

## ORDINANCE NO. O-2020-010-01

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HALTOM CITY, TEXAS, AS AMENDED, BY AMENDING CHAPTER 2, ARTICLE II, "BOARDS AND COMMISSIONS", BY PROVIDING FOR THE CREATION OF AN ETHICS COMMISSION; AMENDING CHAPTER 2, ARTICLE V, "CODE OF ETHICS," BY PROVIDING THE PROCEDURES FOR THE ETHICS COMMISSION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES, PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Haltom City is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

**WHEREAS**, Chapter 2, Article II of the Code of Ordinances of the City of Haltom City, Texas, as amended, provides for the creation of boards and commissions and the appointment of members thereto;

**WHEREAS**, the City Charter requires the City Council to utilize an Ethics Commission in the enforcement of the City ethics policy as it applies to the City Council, board and commission members, and City Council-appointed officers; and

**WHEREAS**, it is the intention of the City Council to establish an Ethics Commission to review and make recommendations regarding ethics complaints against the City Council, board and commission members, and City Council-appointed officers.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HALTOM CITY, TEXAS:**

### **SECTION 1.**

Chapter 2, "Administration", Article II, "Boards and Commissions", Division 8, "Reserved", of the Haltom City Code is hereby amended to read as follows:

#### **"DIVISION 8. – ETHICS COMMISSION**

##### **Sec. 2-162. – Created; membership.**

- (a) There is hereby created and established an Ethics Commission for the City.

- (b) The Ethics Commission shall consist of five (5) regular members and two (2) alternate members (collectively referred to as "commission members") who are citizens of the City of Haltom City, Texas.
- (c) Alternate members shall attend all meetings of the Ethics Commission. In the event that a regular member is absent from a meeting or has a conflict of interest in a specific case, the Ethics Commission chairperson shall designate an alternate member to serve in the regular member's absence. If for any reason more than one member is absent or cannot participate due to a conflict of interest, the chairperson shall appoint both alternates to serve consistent with the provisions of this section. Alternate members may ask questions during meetings but are not voting members unless designated as such by the chairperson at the beginning of the meeting or at the beginning of a case, whichever is appropriate.
- (d) Commission members shall be nominated by the Mayor and confirmed by the City Council.
- (e) Commission members shall serve for a term of office to commence upon their date of appointment and to continue for a term of two (2) years and until their successor is appointed. Members may serve a maximum of two (2) consecutive terms.

**Sec. 2-163.- Purpose.**

The purpose of the Ethics Commission is to assist the City Council in reviewing ethics complaints filed against City Councilmembers, board and commission members, and City Council-appointed officers; investigating the alleged conduct; and making recommendations to the City Council regarding their findings.

**Sec. 2-164. – Removal from commission; vacancies.**

- (a) A commission member may be removed from office at the will and pleasure of the City Council in either of the following manners:
  - (1) Upon the recommendation of a member of the City Council and the favorable vote of at least five Councilmembers; or
  - (2) Upon a majority vote of the Commission, the Commission may submit a recommendation for a commission member to be removed. The chairperson shall forward this recommendation to the Mayor. The Mayor may, at the Mayor's discretion, submit the recommendation to a vote of the City Council.

Upon the favorable vote of at least five Councilmembers, the council may remove the commission member from office.

- (b) Vacancies on the commission shall be filled in accordance with the appointment procedures for new members.

**Sec. 2-165. – Meetings.**

- (a) The Commission shall meet at least once each year and shall select from the members a chair, vice-chair, and secretary for a one-year term and until their successors are elected.
- (b) The Commission shall meet as necessary in response to an ethics complaint filed against a City Councilmember, board and commission member, or City Council-appointed officer.
- (c) Three members of the Commission shall constitute a quorum.
- (d) Minutes of each Commission meeting shall be filed with the City Secretary.
- (e) In the event a regular member is absent from or has a conflict of interest during a meeting of the Commission, the chairman shall select an alternate to sit in the regular member's absence.

**Sec. 2-166. Departmental Support.**

The Ethics Commission shall receive reports and advice from the Civil Service Director or as directed by the City Manager. The Civil Service Director shall be a liaison available to the Ethics Commission for advice and consultation, and the Civil Service Director shall cooperate and render such services to the Ethics Commission as necessary.”

**SECTION 2.**

Chapter 2, “Administration”, Article V, “Code of Ethics”, of the Haltom City Code is hereby amended by revising Sections 2-453 and 2-456 to read as follows:

**“Sec. 2-453. – Penalties for violation of article; forfeited position; exemptions; injunctions.**

- (a) Except where otherwise provided by state law, it is not the intent of this article that violations of this article be subject to criminal penalties.
- (b) The City Council shall utilize the Ethics Commission to investigate an allegation that any City Councilmember, board and commission

member, or City Council-appointed officer has violated any provision of this article. The City Manager shall enforce the ethics policy as it applies to employees. Under this Article, City Manager means the City Manager or their designee. The City Manager or Ethics Commission, as appropriate, shall send written notice to the person being investigated, advising the individual of the alleged violation of this article.

