

ORDINANCE NO. O-23-45

**AN ORDINANCE OF THE CITY OF MISSOURI CITY, TEXAS,
AMENDING CHAPTER 2, ADMINISTRATION, OF THE MISSOURI CITY
CODE; AMENDING REGULATIONS REGARDING STANDARDS OF
CONDUCT FOR CITY OFFICIALS PURSUANT TO AN ANNUAL
REVIEW; PROVIDING FOR REPEAL; PROVIDING A PENALTY; AND
PROVIDING FOR SEVERABILITY.**

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WHEREAS, in accordance with the City Council of the City of Missouri City's Strategic Plan Goal No. 4 of developing a high performing City team, the City Council of the City of Missouri City, Texas (the "City") desires to establish an environment in which ethics concerns can be investigated and addressed in an orderly manner; and

WHEREAS, on or about June 21, 2021, the City Council of the City of Missouri City adopted regulations to address certain complaints against the mayor, councilmembers, board and commission members, the city manager, the city attorney, and the city secretary; and

WHEREAS, Section 2-653 of the Missouri City Code requires the Missouri City Ethics Commission to meet at least once a year to review ethics regulations and make recommendations to the City Council; and

WHEREAS, on or about December 13, 2022, the Missouri City Ethics Commission met and recommended several amendments to the ethics regulations; and

WHEREAS, after significant consideration, the City Council of the City of Missouri City reviewed said recommendations and proposed additional standards of conduct; and

WHEREAS, the City Council of the City of Missouri City finds that enacting this ordinance is necessary for the protection of public health, public safety, public property and public peace; and

WHEREAS, the City Council of the City of Missouri City now deems it appropriate to amend regulations regarding ethics standards; now therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY,
TEXAS:**

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The Missouri City Code is hereby amended by deleting Article IX of Chapter 2 thereof, and substituting therefor, a new Article IX of Chapter 2 to provide as follows:

“Sec. 2-601. - Legislative findings.

It is found and declared that accepting a position as a city official carries with it the acceptance of trust that the city official will work to further the public interest. Maintaining that public trust is critical to the continued operation of good government. To preserve that public trust, there are five principles to which city officials should adhere:

- (1) City officials should represent and work towards the public interest and not towards private or personal interests;
- (2) City officials should accept and maintain the public trust by preserving and enhancing the public's confidence in them through their conduct;
- (3) City officials should exercise leadership, particularly in the form of consistently demonstrating behavior that reflects the public trust;
- (4) City officials should recognize the proper role of all government bodies and the relationships between the various government bodies and the relationship between city staff and city officials; and
- (5) City official should always demonstrate respect for others.

Sec. 2-602. - Applicability. This article applies to alleged actions and violations occurring on or after July 1, 2021.

Sec. 2-603. - Definitions.

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

Chairperson means the chairperson of the ethics commission as described under Section 2-652.

City official means the mayor, each member of the city council, each member of a city board or commission, the city manager, the city attorney, and the city secretary, at the time of the alleged violation.

Ethics commission means the commission established in this article.

Official duties means all powers of the city vested in a city official, except as otherwise provided by law or the city Charter.

Vice-chairperson means the vice-chairperson of the ethics commission as described under Section 2-652.

Sec. 2-604. - Standards of conduct.

No city official shall:

- (1) While acting in his or her official capacity, grant or influence the granting of any special consideration, advantage or favor to any person beyond that which is:
 - a. The general practice to grant or make available to the public at large;
 - b. The general practice in assisting other governmental entities;
 - c. The general practice in aiding or promoting the economic development of the city; or
 - d. Authorized through a variance, special exception or other similar exception provided for in this code or by law;
- (2) Make use of staff, vehicles, equipment, materials or property, including the logo, of the city, except in the course of the city official's duties, or engage in conduct that could violate V.T.C.A., Penal Code § 39.02(a)(2)(relating to abuse of official capacity), as such section may be amended;
- (3) Use information received by the city official, by virtue of his or her city position, in a manner that could violate V.T.C.A., Penal Code § 39.06 (relating to misuse of official information), as such section may be amended;
- (4) Violate an express prohibition in the city's charter;
- (5) Orally or in writing, including on social media, publicly defame or privately or publicly harass, based on the commonly used legal definitions for such terms, any city official or city employee;
- (6) Intentionally, knowingly, or recklessly disclose confidential information gained by virtue of the city official's position and presence in a closed meeting concerning the property, operations, policies, or affairs of the City, except that the reporting of illegal or unethical conduct to authorities designated by law is not prohibited;
- (7) Appear on behalf of his or her own financial interest or personal interest of any kind or on behalf of any other person, business entity, group, or interest before the city council, any city board, commission, or committee, except in matters of

public concern or when requesting reimbursement for authorized expenses relating to city business; or

- (8) Fail to respond to a request for information or documentation by the ethics commission or the investigating attorney acting on behalf of the ethics commission, when the requested information is relevant to an ongoing investigation.

Sec. 2-605. - Reporting alleged ethics complaints.

- (a) *Form.* Any person who believes that a violation of the standards of conduct set forth in this article has occurred may file a written complaint with the ethics commission by submission of such complaint, on a form provided by the city, to the city secretary. The complaint must specify each code section or charter provision alleged to have been violated and must be sworn to before a notary public.
- (b) *Limitations period.* A complaint must be filed by the later of 365 days after the date the violation is alleged to have occurred or 45 days after the alleged violation became known or reasonably should have been known.
- (c) *Acceptance of complaint.* Within five (5) business days of receiving a complaint, the city secretary shall determine if a complaint is administratively complete. A complaint is administratively complete if all sections of the form have been filled-in as instructed on the form.
 - (1) If a complaint is facially valid, the city secretary will send notice of the acceptance of the complaint within five (5) business days of receipt of the complaint to the ethics commission, complainant, city official, and the city attorney.
 - (2) If a complaint is deficient, the city secretary will send notice that the complaint is deficient to the complainant, within five (5) business days of receipt, of the complaint.
- (d) *Certain complaints filed near an election.* Complaints filed within 120 business days of an election against a city official who is a candidate for re-election, will be processed from the day after the votes are canvassed and a winner is declared.
- (e) *Confidentiality.* A complaint that has been submitted to the City is deemed confidential until the time the complaint is either dismissed or scheduled for a determination hearing, unless otherwise required by law. A city official or employee may not reveal information relating to the filing or processing of a complaint, except as required for the performance of the official's or employee's official duties, or as required by law.
- (f) *Retaliation prohibited.* A city official shall not intimidate or discourage any person from filing an ethics complaint or from testifying at a hearing before the ethics commission.

- (g) *Other relief.* Nothing in this article shall be construed to prevent complainants from instituting direct legal action through the appropriate administrative or judicial means.

Sec. 2-606. - Processing and investigating a complaint.

- (a) *Preliminary meeting and jurisdictional determination.* Within ten (10) business days of the ethics commission receiving notice of an administratively complete complaint from the city secretary, the ethics commission shall hold a preliminary meeting to determine whether the complaint is within the ethics commission's jurisdiction. The ethics commission shall have the primary responsibility for investigations under this article and may, if necessary and agreed to by a majority of the ethics commission, seek the assistance of internal or external legal counsel. City council shall provide funding for all necessary and reasonable functions of the ethics commission in fulfilling the commission's duties. At the conclusion of the preliminary meeting, the ethics commission shall take one of the following actions:
 - (1) Dismiss the complaint;
 - (2) Set a date to hold a determination hearing; or
 - (3) Refer the complaint to another agency.
- (b) *Evidence.* At the preliminary meeting, the ethics commission may direct staff to summons city officials, city employees, and city records, and may require the production of evidence for the determination hearing. Evidence may include exculpatory and mitigating information, as well as records, including statements of witnesses, and physical evidence. The ethics commission shall receive and consider testimony of the complainant, the city official, and other relevant witnesses. Only evidence or testimony directly related to the specific alleged violation of a standard of conduct set forth in this article shall be considered relevant to the determination hearing.
- (c) *Dismissal.* In determining whether to dismiss a complaint, the ethics commission shall adhere to the following:
 - (1) *Lack of jurisdiction.* The ethics commission shall dismiss a complaint if it determines that it has no jurisdiction over the complaint. A written complaint that fails to allege a specific violation of the standards of conduct set forth in this article shall be dismissed for lack of jurisdiction.
 - (2) *Frivolous complaints.* The ethics commission shall dismiss a complaint that it determines to be frivolous. In determining whether a complaint is frivolous, the ethics commission shall consider the following factors:
 - a. Whether the complaint is made in bad faith;

- b. Whether the complaint is brought for the purpose of harassment or embarrassment;
 - c. Whether the complaint has any basis in fact or law;
 - d. The timing of the complaint with respect to when the facts supporting the alleged violation become known or should have become known to the complainant, and with respect to the date of any pending election in which a city official is a candidate or is involved with a candidacy, if any;
 - e. The existence and nature of any relationship between the city official and the complainant before the complaint was filed;
 - f. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - g. Any evidence of the complainant's motives in filing the complaint.
- (3) *Ex parte communications.* The ethics commission may dismiss a complaint if the complainant engages in ex parte communication with a member of the ethics commission. For purposes of this subsection, an “ex parte communication” is a communication between an ethics commission member and the complainant or between an ethics commission member and the accused outside of a properly called meeting of the ethics commission.
- (4) *Refusal to cooperate.* The ethics commission may dismiss a complaint if it determines that the complainant refuses to cooperate in the investigation or refuses to provide requested information to the ethics commission or to the investigating attorney in a timely manner. Information submitted within three (3) business days after the date on which the information was requested shall be considered timely.
- (5) *Time limitation.* The ethics commission shall dismiss a complaint that has been filed after the later of 365 days from the date on which the alleged conduct occurred or 45 days from the date on which the complainant knew or should have known about the alleged conduct.
- (6) *Existing litigation.* The ethics commission shall dismiss a complaint based on alleged conduct that serves as the basis for a complaint that, on or before the date on which the complaint is filed with the ethics commission, has been submitted to law enforcement, the district attorney’s office, the Texas Ethics Commission, or another applicable state entity.
- (d) *Actions by other entities.* A determination by the ethics commission to dismiss a complaint shall not prevent any other agency from initiating other enforcement actions based on the same allegations and facts.

- (e) *Determination hearing.* If the Commission decides to proceed with a determination hearing, the determination hearing shall be conducted on or within thirty (30) business days of the preliminary meeting.
- (1) *Postponement.* The ethics commission may postpone a determination hearing for the following reasons:
- a. Upon request from either the complainant or city official, for an extension not to exceed ten (10) business days, if approved by the chairperson or vice-chairperson, as applicable;
 - b. After receiving a complaint, but before the determination hearing, the alleged conduct that serves as the basis for the complaint serves as the basis for a complaint that has been filed with a court, the ethics commission, law enforcement, the district attorney's office, the Texas Ethics Commission, or another applicable state entity; or
 - c. After receiving a complaint, but before the determination hearing, the city official becomes a candidate in a city election, in which instance, consideration of the complaint will be addressed after the votes are canvassed and a winner is declared in the election.
- (2) *Right to representation.* The complainant or the city official under investigation may be represented by a person, including an attorney, of the complainant's or city official's selection at the complainant's or city official's own cost.
- (3) *Exhibits, witness lists, and rebuttal.* The complainant and city official must file their exhibits and witness lists with the city secretary at least ten (10) business days before the date of the determination hearing. The complainant or the city official under investigation, or that person's representative, shall have at least seven (7) business days to examine all documents and records to be used at the hearing before the date of the hearing. Such official, or the official's representative, may use such records during the hearing and may bring witnesses and questions or refute any testimony or evidence.
- (4) *Presentation of evidence.* At the determination hearing:
- a. An attorney may provide legal advice to the ethics commission;
 - b. The complainant or the complaint's representative shall present relevant evidence and testimony, including questioning and cross-examination of witnesses;
 - c. The city official or the city official's representative shall be entitled to present relevant evidence and testimony, including questioning and cross-examination of witnesses; and

- d. The ethics commission may call and question the complainant, the city official, and witnesses.
- (f) *Dismissal or Sanctions.* At the conclusion of a determination hearing, the ethics commission shall take one of the following actions, as appropriate:
 - (1) Dismissal of the complaint;
 - (2) Sustaining the complaint by submitting one of the following:
 - a. A letter of notification to the city official advising the official of the steps to be taken to avoid further violations if the ethics commission finds that a violation was clearly unintentional;
 - b. A letter of admonition to the city official if the ethics commission finds that a violation was committed knowingly or that the city official failed to fully cooperate in the investigation;
 - c. Referral for the city official to attend ethics training; or
 - (3) Recommending additional remedies as set forth in subsection 2-606(g).
- (g) *Recommendation.* At the conclusion of a determination hearing, the ethics commission may recommend that the city council take one of the following actions, as appropriate:
 - (1) A letter of reprimand to the city official if the ethics commission finds that a violation has been committed intentionally or through disregard of this article;
 - (2) A letter of censure, which shall be published by the city secretary in a newspaper of general circulation, if the ethics commission finds that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by a city official;
 - (3) A city council vote on suspension or removal of an appointed city official if the ethics commission finds that a major and serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an appointed city official; or
 - (4) A referral to appropriate authorities for a violation of a state law.
- (h) *Recommendation report.* The ethics commission shall submit its findings and recommendation for disposition by the city council within ten (10) business days of the determination hearing. Such report must be in writing and signed by the presiding officer of the ethics commission.
- (i) *Action by city council.* The city council shall consider and take action on the ethics commission's recommendation report within twenty (20) business days of receipt of the recommendation report by following the ethics commission's recommendation, taking an alternate course of action listed in this article, or voting to take no action on the

complaint. The city council is not bound by the findings or recommendation of the ethics commission.

