

VIA TELEPHONE CONFERENCE



**CITY OF FAIR OAKS RANCH
AGENDA – CITY COUNCIL TELECONFERENCE**

October 1, 2020 9:30 AM
Via Teleconference
7286 Dietz Elkhorn, Fair Oaks Ranch

THERE EXISTS A PUBLIC HEALTH EMERGENCY RELATED TO THE COVID-19 VIRUS THAT NECESSITATES A MEETING OF THE CITY COUNCIL TO TAKE PLACE VIA VIDEO CONFERENCE PURSUANT TO GOVERNMENT CODE CHAPTER 551.125, AS MODIFIED BY EXECUTIVE ORDER OF THE GOVERNOR

You can dial in using your phone:

United States (Local #): 210-714-4201

(Toll-Free #): 1-800-717-4201

*****Due to costs incurred by the city for each minute for each caller using the Toll Free line please consider using the Toll Number if your phone plan covers long distance calls.***

Conference ID: 2443302 #

If you wish to address the Council, please select *5 on your phone; this will place you in a queue for speaking. At the appropriate time the City Secretary will call upon each individual separately.

I. OPEN MEETING

A. Roll Call – Declaration of a Quorum.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

If you wish to address the Council, select *5 on your phone; this will place you in a queue for speaking. At the appropriate time the City Secretary will call upon each individual separately. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda.

A. Citizens to be heard.

III. CONSENT AGENDA

All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.

A. Approval of the second reading of an Ordinance amending Ordinance 35.9 establishing an all-way stop sign at the intersection of Dietz Elkhorn Rd. and Elkhorn Ridge/Square Gate in Fair Oaks Ranch, Bexar County, Texas.

Pgs. 4-7

IV. CONSIDERATION/DISCUSSION ITEMS

- A. Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement for Supervisory Control and Data Acquisition (SCADA) Contracted Services. Julio Colunga, Public Works Superintendent Pgs. 8-22
- B. Consideration and possible action approving the first reading of an Ordinance amending the City's Code of Ordinances Appendix A setting a Tree Contractor Registration Fee. Melissa Castro, Environmental Compliance Manager Pgs. 23-26
- C. Consideration and possible action approving a resolution to appoint a member to fill a vacancy on the City of Fair Oaks Ranch Zoning Board of Adjustment. Laura Koerner, Council Member Pgs. 27-28
- D. Discussion of Rules and Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions. Mayor Manitzas Pgs. 29-43

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

- A. None

VI. CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:

- A. Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:
 - 1. Claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.
 - 2. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
 - 3. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City's operation of well K-2.
 - 4. Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs. Edward I. Hill, Robert E. Heckendorn, Craig M. Kuitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.
 - 5. Cause No. 2020CI15746; Boerne Ranch Estates, LLC vs. the City of Fair Oaks Ranch, Texas.

VII. RECONVENE INTO OPEN SESSION

Discussion and possible action on items discussed in Executive Session.

VIII. ADJOURNMENT

Requests for City topic needing additional information/research; or, potential consideration for a future agenda.

Signature of Agenda Approval: _____



I, Christina Picioccio, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times. As per Texas Government Code 551.045, said Notice was posted by 9:30 AM, September 28, 2020 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch City Hall is wheelchair accessible at the side entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to *Texas Government Code* Chapter 551. Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
October 1, 2020

AGENDA TOPIC: Approval of the second reading of an Ordinance amending Ordinance 35.9 establishing an all-way stop sign at the intersection of Dietz Elkhorn Rd. and Elkhorn Ridge/Square Gate in Fair Oaks Ranch, Bexar County, Texas.

DATE: October 1, 2020

DEPARTMENT: Public Works Department

PRESENTED BY: Consent Agenda (Katie Schweitzer, P.E., Manager of Engineering Services)

INTRODUCTION/BACKGROUND:

The intersection of Dietz Elkhorn Rd and Elkhorn Ridge has been controlled by a cross-street stop sign since the intersection was first constructed circa 2015. Square Gate is a new road nearing completion as part of the Front Gate Unit 4 development and will be the fourth leg of the intersection directly across from Elkhorn Ridge. The Public Works Department in coordination with the developer has evaluated the proposed intersection to determine appropriate traffic control and geometric configuration. Based on review of the existing and proposed condition, it is recommended to convert the existing side-street stop sign to an all-way stop controlled intersection.

In the review and planning of the intersection, a geometric issue was identified where left-turning vehicles exiting the Elkhorn Ridge subdivision would conflict with left-turning traffic exiting the Front Gate community via Square Gate Rd. The geometric issue is created by an existing median and tree on Elkhorn Ridge Rd at Dietz Elkhorn Rd. Ideally, opposing left-turning vehicles would be directly across from one another to allow concurrent left-turn movements that do not conflict with one another. To provide this condition, it would be necessary to remove the existing oak tree at the Elkhorn Ridge entrance and reconstruct the existing median. Given the proposed timing of the Square Gate Rd completion it was not deemed feasible to take this approach.

A second issue identified is related to pedestrian traffic having the ability to safely cross Dietz Elkhorn Rd without any control of vehicular traffic. Dietz Elkhorn Rd is currently a two-lane roadway with a posted speed limit of 35 mph. With Van Raub Elementary School located in the immediate area, providing a safe crossing for students that may cross at this location is very important. And it should be noted that during recent site visits to the location, children were observed crossing Dietz Elkhorn Rd at this intersection. The proposed all-way stop includes geometric modifications which will provide more direct marked crosswalks and will provide a safer crossing environment for children and all pedestrians.

The first reading of this Ordinance was approved at the September 17, 2020 City Council meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The health, safety, and welfare of Fair Oaks Ranch residents is the paramount objective of the Public Works Department; this project will enhance the safety and efficiency of the existing roadway network for citizens at no cost to the City of Fair Oaks Ranch. The Front Gate Unit 4 developer will include the proposed improvements at the developer's sole expense.

The *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* provides guidance for traffic professionals regarding the installation of multi-way stop control at intersections. Section 2B.07 "Multi-Way Stop Applications" of the *TMUTCD* specifically identifies left-turn conflicts as a traffic condition that may be remedied by the installation of a multi-way stop. The *TMUTCD* also states that multi-way stop installation may be used where there is a need to "... control vehicle/pedestrian conflicts near locations that generate high pedestrian volumes." Given the opposing left-turn conflict issue and the close proximity to Van Raub Elementary School, an all-way stop will provide a safe and efficient intersection for both vehicles and pedestrians.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

The only long-term financial impact will be maintenance of the additional signs and markings.

LEGAL ANALYSIS:

The ordinance has been reviewed and approved as to form by the city attorney.

RECOMMENDATION/PROPOSED MOTION:

Consent (I move to approve the Second Reading of an Ordinance an all way stop sign at the intersection of Dietz Elkhorn Rd and Elkhorn Ridge/Square Gate in Fair Oaks Ranch, Bexar County, Texas.)

AN ORDINANCE

AN ORDINANCE OF THE CITY OF FAIR OAKS RANCH, TEXAS AMENDING ORDINANCE 35.9 BY ESTABLISHING STOP SIGNS FOR THE INTERSECTION OF DIETZ ELKHORN RD AND ELKHORN RIDGE/SQUARE GATE IN FAIR OAKS RANCH, BEXAR COUNTY, TEXAS; PRESCRIBING FOR A PENALTY OF NOT LESS THAN \$25 NOR MORE THAN \$500; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF

WHEREAS, for the safety and well-being of the citizens Fair Oaks Ranch, Ordinance 35.9 was passed and approved establishing and defining stop and yield signs within the City of Fair Oaks Ranch; and,

WHEREAS, all stop sign traffic control devices situated at the street intersections hereinafter designated conform to the manual and specifications for uniform traffic control devices as adopted by the Texas Transportation Commission; and,

WHEREAS, the governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation; and,

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and,

WHEREAS, the intersection of Dietz Elkhorn Rd and Elkhorn Ridge has been controlled by a cross-street stop sign since the intersection was first constructed circa 2015 and based on review of the existing and proposed condition, it is recommended to convert the existing side-street stop control to an all-way stop controlled intersection; and,

WHEREAS, the proposed all-way stop includes geometric modifications which will provide more direct marked crosswalks and will provide a safer crossing environment for children and all pedestrians; and,

WHEREAS, given the opposing left-turn conflict issue and the close proximity to Van Raub Elementary School, an all-way stop will provide a safe and efficient intersection for both vehicles and pedestrians in conformance with the published guidance of the *Texas Manual on Uniform Traffic Control Devices*.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

SECTION 1: Ordinance Number 35.9 shall be amended to include the following full stop - stop sign street location: Dietz Elkhorn Rd; Elkhorn Ridge / Square Gate where it shall now, therefore, be unlawful to operate a vehicle without bringing the vehicle to a full and complete stop before proceeding, and all vehicles shall remain stopped until the intersection is free and clear of all oncoming vehicles which might constitute a hazard to life or property under the condition then and there existing.

SECTION 2: Findings Incorporated. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 3: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Fair Oaks Ranch hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 4: Cumulative and Savings. This Ordinance shall be cumulative of all provisions of ordinances of the City of Fair Oaks Ranch, Texas, except where the provisions of the ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5: Penalty Provision. Any violation this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not less than \$25 nor more than \$500. The sign designated in this Ordinance shall become property of the City and penalty for removing or having in possession any signs designated as property of the City shall be punishable by a fine not less than \$25 nor more than \$500. The City of Fair Oaks Ranch retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6. That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 7: Effective Date. This Ordinance shall be effective upon its passage and approval on two readings, and publication as required by law.

PASSED and APPROVED on first reading this the 17th day of September, 2020.

PASSED, APPROVED and ADOPTED on second reading this the 1st day of October, 2020.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C., City Attorney



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

October 1, 2020

AGENDA TOPIC: Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement for Supervisory Control and Data Acquisition (SCADA) Contracted Services

DATE: October 1, 2020

DEPARTMENT: Public Works

PRESENTED BY: Julio Colunga, Public Works Superintendent

INTRODUCTION/BACKGROUND:

In 2014, the City of Fair Oaks Ranch entered into a performance contract with Siemens Industries to upgrade to an automatic water reading system, updated billing system, and water and wastewater plant upgrades. One of the key upgrades included redesigning the operations of the Utilities Supervising Control and Data Acquisition (SCADA) system, which greatly improved the utilities monitoring and operation capabilities. Since these upgrades were implemented the utility has retained Patti Engineering on an annual contract to provide the utility with 24-hour assistance in the event of a technical emergency and routine maintenance.

This year the proposed contract has been priced at \$27,150.00 to be paid in monthly installments of \$2,263.00. The contract includes 60 hours of Remote services, 24 hours on call hotline with a response time of 1 to 4 hours, and 35 hours of on-site assistance. The proposed agreement is for services in fiscal year 2020-2021, which began October 1, 2020.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Retaining Patti Engineering as the utility's SCADA contractor has proven to be beneficial when issues have occurred that are out of scope of the utility operator's technical skills. This past year they have assisted with several issues at the water and wastewater plants such as VFD controls, pump issues, generator issues and worked with the IT consultant during network upgrades.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

The utility budgets \$27,150.00 under contract services to cover the cost of the contract.

LEGAL ANALYSIS:

Contractor will be required to sign and adhere the City's Standard Professional Services Agreement prior to the commencement of work.

RECOMMENDATION/PROPOSED MOTION:

I move to authorize the City Manager to sign a Professional Service Agreement with Patti Engineering for SCADA servicing in the amount of \$27,150.00

CITY OF FAIR OAKS RANCH
STANDARD PROFESSIONAL SERVICES AGREEMENT

THE STATE OF TEXAS §
 §
KENDALL COUNTY §

This Professional Services Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and Patti Engineering, Inc. ("Professional").

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project". Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Professional shall be paid in the manner set forth in Exhibit "B" and as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A) and accounted for in the total contract amount in Exhibit "B". If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work; Additional Work.

(A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

(B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work

undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit C, Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained

by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Section 7. Miscellaneous Provisions.

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive,

perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) *Professional's Seal.* To the extent that the Professional has a professional seal it shall placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(G) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the

reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Professional and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work

required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 9. Indemnification. Professional shall indemnify, defend and hold harmless the City of Fair Oaks Ranch, Texas and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as "Professional") (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional's liability to such employee or former employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Kendall County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Kendall County, Texas.

Section 15. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice

substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Section 25. Boycott Israel. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas government code chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of the agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

EXECUTED, by the City on this the _____ day of _____, 20____.

CITY:

By: _____

Name: Tobin Maples, AICP

Title: City Manager

ADDRESS FOR NOTICE:

CITY

City of Fair Oaks Ranch

Attn: _____

7286 Dietz Elkhorn

Fair Oaks Ranch, TX 78015

PROFESSIONAL:

By: Patti Engineering, Inc.

Name: Nicholas Hitchcock, PE

Title: Director of Texas Operations

PROFESSIONAL

Patti Engineering, Inc.

Nicholas Hitchcock, PE

7601 S Congress Ave, Suite 400

Austin, TX 78745

with a copy to:

City Attorney

City of Fair Oaks Ranch, Texas

Attn: Charles E. Zech

2517 N. Main Avenue

San Antonio, Texas 78212

Exhibit "A"

SCOPE OF WORK

Professional's Responsibilities:

1. Provide up to 60 hours (9/31/2020 thru 9/30/2021) of remote connection service (*VPN connection preferred*) from the Professional's Austin, TX facility (*Customer to supply internet/VPN connection on-site*):
 - a. **24 Hour Hotline: 512-355-4199 (hit "0")**
 - b. Within (1) hour of receiving a phone call from a representative of the purchaser or the customer during normal business hours (9:00-5:00 PM Central Time), Professional will respond and be ready to remotely troubleshoot the problem
 - c. Within (4) hours of receiving a phone call from a representative of the purchaser or the customer during non-business hours, Professional will respond and be ready to remotely troubleshoot the problem.
2. The phone support hours and all other engineering support provided locally from the Professional facility is included under this contract without additional charges. *This contract includes support for keeping the supported system in working order per the applicable Functional Specification, or the project proposal document. Software development for new functionality is not included under this service contract.* (Please contact Nicholas Hitchcock, for any additional functionality needed at 512-354-4731 or nhitchcock@pattieng.com).
3. A representative of the purchaser or the customer will be able to contact the Professional business development manager, vice-president of engineering, and vice-president of operations, as well as the on-call engineer via the Professional 24-hour hotline.
4. Provide up to 35 hours of onsite engineering support during contract period with 4 trips to the installation site. Any Onsite Engineering Support required at the customer's facility in excess of the above listed hours will be billed at Professional's standard rates as provided for herein.
 - a. The customer will never pay Professional's Emergency service rate. When applicable, Professional will submit monthly invoices to the customer at the discounted rates for the additional materials or onsite services.
 - b. If the above on-site time and trip allocation is not utilized by the end of the current year service contract, Professional will send an engineer to the facility for a single day to evaluate any non-reported issues and overall system performance.
5. Professional will keep a log of the service reports for all reported incidents at the customer's facility. The log will be available for review when requested by a representative of the purchaser or the customer.

Exhibit "B" COMPENSATION

Professional shall be paid an amount of **\$27,150** for the services provided (9/31/2020 thru 9/30/2021). Said amount to be paid by City in 12 equal monthly payments of **\$2,263**. Please reference our project 220183 and provide an email address to which we may send invoices on your PO.

Standard Rates for Professional

Standard Scheduled Services:

Standard Engineering Time	\$150/hr
Senior Engineering Time	\$170/hr
Principal Engineering Time	\$200/hr

Off-Shift & Weekend Services:

Standard Engineering Time	\$210/hr
Senior Engineering Time	\$240/hr
Principal Engineering Time	\$275/hr

Emergency Services (Less than 48 hours' notice):	\$350/hr
Professional Engineering (PE) Services:	\$400/hr

* Important Notes:

1. Off-Shift Services include all scheduled services that occur predominately after 5pm or before 8am Monday to Friday or any work on Saturday and Sunday.
2. \$2,000 minimum charge for any Time and Material Purchase Orders or Service calls.
3. The Emergency Service rate applies to any and all work (CAD, In-house Engineering, Onsite Engineering, and Travel Time) for any work scheduled within 2 standard business days of official request.
4. All services provided under a Time and Expense Purchase Order or a Service Contract to be charged in minimum one-half hour increments.
5. 10% premium will be added to the Onsite Startup/Installation Support that is required in foreign nations outside of North America.
6. Material Procurement markup of 75%
7. 9.5% administration fee will be added to all expenses including Mileage and other expenses.
8. Mileage to be billed per the current IRS Standard Mileage Rates:
<http://www.irs.gov/taxpros/article/0,,id=156624,00.html>
9. Patti Engineering reserves the right to modify this rate schedule based on project requirements and/or market conditions - For latest update please contact Patti Engineering directly.

Exhibit "C"

EVIDENCE OF INSURANCE

ACORD		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 10/23/2019													
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.																	
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).																	
PRODUCER CIA Insurance & Risk Management 45600 Village Blvd Shelby Twp MI 48315			CONTACT NAME: PHONE (A/C, No., Ext.): 580-799-0000 FAX (A/C, No.): EMAIL: certificates@ciainsurance.com ADDRESS:														
INSURED Patti Engineering Law Enforcement Intelligent Devices LLC dba LEID Products 2110 E. Wallon Blvd, Suite A Auburn Hills MI 48326			INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <td>INSURER A: Philadelphia Insurance Co.</td> <td>NAIC # 18058</td> </tr> <tr> <td>INSURER B: ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER C: Accident Fund Insurance Co.</td> <td>10168</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>			INSURER A: Philadelphia Insurance Co.	NAIC # 18058	INSURER B: ACE American Insurance Company	22667	INSURER C: Accident Fund Insurance Co.	10168	INSURER D:		INSURER E:		INSURER F:	
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INSURER C: Accident Fund Insurance Co.	10168																
INSURER D:																	
INSURER E:																	
INSURER F:																	
COVERAGES CERTIFICATE NUMBER: 1553510410 REVISION NUMBER:																	
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.																	
INSR LTR	TYPE OF INSURANCE	ADOL SUBR (YES/NO)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS											
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJ. / ECT ☐ LOC ☒ OTHER (Specify)	Y	Y	PHPK1900388 PHFD38292647008	11/1/2019 11/1/2019	11/1/2023 11/1/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (if no occurrence) \$ 100,000 MED EXP (per person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMBOP AGG \$ 2,000,000 \$										
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS (NON-OWNED) ☐ HIRED AUTOS ONLY ☐ AUTOS ONLY	Y	Y	PHPK1500388	11/1/2019	11/1/2020	COMBINED SINGLE LIMIT (if no aggregate) \$ 1,000,000 BODILY INJURY (per person) \$ BODILY INJURY (per accident) \$ PROPERTY DAMAGE (per accident) \$ \$										
A	UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS MADE LTD ☒ RETENTION \$10,000			PHUB552597	11/1/2019	11/1/2020	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ \$										
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROVISIONS WITH THE EXCLUSIVE OF FIDELITY/FIDELITY EXCLUDED (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	Y	WCV6154996	11/1/2019	11/1/2020	BEN. STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000										
A	Professional liability			PHPK1900393	11/1/2019	11/1/2020	Per Claim Aggregate 1,000,000 2,000,000										
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Certificate Holder is included as Additional Insured with respect to General Liability for work performed by the Named Insured if required by written contract or agreement. Waiver of subrogation applies to General Liability if required by written contract or agreement. General Liability coverage is Primary and Non-Contributory as required by written contract or agreement. This certificate of insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the above captioned policies. General liability coverage includes Contractual Liability as broad as ISO Form CG0001.																	
CERTIFICATE HOLDER			CANCELLATION														
City of Fair Oaks Ranch Tobin Maples City Manager 7286 Dietz Ekhorn Fair Oaks Ranch TX 78015			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 														

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ACORD 25 (2016/03)

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CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
October 1, 2020

AGENDA TOPIC: Consideration and possible action approving the first reading of an Ordinance amending the City's Code of Ordinances Appendix A setting a Tree Contractor Registration Fee

DATE: October 1, 2020

DEPARTMENT: Public Works

PRESENTED BY: Melissa Castro, Environmental Compliance Manager

INTRODUCTION/BACKGROUND:

On September 17, 2020, the Fair Oaks Ranch City Council passed and approved an ordinance regarding tree maintenance and oak wilt control which stipulates that any person or entity engaged in the business of tree maintenance shall register with the City for this purpose and pay a registration fee as set forth in Appendix A of the City's Code of Ordinances. In order to be consistent with other contractor registrations, city staff's recommendation is to set the cost at \$75.00 effective November 1, 2020.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Ensures that direct and indirect services associated with tree contractor registration are offset, where possible.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

No negative impact to future budgets.

LEGAL ANALYSIS:

Ordinance was reviewed and approved as to form on September 8, 2020.

RECOMMENDATION/PROPOSED MOTION:

I move to approve an Ordinance amending the City's Code of Ordinances Appendix A; Article A5.000 setting a Tree Contractor Registration Fee.

AN ORDINANCE

AN ORDINANCE OF THE CITY OF FAIR OAKS RANCH AMENDING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES APPENDIX A "FEE SCHEDULE"; ARTICLE A5.000 "MISCELLANEOUS PERMITS", PROVIDING FOR A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE OF NOVEMBER 1, 2020.

WHEREAS, on September 17, 2020, the Fair Oaks Ranch City Council passed and approved an ordinance regarding tree maintenance and oak wilt control; and,

WHEREAS, Chapter 1, Article 1.07, Division 2 of the City's Code of Ordinances, stipulates that any person or entity engaged in the business of tree maintenance shall register with the City for this purpose and pay a registration fee as set forth in Appendix A of the City's Code of Ordinances; and,

WHEREAS, the City Council deems it necessary to amend the City's Fee Schedule to reflect the tree contractor registration fee as required in Chapter 1 General Provisions, Article 1.07 Trees and Shrubs, Division 2 Tree Maintenance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FAIR OAKS RANCH, TEXAS:

PART 1. Appendix A "Fee Schedule"; Article A5.000 "Miscellaneous Permits" of the City's Code of Ordinances is hereby amended as forth in the attached Exhibit A.

PART 2. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

PART 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

PART 4. That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 5. This ordinance shall take effect on November 1, 2020 and after passage and adoption as may be required by governing law.

PART 6. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 7. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED and APPROVED on First Reading this 1st day of October, 2020.

PASSED, APPROVED, and ADOPTED on Second Reading this 15th day of October, 2020.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A

[additions shown as italics]

A. Appendix A “Fee Schedule”; Article A5.000 “Miscellaneous Permits” of the City’s Code of Ordinances is hereby amended as follows:

ARTICLE A5.000 MISCELLANEOUS PERMITS

Sec. A5.004 Tree Contractor Registration

(a) *Tree contractor registration fee:* *\$75.00*



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

October 1, 2020

AGENDA TOPIC: Consideration and possible action approving a resolution to appoint a member to fill a vacancy on the City of Fair Oaks Ranch Zoning Board of Adjustment

DATE: October 1, 2020

DEPARTMENT: City Secretary

PRESENTED BY: Laura Koerner, Council Member

INTRODUCTION/BACKGROUND:

At the September 17, 2020 City Council Meeting, the City Council appointed an alternate member of the Zoning Board of Adjustment to fill a vacant regular board member position. That left a vacancy for an alternate member of the Board. A resident who has previously applied to serve on a City Board or Commission indicated interest in serving as an alternate on this Board. The recommendation of the Boards and Commission Subcommittee is to appoint the interested resident to the Zoning Board of Adjustment.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

It will allow more citizens who have interest in community service to become involved providing fresh perspective to established committees.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

Approved as to form.

RECOMMENDATION/PROPOSED MOTION:

I move to approve a resolution appointing Emily Stroup as an alternate member on the City of Fair Oaks Ranch Zoning Board of Adjustment.

A RESOLUTION

**APPOINTING A MEMBER TO FILL A VACANCY ON THE CITY OF FAIR OAKS RANCH
ZONING BOARD OF ADJUSTMENT**

WHEREAS, in June 2018, under Ordinance 2018-05, the City Council of the City of Fair Oaks Ranch amended the city's Code of Ordinances, Chapter 14 by adopting zoning districts and zoning regulations in the City of Fair Oaks Ranch; and,

WHEREAS, Chapter 14, Section 14.01.004, entitled, "Zoning Board of Adjustment", provides for the structure, procedure, and duties of a Zoning Board of Adjustment ("the Board"); and,

WHEREAS, in September 2020, Craig Matson, an alternate member of the Board was appointed as a regular member, leaving an alternate member vacancy; and,

WHEREAS, Emily Stroup indicated interest in serving as an alternate member; and,

WHEREAS, the City Council deems it necessary to fill the vacant unexpired regular term on the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS that the following qualified citizen volunteer is appointed to serve as a regular member on the City of Fair Oaks Ranch Zoning Board of Adjustment, effective 10/1/2020:

Alternate Member Emily Stroup

Term: 10/1/2020 - 9/30/2021

PASSED, APPROVED and ADOPTED this 1st of October, 2020.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C., City
Attorney



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
October 1, 2020

AGENDA TOPIC: Discussion of Rules of Procedures on City Council Hearings for Code of Ethics Violations and City Charter Forfeitures and Prohibitions

DATE: October 1, 2020

DEPARTMENT: City Council

PRESENTED BY: Mayor Manitzas

INTRODUCTION/BACKGROUND:

The Fair Oaks Ranch City Council has from time to time discussed the need to develop a Code of Conduct and Ethics for the Mayor and City Council members. While there is some guidance regarding conduct contained within the City Charter, the scope of that guidance is limited. Our legal counsel has informed us that having a Code of Conduct for elected officials is considered a best practice and, in fact, many of the other cities they represent have adopted Codes of Conduct and Ethics.

City Charter Section 3.10.B5 states the City Council shall adopt by ordinance rules of procedures to be followed relative to hearings for forfeitures of office and prohibitions. In discussions with the City Attorney, we determined defining procedural rules for City Council hearings for code ethics violations and city charter forfeitures and prohibitions is an appropriate first step.

The Mayor and the Assistant City Manager in working with the City Attorney have prepared a draft document relative to the aforementioned procedural rules for today's discussion and consideration by Council. Following full discussion and whatever modifications to the draft Council agrees upon, it our intention to fully prepare a Code of Conduct and Ethics by Ordinance for City Council consideration and action.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. Citizens should be able to rely upon ethical conduct by their elected representatives. With adoption and adherence to a Code of Conduct and Ethics, the citizens of Fair Oaks Ranch can rely upon open, accessible, and transparent conduct of business and adherence to all applicable laws at all times.
2. Similarly, an enforceable Code of Conduct and Ethics helps prevent conflicts of interest, promotes serving the public interest over the council member's personal interests, and helps avoid undue influence and the appearance of impropriety.
3. Adherence to a Code of Conduct and Ethics promotes professionalism and courtesy in conducting city business and ensures that the Council-Manager form of government adopted under the City Charter and the various roles and responsibilities inherent in that government form are respected.
4. Conforms to the requirement of City Charter 3.10.B5

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Adherence to a Code of Conduct is an effective form of risk mitigation. This lessens the likelihood of unfavorable financial and budgetary impacts caused by improper behavior.

LEGAL ANALYSIS:

Reviewed draft discussion paper and provided insight.

RECOMMENDATION/PROPOSED MOTION:

No formal motion required but the Mayor seeks consensus on the proposed procedural rules and authorization for city staff and the City Attorney to allocate necessary resources to incorporate into the development of a Code of Conduct and Ethics then bring both back for formal consideration and adoption.

RULES OF PROCEDURES ON CITY COUNCIL HEARINGS FOR CODE OF ETHICS VIOLATIONS AND CITY CHARTER FORFEITURES AND PROHIBITIONS

I. CITY COUNCIL RULES OF PROCEDURES

Sec. 1-01. Definitions.	1
Sec. 1-02. Structure of the City Council.	2
Sec. 1-03. Jurisdiction and powers.	2
Sec. 1-04. Complaints.	3
Sec. 1-05. City Attorney's Office.	6
Sec. 1-06. City Council Action.	6
Sec. 1-07. Hearings for Forfeitures of Office and Prohibitions.	8
Sec. 1-08. Disposition.	9
Sec. 1-09. Petition for declaratory ruling and waiver.	12
Sec. 1-10. Public records and open meetings.	12

II. ADMINISTRATIVE PROVISIONS

Sec. 2-01. Other obligations.	12
Sec. 2-02. Distribution and Training	13

I. RULES OF PROCEDURES

As used in this Rules of Procedures, the following words and phrases have the meaning ascribed to them in this section, unless the context requires otherwise or more specific definitions set forth elsewhere in this code apply.

Sec. 1-01. Definitions.

- (a) *Before the City*. Representation or appearance "before the City" means before the City Council; before a board, commission, or other City entity; or before a City official.
- (b) *Business days*. "Business days" means the days of the week, Monday through Friday, in which the administrative offices of the City are open for business.
- (c) *City*. "City" means the City of Fair Oaks Ranch
- (d) *Code of Ethics*. "Code of Ethics," "Ethics Code," or "this code" means the city's Code of Ethics, its amendment(s), and/or enhanced definitions.
- (e) *Complainant*. "Complainant" means an individual who has filed a sworn complaint with the City Secretary as provided in section 1-04 (Complaints).
- (f) *Confidential government information*. "Confidential government information" includes all information held by the City that is not available to the public under the Texas Public Information Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, unless disclosure is permitted under the Open Meetings Act.
- (g) *Ethics Law*. Ethics law includes the Ethics Code of the City, City Charter, and all applicable provisions of the Texas Local and Government codes.
- (h) *Ethical Violation*. "Ethical violation" includes violations of any of those enactments.
- (i) *Intentionally*. A person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

- (j) *Knowingly*. A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.
- (k) *Official*. The term "official" or "City official" includes the Mayor and members of the City Council.
- (l) *Official action*. "Official action" includes any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official's duties
- (m) *Official Information*. "Official information" includes information gathered or created by or on behalf of the City, in the conduct of the City's business, and under the power and authority of the City as a political subdivision of the State of Texas.
- (n) *Recklessly*. A person acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the result of his or her conduct when he or she 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.
- (o) *Representation*. "Representation" is a presentation of fact—either by words or by conduct—made to induce someone to act. "Representation" does not include appearance as a witness in litigation or other official proceedings.
- (p) *Respondent* means an individual identified in a sworn complaint to have allegedly violated the Ethics Code of the City.

Sec. 1-02. Function of the City Council

- (a) In accordance with Article III of the City Charter, the City Council has the powers and duties specified in City Charter, and other powers and duties prescribed by ordinance.
- (b) Composition of the City Council includes the Mayor and each member of the City Council.
- (c) A member of the City Council shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Council member may not participate in official action on any complaint:
 1. That the member initiated; or
 2. During the pendency of an indictment or information charging the member with any felony or misdemeanor offense, or after a finding of guilt of such an offense.

When a majority of Council members share a conflict, they shall disclose the conflict by filing an affidavit and then proceed with the case at hand.

Sec. 1-03. Jurisdiction and powers.

- (a) *Jurisdiction*. The Fair Oaks Ranch City Council has jurisdiction to investigate and make findings and conclusions concerning:
 1. An alleged violation of the city's Ethics Code enacted from time to time by ordinance; and,
 2. An alleged violation of Sections 3.09, 3.10, 7.01, and 7.02 of the City Charter.

- (b) The City Council shall not consider any alleged violation that occurred more than six (6) months prior to the date of the filing of the complaint.
- (c) The City Council has the discretion to accept or decline consideration of an alleged violation that has been addressed by another governmental agency with jurisdiction over the matter.
- (d) *Powers.* The City Council has the power:
 1. To establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances pertaining to the Ethics Code;
 2. To meet as often as necessary to fulfill its responsibilities;
 3. To issue advisory opinions on behalf of the Council;
 4. To request from the City Manager the assignment of staff necessary to carry out its duties;
 5. To review, index, maintain on file, and dispose of sworn complaints;
 6. To make notifications, extend deadlines, and conduct investigations, both on referral or complaint;
 7. To compel the production of sworn testimony, witnesses and evidence;
 8. To recommend cases for prosecution by appropriate authorities and agencies;
 9. To enforce its decisions by assessing civil fines and other sanctions authorized by ordinance;
 10. To request the City Attorney to provide an independent counsel to advise and represent the Council, when appropriate or necessary to avoid a conflict of interest;
 11. To provide assistance in the training and education of City officials with respect to their ethical responsibilities;
 12. To exercise such other powers and duties as may be established by ordinance.

Sec. 1-04. Complaints.

- (a) *Filing.* Any person (including a member of the City Council, acting personally or on behalf of the Council) who believes that there has been a violation of the ethics laws may file a sworn complaint with the City Secretary to allege such violations. A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the City Council, is subject to criminal prosecution for perjury (see section 1-08(g) (Criminal prosecution)).
- (b) *Assistance.* The City Secretary shall provide information to persons who inquire about the process for filing a complaint.
- (c) *Form.* A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:
 1. The name of the complainant;
 2. The street or mailing address, the telephone number, and email address of the complainant;
 3. The name of each person complained about;
 4. The position or title of each person complained about;

5. The nature of the alleged violation, including, if possible, the specific provision of the Ethics Code alleged to have been violated;
6. A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
7. All documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is both true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. A complaint that is not sworn as required shall not be forwarded by the City Secretary to the City Attorney as provided in subsection (d) of this section, but shall be returned to the complainant. The complaint must state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the City Council.

(d) Review by the City Attorney and notification to the City Council and respondents.

1. A copy of a complaint shall be promptly forwarded by the City Secretary to the City Attorney who shall review the complaint for compliance with the filing requirements of subsection (c) of this section within five (5) business days of receipt from the City Secretary. The City Secretary shall notify the respondent(s) of a complaint filed. This notification is for information purposes only and does not trigger subsection (e) of this section until a decision has been made to accept the complaint and forward to the City Council for consideration.
2. If the complaint alleges a violation of the city's Ethics Code, and substantially complies with the filing requirements, the complaint shall be forwarded by the City Secretary to the members of the City Council and the respondents within ten (10) business days after receipt of the complaint from the City Secretary. If the complaint does not substantially comply with the filing requirements, the City Attorney shall return the complaint with a letter explaining the defects in the complaint to the City Secretary who return all to the complainant.
3. The City Secretary shall notify the respondent(s) of the resolution of a complaint.

(e) The respondent(s) shall also be provided with a copy of the Ethics Code and shall be informed:

1. That, within ten (10) business days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
2. That failure to file a response does not preclude the City Council from adjudicating the complaint;

3. That a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within five (5) business days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
4. That the complainant(s) or respondent(s) may request a hearing.

Upon receipt, the City Secretary shall forward the response to the City Attorney and the City Council.

(f) Frivolous complaint.

1. For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
2. By a vote of at least two-thirds (2/3) of those present, the Council may order a complainant to show cause why the Council should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.
3. In deciding if a complaint is frivolous, the Council may consider:
 - a. The timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - b. The nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Council;
 - c. The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - d. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - e. Any evidence of the complainant's motives in filing the complaint.
4. Notice of an order to show cause shall be given to the complainant by the City Secretary, with a copy to the respondent, and shall include:
 - a. An explanation of why the complaint against a respondent appears to be frivolous; and
 - b. The date, time, and place of the hearing to be held under this section.
5. Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the Council shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.
6. By a record vote of at least two-thirds (2/3) of those present after the hearing under subsection (5) of this section, the Council may determine that a complainant filed a frivolous complaint against a respondent.

(g) Confidentiality. Ex parte communications by members of the City Council are prohibited by section 1-06(d) (Ex parte communications).

1. The Council shall not communicate any information about a pending sworn complaint,

including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

2. Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or City Council proceeding.
3. Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.

Sec. 1-05. City Attorney's Office.

(a) *City Attorney's Office.* The City Attorney's Office shall perform the following duties:

1. Act as legal counsel to the City Council;
2. Receive complaints and responses filed with the City Secretary as set forth in section 1-04;
3. Review complaints for legal sufficiency;
4. Request additional information from complainant as needed; and
5. Issue advisory opinions to City Council about the requirements imposed by the ethics laws.

(b) *Independent Counsel.*

1. An independent attorney, who does not otherwise represent the City, may be appointed to serve as the independent Counsel when a complaint is filed relating to an alleged violation of the ethics laws by the Mayor, a member of the City Council, or a candidate for City Council.
2. The City Attorney or City Council may request the appointment of an independent counsel for a particular case.

(c) *Exculpatory evidence.* The City Attorney shall disclose to the City Council and provide to the person charged with violating the ethics code evidence known to the City Attorney tending to negate guilt or mitigate the seriousness of the offense.

Sec. 1-06. City Council Action.

(a) *Review by City Council.* The City Council will meet to review the complaint, responses, replies to responses and any other information it has requested be provided to assist in consideration of the complaint. The Council shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. If the Council finds that the complaint fails to allege a violation of the Ethics Code when assuming all facts set forth in the complaint to be true, the Council may dismiss the complaint without further proceedings.

(b) Before the Council may find that a violation of a particular rule, the respondent must be on notice that compliance with that rule is in issue and must have an opportunity to respond. Notice is conclusively established: if the complaint alleged that the rule was violated; or if the Council or the City Secretary provides the respondent with written notice of the alleged violation and a ten (10) business-day period within which to respond in writing to the charge.

(c) *Scheduling of a hearing.* Regardless of whether the complainant or the respondent requests a hearing, the City Council has discretion to decide whether to hold a hearing.

(d) *Ex parte communications.* It is a violation of this code:

1. For the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in ex parte communication about the subject matter of a complaint with a member of the City Council, or any known witness to the complaint; or
2. For a member of the City Council to:
 - a. Knowingly entertain an ex parte communication prohibited by subsection (1) of this section; or
 - b. Communicate directly or indirectly with any person, other than a member of the City Council, City Staff, or City Attorney's Office about any issue of fact or law relating to the complaint.

(e) *Duty to cooperate.* All City officials shall cooperate with the City Council and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this subsection is a violation.

City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any subpoena or to produce any such books, papers, or other evidence.

The City Council shall have the power to punish any such contempt in an amount not to exceed one hundred dollars (\$100.00).

(f) *Extension of deadlines.*

1. A complainant or respondent who fails to meet a deadline to submit a filing with the City Council may file a request to accept the late filing. The complainant or respondent must include within the request a statement of good cause for the Council to grant the request. The Council may grant a request to accept a late filing for good cause. Any extension given to a respondent pursuant to his or her request shall extend the deadline for the Council to issue a decision under section 1-08 by the amount of time granted.
2. The Council, under its own initiative or at the request of a respondent, may defer consideration of a complaint if the respondent is under investigation by any agency for the activity comprising the subject matter of the complaint, until such time as the investigation has concluded.

(g) *Timeliness of notices or submissions.* When the Code of Ethics requires a notice or other document to be submitted or otherwise given to a person or to the City Council, the requirement is met in a timely fashion if the document is sent to the person or the Council by first-class mail or certified mail addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a date within the time required to provide notice or to submit a document, unless another method of submission is expressly required.

Sec. 1-07. Hearing Process for Forfeiture of Office and Prohibitions.

- (a) All hearings for forfeiture of office and prohibitions shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act.
- (b) *Called Special Meeting.* A special meeting shall be called to hold the hearing to be held no earlier than fourteen (14) days subsequent from the delivery of written notice and no later than ninety (90) days after delivery of written notice, unless otherwise agreed to by a majority of the City Council and the individual subject to the hearing.
- (c) *General rules.*
 - 1. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the City Council. The City Council may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless a majority of the City Council so finds by a preponderance of the evidence.
 - 2. A member of the City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote.
 - 3. The City Council shall state the nature of the hearing and the allegations to be considered.
 - 4. Public comments shall be allowed as follows:
 - a. Comment at the beginning of the meeting under the same guidance as the city's Council Meeting Rules of Procedures found in the City Secretary's Office
 - b. Sworn to speak as witnesses shall only speak as witnesses under oath.
- (d) *Evidence.* The City Council shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The Council shall further abide by the following:
 - 1. The Council shall hear evidence relevant to the allegations; and
 - 2. The Council shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (e) *The person charged (respondent).* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. They shall be provided a copy of the results of the investigation, including any written testimony acquired during the investigation. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the Council. The time permitted for presentation will be at the discretion of the Council.
- (f) *The complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the Council. Witnesses may not be presented by the complainant, except with the permission of

the Council. The time permitted for presentation will be at the discretion of the Council.

Sec. 01-08. Disposition.

- (a) *Violation of City Charter Section 3.09.* City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of City Council to declare the office of said office holder to be forfeited and vacant.
- (b) *Violation of City Charter Section 3.10.* City Council may on the affirmative vote of a majority of the City Council take any of the following actions:
 - 1. Direct further investigation;
 - 2. Request further information;
 - 3. Vote to enforce a penalty pursuant to section 7.15B of the City Charter;
 - 4. Vote to bring an action in Municipal Court;
 - 5. Take a vote of censure; or
 - 6. Upon the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant.
- (c) *Violation of City Charter Section 7.01 or 7.02.* City Council may take any of the following actions:
 - 1. Direct further investigation;
 - 2. Request further information;
 - 3. Vote to enforce a penalty pursuant to section 7.15B of the City Charter;
 - 4. Vote to bring an action in Municipal Court;
 - 5. Take a vote of censure; or
 - 6. Upon the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant.
- (d) *Written opinion.* The Council shall issue a decision within ninety (90) calendar days after the filing of a complaint. This deadline shall be extended by any amount of time granted to a respondent pursuant to a respondent's request for additional time to respond or to attend proceedings. The Council shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:
 - 1. Dismiss the complaint; or
 - 2. Upon finding that there has been a violation of the ethics laws:
 - a. Impose sanctions in accordance with these regulations; or
 - b. Recommend criminal prosecution and/or civil remedies, in accordance with these rules; or
 - c. State why no remedial action is imposed or recommended.

If the Council determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Council to comply within the above time

limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

- (e) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint, the City Attorney, and any member of the City Council who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the City Secretary, who shall make it available as authorized by law.
- (f) *Recommendations.* A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency.
- (g) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the City Council shall not entertain any other similar complaint based on substantially the same evidence.
- (h) *Factors relevant to sanctions.*

1. *General violations (non-reporting violations).* In deciding whether to recommend or impose, in the case of a violation of the ethics laws, criminal prosecution and/or civil remedies, the City Council shall take into account relevant considerations, including, but not limited to, the following:
 - a. The culpability of the person charged in the complaint;
 - b. The harm to public or private interests resulting from the violation;
 - c. The necessity of preserving public confidence in the conduct of local government;
 - d. Whether there is evidence of a pattern of disregard for ethical obligations; and
 - e. Whether remedial action has been taken that will mitigate the adverse effect of the violation.

To impose or recommend sanctions for a first violation of the Ethics Code, other than a letter of notification, a letter of admonition or a referral to training, the Council must find by a preponderance of the evidence that the person acted knowingly, unless otherwise provided by this code.

2. *Reporting requirement violations.* To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the Ethics Code, the Council must determine by a preponderance of the evidence that the person knowingly:
 - a. Failed to file the report on time; or
 - b. Failed to include in the report information that is required to be included; or
 - c. Submitted inaccurate or false information.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the City Secretary or the City Council may be considered evidence of a knowing failure to comply with reporting requirements. Upon finding a second or subsequent untimely, incomplete or inaccurate submission of reports within a two-year period of time, the Council may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

- (i) *Civil sanctions for Ethics Code violations.* The following civil remedies may be recommended or imposed by the City Council which finds that the ethics laws have been violated:
1. *Disciplinary action.* City Council members who engage in conduct that violates the Code of Ethics may be notified, warned, reprimanded, suspended, or removed from office by the City Council, or by a person or body authorized by law to impose such remedies. Disciplinary action under this section may be imposed in addition to any other penalty or remedy contained in the Code of Ethics or any other law;
 2. *Suit for damages or injunctive relief.* It is the intent of the City that the city's Ethics Code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in the Ethics Code or any other law. The City Council may refer a violation of the Ethics Code to the City Attorney's Office for consideration of a suit by the City for damages or injunctive relief.
 3. *Civil fine.* The City Council may impose on a City Official who violates any provision of the Code of Ethics a fine not exceeding five hundred dollars (\$500.00).
 4. *Letter of notification.* The City Council may issue a letter of notification to a City Official, when the Council finds that a violation of the Code of Ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations.
 5. *Letter of admonition.* The City Council may issue to a City Official, a letter of admonition when the Council finds that the violation of the Code of Ethics was minor and/or may have been unintentional or inadvertent.
 6. *Letter of reprimand.* The City Council may issue to a City Official, a letter of reprimand when the Council finds that the person has intentionally or knowingly violated the Code of Ethics.
 7. *Referral to ethics training.* Upon finding of violation of the Ethics Code, the City Council may require a City official to attend Ethics Code training.
- (g) *Criminal prosecution.* The City Council may recommend to the appropriate law enforcement agency criminal prosecution under this section or V.T.C.A., Local Government Code Ch. 171. Prosecution of a city official by the City Council for a violation of this Ethics Code shall not be undertaken until a complaint is disposed of in accordance with this section. However, the absence of a recommendation to prosecute from City Council to the City Attorney shall not preclude the City Attorney from exercising his or her prosecutorial discretion to prosecute a violation of the Ethics Code.
- (h) *Reconsideration.* Within five (5) business days of receiving the final opinion of the City Council, the complainant or respondent may request the City Council to reconsider its decision. The request must be filed with the City Secretary. Within ten (10) business days after filing with the City Secretary, the City Council shall review the request for reconsideration. If the full and seated Council grants reconsideration, the Council may then order further proceedings in accordance with the provisions of these rules.
- (i) *Council action.* City Council shall dispose of the reconsideration within ninety (90) calendar

days of approving the reconsideration. Failure to take action within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

- (j) *Appeals.* A decision of the City Council is final unless the person aggrieved by the decision appeals to the State District Court in Kendall County no later than twenty (20) business days after the date the Council renders the decision.

If the decision of the City Council is not supported by substantial evidence, the District Court may reverse or affirm the Council's decision in whole or in part, or may modify the Council's decision if substantial rights of the aggrieved person have been prejudiced. Costs of an appeal may not be assessed against the Council, individual Council members, or the City.

Sec. 01-09. Petition for declaratory ruling and waiver.

- (a) Any City Official against whom public allegations of ethics have been made in the media or elsewhere shall have the right to file a sworn statement with the City Secretary affirming his or her innocence, and to request the City Council to investigate and make known its findings, and make any relevant recommendations concerning the issue.
- (b) Any City Official subject to the Ethics Code who believes they have unknowingly committed an act in violation of a provision of the Ethics Code may submit a sworn request for a waiver of the application of the Code for that past act. The City Council shall investigate and make known its findings, and make any relevant recommendations to the City Council concerning the issue. The City Council may only act to waive the application of either code following receipt of the recommendation of the City Council.
- (c) The City Council is authorized to impose the sanctions contained within this Code when making their ruling.

Sec. 01-10. Public records and open meetings.

Meetings and other proceedings of the City 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.

II. ADMINISTRATIVE PROVISIONS

Sec. 02-01. Other obligations.

The Ethics Code is cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this code shall 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.

Even if a City official is not prohibited from taking official action by the city's Ethics Code, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

Sec. 02-02. Distribution and training.

- (a) Public service is a public trust. All City officials are stewards of the public trust. They have a responsibility to the citizens of the City to enforce the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in City government, each City official must not only adhere to the principles of ethical conduct set forth in the city's Code of Ethics and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.
- (b) Within thirty (30) days after entering upon the duties of his or her position, every new city official shall be furnished with a copy of the city's Code of Ethics. The failure of any person to receive a copy of the Code shall have no effect on that person's duty to comply with this code or on the enforcement of its provisions.
- (c) The Code of Ethics shall be posted on the City's webpage.
- (d) The City Manager and the City Secretary, in consultation with City Council, shall develop and implement a comprehensive training program for officials of the City on the provisions of the city's Code of Ethics and V.T.C.A., Local Government Code Chapter 171. Such materials and programs shall be designed to maximize understanding of the obligations imposed by the ethics laws, as well as to prepare City officials to ensure the good judgment necessary to accomplish their duties.