

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, CREATING A CODE OF CONDUCT AND REPEALING ORDINANCE NO. 09-10-62; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

Whereas, Frisco desires for all of its citizens to have confidence in the integrity, independence, and impartiality of those who act on their behalf in government; and

Whereas, the City Council ("City Council") of the City of Frisco ("Frisco") previously adopted Ordinance No. 00-01-11 to establish a Code of Ethics to provide citizens with confidence in those who act on their behalf in government; and

Whereas, the City Council amended Ordinance No. 00-01-11 in its entirety when it adopted Ordinance No. 09-04-25; and

Whereas, the City Council later investigated and determined that Ordinance No. 09-04-25 stood alone as the Frisco Code of Ethics Ordinance and Ordinance No. 00-01-11 was repealed in its entirety; and

Whereas, the City Council amended its Code of Ethics Ordinance in 2009 when it enacted Ordinance No. 09-10-62 which repealed Ordinance No. 00-01-11; and

Whereas, the City Council desires to repeal Ordinance Nos. 09-04-25 and 09-10-62 and replace them with this Code of Conduct.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Ordinance Nos. 09-04-25 and 09-10-62 are repealed. Frisco Ordinance Nos. 09-04-25 and 09-10-62 are repealed in their entirety and replaced by this Ordinance. The effective date of the repeal of Ordinance Nos. 09-04-25 and 09-10-62 is effective upon the Effective Date of this Ordinance by the City Council. Such repeal shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of Ordinance Nos. 09-04-25 and 09-10-62, occurring before the Effective Date of this Ordinance.

PART A: DECLARATION OF POLICY

SECTION 1: STATEMENT OF PURPOSE

It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. The City Council adopts this Code of Conduct in order to promote confidence in the government of

Frisco, and thereby enhance the City's ability to function effectively. The Code of Conduct establishes standards of conduct, disclosure requirements, and enforcement mechanisms relating to City Officials. Conduct not regulated herein is not subject to this Code of Conduct.

SECTION 2: DEFINITIONS

As used in this Code of Conduct, the following words and phrases have the meaning ascribed to them in this Section, unless the context requires otherwise or more specific definitions set forth in this Code of Conduct apply:

Affiliated or Affiliates. Business entities are "Affiliated" or are "Affiliates" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent Business Entity.

Affinity. Relationship by "Affinity" is defined in Sections 573.024 and 573.025 of the Texas Government Code or as amended

Before the City. Representation or appearance "Before the City" means Before the City Council or a Board, commission, or other City entity.

Board. A Board, commission, or committee:

- (1) Which is established by City Ordinance, City Charter, inter-local contract between the City and another Party, or state law; or
- (2) Any part of whose membership is appointed by the Mayor and/or City Council, but does not include a Board, commission, or committee that is the governing body of a separate political subdivision of the state.
- (3) The Frisco Community Development Corporation and the Frisco Economic Development Corporation are considered Boards for the purposes of this Code of Conduct.

Board Member. "Board Member" is a member of a Board, as defined herein.

Business Entity. "Business Entity" means a sole proprietorship, partnership, limited partnership, firm, corporation, limited liability company, holding company, joint stock company, receivership, trust, unincorporated association, or any other business entity recognized by law.

City Council or City Council of Frisco. "City Council" or "City Council of Frisco" means the elected governing body of the City of Frisco, Texas.

Code of Conduct. "Code of Conduct," "Conduct Code," "this Code," or "the Code" means Parts A through G of this Ordinance. Only a City Official may be held responsible for violations of the Code of Conduct.

Confidential Government Information. "Confidential Government Information" is all information held by the City that is not available to the public under the Texas Public Information Act, (Chapter 552, Local Government Code, or as amended, "the Act"); any

information from a meeting closed to the public pursuant to the Texas Open Meetings Act, (Chapter 551, Local Government Code, or as amended) regardless of whether disclosure violates the Act and/or the Texas Open Meetings Act; and any information deemed confidential by law.

City. "City" or "Frisco" means the City of Frisco, Texas.

Consanguinity. Relationship by "Consanguinity" is defined in Sections 573.022 and 573.023 of the Texas Government Code, or as amended.

