

ORDINANCE NO. 2025-681
AN ORDINANCE ADOPTING CODE OF ETHICS UNDER
CHAPTER 1.02 OF THE CITY OF SMITHVILLE CODE OF
ORDINANCES.

WHEREAS, the City of Smithville is a Type A general-law municipality organized under the general laws of the State of Texas; and

WHEREAS, Texas Local Government Code Section 51.012 authorizes Type A general-law municipalities to adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic; and

WHEREAS, the Smithville City Council, in compliance with the laws of the State of Texas and the City's municipal code in the exercise of its legislative discretion, has determined it is appropriate, for good government and for the welfare and benefit of the public, to adopt a code of ethics; and

WHEREAS, the City Council finds and determines that the meeting at which this Ordinance was passed was open to the public, that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SMITHVILLE THAT:

I.
FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

II.
ENACTMENT

Chapter 1, Article 1.02, Division 3 - Code of Ethics is hereby created and adopted and shall read as follows:

Sec. 1.02.051 Purpose and Applicability

- (a) The citizens and businesses of the City of Smithville are entitled to have fair, ethical, and accountable local government that earns the public's full confidence for integrity. The purpose of the Code of Ethics and conduct is to establish guidelines for ethical standards of conduct for all elected and appointed officials of the City of Smithville by setting forth

those acts or actions that are incompatible with the best interests of the City of Smithville by prohibiting conduct incompatible with the city's best interests and minimizing the risk of any appearance of impropriety. This Code of Ethics and Conduct furthers the legitimate interests of democracy.

- (b) The purpose of this Code of Ethics is to apply to elected and appointed officials and to the city manager. It is not intended to apply to city employees who answer to the city manager. The city manager retains authority to supervise, discipline, and instruct the actions of all city employees designated as answering to them under the ordinances and organizational structure of the city.

§ 1.02.052 Definitions

- (a) The following words, terms, and phrases, when used in this Code of Ethics and Conduct, have the meanings ascribed to them below.

Business. A corporation, partnership, association, sole proprietorship, firm, holding company, joint stock company, receivership, trust, or any other for profit or non-profit entity, company, or association.

City council. The legislative and governing body of the City of Smithville consisting of the mayor and city council members.

City official. Any member of the city council, a member of a city-appointed board, commission or committee, a statutory municipal officer, or any city department head, including the city manager. This definition expressly excludes any municipal court judge as such official's conduct is regulated by the Texas Commission on Judicial Conduct.

Employee. Any person employed by the City of Smithville on a full-time or part-time basis.

Ethics code. This term shall mean the Code of Ethics and Conduct identified in section 1.02.05, Chapter 1 of the Smithville Code of Ordinances and any other Code provision designating itself as an ethical code.

Former city official. Any person who has previously been a city official, but no longer serves in such position.

Former employee. Any person who has formerly been a city employee.

Recuse. The terms "recuse" and "recusal" include but are not limited to refraining from deliberating or voting from the dais or otherwise making a substantive decision on the relevant subject matter.

Undue influence. This term includes when a person or persons intentionally or knowingly exercise a level of control over another such that the person's assertion of control becomes

the dominant decision maker, subverting or overpowering the mind or will of the person over which the influence is being exerted.

§ 1.02.053 Ethics Committee

- (a) Creation. An ethics committee may be established on an ad hoc basis by the city council.
- (b) Membership. Unless provided otherwise, an ethics committee will consist of three (3) members appointed by the mayor, two of which will be city council members, and the third member will be appointed based on the type of city official that is the subject of the complaint. If the city official that is the subject of the complaint is:
 - (1) A member of the city council, then the third member of the committee will be the mayor.
 - (2) A member of a city-appointed board, then the third member will be a member of the relevant board.
 - (3) A city employee, other than the city manager, then the third member will be the city manager.
 - (4) The city manager, then the third member will be the mayor.
- (c) Disqualification. No person who is either the subject of the complaint or the complainant may serve on an ethics committee. If the mayor is the subject of an ethics complaint, then the ethics committee will be chosen by the mayor pro-tem and will consist of two (2) council members other than the mayor pro-tem and a resident of the City of Smithville that is not a city official or a city employee.
- (d) City Council Approval. The appointment and composition of the ethics committee is subject to approval by majority vote of the city council.
- (e) Investigation. The ethics committee shall investigate the allegations made in the sworn complaint and within thirty (30) days of its appointment, make a finding as to whether or not there is sufficient evidence that a violation of this ordinance has occurred. In conducting the investigation, the ethics committee may contact witnesses and may consult with the city attorney. The city official that is the subject of the complaint shall be allowed counsel at such city official's own expense and shall not be represented by, or consult with, the city attorney.
- (f) Insufficient Evidence. If the ethics committee finds insufficient evidence to support the alleged violation, the ethics committee will file a report so stating with the city secretary and no further action shall be taken on the matter.
- (g) Sufficient Evidence. If the ethics committee finds sufficient evidence of an alleged violation, the ethics committee shall present a recommendation to the city council as to the appropriate action to be taken.