- (c) Whenever the Ethics Commission finds that any City Councilmember, board and commission member, or City Council-appointed officer has violated any provision of this article, it shall make a recommendation of one or more appropriate penalties to the City Council as follows:
  - (1) A letter of notification shall be issued when the violation is clearly minor and unintentional. A letter of notification shall inform the party complained against of appropriate actions that should be taken to avoid future violations.
  - (2) A letter of admonition shall be issued when the violation is minor and may or may not have been unintentional, but calls for a more substantial response than a letter of notification. A letter of admonition shall inform the party complained against of appropriate actions that should be taken to avoid future violations.
  - (3) Public admonishment from the dais, in addition to a letter of admonition, shall be issued when the violation has been committed either intentionally or through disregard of the Ethics Code or an advisory opinion issued by the City Attorney.
  - (4) Forfeiture of or removal from office for board and commission members or suspension or termination of City Council-appointed officers when the violation is considered to be contrary to essential standards of conduct applicable to such position.
- (d) Whenever the City Manager has determined that any employee has violated any provision of this article, the City Manager, may sanction or discipline such employee. Such sanction or discipline may include forfeiture of or termination from the individual's position. The City Manager shall send written notice to the individual of the determination and any disciplinary action taken.

- (e) Nothing in this article shall be construed to prohibit a disciplined employee, City Councilmember, board and commission member, or City Council-appointed officer from being re-elected, reappointed, or otherwise rehired to any position forfeited or terminated under the provisions of this article.
- (f) The City Council, Ethics Commission, or City Manager may exempt from the provisions of this article any conduct found to constitute a violation by an employee, City Councilmember, board and commission member, or City Council-appointed officer if it finds that the enforcement of this article with respect to such conduct is not in the public interest.
- (g) Any contract or transaction that was the subject of an official act or action of the City in which there is an interest prohibited by this article, or which involved the violation of a provision of this article, shall be voidable at the option of the City Council or City Manager.
- (h) At the discretion of the City Council or City Manager, the City Attorney shall have the power, where a violation of the provisions of this article is threatened or has occurred, to bring a civil action or proceeding, at law or in equity, for a judgment enjoining any violation of the provisions of this article or requiring the relinquishment of any prohibited interest or the voiding of any such contract or transaction, taking into account the interest of the City and any third person who may be injured thereby. Where the City Council or City Manager determines that the public interest may be best served by not voiding a contract or transaction entered into in violation of this article, such contract or transaction may be enforced and an action or proceeding may be brought against any employee, City Councilmember, board and commission member, or City Council-appointed officer found in violation of the provisions of this article for damages, not to exceed twice the damages suffered by the City or twice the profit or gain realized by the employee, City Councilmember, board or commission member, or City Council-appointed officer, whichever is greater."

**"Sec. 2-456. – Enforcement of article.**

- (a) The City Council, utilizing the Ethics Commission, shall have the responsibility for the enforcement of this article as it applies to the City Council, board and commission members, and City Council-appointed officers. The City Manager shall have the responsibility for enforcement of this article as it applies to a City employee.
  - (1) The City Council, Ethics Commission, or City Manager, as appropriate, may investigate any alleged violation of this

article and may take such disciplinary action as deemed appropriate.

(2) At the direction of the City Council or City Manager, the City Attorney shall have the power to investigate any complaint, to initiate any suit, and to prosecute any action on behalf of the City where such action is appropriate.

(b) Any person who believes that a violation of any portion of this article has occurred may file a complaint with the City Secretary, or their duly authorized representative, on a form provided by the City. A complaint made about a City Councilmember, board and commission member, or City Council-appointed officer will then be reviewed in accordance with the Ethics Commission procedures detailed in this article. A complaint made about a City employee will be processed in accordance with this section. However, nothing in this article shall be construed to prevent complainants from instituting direct legal action through the appropriate judicial authority.

(c) The penalties and enforcement provisions of this article shall not be applied to permit the removal from office of a City Councilmember without compliance with the procedures for recall or removal of Councilmembers as provided in the City Charter.

(d) In the event the City Council determines that any City Councilmember, board and commission member, or City Council-appointed officer has violated this Article, the City Council may impose a sanction or penalty as provided for in this Article."

### **SECTION 3.**

Chapter 2, "Administration", Article V, "Code of Ethics", of the Haltom City Code is hereby amended by adding a new Section 2-458 to read as follows:

#### **"Sec. 2-458. – Ethics Commission Procedure.**

(a) Each Ethics Commission proceeding shall be held in accordance with the Texas Open Meetings Act (or successor law).

(b) Complaints.

(1) Ethics complaints may be filed by any person against a City Councilmember, board or commission member, or City Council-appointed officer.

(2) Complaints must be made on a form provided by the City.

- (3) Complaints must be submitted to and notarized by the City Secretary, or their duly authorized representative.
- (4) For this Article, the individual who files a complaint will be referred to as the “Complainant” and the person alleged to have committed an ethics violation will be referred to as the “Accused.”
- (5) Complainants must provide supporting documentation or be supported by first-hand knowledge of the alleged violation when submitting an initial complaint. A complaint that is not supported by documentation or first-hand knowledge is incomplete.
- (6) The City Secretary, or their duly authorized representative, will review the face of the complaint for technical completion.
  - a. A completed complaint alleging an ethics violation against a City Councilmember, board or commission member, or City Council-appointed officer will be forwarded to the Ethics Commission within five (5) business days of receipt to be reviewed at the next meeting.
  - b. The City Secretary shall schedule an Ethics Commission meeting to be held within twenty (20) days of receipt of a completed complaint and notify the Ethics Commission of the meeting date.
  - c. A completed complaint alleging an ethics violation against a City employee will be forwarded to the City Manager.

(c) Initial review by commission.

- (1) Within twenty (20) days of the filing of an ethics complaint, the Ethics Commission will review the complaint to determine if, on its face, the complaint alleges a violation of the Code of Ethics.
- (2) If the Ethics Commission determines a complaint states a violation, the complaint will be set for a hearing. The City Secretary shall send certified notice to all parties stating the complaint, the Commission’s decision, and the hearing date.

- (3) If the Ethics Commission determines a complaint does not state sufficient information to determine whether there is an alleged violation, the Commission may table the complaint and seek clarification from the Complainant regarding which Ethics Code provision they allege was violated.
  - a. Requests for clarification must be returned within twenty (20) days from the date sent to the Complainant or the complaint will be considered withdrawn.
  - b. All timelines contained within this Section are tolled while a complaint is tabled for clarification.
- (4) If the Ethics Commission determines a complaint does not state a violation the case will be closed. The City Secretary shall send notice via regular mail to the Complainant of the Commission's decision.
- (5) A determination of whether the complaint states a violation of the Code of Ethics requires a majority vote of the members present.

(d) Investigation.

- (1) The Ethics Commission is authorized to conduct investigations of alleged ethics violations.
- (2) The Ethics Commission is authorized to hire a third-party investigator to conduct ethics violation investigations.
- (3) In the course of an investigation, the Ethics Commission or third-party investigator may request documentation or statements to support or negate the complaint. The failure of a party to provide requested documentation or statement will be noted in the presentation of the case to the Ethics Commission and, if applicable, the City Council.
- (4) If, during the course of an investigation, the Ethics Commission determines an alleged violation is the subject of an ongoing criminal investigation, the Ethics Commission may table the ethics complaint investigation pending the conclusion of the criminal investigation. All timelines contained within this Section are tolled while a complaint is tabled pending a criminal investigation.

(e) Hearing.

- (1) The Ethics Commission will hold a hearing on complaints that are determined to state a violation within sixty (60) days of filing. Hearings may be postponed for good cause, but will in no event be held later than 120 days from the filing of the complaint.
- (2) In each hearing or review of any kind in which the Commission performs an adjudicatory function, the accused is entitled to be represented by counsel.
- (3) The ethics complaint will be presented to the Commission by the Civil Service Director or outside counsel, as determined by the Commission or Civil Service Director.
- (4) The Commission may consider only the evidence submitted at the hearing. The Accused is entitled to present evidence and call and cross-examine witnesses.
- (5) The Commission shall conduct the hearing fairly and impartially and shall render a just and fair recommendation.
- (6) Whenever the Commission finds that any City Councilmember, board and commission member, or City Council-appointed officer has violated any provision of the Code of Ethics, it shall make a recommendation of the appropriate penalty to the City Council as follows:
  - a. A letter of notification shall be issued when the violation is clearly minor and unintentional. A letter of notification shall inform the Accused of appropriate actions to be taken to avoid future violations.
  - b. A letter of admonition shall be issued when the violation is minor and may or may not have been unintentional, but calls for a more substantial response than a letter of notification. A letter of admonition shall inform the Accused of appropriate actions that should be taken to avoid future violations.
  - c. Public admonishment from the dais, in addition to a letter of admonition, shall be issued when the violation has been committed either intentionally or through disregard the Code or an advisory opinion issued by the City Attorney.

- d. Forfeiture of or removal from office for board and commission members or suspension or termination of City Council-appointed officers when the violation is considered to be contrary to essential standards of conduct applicable to such position.
- (7) A recommendation that the Accused has violated the Code of Ethics requires a super-majority vote of the Commission.

(f) Recommendation to City Council.

Following the Commission's determination, the Ethics Commission chairperson will present the Commission's recommendation to the City Council.

#### **SECTION 4.**

This Ordinance shall be cumulative of all provisions of the City of Haltom City, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

#### **SECTION 5.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

#### **SECTION 6.**

This Ordinance shall be in full force and effect from and after its passage and it is so ordained.

PASSED AND APPROVED ON FIRST READING THIS 13<sup>th</sup> DAY OF APRIL, 2020.

PASSED AND APPROVED ON SECOND READING THIS 11<sup>th</sup> DAY OF MAY, 2020.

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MAYOR

ATTEST:

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CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

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CITY ATTORNEY