Discretionary Contract. "Discretionary Contract" means any contract other than those which by law must be awarded on a qualified bid basis.

Economic Interest. "Economic Interest" is a legal or equitable property interest in land, chattels, and intangibles, and contractual rights having a value of more than fifty thousand dollars (\$50,000.00). Service by a City Official as an Officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that City Official an "Economic Interest" in the property of the organization. "Economic Interest" does not include the contract and/or business relationship that the City Manager, City Secretary, City Attorney and/or his law firm, and/or the Municipal Court Judges and Magistrates and/or their respective law firms have with the City.

Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an Economic Interest in such securities or other assets, unless the person in question participates in the management of the fund.

Gift. A voluntary transfer of property (including the payment of money) or the conferral of a benefit having monetary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor as quid pro quo, or as defined by law.

Indirect Ownership. A person "indirectly owns" an equity interest in a Business Entity where the interest is held through a series of business entities, some of which own interests in other business entities.

Matter. "Matter" is defined as the events or circumstances of a particular situation.

Official. The term "Official" or "City Official" is defined as the following persons:

- (1) The Mayor and/or former Mayors;
- (2) Members and/or former members of the City Council; or
- (3) Members and/or former members of temporary or standing Boards, Commissions, Governing Bodies, and Boards of Directors when those Boards, Commissions, Governing Bodies, and Boards of Directors that are appointed in their entirety or partially by the Mayor and/or the City Council.

Official Action. "Official Action" is defined as:

- (1) Any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an Official's duties; or
- (2) Any failure to act, if the Official is under a duty to act and knows that inaction is likely to affect substantially an Economic Interest of the Official or any person or entity listed in Part B, Sections 1(a)(2) through 1(a)(8).

Official Information. "Official Information" is information gathered pursuant to the power or authority of the City.

Partner. "Partner" is defined as partners in general partnerships, limited partnerships, limited liability partnerships, joint ventures, and any other partnership allowed by law.

Personally and Substantially Participated. The requirement of having "personally and substantially participated" in a Matter is met only if the individual in fact exercised discretion relating to the Matter. The fact that the person had responsibility for a Matter does not by itself establish that the person "personally and substantially participated" in the Matter.

Representation. "Representation" is defined as all forms of communication and personal appearances in which a person, not acting in the performance of Official duties, formally or informally, serves as an advocate for private interests, regardless of whether the Representation is compensated. Lobbying, even on an informal basis, is a form of Representation. Representation does not include an appearance as a fact witness or uncompensated expert witness in litigation or other Official proceedings.

Solicitation. "Solicitation" of subsequent employment or business opportunities is defined as all forms of proposals and negotiations relating thereto.

SECTION 3: WORDING INTERPRETATION

The gender of the wording throughout this Ordinance shall always be interpreted to mean either sex. All singular words shall include the plural, and all plural words shall include the singular. All references to the laws of the State of Texas or the Home Rule Charter, Ordinances, or Resolutions of the City of Frisco Texas shall mean "as presently enacted or hereafter amended".

PART B: PRESENT CITY OFFICIALS

SECTION 1: IMPROPER ECONOMIC BENEFIT

- (a) General Rule. A City Official shall not take any Official Action that benefits the Economic Interests of:
 - (1) The Official;
 - (2) His parent, child, stepchild, spouse, or other family member within the second degree of Consanguinity or Affinity;
 - (3) His outside Client and/or Customer with any transaction outstanding;