- (h) Council Action. The city council will consider the report at a public meeting held as soon as practicable after receiving the report. At such meeting, the city official that is the subject of the complaint shall be allowed representation by counsel, the right to call witnesses, and the right to cross-examine witnesses. During such meeting, any city council member may move to accept, reject, or modify the recommendation of the ethics committee. In the absence of a motion, or if the motion fails to pass by the required margin, the ethics committee shall file a written report of its investigation with the city secretary and the investigation shall be closed

§ 1.02.054 Standards of Conduct

- (a) Refrain from Abusive Conduct. The professional and personal conduct of city officials must be above reproach and avoid even the appearance of impropriety. City officials will refrain from abusive conduct, personal charges, or verbal attacks upon the character of other city officials, employees, and members of the public. City officials must refrain from intentionally communicating in a way a reasonable person would feel is meant to improperly intimidate, harass, embarrass, ridicule, or impose an undue influence over the other city official, employee, or member of the public in an attempt to influence the person's conduct.
- (b) Promises, Obligations, and Commitments. City officials will refrain from unilaterally promising, obligating, or committing, either directly or indirectly, any action on behalf of the city, which has not been previously authorized by the city council, the city manager, any of the boards, commissions, and committees, operating within their delegated authority.
- (c) Conduct of Public Meetings.

City officials have an obligation to:

- (1) Attend all scheduled meetings.
- (2) Be on time to the meetings.
- (3) Be prepared for public issues and discussions.
- (4) Listen courteously and attentively to all public discussions before the body when they attend.
- (5) Focus on the business before the body.
- (6) Review information provided to them by city staff prior to the meeting and be familiar with the information to allow proper deliberation.
- (7) Refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfere with the orderly conduct of meetings.

- (8) City officials and employees shall perform their duties in accordance with the processes and rules of order established by the city council and its boards, commissions, and committees governing the public deliberation of public policy issues, meaningful involvement of the public, and employees' implementation of the city council's policy decisions.
- (d) Comply with the law. City officials will comply with the laws of the nation, the State of Texas, and the City of Smithville in the performance of their public duties. These laws include but are not limited to the United States and Texas Constitutions, laws, and statutes pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, open processes of government, and city ordinances.
- (e) Information contained on personal devices or electronic accounts. City officials are prohibited from intentionally or knowingly deleting, altering, or hiding public information (i.e., information related to city business) that is sent or received on a personal device or electronic account without the city also having a copy of such information. Individuals who have public information stored on their personal devices or electronic accounts must save such information or forward such information to the city's officer for public information. It is a defense to an alleged violation of the deleting of information found in this provision that such information was already in the hands of a city department at the time the city official deleted such information.
- (f) Communications with members of the general public. City officials must be aware of the public perception held by their office or position with the city when communicating with members of the general public. Although city officials have the right to express personal opinions on any issue, it must be made expressly clear that, when speaking to members of the general public outside of a meeting, they are speaking for themselves and not speaking in an official capacity for the city or on behalf of the city council. City officials will not encourage, facilitate, or create a perception that city official's comments are authorized comments of the city, unless the city official has been granted express authorization to make such comments by the city council or the city manager.
- (g) Decisions based on merit. It is expected that city officials review material, participate in discussion, and base their decisions on the merits and substance of the matter at hand when conducting any business in their official capacities in the furtherance of the best interests of the City of Smithville. City officials are required to vote on all matters before the body on which they serve when a motion is made, unless prohibited from doing so by law.
- (h) Communication to City. Prior to taking final action on a matter under consideration, city officials and employees should share information which they have received from sources outside the public decision-making process, which is relevant, reasonably related, or may impact any action by the city council, boards, commissions, or committees.