- (j) *Notice.* Notice of the ethics commission's action on a complaint, shall be provided to the complainant and city official within five (5) business days of the action. Notice of city council's action on a complaint shall be provided to the complainant and city official within ten (10) business days of the action.

Sec. 2-607. – Penalties; remedies for the accused.

Except as provided by other law, it is not the intent of this article that a violation of this article be subject to criminal penalties.

Sec. 2-608. – Records.

All records of the commission shall be submitted to and maintained by the city secretary.

Sec. 2-609. - Distribution of and training in the code of ethics.

Within 30 business days after taking an oath of office, a city official shall be furnished a written copy of this article. The failure of any city official to receive a copy of this article shall have no effect on that city official's duty to comply with this article or on the enforcement of the provisions of this article. This article shall be posted on the city's webpage.

DIVISION 2. – ETHICS COMMISSION

Sec. 2-651. - Established; composition; term of members.

- (a) The ethics commission is hereby established.
- (b) The ethics commission shall consist of seven (7) regular members and four alternate members, all of whom shall reside in the city and be appointed by the city council. The alternate members shall serve in the absence of one or more regular members, upon request. Each regular member shall be assigned a position and shall be designated, Commissioner Number 1 through Commissioner Number 7, as applicable. Each alternate member shall be assigned a position and shall be designated, Commissioner Number 8 through Commissioner Number 11, as applicable. The members of the commission shall serve at the pleasure of the city council and shall be subject to removal or replacement by the city council during their terms with cause, including, but not limited to ineligibility as described in subsection (c) of this section. A vacancy on said commission shall be filled by the city council for the unexpired term of such position. The members of the ethics commission shall serve without compensation. Except as provided herein, a

person appointed to the ethics commission after December 1, 2024, shall be appointed for a staggered two-year term, and will serve until a respective successor is appointed. The terms of all members shall expire on December 31 of the applicable expiration year.

- (c) A person is ineligible to serve on the ethics commission if the person meets one of the following conditions:
 - (1) has a conviction for a Class B misdemeanor or higher or a conviction for a crime of moral turpitude; or
 - (2) within the three years prior to appointment was:
 - a. A city official or city employee;
 - b. A campaign treasurer, campaign manager, officer or other policy or decision-maker for the campaign of any candidate elected to city council while that candidate is in office;
 - c. A donor to the campaign of any city official;
 - d. A campaign treasurer, campaign manager, officer or other policy or decision-maker for any political action committee as defined in V.T.C.A. Texas Election Code; or
 - e. A member of any city board or commission other than the ethics commission.

Sec. 2-652. - Organization; rules and regulations.

The ethics commission shall elect from its membership a chairperson on an annual basis and will promulgate its own rules as to its forms and procedures. The ethics commission shall also elect a vice-chairperson, who shall act during the chairperson's absence. The ethics commission shall adopt procedural rules consistent with this article governing the conduct of a determination hearing.

Sec. 2-653. - Authority and duties.

- (a) *Generally.* The ethics commission shall act as authorized by this article.
- (b) *Review and make recommendations.* The ethics commission shall meet at least once a year to review this article and may make recommendations on this article to the city council."

Section 3. Applicability. The changes in law made by this Ordinance apply only to a complaint filed on or after December 4, 2023. A complaint filed before December 4, 2023, is governed by the procedures in effect on the date the complaint was filed.

Section 4. Repeal. Any ordinance or any part of an ordinance in conflict herewith shall be and is hereby repealed only to the extent of such conflict.

Section 5. Penalty. Any person who violates, or any person who causes or allows another person to violate, any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each occurrence of any violation of this Ordinance shall constitute a separate offense. Each day in which any violation of this Ordinance occurs shall constitute a separate offense.

Section 6. Severability. In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof, other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED and APPROVED on first reading this ____ day of _____, 2023.

PASSED, APPROVED and ADOPTED on second and final reading this ____ day of _____, 2023.

Robin J. Elackatt, Mayor

ATTEST:

APPROVED AS TO FORM:

Crystal Roan, City Secretary

E. Joyce Iyamu, City Attorney