- (A) Client - A Client is someone with whom the Official has a contractual relationship, or a commitment to provide goods and/or professional services from the Official to the Client over a period of time. The contract could be either short-term or long-term in nature. The person receiving the services or goods would be considered a Client of the Official only during the period covered in the contract.
 - (B) Customer - A Customer is someone who simply purchases a product/service from an Official's business. Customer relationships are transactional; they rarely require a contract to complete the sale and the actual business transaction is completed within minutes. For example, the sale of an automobile is an example where a contract is signed but the purchase is transactional in nature, and so the purchaser would be considered a Customer.
- (4) The outside employer of the Official;
 - (5) A Business Entity in which the Official knows, or should know, that he or his parent, child, stepchild, spouse, or other family member within the second degree of Consanguinity or Affinity holds an Economic Interest;
 - (6) A Business Entity which the Official knows, or should know, is an Affiliated business or Partner of a Business Entity in which he or his parent, child, stepchild, spouse, or other family member within the second degree of Consanguinity or Affinity holds an Economic Interest;
 - (7) A Business Entity or nonprofit entity for which the City Official serves as an Officer or director or in any other policy making position; or
 - (8) A person or Business Entity from whom the Official, directly or indirectly:
 - (A) Has received and not rejected an unsolicited offer of employment or business opportunities; or
 - (B) Has accepted, received, and not rejected an unsolicited offer of employment.
- (b) Recusal and Disclosure. A City Official whose conduct would otherwise violate Subsection (a) must recuse himself. From the time that the conflict is, or should have been recognized, he shall:
- (1) Disclose the conflict and immediately refrain from further participation in the Matter, including discussions with any persons likely to consider the Matter;
 - (2) Remove himself from the dais or area in which the other City Officials who are voting on the measure are seated; and
 - (3) Promptly file with the City Secretary the appropriate form for disclosing the nature and extent of the prohibited conduct.

SECTION 2: UNFAIR ADVANCEMENT OF PRIVATE INTERESTS

- (a) **General Rule.** A City Official may not use his Official position to grant or secure, or attempt to grant or secure, for any person (including himself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. This rule does not apply to actions taken by a City Official in the legislative process.
- (b) **Special Rules.** The following special rules apply in addition to the general rule:
- (1) **Acquisition of Interest in Impending Matters.** A City Official shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other Matter (the "interest"), if the Official knows, or has reason to know, that the interest will be directly or indirectly affected by impending Official Action by the City.
 - (2) **Reciprocal Favors.** A City Official may not enter into an agreement or understanding with any other person that Official Action by the Official will be rewarded or reciprocated by the other person, directly or indirectly.
 - (3) **Appointment of Relatives.** A City Official shall not nominate, appoint or vote to nominate or appoint any relative within the third degree of Consanguinity or Affinity to any position of the City.
 - (4) **In any matter relating to real property which comes before the City Council, Planning and Zoning Commission, or Board of Adjustment and in which any member of the City Council or aforementioned Boards and commissions has a financial interest in any property within two hundred feet (200') of the Matter before it, such member shall disclose the existence of the interest by filing a statement with the City Secretary. The member of the City Council, Planning and Zoning Commission, or Board of Adjustment may speak on the item and, thereafter, remove himself from the dais or area in which the other members of the City Council or Board who are voting on matters relating to real property are seated. In addition, any state law provision regarding a conflict of interest shall also be followed.**

It is the intention of this provision that the term "land matter" shall be interpreted broadly to include zoning, preliminary plats, final plats, site plans, permit requests, variances, and similar requests for the City's approval of matters relating to real property.
 - (5) **No City Council member 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.**
- (c) **Recusal and Disclosure.** A City Official whose conduct would otherwise violate this Code of Conduct shall adhere to the recusal and disclosure provisions stated in the Recusal and Disclosure provision in Part B, Section 1(b).

SECTION 3: GIFTS

- (a) **General Rule.** A City Official shall not solicit, accept, or agree to accept any Gift or benefit:
- (b) **Special Applications.** Subsection (a) does not include:
 - (1) A gift to a City Official relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and recipient;
 - (2) Payment by third parties for travel related expenses of a City Official previously authorized by the City Council;
 - (3) A public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion;
 - (4) A loan from a lending institution made in its regular course of business on the same terms generally available to the public;
 - (5) A scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants;
 - (6) Admission to an event in which the City Official is participating in connection with official duties;
 - (7) Lawful campaign contributions;
 - (8) Attending social functions, ground breakings, or civic events pertinent to the public relations and operations of the City, including the receipt of a gift commensurate with the occasion;
 - (9) A City Official giving or receiving gifts with his family and relatives;
 - (10) A City Official giving or receiving gifts at church functions;
 - (11) A City Official giving or receiving gifts at City parties;
 - (12) A City Official giving or receiving gifts at functions where only City Officials and their employees are invited or in attendance;
 - (13) Giving or receiving gifts or receiving a bonus from the City Official's place of employment;
 - (14) Admission or ticket(s) (including parking) to a City Official to an event held at any venue owned in whole or in part by the City;
 - (15) Reasonable expenses paid by non-profit organizations, the Frisco Community Development Corporation or Frisco Economic Development