(i) Conflicts of interest, disclosure, and recusal.

- (1) State Conflicts of Interest. All of the below subsections are a conflict of interest for purposes of this chapter:
- (A) Acts which would constitute a violation of Chapter 171 of the Texas Local Government Code which requires city council members and city officials to file an affidavit disclosing a substantial interest in a business or property that would be beneficially affected by a decision of the city council.
 - (B) Acts which would constitute a violation of Chapter 176 of the Texas Local Government Code, which requires city council members and the mayor to file a conflict of interest disclosure statement disclosing any business relationship with a person or commercial or non-profit business doing business with the city or being considered by the city for a business relationship and requires the disclosure of gifts of an aggregate value of more than \$100.00 in the twelve (12) month period preceding a transaction described in Section 176, other than gifts of food, lodging, transportation, or entertainment accepted as a guest.
 - (C) Acts which could constitute a violation of Chapter 553 of the Texas Government Code, which requires the filing of an affidavit before the date the city will acquire a property in which city officials or employees have a legal or equitable interest.
- (2) City conflicts of interest. In addition to any state law conflict of interest and disclosure statutes, a city official will not take any action that they know is likely to directly affect, in a beneficial way, the economic interests of:
- (A) The city official;
 - (B) Their parent, child, spouse, or other family member within the third degree of affinity or within the third degree of consanguinity;
 - (C) Their outside client;
 - (D) A member of their household; or
 - (E) Any outside employer of the city official or employee or their parent, child, spouse, or member of the household.
- (3) Recusal and Disclosure. Should a conflict arise, the city official who is in conflict must recuse themselves from the time that the conflict is or should have been recognized. Further, the city official must:

- (A) Immediately refrain from further participation in the matter, including discussions with persons likely to consider or participate in the matter;
- (B) File the appropriate form with the city manager's office within three business days disclosing the nature and extent of the prohibited conduct;
- (C) Promptly bring the conflict to the attention of the presiding officer of the body or the mayor, who may reassign responsibility for handling the matter to another person, if the city official has been tasked with any duties prior to the disclosure; and
- (D) Promptly disclose the conflict to other members of the council, board, commission, or committee in which they serve and shall not be present during the discussion of, or voting on, the matter. If the conflict involves the city manager, the city manager must promptly inform the mayor then the city council of any conflict.
 - (i) The city official must not participate in the discussion of, or voting on, the matter from the dais.
 - (ii) This article does not relieve a city official from complying with any other obligations required by federal or state law or other articles in the city's Code of Ordinances.
 - (iii) A city official may discuss the matter over which they have declared a conflict as part of the process to transition the matter to another official for handling in their place.
 - (iv) A city official, after making the disclosure of a conflict of interest, may submit a written explanation to the city secretary, with any further explanation of the circumstances surrounding the conflict and may request a waiver of conflict allowed by this chapter. The city official, after making the disclosure, may also submit a written explanation with the city official's personal experience regarding the cause of the conflict as long as the city official does not intentionally attempt to substantially influence the decision maker by the statement. If the conflicted member makes such a statement, the city secretary will distribute to the full body on which the city official sits before the next regular council meeting.

The person must refrain from attempting to influence the deliberating body while the body is deliberating on the subject matter or otherwise influencing the decision maker involved in deciding on any conflicted subject matter. The person being recused may provide a factual rendition or an opinion of personal experience, in

writing, to the city manager prior to any deliberation by the deliberating body, should the person wish to provide any comments on the recusal. Such rendition does not violate this code regarding recusal.

- (3) Disclosure Form. A city official disclosing a conflict of interest must utilize the form approved by the city manager's office. The city manager's office is authorized to create any additional forms required for the enforcement of this chapter. The city secretary must have such forms available to any city official who requires them.

(j) Political advocacy.

- (1) City officials will not utilize the city's name or logo, either verbally or in writing, for purposes of endorsing any political candidate or any business.
- (2) City officials are prohibited from using their municipal title or position in any advertisement or endorsement of products, persons, or activities, without previous written authorization by the city council.

(k) Confidential information.

