

ARTICLE VI. ETHICS

Sec. 2-201. Policy.

- (a) It is hereby declared to be the policy of the City that the proper operation of democratic government requires that public officers and employees be independent, impartial and responsible only to the people of the city; that no officers, employees or members of any standing committee or board shall permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity to conflict with the proper discharge of their duties in the public interest; that public office not be used for illegal or improper personal gain; and that the city council at all times shall be maintained as a nonpartisan body. To implement such a policy, the City Council deems it advisable to enact the following standards of conduct for all officers and employees, whether elected or appointed, paid or unpaid and the sanctions set forth for failure to adhere to the standards of conduct.
- (b) The city further recognizes that public servants are also members of society and, therefore, cannot and should not be without any personal and economic interest in the decisions and policies of government; that public servants retain their rights as citizens to interests of a personal or economic nature, and their rights to publicly express their views on matters of general public interest. It is not the intent of this article to prevent the exercise and enjoyment of public servants' rights as citizens of the community.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-202. Purpose.

The purpose of this article is to:

- (1) Encourage high ethical standards by city officers and employees in conducting official business, and
- (2) Establish minimum guidelines for ethical standards of conduct to be followed by city officers and employees, and
- (3) Provide a mechanism for punishment of those officers and employees who violate the established standard of conduct.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-203. Definitions.

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

Business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

City council or *councilmember* means the elected legislative and governing body of the city consisting of the mayor, mayor pro tem and councilmembers.

Economic benefit means any money, real or personal property, contract rights, sale, lease, option, credit, loan, discount, employment, service or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated, and shall include that for Family Members.

Economic interest means a legal or equitable interest in real or personal property or a fiduciary obligation to such property or contractual right in such property that is more than minimal or insignificant for one's self or a Family Member, and would be recognized by reasonable persons to have weight in deciding a case or an issue. Service by a city official as an officer or director with decision or policy making authority, but not as a general volunteer or contributor, in an educational, religious, charitable, fraternal, or civic organization does create an economic interest in the property of that organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in the securities or other assets unless the city official participates in the management of the fund. A person does not have an economic interest in a matter if the economic impact on the city official is indistinguishable from the impact on the public or on the particular group affected by the matter.

Employee means any person employed by the City including part-time and temporary employees.

Family Member means the spouse, children, parents, spouse's parents and any other family member within two degrees of affinity or consanguinity of the Councilmember, Officer, City Official or employee.

Officer or City Official means any appointive member of a city board, commission, or committee set up by city council action, ordinance, charter, state law, or federal law on a permanent or ad hoc basis. Officer or City Official shall also include the City Manager or Municipal Judge.

Respondent means the person against whom a complaint is made; a person who allegedly violates this Chapter.

Substantial interest means an interest in an entity or property if a Councilmember, Officer, City Official or employee of the City and/or any Family Member:

- (a) owns ten percent or more of the stock of a corporation or ownership interest in any entity, trust or estate, or
- (b) owns ten percent or more or \$2,500.00 or more of the fair market value of a corporation or of any entity, trust or estate, or
- (c) if funds received from any of the above described entities exceeds ten percent or more of the person's gross income for the previous year.

A Councilmember, Officer, City Official or employee of the City and or any Family Member has a substantial interest in real property if he or she, owns or controls an interest in said property, and the interest owned or controlled interest has a market value of \$2,500.00 or more. A prima facie determination of value will be the percentage of the property owned or controlled applied to the appraised value of the property by the Appraisal District records of the County in which the property is located for the year in which the complained of action occurs.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-204. Standards of conduct.

- (a) *General prohibitions.*
 - (1) No Councilmember, Officer, City Official or Employee may act as surety for any person or business entity that has a contract with the city or as a surety on any bond required by the city for a city official.