Corporation for attendance of a City Official at a fund raising event or other meeting;

- (16) Reasonable expenses paid by other governments or governmental entities for attendance of a City Official at a convention, fact finding mission or trip or other meeting;
- (17) A City Official giving or receiving a gift whose value does not exceed \$50.00;
- (18) A City Official giving or receiving a gift in excess of \$50.00 from a friend, client or customer if it cannot be reasonably inferred that the gift was intended to influence the City Official. If the gift is in excess of \$50.00 and received within one year of the date the donor, either personally or on behalf of another person or entity, seeks official action from the City in which the City Official is in a position to take official action, the City Official shall acknowledge the receipt of the gift to the City; immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and remove himself from the dais or area in which the other City Officials who are voting on the measure are seated; and
- (19) A City Official giving or receiving a gift from a donor other than a friend, client or customer whose value is greater than \$50.00 and less than \$250.01 provided the City Official complies with the recusal and disclosure process described below:
 - (A) The gift shall be disclosed by the City Official who received it to the City Secretary within 30 days of receipt of the gift. The disclosure of the gift to the City Secretary shall be reported to the public as part of the City Secretary's report to the City Council at the next available City Council meeting. The information to be disclosed to the City Secretary is as follows:
 - i. The date the gift was received and who received it;
 - ii. A description of the gift;
 - iii. The fair market value of the gift at the time of its receipt; and
 - iv. The name, address, phone number and employer of the person or entity who provided the gift.
 - (B) From the date that the City Official knows or should have known that the donor who has made a gift the subject of this subsection was presenting a matter, either personally or on behalf of another person or entity, in which the City Official may take official action and such request is within one year from the date of the gift described above, the City Official shall:

- i. Immediately refrain from further participation in the matter, including discussion with any persons likely to consider the matter; and
- ii. Remove himself from the dais or area in which the other City Officials who are voting on the measure are seated.
- iii. Gifts to closely related persons. A city official shall take reasonable steps to persuade a parent, spouse, child, stepchild, or other relative within the second degree of consanguinity or affinity not to solicit, accept, or agree to accept any gift or benefit which would violate this Code if the official solicited, accepted, or agreed to accept it.

SECTION 4: STATUTORY VIOLATIONS

It is a violation of this Code for a City Official to violate Texas Local Government Code, §§ 171 and 176 and Texas Penal Code § 36.08.

SECTION 5: CONFIDENTIAL INFORMATION

- (a) It is a violation of this Code for a City Official to violate Texas Penal Code § 39.06 (Misuse of Official Information).
- (b) A City Official shall not disclose to the public any information that is deemed confidential and/or privileged under any federal, state, local law, or Council rules, unless authorized by law.

SECTION 6: REPRESENTATION OF PRIVATE INTERESTS

- (a) Representation by a Member of the Board. A City Official who is a member of a City Board shall not serve as a representative before that Board, body, or any person, group, or entity.
- (b) Representation Before the City. A City Official shall not represent any person, group, or entity, other than himself, or his spouse or minor children, before the City.
- (c) Representation in Litigation Adverse to the City. An Official shall not represent any person, group, or entity, other than himself, or his spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to interests of the City and the Matter is substantially related to the Official's duties to the City.

SECTION 7: PUBLIC PROPERTY AND RESOURCES

A City Official shall not use, request, or permit the use of City facilities, personnel, equipment, or supplies for private purposes (including political purposes), except:

- (a) Pursuant to duly adopted City policies, or

- (b) To the extent and according to the terms that those resources are lawfully available to the public.

SECTION 8: POLITICAL ACTIVITY

It is a violation of this Code for City Officials to fail to comply with requirements / restrictions on political activities imposed by state law, the City Charter, and City personnel rules. In addition, the following restrictions apply:

- (a) **Influencing Subordinates.** A City Official shall not, directly or indirectly, induce or attempt to induce any City employee:
 - (1) To participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue, except as allowed by law; or
 - (2) To refrain from engaging in any lawful political activity, except as prohibited by the City Charter.
- (b) **Paid Campaigning.** A City Official shall not accept anything of value, directly or indirectly, for political activity relating to a proposition pending on the ballot, if he participated in, or provided advice relating to, the exercise of discretionary authority by the City Council or a Board that contributed to the development of the ballot item.
- (c) **Official Vehicles.** A City Official shall not display or fail to remove campaign materials on any City vehicle under his control.

