any court-ordered election arising out of the election contest.
- (e) In the event the filing of a complaint is delayed as a result of subparagraphs (b) or (c), above, the period for filing a complaint will be extended for a period of up to ninety (90) days following the date on which the council canvassed and adopted the results of such election or run-off election, as applicable.

Sec. 2-291. - Detailed written complaints required.

A complaint alleging a violation of this code of ethical conduct and procedures must be made in writing, signed by the complainant, sworn to before a notary public, and filed with the city secretary and contain the following information:

- (a) The name, address, and telephone number of the person making the complaint;
- (b) The name of, and office held by, the person against whom the complaint is directed;
- (c) The specific provision of this article that is alleged to have been violated;
- (d) For each violation alleged, a detailed description of the facts that are alleged to constitute the violation, including the date or dates on which the violation is alleged to have occurred;
- (e) The names, addresses, and telephone numbers of any witnesses to the violations;

- (f) Copies or descriptions of any documents that support or substantiate the allegations;
- (g) The affidavit and signature of the complainant affirming the validity of the complaint; and
- (h) The signature and seal of the notary giving the oath and witnessing the complainant's signature as to the validity of the complaint.

The complainant by and through the action of filing a complaint specifically agrees to pay all costs and fees incurred by the city in the investigation and processing of the complaint if the complaint is determined to be groundless or false.

Sec. 2-292. - Preliminary review of complaints.

- (a) The city secretary will provide copies of each complaint to the official accused (the "Respondent"), and to the city attorney, as soon as practicable. The city secretary will not accept any incomplete complaint.
- (b) Within ten (10) business days of receiving the complaint from the city secretary, the city attorney will review the complaint or forward the complaint to independent legal counsel (collectively the "Investigating Attorney") for review and the investigating attorney will take one of the following actions:
 - (1) Dismiss the complaint if:
 - a. The deadline for filing a complaint has passed;
 - b. The person accused in the complaint is not an official subject to this article;
 - c. The conduct alleged is not regulated under this article; or
 - d. The complaint is not properly completed by the person filing the complaint.
 - (2) Direct any complaints alleging violations of sections 2-267 and/or 2-269 to the city's police department and/or the municipal court prosecutor for the issuance of one or more citations and the prosecution of a possible violation or failure to comply with any of the provisions of said sections 2-267 and/or 2-269 of this article.
 - (3) Perform a preliminary investigation of the complaint and prepare a preliminary report to be forwarded to council together with the complaint for consideration by the council. The preliminary report will include a copy of any written opinion or opinions prepared and provided by the city attorney to the respondent that relate to the conduct at issue and whether, in the city attorney's opinion, the conduct was undertaken in good faith reliance on a written opinion that concluded the conduct was not in violation of this article. Where the city attorney concludes that the conduct was undertaken in good faith reliance on a written opinion, the investigating attorney will recommend that the complaint be dismissed without a hearing.

(4) The investigating attorney will also inform the respondent of the respondent's right to submit any evidence or information the respondent desires to provide to the council for its consideration in conjunction with the preliminary report.

(c) The investigating attorney's preliminary recommendation that the council conduct further proceedings does not mean that any of the allegations contained in the complaint are true or false or that any current or former official or candidate for council has violated or has not violated this article. The council will make that determination.

Sec. 2-293. – Council complaint review procedures.

(a) The council shall be the sole determiner of the quality of the evidence or information provided to it regarding a complaint filed under this article as well as the weight to be given to such evidence or information in its review and analysis of any complaint. Notwithstanding the foregoing, complaints filed under sections 2-267 and/or 2-269 of this article shall fall within the jurisdiction of the Municipal Court of the City of McKinney, Texas.

(b) Within twenty business days after the council receives a preliminary report and recommendation from the investigating attorney, council will vote and render a decision as to whether the complaint should be:

(1) Dismissed as frivolous;

(2) Dismissed because the subject conduct was undertaken in good faith reliance on a formal written opinion of the city attorney;

(3) Dismissed because sufficient cause does not exist to suggest a violation may have occurred; or

(4) Investigated more thoroughly by the investigating attorney because sufficient cause exists to suggest a civil violation may have occurred.

(c) When deciding if a complaint should be dismissed as frivolous, the council may consider the following, and any other pertinent points:

(1) The existence and nature of any relationship between the accused official and the person filing the complaint before the complaint was filed;

(2) Any evidence that the person filing the complaint knew or reasonably should have known that the allegations in the complaint were groundless; and

(3) Any evidence regarding the motives of the person filing the complaint.

(d) When the council determines that an investigation should be made it will direct the investigating attorney to further investigate the allegations in the complaint using such procedures as are appropriate considering the nature and circumstances of the particular complaint.