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- (2) The provisions of this Article do not prohibit a Councilmember, Officer, City Official or Employee from representing his or her interest in his or her owner-occupied homestead before any city body, except the body of which the official is a member.
 - (3) Councilmembers, Officers and City Officials shall respect and adhere to the City Manager structure of the City of Fredericksburg's government as provided in state law and the City Charter.
 - (4) Councilmembers, Officers and City Officials, except Employees, shall not attend internal staff meetings or meetings between city staff and third parties unless invited by city staff or directed by the City Council.
 - (5) Councilmembers, Officers, City Officials and Employees shall refrain from abusive conduct, actions and language and shall not knowingly make a false statement of material fact relating to the character or motives of other members of the city council, boards, commissions, committees, city staff or the public.
 - (6) Councilmembers, Officers and City Officials shall make all reasonable efforts to attend all properly noticed public meetings where their attendance is required by state law or the City Charter.
 - (7) Officers and City Officials addressing the City Council or any other city board or commission as members of the general public during the public comments section, public hearing section or any other time during which public comments are taken during any open meeting shall identify themselves by name and disclose their position with the city.
 - (8) A Councilmember who serves on the board of a public or private nonprofit organization shall be permitted to take part in discussions of, but shall have no vote on any funding request or contract by that organization, unless the organization has a board of directors or trustees appointed in whole or in part by the city council.
 - (9) Councilmembers, Officers, City Officials and City Employees shall abide by the laws of the State and Federal Government, pay all taxes before delinquency, pay all City utility accounts prior to delinquency and not otherwise be indebted to the City of Fredericksburg. Bona fide disputes and the entering into payment plans which are kept current are defenses to this prohibition.

Final conviction of a penal offense other than Class C offenses, or the equivalent, under Federal Law, the Texas Transportation Code or the Texas Penal code, except those involving moral turpitude or assault, shall be grounds for dismissal as to Officers, City Officials and City Employees. Final convictions for felonies shall be grounds for removal for Councilmembers. Failure to abide by other laws, shall be grounds for the imposition of other sanctions hereunder such as reprimands, fines, the recommendation of recall etc., which are listed in the Consequences of a Finding of Violation section.

(b) *Prohibition against gifts.*

- (1) Councilmembers, Officers, City Officials and Employees of the City shall not accept or solicit any gift, favor, service, employment or other economic benefit from any person or business entity doing business with the City that might reasonably tend to:
 - a. influence him or her in the discharge of their official duties, or
 - b. influence or encourage him or her to grant any improper favor, service or thing of value, or
 - c. influence his or her judgment or discretion.
- (2) Factors which may be considered in evaluating whether a gift is prohibited include the value of the gift, any preexisting relationship between the donor and donee, whether the benefit of the gift flows to the City or to an individual Councilmember, Officer, City Official or Employee and whether any consideration is given or expected in exchange for the gift. Those items or services that do not constitute prohibited gifts include, but are not limited to, political contributions made and reported in

accordance with state law, awards publicly presented in recognition of public service, entertainment, meals or refreshments furnished to attendees of public events, appearances or ceremonies, or ceremonial gifts by other dignitaries or exchange program participants.

- (3) Any item offered to a Councilmember, Officer, City Official or Employee may be accepted and donated to a charitable organization or be presented to the City.
- (c) *Substantial interest.* Councilmembers, Officers, City Officials and Employees shall not vote on or participate in any decision-making process with regard to any matter concerning property or a business entity in which they have a direct or indirect Substantial Interest.
- (d) *Economic interest/Economic Benefit.* Councilmembers, Officers, City Officials and Employees shall not vote on or participate in any decision-making process on a matter if he or she has an economic interest in the outcome of the matter under consideration or on a matter in which he or she may obtain an Economic Benefit.
- (e) *Conflict of interest.*
- (1) No former Councilmember, Officer, City Official or Employee shall represent or appear on behalf of themselves or on behalf of the private interests of others before the City Council or any city board, commission or committee when such person has a Substantial Interest, an Economic Interest, may receive and Economic Benefit or represent the private interest of others in any action or proceeding involving the city for a period of one year following the termination of his or her service or employment.
- (2) No former city employee may, for a period of one year, for compensation, appear on behalf of any person other than a governmental entity, or make any appearance before, or negotiate with any City Officer or Employee in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge relating to any matter that involved the employee's former employment.
- (3) Except as specifically authorized below or by other city ordinance, no Councilmember, Officer, City Official or Employee may appear before the body of which he or she is a member to represent himself, herself or any other person or entity, nor may that Councilmember, Officer, City Official or Employee contact another member of such body regarding a matter which he or she is representing himself, herself or another. Such person may designate and be represented by a person of his or her choice in any such matter, other than a Family Member or member or employee of the same entity as such Councilmember, Officer, City Official or Employee. This prohibition shall not apply to a person who serves as an officer or director of an educational, religious, charitable, fraternal, or civic organization and has no economic interest in the property of that organization and who receives no compensation from such organization, nor to a person who has ownership of an interest in a mutual or common investment fund that holds securities or other assets unless such person participates in the management of the fund, nor to a person who has an economic interest in a matter if the economic impact on such person is indistinguishable from the impact on the public or on the particular group affected by the matter.
- (4) A Councilmember, Officer, City Official or Employee shall recuse himself or herself from meetings, discussions or other participation in matters where he or she is an adverse party to that of the City or the body of which he or she is a member and in which matters confidential to the City or body are to be discussed. An adverse party is a party whose interests are opposed to another party in a legal action or threatened legal action, and/or a person whose presence would otherwise prevent privileged communication from taking place.
- (f) *Disclosure of interest and recusal.*
- (1) A Councilmember, Officer, City Official or Employee who has a Substantial Interest, an Economic Interest in the outcome of the matter under consideration or a Conflict of Interest regarding the matter

under consideration shall disclose the same and shall recuse himself/herself from voting on or participating in the relevant decision-making process.

- (2) Such Councilmember, Officer or City Official, if required by State Law, shall also promptly file an affidavit with the city secretary disclosing the nature and extent of the Interest, and the affidavit shall be included in the official minutes of the body, in accordance with state law.
 - (3) Upon recusal, a person who has disclosed having either a Substantial Interest, Economic Interest or a Conflict of Interest in the outcome of a matter under consideration shall leave the dais, if applicable, but may remain at the open meeting in the public seating area.
- (g) *Confidential information.* Councilmembers, Officers, City Officials and Employees of the City shall not directly or indirectly disclose information that such person is privy to because of his or her position but which is otherwise unavailable to the public under the provisions of any applicable United States or Texas public information laws as the same may be amended from time to time, nor directly or indirectly use any information gained solely by reason of their official position or employment, for their own personal gain or benefit or for the private interest of others.
- (h) *Use of City property.* Councilmembers, Officers, City Officials and Employees of the City shall not use city supplies, equipment, resources or facilities for any purpose other than to conduct official city business, unless otherwise provided for by law, ordinance or city policy.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-205. Administration of ethics complaints.

- (a) The City Council of the City of Fredericksburg shall serve as the body which enforces the provisions of this Chapter as to Councilmembers, Officers and City Officials. The City Manager shall have jurisdiction of complaints involving Employees other than those who are Officers or Officials, and shall enforce the provisions of this Article with regard to them, and shall follow the City's personnel policies where they may conflict with the provisions hereof. This jurisdiction shall be exclusive for complaints arising solely from the provisions of this Article and non-exclusive for any other complaints regardless of the source of law for which a violation is alleged.
- (b) The Council, at its discretion, may appoint one or more persons who are not members of the Council, and who are not City Employees, to fully participate in or advise on a particular case. In such event, the participation of such a person shall not be or create a waiver of any confidentiality or privilege.
- (c) The city secretary shall serve as staff liaison and shall be responsible for taking the minutes of the meetings.
- (d) Rules of procedure.
 - (1) The Council shall establish its own parliamentary procedure, provided that such is not in conflict with the specific provisions of state law, city charter or city ordinance, and provided that the terms of this Chapter are followed.
 - (2) A quorum of the Council is required for hearings hereunder.
 - (3) In the event a member of the Council is the Respondent, he or she shall not be a member of the body with regard to his or her ethics complaint. The quorum, voting requirements and the like shall be adjusted accordingly and set in advance of the hearing.
 - (4) The chairperson of the Council may administer oaths and compel the attendance of witnesses.
- (e) Role of the City Attorney.

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- (1) The City Attorney shall serve as legal counsel and staff liaison to the Council or City Manager as applicable. When complaints are filed relating to the City Attorney, independent legal counsel shall be utilized to advise the Commission, take part in hearings and fill the role of the City Attorney in this section. When complaints are filed relating to the Mayor, City Councilmembers, City Manager, City Prosecutor or Municipal Court Judge, or when the City Attorney has a conflict of interest or is otherwise unable to fulfill this role, independent legal counsel shall be utilized at the request of the City Attorney to advise the Commission and take part in hearings.
 - (2) The City Attorney shall serve as ethics advisor to city Employees and Officers. As ethics advisor, the City Attorney is available to respond confidentially to inquiries relating to this section. Provided however, the City Attorney shall not be required to act in cases prohibited by the Texas Rules of Disciplinary Procedure or other relevant ethical considerations.
 - (3) The City Attorney shall receive all sworn complaints and conduct a preliminary analysis and review of the complaint. The City Attorney shall forward a legal review and recommendation to the Council for action as set forth below. If a Complainant alleges a violation by the City Attorney, the complaint must be sent to each member of the Council, with a copy to the City Manager. The City Manager shall employ independent counsel.
- (f) Procedure for Complaints.
- (1) Any person may file a complaint alleging possible violations of federal, state and city laws relating to the provisions of this Chapter. All complaints shall:
 - a. Be submitted in writing, on a form prescribed by and filed with the City Attorney;
 - b. Be signed under oath;
 - c. Be dated; and
 - d. Provide, with as much detail and specificity as possible, all information requested on the form, including the name and address of the Respondent, the provision(s) of law allegedly violated, facts constituting the alleged violation(s), copies of any evidence substantiating the allegations or the relevant facts, the names and addresses of potential witnesses, additional information, if any, and an address and telephone number at which the complainant may be reached during normal business hours. All such information shall be provided to the best of the complainant's knowledge and belief.
 - (2) Complaints and any evidence collected during the investigation of the alleged violation shall be kept confidential until the formal Council hearing, if any, at which time the provisions of the Texas Open Meetings Act shall control. The provisions of the Texas Open Records act shall also be applicable to all cases including those of Employees.
 - (3) A complaint shall be filed with the City Attorney within six months from the date on which the complainant knew of or should have known about the alleged violation.
 - (4) No later than 30 business days after receipt of the complaint, the City Attorney shall acknowledge receipt of the complaint in writing to the complainant and provide a copy of the complaint to the Respondent by certified mail. Respondent shall have 30 business days from receipt of the notice to submit a sworn written response to the City Attorney along with any information the Respondent desires to have considered. The City Attorney shall provide a copy of any sworn written response to the complainant, conduct a preliminary investigation and review the facts to determine whether there is a legal basis for the claim. The City Attorney shall submit in writing a preliminary analysis and recommendation to the Council or City Manager as applicable. The City Attorney shall make one of the following recommendations to the Council:

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- a. Enforcement shall not be taken, and stating the reasons therefor. If the Council/City Manager concurs with this recommendation and no further action is taken in the matter, the City Attorney may still refer the information to another agency or department for appropriate action. A determination by the Council/City Manager that no further action should be taken shall not prevent the City Manager or any other agency or department from initiating other enforcement action, including disciplinary action, based on the same allegations and facts;
 - b. An administrative enforcement hearing should be commenced. If the City Attorney makes this recommendation to the Council/City Manager then the City Attorney shall prepare a probable cause report to be presented with the recommendation which shall contain a summary of law, facts and evidence gathered through the investigation, including exculpatory and mitigating information of which he or she has knowledge. The evidence may include hearsay, including declarations of investigators or others relating to the statements of witnesses or concerning the examination of physical evidence;
 - c. A civil action pursuant to any local, state or federal law should be commenced. If the Council/City Manager concurs with this recommendation, then the City Attorney shall commence the appropriate civil action and the Commission shall take no further action; or
 - d. A referral to another agency for criminal or civil action is appropriate. If the Council/City Manager concurs with this recommendation, then the City Attorney shall refer the information to the appropriate agency and the Council shall take no further action. However, the City Manager may still take disciplinary action, and the determination of the Council shall not prevent the City Attorney from such referral.
- (g) Notification of intent to take action. No later than 75 business days after receipt of the complaint by the City Attorney, the Council/City Manager shall notify the complainant and Respondent in writing if the Council/City Manager intends to schedule an administrative enforcement hearing or take other action concerning the complaint. If the Council/City Manager makes a determination that there is probable cause to schedule an administrative enforcement or other hearing, then the City Attorney shall serve, personally or by certified mail, Respondent with a copy of the probable cause report and notification that Respondent has the right to respond in writing to the probable cause report and to request a disposition conference with the City Attorney at which the Respondent may be present in person and represented by legal counsel or any representative of his or her choosing.
- (h) Response to probable cause report.
- a. Respondent may submit a written response to the probable cause report, in which it may request a disposition conference. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information.
 - b. Any response and request for a disposition conference must be filed not later than 15 business days following service of the probable cause report. If the probable cause report is not personally served, three business days shall be added to the prescribed period.
- (i) Disposition conference.
- (1) If requested, the disposition conference shall be held at a time fixed by the City Attorney and shall be held informally by the City Attorney. The Respondent shall be given at least ten business days notice of the date, time and location of the conference.
 - (2) Formal rules of evidence shall not apply to such a conference.
 - (3) The conference shall be closed to the public unless the Respondent otherwise requests and all other Respondents agree to a public conference.

(j) Ex parte communications. After a complaint has been filed and during the consideration of a complaint by the Council, neither a member of the Council nor the Council's appointees may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the Council, nor may any Council member or appointee conduct an independent investigation or gathering of information.

(k) Administrative enforcement hearings before Council or City Manager.

(1) *Administrative prosecution.* The City Attorney shall prepare and present the case in support of the accusation to be heard at the hearing.