- (1) A city official will not use their position to obtain official information about any person or entity for any purpose other than the performance of official duties.
- (2) A city official will not intentionally, knowingly, or recklessly disclose any confidential information gained by reason of said official or employee's position concerning the property, records, operations, policies, or affairs of the city, including those items discussed in closed or executive session. This rule does not prohibit any reporting of illegal or unethical conduct to authorities because of a court order.
- (3) City officials and employees must respect the confidentiality of information concerning city property, personnel, or proceedings of the city. They will neither disclose confidential information without proper legal authorization, nor use such information to advance their or any other person's personal interests.

(l) Use of public resources. A city official or employee will not use, request, or permit the use of city resources, facilities, equipment, supplies, or staff time for private gain or personal purposes (including political purposes), except:

- (1) For a public purpose that is directly related to the governmental responsibilities of the city; or
- (2) When those resources are lawfully available to the public.

(m) Representation of private interests.

- (1) With Compensation. A city official will not represent for compensation any person, group, or entity, other than themselves, or their spouse or minor children, before the city, its boards, commissions, and committees. For purposes of this subsection, the term “compensation” means money, or any other thing of value, that is received, or is to be received, in return for or in connection with such representation.
 - (2) Without Compensation. A city official will not represent any person, group, or entity, regardless of whether compensation is provided, before the city, its boards, commissions, and committees, as a principal spokesperson for such person, group, or entity. The city official may represent themselves, or their spouse or minor children, as long as such representation is specific to the official, their family, or property. While a city official may sign petitions and count, as a citizen, for purposes of counting community input, city officials must avoid the appearance their position provides insider knowledge or treatment. As a result, a city official cannot be a spokesperson or principal advocate before the city for another person or associated group or entity with a common purpose.
- (n) Representation in litigation averse to the City.
- (1) City officials or employees will not represent any person, group, or entity, other than themselves, their spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are averse to those of the city.
 - (2) A person who is classified as a city official only because they are an appointed member of a board, commission, or committee will not represent any person, group, or entity, other than themselves, their spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are averse to the interests of the city and the matter is substantially related to the official’s duties to the city.
- (o) Former city officials and employees.
- (1) Former city officials or employees will not use or disclose confidential government information acquired during service as a city official or employee. This rule does not prohibit any disclosure that is no longer confidential by law, or the confidential reporting of illegal or unethical conduct to authorities designated by law.
 - (2) Former city officials or employees will not represent for compensation any person, private group, or private entity, other than themselves, or their spouse or minor children, before the city for a period of two (2) years after the resignation or termination of their official duties. For purposes of this subsection, the term “compensation” means money, or any other thing of value, that is received, or is to be received, in return for or in connection with such representation. Such includes

but is not limited to such former city official not representing any person, group, or entity:

- (A) before that board, commission, or committee in which they served;
- (B) before city staff having responsibility for making recommendations to or taking any action on behalf of that board, commission, or committee, unless the board, commission, or committee is only advisory in nature; or
- (C) before a board, commission, or committee which has appellate jurisdiction over the board, commission, or committee of which the former city official was a member, if any issue relates to their former duties.

(p) City Loyalty and Advocacy. City officials owe a duty of loyalty to the city for the position they hold. All city officials must represent the official policies or positions of the city council, board, commission, or committee to the best of their ability in the performance of their official duties.

- (1) Debate on official policies or positions within the authority of the body on which the city official serves. This does not prevent a city official from advocating or discussing a change in policy or position, as long as such change is within the authority of the body on which they serve. This provision is not intended to stifle debate on official policies or positions by the adopting body.
- (2) Actions relating to official policies or positions outside the authority of the body on which the city official serves. A city official may not oppose or act in contravention of an official policy or position of the city while acting in their official capacity unless the policy or position is within the authority of the body on which the city official serves. If a city official wishes to express disagreement over such an official policy or position of the city, the city official may only do so in their individual capacity as a citizen. When presenting their individual opinions and positions, city officials shall explicitly state that such opinion or position does not represent that of the City of Smithville. City officials shall not create or allow the inference that they speak for the city in any official capacity in such a situation.

(q) Policy role of city officials and employees. City officials must respect and adhere to the City of Smithville's governmental structure as outlined in the city's ordinances, policies, and procedures. In this structure, the city council determines the policies of the city with the advice, information, and analysis provided by the public, boards, commissions, committees, and employees of the city. Except as provided by ordinance, city officials will not interfere with the administrative functions of the city or the performance of the employees' official duties, nor will they impair employees' ability to implement city council policy decisions. Further, city officials will not intentionally obstruct or prevent the

receiving of information requested by other city officials who have a definitive right to obtain the information in the performance of their duties.

- (r) Independence of city council, boards, commissions, and committees. To safeguard the independence of the city council, boards, commissions, and committees in the public decision-making process, members of city council and other city officials must refrain from applying undue influence on the deliberation or outcomes of board, commission, and committee proceedings on which the city official does not serve. This section does not prohibit city officials from voicing their concerns or opinions while deliberating and discussing matters at public meetings that have been brought before the body in which they serve.
- (s) Positive workplace environment. City officials must support the maintenance of a positive and constructive workplace environment for city employees and for citizens and businesses dealing with the city. City officials must recognize their special role in dealing with city employees and refrain from creating the perception of inappropriate direction to city employees. When dealing with employees, city officials must adhere to the restrictions prescribed in this chapter and must be cognizant of the weight and perception of their position as a city official.

§ 1.02.055 Implementation

- (a) As an expression of the standards of conduct for city officials and employees expected by the city, this code is intended to be self-enforcing. It therefore becomes most effective when city officials and employees are thoroughly familiar with it and embrace its provisions. Ethical standards must be included in the regular orientation for candidates for city council, applicants to boards, commissions, and committees, and newly elected and appointed officials and new city employees. City officials entering office, including those appointed to boards, commissions, and committees will sign a statement affirming they have read and understood the code of ethics. Additionally, the code of ethics will be reviewed no less than every two (2) years to determine if amendments are needed or desired.

§ 1.02.056 Duty to Report

- (a) The code of ethics expresses standards of ethical conduct expected for city officials. City officials have the primary responsibility to ensure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. City officials who have knowledge of a violation of any of the provisions of this ethics code must use their best effort to report the violation as soon as possible but not more than three (3) business days from the date in which the city official has acquired actual knowledge of the violation. A city official will not delegate to, or rely on, another person to make the report. This provision does not apply to the city manager, as the city manager's responsibilities in this regard are controlled by ordinance.

- (b) Any city official who has knowledge that a violation of the ethics code has been committed and intentionally fails to report such violation within the above stated deadline may be subject to an ethics complaint and investigation and potential penalty.

§ 1.02.057 Enforcement Structure

- (a) Authority. The city council has the authority and duty to investigate written complaints of alleged violations of the code of ethics by a member of the city council. The city council further has such authority regarding a member of a city-appointed board, commission, or committee. The city council may adopt reasonable rules and regulations for handling complaints against members of the city council and all other city officials which are not inconsistent with the city's ordinances or this chapter.
- (b) Ethics compliance officer.
 - (1) Designation. The city attorney or their attorney designee will serve as the ethics compliance officer for the city. The ethics compliance officer will function as legal counsel to the city council and any ethics committees created by the city council on matters related to enforcement of this chapter. As legal counsel, the ethics compliance officer will not represent any person or party in any proceeding before the city council or any ethics commission in relation to a complaint or investigation.
 - (2) Authority and Duty. The ethics compliance officer will also have the duty to review alleged ethics complaints to ensure the written complaint meets the required form and substance as stated in this chapter prior to submission to the city council or any ethics commission. In reviewing alleged ethics complaints, the ethics compliance officer will not determine the truth of the factual matters alleged but will determine whether the facts alleged could constitute a violation under the code of ethics and conduct, if proven true. Should the ethics compliance officer determine that the facts alleged would not constitute a violation of the code, even if true, the complaint will be dismissed by the ethics compliance officer.
 - (3) Notice of Defects in Form. If the ethics compliance officer determines an alleged complaint is defective in form, the complainant must be advised of the defect and given a reasonable opportunity to correct any defects in the form of the complaint, but no longer than ten (10) business days. Should the complainant refuse to correct or fail to correct any defects in form, the ethics compliance officer will dismiss the complaint as non-compliant. Should the ethics compliance officer determine the complaint falls outside the council's or ethics commission's authority but within the purview of the city manager, the ethics compliance officer will forward the complaint to the city manager's office and dismiss the complaint filed with the city council or ethics commission.

- (4) Appointment of independent outside attorney. Should a conflict arise with the city attorney, or if the city attorney determines they cannot perform the duties required of the ethics compliance officer regarding a specific complaint, the city attorney may appoint, with the city manager's approval, an independent outside attorney, to serve as the ethics compliance officer for a particular complaint, investigation, or scenario. Such independent outside attorney will have the same duties and authority of the ethics compliance officer and will be entitled to reasonable compensation as determined by the city manager for the duties performed. Should the city manager not be able or willing to appoint an independent outside attorney, then such appointment will be made by the mayor.

(c) Written Ethics Complaint.

- (1) Form. A complaint filed under this chapter will be submitted on the form adopted by the city manager's office which can be obtained at the office of the city secretary.
- (2) Completed Form Required. A person reporting a suspected ethics violation must fill out the form completely and submit the form to the city manager's office.
- (3) Minimum Requirements of Form. A complaint must contain the following minimum requirements:
- (A) The name, mailing address, and telephone number of the person submitting the complaint;
 - (B) The name of the person(s) whom is/are alleged to have committed a violation of the code of ethics and their position or title held or formerly held;
 - (C) Identify the specific code of ethics provision alleged to have been violated;
 - (D) The date of the acts constituting the alleged ethics violation(s), including the facts supporting specific provision(s) of the ethics code that are alleged to have been violated; and
 - (E) The ethics complaint form is sworn to before a notary public or other person authorized by law to administer oaths under penalty of perjury.
 - (F) The city manager's office may adopt additional requirements for the complaint as it deems necessary but may not reduce the requirements established by this section of the Code.
- (4) Limitations Period. No ethics complaint will be considered if the actions of the city official occurred more than one (1) year prior to the date of the filing of the

complaint. The termination, resignation, or forfeiture of a member of the city council, or any member of a city-appointed board, council, commission, or committee, does not affect the authority of the city council to investigate and act upon any alleged violations occurring prior to the date of said termination, resignation, or forfeiture.

- (5) Intake of Complaint. If the city manager's office receives a completed ethics complaint form regarding the conduct of a city official, the city manager, or their designee, will forward the complaint to the ethics compliance officer for review. A complaint will not be forwarded to the city council or any board or commission or member of any board or commission until the complaint has been reviewed by the ethics compliance officer.
 - (6) The ethics compliance officer will review the complaint under the standards set forth in this chapter.
 - (7) If the ethics compliance officer determines a complaint is defective in form, the officer must give the complainant the opportunity to correct the complaint under the requirements of this chapter. The complainant will have a minimum of five (5) business days to submit any corrections.
 - (8) If the ethics compliance officer determines a complaint does not allege a violation of the ethics code by a city official, after the opportunity to correct, the ethics compliance officer will dismiss the complaint for non-compliance. A complaint dismissed for non-compliance will be forwarded to the city manager and mayor with the ethics compliance officer's written dismissal determination. The mayor or city manager will notify the city council of ethics complaints that are dismissed under this section.
 - (9) If the ethics compliance officer determines a complaint meets the minimum requirements for a complaint and does allege a violation of the ethics code if the factual allegations are proven to be true, the ethics compliance officer will forward the complaint along with the officer's written determination that the complaint meets the minimum requirements for a complaint to the city council.
- (d) Frivolous Complaints.
- (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 commission may order a complainant to show cause why the commission 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 commission will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also 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 board;
 - (C) The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - (D) If respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;
 - (E) Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - (F) Any evidence of the complainant's motives in filing the complaint.
 - (4) Notice of an order to show cause must be given to the complainant, with a copy to the respondent, and must include:
 - (A) An explanation of why the complaint against the 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 commission will hold a hearing at which the complaint may be heard; the complainant may be accompanied by counsel retained by the complainant.
 - (6) By a record vote of at least two-thirds $\frac{2}{3}$ of those present after the hearing under subsection 5 of this section, the commission may determine that a complainant filed a frivolous complaint against a respondent and may recommend sanctions against that complainant.
- (e) Sanctions for Filing Frivolous Complaints.
- (1) Before imposing a sanction for filing a frivolous complaint, the commission will consider the following factors:

- (A) The seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;
 - (B) The sanction necessary to deter future violations; and
 - (C) Any other matters that justice may require.
- (2) The Commission may impose the following sanctions:
- (A) A civil penalty of not more than five hundred dollars (\$500.00);
 - (B) Imposition of attorney’s fees incurred by the city or the respondent of the frivolous complaint, or both; or
 - (C) Any other sanction permitted by law.
- (3) The commission may notify the appropriate regulatory or supervisory agency for their appropriate action. This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.

§ 1.02.058 Notice and Investigation

- (a) If a complaint is filed against a city official, the ethics compliance officer must first determine whether a complaint meets the minimum requirements of this chapter before any investigation can occur.
- (b) If the ethics compliance officer issues a written determination that a complaint meets the minimum requirements of this chapter, the city manager may instruct the ethics compliance officer to conduct an initial investigation and to determine whether further investigation should be pursued. However, the ethics compliance officer or city manager may not dismiss the complaint without first obtaining approval of the city council or an agreement as outlined under “City Manager’s Proposed Agreement” below. If such an initial investigation is ordered, the city manager and ethics compliance officer must inform the mayor and city council of the complaint and that an initial investigation is underway.
- (c) No action may be taken sustaining a complaint against a city official until the city official has been given a copy of the complaint and given a reasonable opportunity to provide a response. The ethics compliance officer may set a time for the city official to respond but must provide the city official a minimum of ten (10) calendar days to respond.
- (d) City Council to Determine Investigative Path. After the time set by the ethics compliance officer for a response has passed, the city council will decide the specific investigation path to undertake against a city official from the following:
 - (1) Hold a public hearing before the city council to consider and decide the complaint.

- (2) Create an ad hoc ethics committee or commission to specifically address the complaint and make recommendations back to the city council for any determinations.
 - (3) Retain an outside investigator to investigate the complaint or any portion of the complaint who shall make recommendations back to the city council for any determinations. The city council may delegate such authority as needed to the outside investigator as deemed appropriate by the city council.
 - (4) Accept or reject a city manager's proposed agreement.
 - (5) Take any other actions authorized by law to address the complaint.
- (e) Public Hearings.
- (1) Any public hearing conducted by the city council or a committee or commission must post the agenda item as addressing an ethics complaint and must identify the city official or their office, but may not disclose the grounds for the complaint.
 - (2) The complainant and the city official against whom a complaint is brought are entitled to notice of any public hearing set to consider the complaint, its date, time, and location, separate and apart from receiving a posted agenda.
 - (3) At any public hearing, the complainant must appear and is responsible for presenting the complaint. The complainant bears the burden of establishing facts supporting the complaint. To present testimony, the complainant must be placed under oath.
 - (4) The city official subject to the complaint will be entitled to speak at the public hearing if placed under oath.
 - (5) While the public may provide comments to any action item on an agenda, the public will not provide testimony or evidence at a public hearing to consider a complaint unless such member of the public is placed under oath.
 - (6) The city council, committee, or commission considering the complaint may subpoena the complainant, the city official, or any other individual needed by the city council, committee, or commission to consider the complaint as well as command the presentation of documents and other evidence. The city council, committee, or commission considering the complaint may administer oaths and hold such meetings and hearings as deemed necessary to consider and determine the complaint.
 - (7) At any public hearing, the ethics compliance officer will provide legal advice to the city council, commission, or committee considering the complaint. The ethics compliance officer may also present any initial investigative information obtained.

However, the ethics compliance officer is not to prosecute the complaint in front of the city council, commission, or committee but must provide legal advice and guidance.

- (8) All evidence presented during the public hearing is to be presented to the city council, commission, or committee. Such public hearing is not to be used as a public information presentation, but is limited to the city council, commission, or committee investigating the complaint for consideration and determination. The city council, commission, or committee considering the complaint may adopt reasonable rules and procedures for conducting any business involving the complaint.
- (9) The city council, commission, or committee may consider part or all of the evidence or testimony in executive/closed session as permitted by law but is not required to hold such executive/closed session.

(f) Determination and Findings.

- (1) Delegation. The city council may delegate to a committee or commission the ability to make a determination on a complaint for all alleged violations. When such a delegation is made, the city official must be provided the opportunity to appeal to the city council from any such determination which imposes a penalty or any corrective action requirements. The city council may consider the appeal based on a review of committee or commission records or may hold its own investigatory hearing on the appeal.
- (2) Vote and Resolution. The city council, committee, or commission making a determination on a complaint will make such determination by majority vote, which will be memorialized in a subsequent resolution.
- (3) Council Action Final. Any determination made by the city council, whether originally or through the appeal process, regarding a complaint against a city official and any penalty or corrective action assessed is a final decision and is not appealable.