- (e) If the council determines that there is not sufficient cause to proceed with the investigation or proceeding, it will dismiss the complaint and send notification of this dismissal to the complainant and the respondent. In its letter of dismissal, which letter must be sent within ten (10) business days after the vote on sufficient cause, the council must set forth a short summary of the facts and the reasons for dismissal.
- (f) If the council determines that there is sufficient cause to proceed, it will send notification of this finding to the complainant and the respondent. In its letter of finding sufficient cause for investigation, which letter must be sent within ten (10) business days after the vote on sufficient cause, the council must set forth a short summary of the facts and the reasons suggesting substantial cause.
- (g) The respondent may file with the council a response to the complaint within ten (10) business days after his or her receipt of the council's decision to proceed with an investigation of the allegations set out in the complaint.
- (h) At any time after a complaint has been filed, the council may seek and enter into an agreement with the accused official, former official, or candidate against who the complaint was filed. The agreement should include, or incorporate by reference or otherwise, the nature of the complaint, findings of fact, conclusions of law, the council's reasons for entering into the agreement, an admission of violation or a statement of no desire to contest the complaint by the accused official and a waiver of the right to a hearing. It will also, where relevant, include a promise by the accused official not to engage in certain actions, the imposition of penalties permitted by this code of ethical conduct and procedures, remedial action to be taken, and oral or written statements to be made. If an agreement is breached by the accused official, the council may rescind the civil agreement and reinstitute the proceeding.
- (i) The council may not sustain a complaint or impose sanctions against an accused official without first providing the accused official with notice and an opportunity to defend themselves against the allegations in the complaint in a public hearing held for such purpose.
- (j) The council may conduct hearings and other proceedings on a complaint in closed executive session if permitted by state law, but any final decision and action must be rendered during an open public meeting. The council may, in its sole discretion accept public comment as a part of any proceeding(s) under this article.
- (k) In exercising its authority under this article, the city council shall have the right and ability to exercise all such powers and authority given to it by and through Sections 19 and 31 of the City Charter of the City of McKinney, Texas.

Sec. 2-294. – Civil Sanctions for violations of this article.

If the council determines that a violation has occurred, the council may impose one or more of the following civil sanctions:

- (a) A resolution of notification when a majority of the council believes the violation is clearly unintentional, or when the respondent's

complained of conduct was made in reliance on a public written opinion of the city attorney. A resolution of notification may advise the respondent of any steps to be taken to avoid future violations;

- (b) A resolution of admonition when a majority of the council believes the violation is minor or may have been unintentional, but calls for a more substantial response than a resolution of notification;
- (c) A resolution of reprimand when a majority of the council believes the violation has been committed intentionally or through culpable disregard of this article; and/or
- (d) A resolution of censure when a majority of the council believes a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an elected official. A resolution of censure directed to an elected official will be transmitted by the council to the city secretary and published by the city secretary in the city's official newspaper or a newspaper of general circulation in the city.
- (e) If a majority of the council determines that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an appointed official, the council may remove the appointed official from office or suspend the appointed official from office for a period of time to be determined by the council.
- (f) If a majority of the council determines that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an elected official, the council may recommend the recall of the elected official from office. A recommendation regarding the recall of an elected official will be sent to the city's official newspaper or a newspaper of general circulation in the city. The final authority to carry out a recommendation regarding recall of an elected official rests with the citizens.
- (g) For purposes of this section, a violation is committed intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.
- (h) For purposes of this section, a violation is committed through culpable disregard, or recklessly, with respect to the nature of his conduct or to a result of his conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Sec. 2-295. - Name clearing proceedings.

Where informal allegations of a potential violation of this code of ethical conduct and procedures have been made against an official and the respondent desires an investigation of such allegations in order to clear their name, the accused person may file a written request for a name clearing proceeding, which must contain the information described in section 2-291, "Detailed written complaints required," and state that the accused official denies the allegations and is filing the request for a name clearing proceeding solely for the

purpose of clearing their name. A request for a name clearing proceeding filed under authority of this section will be handled in the same manner and in accordance with the same procedures as complaints received from third parties and must be filed no later than the 90th calendar day after the official first learned of the allegations.

Sec. 2-296. - Public records and open meetings.

Meetings and other proceedings of the council will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.

Sec. 2-297. - Other obligations.

This code of ethical conduct and procedures is inclusive of and supplemental to applicable state and federal laws and regulations including Texas and Federal whistleblower protections. Compliance with the provisions of this code of ethical conduct and procedures does not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, lobbying activities, or any other issue addressed herein.

DIVISION 5. – CRIMINAL COMPLAINT PROCEDURES

Sec. 2-300. – Criminal Penalty for false complaint

It shall be unlawful for any person, firm or corporation to intentionally file a complaint under this article that the person, firm or corporation knows contains false information or by making reasonable inquiry should know that it contains false information. It shall be unlawful for any person, firm or corporation to intentionally give false testimony under oath in any hearing before the council held under this article. Any person, firm or corporation violating or failing to comply with any of the provisions of this Section shall be subject to the penalty provisions set forth in Section 1-18 of the Code of Ordinances, City of McKinney, Texas, (“McKinney Code”); and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Sec. 2-301. – Criminal Penalty for violating certain provisions

(a) It shall be unlawful for an official to violate any of the provisions of section 2-267 of this article. Any official violating or failing to comply with any of the provisions of section 2-267 of this article shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

(b) In addition, it shall be unlawful for a former official to violate any of the provisions of section 2-269 of this article. Any official violating or failing to comply with any of the provisions of section 2-269 of this article shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Sec. 2-302. – Determination of Criminal Violation

All criminal cases arising under this article that are referred to the city’s police department and/or the municipal court prosecutor pursuant to Section 2-292(b)(2) shall be heard and ruled upon by the

Municipal Court of the City of McKinney as provided in Sections 38 through 43 of the City Charter of the City of McKinney, Texas, and Section 1-18 of the McKinney Code.”

- Section 3. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.
- Section 4. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.
- Section 5. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.
- Section 6. Any person, firm, or corporation who violates or fails to comply with any of the provisions of this ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.
- Section 7. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- Section 8. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council’s adoption hereof, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.
- Section 9. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS ____ DAY OF AUGUST, 2018.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
MELISSA LEE
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney