



ORDINANCE NO. 3479

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 2 “ARTICLE III “CODE OF ETHICS”; BY AMENDING SECTION 2-280 ADDITIONAL STANDARDS OF CONDUCT TO ADD SUBSECTION (f) INCORPORATING THE STANDARDS OF CONDUCT SET FORTH IN THE CITY OF FARMERS BRANCH, TEXAS, ETHICS HANDBOOK FOR ELECTED OFFICIALS AND ADVISORY BOARDS ADOPTED BY CITY COUNCIL REOLUTION NO. 2015-129; BY AMENDING SECTION 2-284 AMENDING THE COMPLAINT PROCESS; BY AMENDING SECTION 2-282 TO REQUIRE ANNUAL SEXUAL HARASSMENT TRAINING; BY DELETING SECTION 2-297; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Chapter 2 “Administration,” Article III “Code of Ethics,” of the Code of Ordinances of the City of Farmers Branch is hereby amended and restated, as follows:

“CHAPTER 2. – ADMINISTRATION

...

ARTICLE III. - CODE OF ETHICS

Sec. 2-276. - Purpose.

It is hereby declared to be the policy of the city that the proper operation of democratic government requires that public officials be independent, impartial and responsible only to the people of the city; that no officer shall permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity to conflict with the proper discharge of such person's duties in the public interest; that public office not be used for personal gain; and that the city council at all times shall be maintained as a nonpartisan body. To implement such a policy, the city council deems it advisable to enact a code of ethics for officials, as defined in this article, whether elected or appointed, paid or unpaid, to serve not only as a guide for official conduct of the city's public servants, but also as a basis for discipline for those who refuse to abide by its terms, the over-riding interest being that such officers of the city shall at all times strive to avoid even the appearance of impropriety.

Sec. 2-277. - Title; application.

(a) This article shall be known as the code of ethics.

- (b) This code of ethics shall apply to all officials as defined in this article.
- (c) This code of ethics does not apply to employees, including those individuals employed on a full-time, part-time or internship basis (including those who may serve on a city board, committee or commission) nor to independent contractors of the city. The standards of conduct for employees are governed by the City of Farmers Branch Personnel Policies and the City Charter.
- (d) This code of ethics applies to members of all city boards, committees or commissions as defined in this article.
- (e) This code of ethics applies to the conduct or actions of public officers, as defined in this article which occurs in whole or in part after the date of adoption of this article.
- (f) This code of ethics applies to officers only while such persons hold such position or office.

Sec. 2-278. - Definitions.

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

Benefit means anything reasonably regarded as pecuniary or economic gain or pecuniary or economic advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Business entity means any person, entity, corporation (whether for-profit or nonprofit), general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, holding company, joint-stock company, receivership, or other entity recognized by law, whether or not organized for profit, which has an economic interest, or seeking such, in conducting business with the city. Business entity also includes any business entity that represents a party conducting or seeking to conduct business with the city.

City means the City of Farmers Branch, Texas.

City council means the governing body of the city.

Confidential information means any information to which an official has access in such person's official capacity which may not be disclosed to the public except pursuant to state and/or federal law and which is not otherwise a matter of public record or public knowledge. Confidential information includes the following information, however transmitted: (i) any information from a meeting closed to the public pursuant to the Texas Open Meetings Act or other law regardless of whether disclosure violates the Texas Open Meetings Act or Texas Public Information Act; (ii) any information protected by attorney client, attorney work product, or other applicable legal privilege; and (iii) any information deemed confidential by law.

Contract means any lease, claim, account or demand against or agreement with any entity or person, whether express or implied, executed or executory, oral or written.

Corporation means any corporation that has a board of directors appointed in whole or in part by the city council that is operating under the direct authority of or subject to the direct control of the city council.

Employee means any person employed by the city, including those individuals on a part-time or internship basis, but does not include independent contractors.

Gift means anything of value, regardless of form, offered or given in the absence of adequate and lawful consideration. It does not include the receipt or acceptance of campaign contributions which are regulated by federal, state, and/or local laws or ordinances.

Knowingly means a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct whether the person is aware that the conduct is reasonably certain to cause the result.

Officer or official means the mayor any member of the city council and any appointed member of a city board, commission or committee established by ordinance, charter, state law or otherwise, on a temporary or permanent basis, operating either under the direct or indirect authority or subject to either the direct or indirect control of the city council. Such term includes, but is not limited to, the members of the planning and zoning commission, the zoning board of adjustment, the Valwood Improvement Authority, the Metrocrest Hospital Authority, the tax increment financing reinvestment zone board of directors, the library board, the parks and recreation board, the animal shelter advisory committee, the municipal drainage utility system advisory committee, and the historical preservation and restoration board. Such term also includes the members of the boards of directors of corporations, such as the North Dallas Water Supply Corporation, the housing finance corporation, the industrial development corporation, and any of the local government corporation to which the city appoints a board of director, unless such person is an employee of the city.

Relative means any person related to an officer within the second degree by consanguinity or affinity. This relationship includes the spouse, parents, children, stepchildren, father and mother-in-law, or son and daughter-in-law, grandparents, grandchildren, sisters and brothers of the officer.

Special privileges means a right, advantage or favor of or for a particular person, occasion or purpose not otherwise available to others.

Substantial interest means (i) the ownership of ten percent or more of the voting stock or shares of a business entity; (ii) the ownership of ten percent or more, or \$15,000.00 or more of the fair market value of a business entity; or (iii) funds received from the business entity exceed ten percent of the person's gross income for the previous year, and action on the matter involving the business entity will have a special economic effect on the business entity that is distinguishable from the effect on the public. It is expressly provided herein that an investment or ownership in a publicly held company, in an amount less than \$15,000.00 does not constitute a substantial interest. Substantial interest in real property means the person has an interest in the real property that is equitable or legal ownership with a fair market value of \$2,500.00 or more; and it is reasonably

foreseeable that an action on a matter involving the real property will have a special economic effect on the value of the real property distinguishable from its effect on the public. (Ownership includes any partnership, joint or corporate ownership or any equitable or beneficial interest as a beneficiary of a trust.) An officer is considered to have a substantial interest under this code of ethics if a person related to the officer in the second degree of consanguinity or affinity has a substantial interest under this code of ethics. A relationship within the second degree by affinity (marriage) includes the officer's spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepchild, sister-in-law (brother's spouse or spouse's sister), brother-in-law (sister's spouse or spouse's brother), spouse's grandmother, spouse's grandfather, spouse's granddaughter, and spouse's grandson. A relationship within the second degree by consanguinity (blood) includes the officer's father, mother, daughter, son, sister, brother, grandparent and grandchild.

Sec. 2-279. - Standards of conduct.

No officer of the city or a relative thereof shall:

- (1) Have a financial interest, direct or indirect, in any contract with the city nor shall such person be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The "financial interest" contemplated under this section requires that such person receive an actual financial benefit from the transaction with the city. An actual financial benefit from the transaction shall include:
 - a. An ownership in the entity transacting business with the city where the ownership interest is more than ten percent.
 - b. Compensation as an employee, officer or director of the entity transacting business with the city where such compensation is affected by the entity's transaction with the city.
- (2) Participate in a vote or decision on any matter in which the officer has a substantial interest.
- (3) Represent or appear in behalf of private interests of others before the city council, or any agency, board, commission, corporation, or committee of the city, nor shall represent any private interests of others in any action or proceeding involving the city, nor voluntarily participate on behalf of others in any litigation to which the city is, or might be, an adverse party. The restrictions of this subsection do not prohibit an officer, or relative of an officer, who is the president, vice president or officer of a homeowners association from appearing before the city council, or any agency, board, commission, or committee of the city to represent such homeowners association, except that no such officer or relative of such officer shall appear before the agency, board, commission or committee of the city of which such officer is a member.
- (4) Accept any gift from any person that might reasonably tend to influence such officer in the discharge of such person's official duties. The prohibition against gifts shall not apply to:

- a. A lawful campaign contribution;
 - b. An honorarium in consideration for services unless the officer would not have been asked to provide the services but for the officer's position;
 - c. Meals, lodging, transportation in connection with services rendered by the officer at a conference, seminar or similar event that is more than merely perfunctory;
 - d. Complimentary copies of trade publications and other related materials;
 - e. Attendance at hospitality functions at local, regional, state or national association meetings and/or conferences;
 - f. Any gift which would have been offered or given to the person if such person was not an officer or employee of the city;
 - g. An occasional item with a value less than \$50.00;
 - h. Tee shirts, caps and other similar promotional material;
 - i. Meals, transportation and lodging in connection with a seminar or conference at which the officer is providing services;
 - j. Gifts on account of kinship or a personal, or professional, or business relationship independent of the officer's status;
 - k. Complimentary attendance at political or charitable fund-raising events; and
 - l. Meals, lodging, transportation, or entertainment furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public events.
- (5) Use such person's official position to secure special privileges or benefits for such person or others.
 - (6) Grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group.
 - (7) Disclose confidential information.
 - (8) Engage in any outside activities which will conflict with or will be incompatible with such person's official position or duties as an officer of the city.
 - (9) Use city supplies, personnel, property, equipment or facilities (whether tangible or intangible) for any purpose other than the conduct of official city business, unless otherwise provided for by law, ordinance or city policy.