Limitations on the use of public property and resources for political purposes are imposed by Part B, Section 6.

A general statement merely encouraging another person to vote does not violate this rule.

SECTION 9: ACTIONS OF OTHERS

- (a) **Violations by Other City Officials.** A City Official shall not knowingly assist or induce, or attempt to assist or induce, another City Official to violate any provision in this Code of Conduct.
- (b) **Using Others to Engage in Forbidden Conduct.** A City Official shall not violate the provisions of this Code of Conduct through the acts of another.

SECTION 10: INTERACTION WITH CITY STAFF

- (a) City Council members' and Board Members' interaction with the City Manager or City staff must recognize the lack of authority in any individual City Council member, Board Member or group of the City Council members or Board Members, except when explicitly authorized by the City Council or Board.
- (b) City Council members and Board Members will not make public individual judgments of the performance of the City Manager, his staff, the City Attorney, the

City Secretary, or the Municipal Judge except as authorized by City policy, ordinance, or the City Charter.

- (c) City Council members and Board Members may not attempt to coerce or intimidate City Employees, interfere with City Employees' duties, or otherwise circumvent the authority of the City Manager.

SECTION 11: CITY COUNCIL AND BOARD INTERACTION WITH GENERAL PUBLIC

City Council members and Board Members who interact with the public, press or other entities must recognize the same limitation as expressed in Section 9 and the inability of any City Council member or Board Member or group of City Council members or Board Members to speak for the City Council or Board except when explicitly authorized by the Council, Board, or City Charter.

PART C: FORMER CITY OFFICIALS

SECTION 1: CONTINUING CONFIDENTIALITY

A former City Official shall not use or disclose Confidential Government Information acquired during service as a City Official. This rule does not prohibit:

- (a) Any disclosure or use that is authorized or required by law; or
- (b) The confidential reporting of illegal or unethical conduct to authorities designated by law.

SECTION 2: SUBSEQUENT REPRESENTATION

- (a) Representation by a Former Board Member. A person who was a member of a Board shall not represent before that Board any person, group, or entity for a period of one (1) year after the termination of his Official duties.
- (b) Representation Before the City. A former City Official shall not represent any person, group, or entity, other than himself, or his spouse or minor children, Before the City for a period of one (1) year after termination of his Official duties, unless hired by the City under the authority granted within the Charter.
- (c) Representation in Litigation Adverse to the City. A former City Official shall not, absent consent from the City, represent any person, group, or entity, other than himself, or his spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to the interests of the City and the Matter is one in which the former City Official "Personally and Substantially Participated" prior to termination of his Official duties.

SECTION 3: DISCRETIONARY CONTRACTS

- (a) Within one (1) year of the termination of Official Duties, a former City Official may not be an employee of the City nor shall the former City Official have a Financial Interest, direct or indirect, in any contract or sales made with the City that are not awarded based upon a competitive bid.

- (b) A former City Official may enter into a consulting contract with the City to provide personal services.
- (c) In this section, "Financial Interest" means a contract with the City or a sale to the City of land, materials, supplies or services made on a discretionary basis and that are not awarded based upon a competitive bid if any of the following individuals or entities is a party to the contract or sale:
 - (1) The former Official;
 - (2) His parent, child, stepchild, or spouse;
 - (3) A Business Entity in which the former Official directly or indirectly owns:
 - (A) Ten (10) percent or more of the voting stock or shares of the Business Entity; or
 - (B) Ten (10) percent or more of the fair market value of the Business Entity.
 - (4) A Business Entity of which any individual or entity listed in Part C, Section 3(c)(1) or 3(c)(3) is:
 - (A) A subcontractor on a City contract; or
 - (B) An Affiliated business or Partner.
- (d) Definitions. For purposes of Part C, Section 3(a) of this rule:

A "former City Official" is any person who, immediately prior to termination of Official duties, was:

 - (1) The Mayor or a member of the City Council; or
 - (3) A member of a Board which is more than advisory in function. The term "former City Official" does not include a former member of the Board of another governmental entity even if some or all of its members were appointed by the City Council.