(2) *Informal disposition.* An informal disposition may be made of an administrative enforcement hearing by:

- a. Stipulation;
- b. Agreed settlement; or
- c. Default.

All informal dispositions through stipulation or agreed settlement shall be negotiated through a disposition conference pursuant to the above provision. The Council/City Manager has the right to accept or reject any stipulation or agreed settlement. In the event of an Agreed Settlement of agreed Stipulation, the sanctions shall be included in such agreement, and no further action will be taken.

(3) *Open or closed hearing.* If the Council/City Manager and Respondent do not informally dispose of the enforcement action, Respondent may request either a closed or open hearing and may have legal counsel present. If Respondent does not request a hearing, the Council/City Manager in any event shall conduct a hearing. The hearing shall be held as expeditiously as possible, but in any event no later than 120 days from the date the complaint was received. Respondent shall be given at least 14 days notice of the hearing. The notice shall be in substantially the following form but may contain additional information:

"You are hereby notified that a hearing will be held before the City Council/City Manager at _____ on the _____ day of _____ 20____, at the hour of _____, upon the charges made in the complaint filed against you on _____. You may be present at the hearing, but need not be represented by counsel, you may present any relevant evidence, and you will be given full opportunity to cross-examine all witnesses testifying. If you choose not to attend this hearing a default may be taken."

(4) *Default.* If Respondent does not appear at a scheduled hearing the Council/City Manager may declare a default and make a determination without the need to reschedule a hearing.

(5) *Waiver.* If Respondent waives his or her right to a hearing the Council/City Manager may schedule a hearing without any further notice to Respondent.

(6) *Standard of proof.* The issue at the hearing shall be whether the violation alleged in the complaint occurred. The Council/City Manager shall make its decision based on clear and convincing evidence presented during the hearing.

(7) *Finding of violation.* An affirmative vote of a majority of the members of the Council, including appointees, if any, or an affirmative finding by the City Manager shall be required for the determination that a violation has occurred and to impose any sanction under this Chapter. If the Council/City manager determines that a violation has occurred, it, he or she shall state its, his or her finding(s) in writing, identifying the particular provision(s) which have been violated, make a sanctions determination and deliver a copy of the findings and Consequences determination to the complainant and Respondent within ten business days.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-206. Consequences of a finding of violation.

- (a) One or more sanctions may be imposed as follows. It is specifically provided that the following are actions by the City and do not preclude action by any other agency or person with jurisdiction, and do not supersede penalties that may be imposed through State or Federal action. Sanctions may be imposed on entities based on the conduct of an employee or agent in violation of this Chapter.
- (b) Sanctions:
 - (1) Disciplinary action. Employees and City Officers who are employees may be disciplined in accordance with City policies, including termination. Employees and others may be notified, warned, reprimanded, suspended or removed from office;
 - (2) Fines as set forth in section 1-6 of this Code of Ordinances;
 - (3) Suit for Damages or Injunctive relief;
 - (4) Disqualification from Contracting with the City or Lobbying. The time and manner shall be specified. It is a violation of this code for a person debarred from so contracting or lobbying to enter into, attempt to enter into or aid another in entering into or attempting to enter into a contract with the City during the term of disqualification;
 - (5) Void contract: if the violation involved the award of a contract, the Council may void the contract;
 - (6) Letter of notification may be used when the determination is that the violation was unintentional or inadvertent. The letter should advise the person to whom it is directed of any steps to be taken to avoid future violations;
 - (7) Letter of admonition may be used when the determination is that the violation was minor and may have been unintentional or inadvertent;
 - (8) Letter of reprimand may be used when the determination is that the violation was intentional or knowing. A letter of reprimand directed to a Councilmember may, at the Council's direction, be delivered to the City Secretary and published in a local newspaper of the largest general circulation;
 - (9) Referral to ethics training; or
 - (10) Recommendation for recall for Council members. A letter recommending recall directed to a Councilmember shall be delivered to the City Secretary and published in a local newspaper of the largest general circulation.
- (c) In arriving at its determination, the Council/City manager shall consider the seriousness of the violation, the importance of deterrence, the impact on public confidence in government, the number of times the violation occurred, the mental state with which the violation was committed and any previous violations committed and any previous violations committed by Respondent.
- (d) If the Council/City Manager determines that the conduct occurred, but the facts indicate that the violation was unintentional or de minimus, the Council/City Manager may dismiss the complaint and no sanction will be imposed.

(Ord. No. 23-012, 8-5-2013)

Secs. 2-207—2-249. Reserved.