- (10) Act as a surety on any official bond required for any officer or employee of the city, or for a business that has a contract, work or business with the city.
- (11) Participation in city vendor reward programs that provide cash, gifts or other items of value to the officer based on city purchases; provided, however, an officer may accept frequent flier miles, car rental reward points, and/or lodging reward points accumulated by the officer for city sponsored or reimbursed travel expenses for official city business.
- (12) Fail to timely file the written confirmation of compliance with this article as required by section 2-282.
- (13) Solicit, request or encourage employees while such employees are on duty to engage in political activities.

Sec. 2-280. - Additional standards.

- (a) No member of the city council who is on the board of a nonprofit organization may vote on any funding request by that nonprofit organization, unless the nonprofit organization has a board of directors or trustees appointed in whole or in part by the city council.
- (b) With the exception of those proceedings allowed under this article, no member of the city council shall personally appear in such person's own behalf before the city council, or any city board, commission, corporation or committee but may designate and be represented by a person of such person's choice in any such personal matter.
- (c) No member of the city council, the planning and zoning commission, or zoning board of adjustment shall participate in, or vote on, any land use matter in which such officer has a substantial interest in any real property within 200 feet of the real property, the subject of the land use matter. For purposes of this section 2-5(c) "land use matter" shall mean zoning, plat approval, site plan or other development approvals or permits, variances or exceptions. The term "land use matter" does not include studies or similar matters that are for the benefit of the city and which are not unique to real property within 200 feet of the real property, the subject of the land use matter, in which the officer has a substantial interest.
- (d) The mayor and members of the city council shall not direct or request the appointment to or removal from office of any person by the city manager or any of the city manager's subordinates. The mayor or members of the city council may consult with and advise the city manager, make inquiry regarding the appointments or removals and may express their opinion in regard thereto.
- (e) In regard to administrative and executive duties under the city manager, the mayor and members of the city council shall deal solely through the city manager. The mayor and members of the city council shall not give orders or directions to any subordinates of the city manager, either publicly or privately.
- (f) No officer shall engage in any conduct that is conduct described in and prohibited by the City of Farmers Branch, Texas Ethics Handbook for Elected Official and Advisory Boards adopted by the City Council November 17, 2015, pursuant to Resolution No. 2015-120 ("Ethics

Handbook”) set forth below. In the event of any irreconcilable conflict between the other provisions of this article and the provisions of the Ethics Handbook, the other provisions of this article shall control.

I. City of Farmers Branch Ethics Policy

IT IS THE POLICY of the City of Farmers Branch to uphold, promote and demand the highest standards of ethics from all of its officials, whether elected to City Council or appointed to advisory boards. Accordingly, the City Council, pursuant to Section 2.02 of the City Charter, has enacted a Code of Ethics (“the Code of Ethics”) applicable to the City Council and all members of City boards, commissions, committees (“elected officials and advisory board members”) in order to better ensure that all City officials maintain the utmost standards of personal integrity, truthfulness, honesty, and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws, and never use their City position or powers improperly or for personal gain. One of the City’s guiding principles is “doing the right things for the right reasons delivers appropriate results.” The pursuit of transparency and accountability wherever possible helps achieve this principle and illustrates the City’s commitment to good government and high ethical standards.

The City of Farmers Branch and its elected officials and advisory board members all share a commitment to ethical conduct in service to their community. This handbook has been created to ensure that all elected and appointed officials and advisory board members have clear guidance for carrying out their responsibilities.

II. Applicable Laws and Policies

A. General Character

Elected officials and advisory board members are often called upon to make decisions that affect various groups and individuals adversely. Balancing diverse constituent interests is a difficult task. While someone will always be disappointed in decisions, officials shall adhere to ethical standards that eliminate disappointment borne of dishonesty, conflicts of interest, unfairness or illegality. Preservation of public trust is critical for the preservation of democracy.

A certain amount of detail is required in any code of ethics so that it serves as a clear guide. However, at the core of ethical behavior are some basic standards that officials shall use to reach a level of conduct that strives to be beyond reproach. Treating others as you would have them treat you is always a good ethical test. Another standard is to reflect on how your actions or decisions might be viewed by persons you or the public holds in high regard because of their ethical integrity.

1. Honesty and Integrity.

Honesty and integrity shall be the primary values in all issues. The public trust in the City Council and citizen boards can be a reality only when public officials are truthful.

2. Fairness and Respect.

All issues and citizens shall be handled with fairness, impartiality and respect. Elected officials and advisory board members have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting. In reviewing, discussing and deciding issues, City Councilmembers and citizen advisory board members have an obligation to be accessible, open and direct, not only with the other members of the City Council or board, but also to the citizens and business representatives who appear before them. The public is entitled to communicate with their public servants and understand the position of the City Council and boards on public issues.

3. Effort.

Elected officials and advisory board members have an obligation to attend meetings and to be prepared. It is expected that these officials will review the materials, participate in discussions and make an informed decision on the merits of the issue.

B. Conflict of Interest

Elected officials and advisory board members must be constantly on guard against conflicts of interest. In short, elected officials and advisory board members shall not be involved in any activity which conflicts with their responsibilities to the City and its residents. Citizens of Farmers Branch have a right to expect independence and fairness toward all groups without favoring individuals or personal interests.

1. Self-Dealing and Financial Disclosure.

Texas conflict-of-interest laws, in particular the provisions of Chapter 171 of the Texas Local Government Code (“Chapter 171”), apply to members of the City Council and other City officers, whether elected or appointed, paid or unpaid. The Code of Ethics incorporates many of the provisions of Chapter 171 and applies them to the members of the City’s boards and commissions. As a result, every Councilmember and board and commission member must be consistently aware of any potential issues which may appear to be self-dealing. Officials must not be involved in discussing or deciding any issue over which they have jurisdiction as a City Council or board member which may impact the member, or the member’s family, financially.

The Code of Ethics provides that a City officer (which, for purpose of the Code of Ethics includes Councilmembers and City board and commission members) shall not participate in a vote or decision on any matter in which the officer has a

“substantial interest.” An officer has a “substantial interest” in the matter if the matter involves a business entity in which the officer:

- owns 10% or more of the voting stock or shares of the entity
- owns 10%, or \$15,000, of the fair market value of the entity
- 10% of the officer’s gross income for the prior year consisted of funds received from the entity;

and the action will not have a special economic affect on the entity distinguishable from the public.

As it relates to real property, an officer has a substantial interest in the matter if the officer owns an equitable or legal interest in the property with a fair market value of \$2,500 or more and it is reasonably foreseeable that the matter will have a special economic affect on the value of the real property distinguishable from its affect on the public. For example, in a case involving the zoning of a property, if the officer owns property within 200 of the property being rezoned and receives a public hearing notice regarding that case, it will be presumed the officer’s property will be affected in a manner distinguishable from other property in the City.

The conflict of interest rules also apply to interests a City official’s relatives own in a business entity or real estate. Be aware that while Chapter 171 applies only to relatives in the “first degree of consanguinity or affinity” (i.e., parents, spouse, or child), the Code of Ethics extends the rules to also include the officer’s relatives within the “second degree of consanguinity or affinity” (i.e., step-children, father or mother-in-law, son or daughter-in-law, grandparents, grandchildren, brothers, and sisters). This is stricter than state law.

Prior to any meeting where a matter in which the City officer has a conflict of interest under Chapter 171 or the Code of Ethics, Councilmembers and board and commission members must file a conflict-of-interest affidavit with the City Secretary or the board/commission staff liaison, and then refrain from participating in any part of the meeting where the matter at issue will be discussed. This means the member cannot discuss, let alone vote, on the matter. Because any form of communication from the officer, including, but not limited to, emails, text messages, hand gestures, applause, frowns and smiles, etc., might be perceived as the officer’s attempt to improperly participate in the discussion of the matter for which a conflicts affidavit has been filed, it is recommended that the officer remove himself from the meeting room during the consideration of the matter.

2. Disclosure of and Policy on Acceptance of Gifts and Favors and Relationships with Vendors.

Chapter 176 of the Texas Local Government Code (“Chapter 176”) in general requires disclosure by elected officials and members of certain quasi-judicial boards when receiving items of value or any compensation other than their normal

salary for any service rendered in connection with that person's duties with the City. The Chapter 176 disclosure requirements may under certain circumstances apply to members of other boards and commissions if as a board or commission member the person acts as an agent of the City by exercising discretion in the planning, recommending, selecting, or contracting of a vendor.

A conflict-of-interest statement as outlined in Chapter 176 of the Texas Local Government Code must be filed by a City Councilmember or other City officer if the aggregate value of all gifts received by the officer or member of the officer's family from the same vendor exceeds \$100 in the twelve months preceding the City entering a contract with the vendor or considers entering a contract with the vendor. For purposes of this disclosure, a "gift" does not include (a) a political contribution; (b) food accepted as a guest; or (c) if the gift is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. A "gift" would include transportation, lodging, and entertainment, even as a guest.

Similarly, a Chapter 176 disclosure must be made by a Councilmember or other City officer if the officer or the officer's family member has an employment or other business relationship with the vendor which results in the officer or officer's family member receiving taxable income of more than \$2,500 in the twelve months preceding the City entering a contract with the vendor or considers entering a contract with the vendor. The disclosure requirement does not apply if the officer only receives investment income, regardless of amount.

In addition, a Chapter 176 disclosure is required if the Councilmember or other City officer has a family relationship with the vendor. For purposes of this disclosure, a "family relationship" means a person related (i) within the third degree by blood (e.g. mother, father, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great-grandfather, great-grandmother, aunt, uncle, nephew, niece, great-grandson and great-granddaughter) or (ii) with the second degree by marriage (e.g. spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepchild, sister-in-law (brother's spouse or spouse's sister), brother-in-law (sister's spouse or spouse's brother), spouse's grandmother, spouse's grandfather, spouse's granddaughter, and spouse's grandson.

This statement (Form CIS) must be filed with the City Secretary not later than seven (7) days after the Councilmember or other City officer learns of the basis for being required to file the disclosure. The disclosure must also be posted on the City's website. Vendors of the City have a similar disclosure requirement (Form CIQ) if they have a business affiliation or relationship with a local government official. Political contributions are exempt from these requirements and are addressed in Title 15 of the Texas Election Code.

While Chapter 176 may not require members of all boards and commissions to file the statutory disclosure, the Code of Ethics requires all board and commission members to annually file a statement professing compliance with the Code of

Ethics. This would include Section 2-279 of the Code of Ethics which prohibits an officer of the City from having a direct or indirect financial interest in contracts with the City.

Under no circumstances shall a City Council or board member accept a gift or favor that is a bribe, or reflects, to a reasonable person, an effort to improperly influence the member contrary to that member's responsibility to the public to act impartially and on the merits of a matter. City Council and board members are expressly prohibited from participating in vendor reward programs that provide cash or gifts to the member based on City purchases provided however that the City Council or board member may accept frequent flyer miles car rental or lodging reward points accumulated by the City Council or board member for City sponsored or reimbursed travel expenses for official City business. Additionally, the Farmers Branch City Charter (Section 9.01) specifically prohibits the acceptance of any gift, favor, privilege, or employment from any franchised public utility of the City. The prohibition against receiving gifts does not apply to items of de minimis value and other identified categories of gifts listed in Section 2-279(d) of the Code of Ethics. When in doubt about these requirements, elected officials and advisory board members shall disclose the gift, benefit or favor.

All disclosures will be kept for public record in the City Secretary's Office.

Gifts having a value greater than \$50 that are donated to the City or a bona fide charity also do not need to be reported.

Gifts exceeding \$50 in value and intended for the City rather than as a personal gift to a Councilmember or board member are not prohibited provided such items are timely delivered to the City's possession and become City property. Unreasonably delayed delivery of the gift to the City may subject the person to accusations that the person is making personal use of public property.

3. Loyalty.

Elected officials and advisory board members have an obligation to put the interests of the City of Farmers Branch over all personal considerations. Their goal should be "what is in the best interest for the broadest public good of the City of Farmers Branch, consistent with constitutional and other legal protections for property and other interests."

4. Nepotism.

As provided in the City Charter and Personnel Rules, no relative of a sitting Councilmember may be hired by the City, and no relative of a sitting advisory board member may be hired in the City department for which that advisory board member provides guidance. For a listing of relatives that are subject to this prohibition, refer to Section 9.16 of the City Charter.

5. Purchase of City Property.

No Councilmember or advisory board member shall purchase any personal property or real estate from the City regardless of the method of purchase excluding electronic computer tablet devices which have been issued to Councilmembers or advisory board members to be used as a resource during public meetings and for public email communications. These devices may be purchased by the user for fair market price at the end of a Councilmember's or advisory board member's term of office.

6. Subsequent Appointments and Contracts.

No Councilmember shall be appointed as an advisory board member within six months after the end of the Councilmember's term of office. No Councilmember or advisory board member, or a business entity in which the Councilmember or advisory board member has a substantial interest, shall be approved by Council to enter into a contractual purchase agreement with the City for a period of six months after the end of the person's term of office.

C. Legal Compliance

1. Meetings.

Public Access: Open Meetings and Public Records

Subject to certain exceptions, discussion of issues which may appear before the City Council or an appointed board are prohibited when a quorum of the members of the City Council or board is present. The Texas Open Meetings Act requires that the deliberations of its elected and, in some cases, appointed governing bodies be open to the public and that proper notice of such meetings be posted and made available to the public not later than 72 hours in advance of the meeting. Attempts by a quorum of the deliberating body to meet and discuss City business without fully complying with the Open Meetings Act is a criminal violation and can also be the basis for a charge of official misconduct pursuant to Section 9.18 of the City Charter. By local policy, all City boards and commissions, not just the City Council and other boards with quasi-judicial authority (e.g. Planning and Zoning Commission and Building Board of Adjustment), must comply with the Open Meetings Act.

Similarly, though subject to certain exceptions, the City is required to make available to the public upon written request "public information" pursuant to the Public Information Act. "Public information" is information which is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or by a third party on behalf of a governmental body.

Public information can also include emails, text messages, blog and social media pages, and other types of electronic media discussing City matters. Written and

electronic communications by Councilmembers or board and commission members relating to City business are often subject to disclosure to the public pursuant to a written request, whether such information is contained on a City-provided device or a personally owned device. Failure of a Councilmember or board or commission member to provide to the City Secretary copies of public information in their possession when a proper request for public information is received could (1) create a presumption that information that would otherwise be confidential to be public information and (2) result in the unlawful withholding of public information from the requesting party. Besides being a violation of the Public Information Act, any such lack of cooperation is likely to be considered contrary to the interest of the City and subject to sanctions under the Code of Ethics.

2. Attendance.

Attendance is outlined by the City Charter and is enumerated below:

a. Mayor and City Council

The City Charter provides that four (4) councilmembers may discipline another councilmember if the Councilmember misses three (3) regular (or 25% of the regular meetings in any six-month period) duly noticed meetings of the City Council without good cause. Duly noticed meetings of the City Council include regular council meetings, special council meetings, study sessions, policy sessions, executive sessions, budget review meetings, and council committee meetings to which a councilmember is assigned.

The City Council generally finds that personal illness, family emergencies, military absences, family weddings, family graduation exercises, and bona fide business and vacation trips constitute good cause for nonattendance at council meetings. Whether good cause exists for any other absence shall be determined by vote of the entire City Council at the next regular meeting following the absence. The vote shall be taken after sufficient information is received explaining the reason for the councilmember's absence.

b. Boards, Commissions and Committees

The City's attendance policy for members of boards, commissions and committees provides that if a member fails to attend three (3) consecutive and duly noticed meetings of such groups without being excused for good cause, the City Council may declare the seat vacant and appoint a replacement.

Members of City boards, commissions and committees are expected to attend all regularly scheduled meetings and should make every effort to do so. The City Council appoints members for their experience, background and perspective in a particular policy area, and desires the benefit of knowledgeable consideration and judgment. Moreover, boards, commissions and committees cannot conduct any business unless a quorum

is present. Members should notify the chairperson of the board or the staff liaison regarding any meeting missed or to be missed.

The advisory board, commission or committee shall decide by vote of the entire body at the next regular meeting following the absence, whether the absence was for good cause or not. Advisory boards, commissions and committees shall use the same standard for good cause as set forth above for councilmembers.

3. Disclosure of Confidential Information.

Texas law provides that, during a person's service with the City, no member of a City board, commission, committee or the City Council may disclose or use confidential information without appropriate authorization. The information is outlined in the Texas Open Meetings Act (Texas Government Code Chapter 551). For example, confidential information includes discussions during executive sessions and certain economic development information such as prospect leads. Unauthorized disclosure of confidential information to the public is a Class B misdemeanor.

Likewise, disclosure of public information which is confidential, such as emails or memos consisting of attorney-client communications, documents relating to proposed real estate purchases or sales, or documents relating to pending litigation, is a potential violation of the Public Information Act.

4. Discrimination and Harassment.

Public decision-making must be fair and impartial and shall not be discriminatory.

The City of Farmers Branch is an Equal Opportunity Employer and does not discriminate in its employment practice on the basis of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, pregnancy, military or veteran status, citizenship, genetic information, or any other characteristic protected by law, both internally and in the relationships of the elected officials and advisory board members with their constituencies.

In addition, it is the policy of the City of Farmers Branch that the elected officials and advisory board members strive to create an operating environment internally and in the relationships of the elected officials and advisory board members with their constituencies, that is productive and free from intimidation, hostility or other adversity. Harassment of any sort – verbal, physical, visual – including intentional and unwarranted actions that would constitute sexual harassment were they to occur in an employment relationship, by any elected official or advisory board member, is prohibited and is considered a violation of the Code of Ethics.

D. Political Activities

Elected officials and advisory board members shall not use their political or appointed office to advance private interests. City Charter Section 2.02 prohibits the Mayor, Councilmembers, and board members from holding other public offices.

Elected officials, advisory board members and candidates shall not engage in political campaigning at City meetings or within City buildings. They shall also not use public resources for political campaigning. For example, candidates or supporters of candidates shall refrain from circulating petitions during a City meeting and refrain from soliciting City employees to support their specific cause. City Council and board members are free to express their opinions about the public issues on the agenda before them, but they must not make campaign speeches at council or board meetings touting their, or another's, candidacy nor may they urge residents to vote for them or another, through words, signs, buttons or other means, during duly noticed meetings of the City Council or its citizen advisory boards.

City Councilmembers shall not solicit, request or encourage employees while on duty to engage in political activities.

E. Facilities, Resources and Expenses

1. Expense Reports and Travel.

When traveling on City business, elected officials shall conduct themselves professionally as representatives of the City of Farmers Branch. Officials are entitled to be reimbursed for actual and necessary travel expenses. Expenses must be documented completely and accurately and approved by a committee of Councilmembers designated for that purpose. Officials are asked to contact the appropriate City staff for assistance in travel plans and expense reports.

2. Use of Equipment and Facilities.

Elected officials and advisory board members shall not use City equipment or City facilities for private purposes, except to the same extent that they are available to the public.

a. Software Management.

Elected officials and advisory board members shall not make, use, accept or install illegal copies of computer software, documentation or templates. The City conducts periodic audits to ensure compliance with City policies on software installed on City-owned computers.

The legality of software is ideally established by possession or accountability of the following five items: the original software diskettes, the license, the original manuals, documented evidence of purchase, or copy of the completed product registration.

b. Electronic Mail.

City-assigned electronic mail accounts shall be used only for City business or for minor personal use such as setting up medical appointments or communicating occasionally with one's family in a way that does not interfere with City business. City-assigned electronic mail accounts may not be used for personal business or for any campaign purpose.

All City-assigned electronic mail is considered official City business and must be retained in accordance with the City's records management program. In general, electronic mail communications are public records and subject to disclosure under the public records laws. The Texas Public Information Act is found in Texas Government Code, Chapter 552. Because the Public Information Act has been expanded to include public information retained on private electronic devices such as laptops and cell phones, Councilmembers should do their utmost to only use their office City e-mail address when corresponding with the public or City staff about City business.

3. Use of Staff.

Under the council-manager form of government, the City Council appoints a City Manager, who directs the day-to-day operations of all employees. Councilmembers need to be sensitive to the role of the City Manager and City staff. In regard to administrative and executive duties under the City Manager, City Charter Section 2.10 requires the City Council to deal solely through the City Manager and expressly prohibits members of the City Council from privately or publicly giving any orders to City employees who are subordinates of the City Manager.

Councilmembers may ask other staff members about the status of a matter and may ask for information, but Councilmembers shall not expressly or implicitly give orders or direction to staff, except through their participation on the City Council. They shall not try privately to influence the decisions or recommendations of staff members, but they may share information with staff. City Council and board members shall not intervene directly with staff on behalf of a particular constituent or organization on a pending matter, but shall participate with City Council or board colleagues in discussing and deciding policy matters for staff to carry out.

Appointed board members shall work through the staff liaisons of their board.

III. Procedures

A. Where to Seek Advice

Questions about this handbook, the City's Code of Ethics, a conflict-of-interest, compliance with open government laws, or other ethical issues should be presented to the City Attorney's Office. If time permits, requests should be in writing to the City Attorney directly.

B. What to Do if You Are Uncertain

The existence of an ethical issue often does not arise until a meeting is underway. Rather than risk an inadvertent violation of law, the safest course of action is simply to declare that a conflict may exist that prevents an elected official or advisory board member from participating. Indeed, if there is a consistent theme to this handbook, it would be: “If in doubt, don’t.”

C. How to Declare a Possible Conflict

If an official believes that a conflict-of-interest (or even a possible conflict) exists, then he or she should disclose the fact as soon as possible. For example, as soon as an elected official or advisory board member realizes that a conflict exists on a given matter, they must disclose the conflicting interest on the record for the minutes. From that point on, the official shall complete any required affidavit and not participate in any manner (by discussing, questioning or voting) in that matter.

Declaring a conflict and not participating should be recognized as a necessary part of preserving public trust and should not be avoided simply because of delays or inconvenience. Indeed, officials should declare possible conflicts to avoid any appearance of impropriety.

D. Where to Report Improper Behavior

Elected officials and advisory board members have a duty to create the image and reality of a responsive, accessible and fair city government. Accordingly, City Council and advisory board members have a duty to report if another elected official or advisory board member is violating laws or ethics relating to city government, as set forth in the Code of Ethics and this handbook. Moreover, officials shall never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person’s duty to disclose such improper activity.

All complaints or allegations of a violation of the City’s Code of Ethics against an elected official or advisory board member shall be made in writing on a form provided by the City, sworn to before a notary public, and filed of record with the City Secretary. A general complaint lacking in detail shall not be sufficient to merit investigation procedures outlined in the City’s Code of Ethics Ordinance.

IV. Penalties and Sanctions

It is the intent of the City Council to educate, and, when necessary, discipline board or councilmembers who violate the City’s Code of Ethics. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the City Council believes progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the City Council does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving a matter, including the

intent of the one accused of wrongdoing. This Code does not prevent informal resolution of minor infractions, such as by immediate corrective action of the possible misconduct.

Sec. 2-281. - Disclosure of substantial interest.

Any officer who has a substantial interest in any matter pending before the body, board, commission, corporation or committee of which the officer is a member, before a vote or decision on such matter, shall file an affidavit stating the nature and extent of the substantial interest, and shall abstain from further participation in such matter. The affidavit shall be on a form provided by the city and must be filed with the city secretary.

Sec. 2-282. - Annual certification of compliance; sexual harassment training.

(a) Officers shall provide a written certification of compliance with this code of ethics, on a form provided by the city, upon taking office to the position appointed or elected, and on each anniversary date thereafter.

(b) Officers shall be required on annual basis to participate in sexual harassment training provided by the City.

Sec. 2-283. - Post service prohibitions.

- (a) The city may not appoint any former mayor or member of the city council to any appointed position (compensated or not) with the city or to any city board, commission or committee established by ordinance, resolution, charter, state law or otherwise until at least six months has elapsed since the such person terminated the office previously held by such person.
- (b) The city may not enter into any contract for the purchase or sale of real or personal property, labor or services with any former officer or business entity in which the former officer has a substantial interest until at least six months has elapsed since such person terminated the position or office previously held by such person.

Sec. 2-284. - Complaints against officers.

- (a) All complaints or allegations of a violation of this code of ethics against an officer shall be made in writing sworn to before a notary public, and filed of record with the city secretary. The complainant may but is not required to use a form provided by the City. Such complaint shall describe in detail the act or acts complained of and the specific section(s) of this code of ethics alleged to have been violated. As determined by the City Attorney a general complaint lacking in detail shall not be sufficient to invoke the investigation procedures contained herein; and anonymous complaints shall not be considered. Not later than the first business day after receipt of the complaint by the city secretary, the city secretary shall provide a copy of the complaint to the affected officer, the city council, and the city attorney, who shall initially review the complaint to determine if the complaint contains sufficient detail and alleges a violation of the code of ethics. The affected officer may file a written response to the complaint with the city secretary within three (3) business days after receipt of the complaint from the city secretary, who shall forward the response, if any, to the city attorney.

- (b) Within three (3) business days after notification by the city secretary, the mayor or mayor pro tem shall schedule a special called meeting of the city council to consider the complaint in executive session. At such meeting, the city attorney shall present a written report to the council describing in detail the nature of the complaint and the city attorney's findings and conclusions as to a possible violation of this Code. The non-implicated council members in attendance shall then review the complaint and either reject the complaint or invoke an investigation. In the event the city council decides to reject the complaint, the vote to reject the complaint shall be taken in open session without further investigation. In the event the city council decides to invoke an investigation, the city attorney shall select and appoint an independent private attorney to fully investigate the alleged improprieties. The investigating attorney shall report back to the council in writing within ten (10) business days from such appointment, unless an extension is granted by a majority of the non-implicated council members. Such report shall be comprehensive and explain in detail all facts, findings, and conclusions in support of the attorney's opinion as to whether or not a violation of this code of conduct occurred.
- (c) The city council shall consider the findings of the investigating attorney's report at the meeting in which it is presented, at which time the person(s) accused shall have the right to a full and complete hearing with the opportunity to call witnesses and present evidence on such person's behalf. The final action, decision, or vote of the council with regard to the complaint shall be taken or made only in a meeting that is open to the public.
- (d) No action or decision with regard to the complaint shall be made except in a meeting which is open to the public.
- (e) A complaint or allegation of a violation of this article may only be made against an officer while such person holds such position or office. A complaint made against an officer pursuant to this section shall be processed and resolved even if such person resigns from, or ceases to hold such position or office, prior to resolution of the complaint.

Sec. 2-285. - Violations.

The city council may take any one or more of the following actions in an open meeting concerning a complaint:

- (1) Issue a statement finding the complaint is totally without merit, brought for the purpose of harassment, or brought in bad faith.
- (2) Issue a letter of notification when the violation is unintentional. A letter of notification shall advise the officer of any steps to be taken to avoid future violations.
- (3) Issue a letter of admonition when the violation is minor or may have been unintentional, but calls for a more substantial response than a letter of notification.
- (4) Issue a reprimand when a violation has been committed knowingly or intentionally.

- (5) Remove from office an officer, other than a city council member, for a serious or repeated violation of this code of ethics. Removal shall be, to the extent by and allowed, in compliance with the charter and state law.
- (6) Pass a resolution of censure or a recommendation of recall when the city council finds that a serious or repeated violation of this code of ethics has been committed intentionally by a member of the city council.
- (7) Removal of the mayor or member of the city council in accordance with applicable state law and the charter. Section 2.02 of the city charter provides that a member of the city council may be removed from office if they knowingly violate the city council code of ethics.

Sec. 2-286. - Interpretation of content.

Any officer may request and the city attorney shall issue, a verbal or written opinion (as deemed appropriate) concerning the meaning or effect of any section, word, or requirement of this code of ethics as it affects such person.

Secs. 2-287—2-320. - Reserved.”

SECTION 2. All provisions of the ordinances of the City of Farmers Branch, Texas, in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Farmers Branch, Texas, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. This Ordinance shall take effect immediately from and after its passage, as the law and Charter in such case provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, ON THE _____ DAY OF JANUARY 20187.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert C. Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(PGS:1-17-18:102.93706)