PART D: MEMBERS OF THE PUBLIC AND OTHERS

Part D applies to current and former City Officials, persons doing business with the City, and lobbyists, as well as to members of the public and any other person (including business entities and nonprofit entities).

SECTION 1: FORMS OF RESPONSIBILITY

No person subject to this Code shall induce, attempt to induce, conspire with, aid or assist, or attempt to aid or assist another person to engage in conduct in violation of the obligations imposed by this Code of Conduct.

PART E: COMPLAINT REVIEW PROCESS

SECTION 1: PURPOSE / QUALIFICATIONS

The City Council shall review Complaints regarding alleged violation(s) of the Code ("Complaints"), review applicable waivers regarding the alleged violation(s), and determine if a Complaint should be dismissed under the criteria, as outlined herein.

A City Council member may not participate in the Complaint review process and/or hearing if the member is the subject of the Complaint, or the individual filing the Complaint ("Complainant") or the individual who is the subject of the Complaint ("Respondent") or the Complainant is related to the City Council member within a prohibited level of affinity or consanguinity.

SECTION 2: CITY ATTORNEY / REVIEWING ATTORNEY

The City Attorney is authorized to issue to any City Official, upon reasonable request, formal written opinions regarding the applicability of the provisions of the conduct rules and/or laws to an action the City Official is considering taking in the future. The City Council may consult with the City Attorney or a designee of the City Attorney regarding legal issues that may arise in connection with this section and may also consult with the City Attorney or a designee of the City Attorney to request assistance from the City Attorney in conducting hearings during any stage of the process. The City Attorney serves as legal counsel for the City Council and not any individual City Council member. The City Council shall approve a list of three (3) independent private attorneys recommended by the City Attorney who may individually serve as a "Reviewing Attorney" for Complaints filed under this section. The Reviewing Attorney shall be chosen by the City Manager by lot.

- (1) To be qualified, the Reviewing Attorney must be an attorney in good standing with the State Bar of Texas, have been licensed to practice in the State of Texas for at least ten (10) consecutive years, and have at least five (5) years of experience working with municipalities in Texas.
- (2) The Reviewing Attorney may not be:
 - (A) A City Council member or City of Frisco employee, or the spouse or domestic partner of a City Council member, Board Member, or City of Frisco employee;
 - (B) An elected public official; or
 - (C) A candidate for elected public office at the time of their service.

SECTION 3: COMPLAINTS

- (a) Filing. Any person who believes a City Official violated the conduct laws may file a sworn Complaint with the City Secretary. The "Complaint" shall:
 - (1) Identify the person or persons who allegedly committed the violation;

- (2) Provide a statement of the facts and evidence on which the Complaint is based;
- (3) To the extent possible, identify the rule or rules allegedly violated; and
- (4) Be sworn to in the form of an affidavit and be based on personal knowledge of the affiant and be subject to the laws of perjury. Anonymous Complaints and/or Complaints from fictitious persons will not be accepted.

The Complainant may also recommend other sources of evidence that the Reviewing Attorney should consider.

Within five (5) business days from receipt of the Complaint and before processing the Complaint, the City Secretary shall confirm the Complaint complies with the filing requirements. If the Complaint is incomplete and/or does not comply with the filing requirements, the City Secretary will not process the Complaint and will notify the Complainant, at which time the Complainant may initiate a new Complaint. However, the City Secretary determination is not a decision regarding the validity of the Complaint.