(g) City Manager's Proposed Agreement.

- (1) Prior to the city council deciding on a proper investigative path to pursue, the city manager may, but is not required to, inform the city official of the city manager's anticipated comments and recommendations based on any initial investigation performed by the ethics compliance officer.
- (2) The city manager may propose a City Manager's Proposed Agreement with the city official prior to the city council, commission, or committee resolving the complaint. The City Manager's Proposed Agreement must be in writing and contain a

performance improvement or corrective action requirement. The City Manager's Proposed Agreement is intended to be an agreed course of corrective action applied to the city official. If the complaint is against the city manager, the mayor may propose a similar agreement.

- (3) If the city official agrees or consents, in writing, to the City Manager's Proposed Agreement and proposed corrective action, the city official may elect to have imposed the City Manager's Proposed Agreement in lieu of a hearing before the city council or a committee or commission. If the city official makes such an election, the city manager will submit the agreement to the city council for approval. The city council will take no further action on the complaint after being informed of such agreement, other than to approve or reject the City Manager's Proposed Agreement. If the city council approves the City Manager's Proposed Agreement, then the terms of such agreement shall be implemented. If the city council does not approve the City Manager's Proposed Agreement, then the complaint will proceed as if the City Manager's Proposed Agreement had not been proposed. Nothing in this article prevents the city council from considering the agreement or actions surrounding the complaint in determining whether the city official may continue to serve the city.

§ 1.02.059 Penalties and Corrective Action

- (a) If a city official or complainant are found to have acted in violation of this chapter, the city council or a designated committee or commission may:
 - (1) Censure the city official or complainant with a formal public reprimand;
 - (2) Remove the city official or complainant from their office, if allowed by law;
 - (3) Impose a corrective action plan for the city official to prevent future violations or similar violations;
 - (4) Remove, reassign, alter, or otherwise modify the city official's duties and responsibilities as the council deems appropriate given the specific violation found;
 - (5) Require the city official to undergo specific training, education, or counseling;
 - (6) Impose an administrative fine not to exceed \$500.00 for each violation found;
 - (7) Sanction the city official or complainant, including but not limited to making the official or complainant responsible for any administrative costs associated with considering the complaint. Such administrative costs include but are not limited to attorney's fees and investigator fees incurred by the city related to the complaint;
 - (8) Impose any penalty allowed by law within the council's authority; or

- (9) Any combination of the above.
- (b) Failure to Comply.
- (1) Any failure of any person to comply with a penalty, sanction, or corrective action imposed by the city council, commission, or committee making such determination will be guilty of contempt of the body. The body imposing such a penalty, sanction, or corrective action must formally declare the person in contempt after providing notice and a reasonable opportunity to explain the non-compliance.
- (2) A finding of contempt will be a finding of official misconduct. If the body determines the contempt was intentional, such finding constitutes an act of moral turpitude. A finding of contempt may also include an administrative penalty not to exceed \$500.00 for each finding of contempt.
- (3) No person may serve on a city board, commission, committee, council or otherwise volunteer or be employed with the city if the person:
- (A) Has been found in contempt under this chapter for five years following the finding, or
- (B) Owes the city a debt imposed under this chapter, or
- (C) Both.
- (4) The city may enforce a penalty, sanction, or corrective action imposed by the city council, commission, or committee under this chapter by any means authorized by law.

III. CUMULATIVE CLAUSE

That this Ordinance shall be cumulative of all provisions of the City of Smithville Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of such existing Ordinance, in which event the conflicting provisions of such existing Ordinance are hereby repealed, and this Ordinance controls.

IV. SEVERABILITY

That it is hereby declared to be the intent of the City Council for the City of Smithville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without

incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

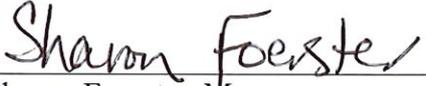
**V.
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by state and local law.

**VI.
READINGS**

DULY PASSED AND APPROVED, on the 10th day of March, 2025, at a regular meeting of the City Council of the City of Smithville, Texas, which was held in compliance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, at which meeting a quorum was present and voting.

CITY OF SMITHVILLE, TEXAS



Sharon Foerster, Mayor

ATTEST:



Jennifer Lynch, City Secretary