- (b) Maintenance of Complaint and Related Information. Documents relating to a Complaint will be maintained by the City Secretary in accordance with applicable records retention laws and/or other applicable laws.
- (c) Process. Within three business (3) days from the date of receipt of the Complaint and confirmation the Complaint meets the filing requirements, the City Secretary shall forward a copy of a Complaint under Part E, Section 3 to the City Attorney, the Reviewing Attorney, and to the Respondent. The Complainant and the Respondent shall also be provided with a copy of the conduct rules and shall be informed that:
 - (1) Days, as used herein, are defined as City business days.
 - (2) All timelines provided herein must be followed, subject only to extensions approved in writing by the City Manager based on the individual circumstances of the Complaint.
 - (3) A Complaint must be filed with the City Secretary within six (6) months of the date the Complainant knew, or with reasonable diligence should have known, of the events or series of events giving rise to the Complaint. The City Secretary shall not accept or process any Complaint that is filed more than six (6) months after the date of the violation alleged in the Complaint. Complaints not filed within this timeframe are barred and will be dismissed as untimely.
 - (4) The Reviewing Attorney and/or City Council shall allow the Respondent to designate a representative if he or she wishes to be represented by someone else and to present evidence, according to rules adopted by the City Council.

- (5) The Respondent and/or Respondent's representative may file a response ("Respondent's Response") to the Complaint to the City Attorney, Reviewing Attorney, and City Secretary within ten (10) business days from the date of the Respondent's receipt of the Complaint.
 - (6) The Complainant and the Respondent have a duty to cooperate with the City Attorney, Reviewing Attorney and City Council, pursuant to this Code.
- (d) Assistance. The City Secretary shall provide information to persons who inquire about the process for filing a Complaint.
- (e) Frivolous Complaint.
- (1) For purposes of this section, a "frivolous complaint" is a sworn Complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
 - (2) By a vote of at least two-thirds of those present, the City Council may order a Complainant to show cause why the Complaint filed by the Complainant is not frivolous.
 - (3) In deciding if a Complaint is frivolous, the City Council will be guided by Rule 13 of the Texas Rules Civil Procedure, 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;
 - (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 shall be given to the Complainant, with a copy to the Respondent, and shall include:

- (A) An explanation of why the Complaint against a Respondent appears to be frivolous; and
 - (B) The date, time, and place of the hearing to be held under this section.
- (5) Before making a determination that a sworn Complaint against a Respondent is frivolous, the City Council shall hold a hearing at which the Complainant may be heard and accompanied by his or her representative.
- (6) By a record vote of at least a simple majority of those present after the hearing under this section, the City Council may determine that a Complainant filed a frivolous Complaint and may recommend sanctions against that Complainant.
- (7) Before imposing a sanction for filing a frivolous Complaint, the City Council shall 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.
- (8) The City Council may impose the following sanctions:
- (A) A civil penalty of not more than \$500;
 - (B) Imposition of attorneys' fees incurred by Respondent;
 - (C) Any other sanction permitted by law; and/or
 - (D) The City Council may notify the appropriate regulatory or supervisory agency for their appropriate action. This may include a referral for criminal prosecution if the facts so warrant.

SECTION 4: PROCEDURE FOR COMPLAINTS AGAINST CITY OFFICIALS

- (a) Review by the Reviewing Attorney.
- (1) Within fifteen (15) business days after the Reviewing Attorney receives the Complaint from the City Secretary, the Reviewing Attorney shall make an initial assessment of the Complaint. The assessment may include consideration of the Respondent's Response, if any, and any other investigation the Reviewing Attorney deems appropriate. The Reviewing Attorney shall issue a written advisory opinion, dismissing or referring the Complaint to the City Council.
- (A) The Reviewing Attorney may dismiss the Complaint if:

- (i) The deadline for filing a Complaint has passed;
 - (ii) The accused is not subject to the Code;
 - (iii) The conduct alleged is not regulated under the Code;
 - (iv) The Complaint is not completed as defined herein or signed and sworn to by the person filing the Complaint in the form of an affidavit;
 - (v) The person who is the subject of the Complaint had obtained a waiver permitting the conduct; or
 - (vi) Determines the facts, if taken as true, do not constitute a violation of the Code.
- (B) Dismissal of a Complaint under this provision is final and non-appealable.
- (C) If the Reviewing Attorney dismisses the Complaint, the Reviewing Attorney shall forward a copy of the dismissal to the Complainant, Respondent, City Council, and the Board on which the Respondent is a member, if applicable.
- (2) If the Reviewing Attorney does not dismiss the Complaint, as provided herein, the Reviewing Attorney shall refer the Complaint and the advisory opinion to the City Council for review under this provision. The Reviewing Attorney's referral of the Complaint and advisory opinion to the City Council does not mean that any of the allegations of the Complaint are true or false or that any current City Official has or has not violated the Code.
- (3) If the Complaint is referred to the City Council for review, the Reviewing Attorney shall also copy his or her advisory opinion to the Complainant, the City Manager, and the City Attorney within seven (7) business days of receipt of the Complaint. For Complaints not dismissed by the Reviewing Attorney, and subsequently referred to the City Council, the notice to the Respondent will include notice of the Respondent's option to file a written response to the advisory opinion with the City Secretary within seven (7) business days of receipt of the opinion from the Reviewing Attorney. The City Secretary will forward the Respondent's written response to the City Council with the Complaint and the Reviewing Attorney's advisory opinion. In the event that five (5) or more members of the City Council, including the Mayor, are the subject of the same Complaint, this process shall be heard and processed in accordance with Part E. Section 4(b) of this Code, by the three (3) independent private attorneys approved by the City Council pursuant to Part E. Section 2 of this Code.
- (4) In an open session of a City Council meeting, a majority of those City Council members not implicated by the Complaint may:

- (A) Dismiss the Complaint based on any of the following grounds:
 - (i) The Complaint does not allege facts sufficient to constitute a violation of the conduct laws;
 - (ii) The failure of the Complainant to cooperate in the review and consideration of the Complaint;
 - (iii) The Complaint does not comply with the requirements of filing a Complaint; or
 - (iv) The City Attorney or Reviewing Attorney concludes that the conduct of the City Official referred to in the Complaint was made in good faith reliance on a written opinion by the City Attorney that concluded the conduct was not a violation of the conduct laws.
 - (B) Determine that the Complaint on its face does not state a violation of this Code of Conduct; or
 - (C) Determine that the Complaint alleges facts that, if true, are sufficient to constitute a violation of this Code of Conduct and refer it for investigation as described in Section 4(b) below.
- (b) City Council Review / Hearing.
- (1) The City Council may dismiss a Complaint if:
 - (A) The alleged violation is a minor or de minimis violation;
 - (B) The Complaint *is*, on its *face*, frivolous, groundless, or brought for purposes of harassment;
 - (C) The matter has become moot because the Respondent is no longer an elected official or Administrative Board or Advisory Board member; or
 - (D) The Respondent came into voluntary compliance.
 - (2) The City Council will conduct its review of a Complaint not dismissed pursuant to this section at meetings which are open to the public.
 - (3) The rules shall require the dismissal and the reason for dismissal to be submitted by the City Council in writing and available to the public within sixty (60) days of considering the Complaint. A dismissal under this provision by the City Council is final and non-appealable.
 - (4) If the City Council does not dismiss the Complaint, the City Council will consider the Complaint within sixty (60) business days of receiving the

Complaint.

- (5) The City Secretary shall notify in writing the City Council, the Complainant and the Respondent of the date, time and location of a hearing on the Complaint. Such written notice shall be sent to the Complainant and the Respondent by email, mail, and/or certified mail, return receipt requested. If the hearing is not held within sixty (60) business days after receipt of the Complaint, the City Secretary shall notify both the Complainant and the Respondent of the reasons for the delay.

- (6) All hearings shall be conducted in accordance with the Texas Open Meetings Act, Tex. Government Code Chapter 551. The City Council shall have the right to hold the hearing in open or closed session as permitted by applicable laws and regulations. Additionally, the City Council shall establish time limits and other rules of procedure for a hearing and relating to the participation of any person in the hearing. Subject to the rules of procedure established by the City Council for the hearing:
 - (A) Both the Complainant and the Respondent shall have the right to a full and complete hearing with the opportunity to call witnesses and present evidence on his/her behalf.

 - (B) All proceedings of the hearing shall be recorded by audio recording if a court reporter is not used, or reduced to writing by a court reporter if present for the hearing. If a court reporter is not used, the audio recording shall be filed with the City Secretary within such time as specified by the City Council. If a court reporter is used, the court reporter's transcript of the hearing shall be filed with the City Secretary within such time as is specified by the City Council.

 - (C) The procedures established by the City Council shall allow the Complainant and the Respondent sufficient time to examine and respond to any evidence not presented to them in advance of the hearing.

 - (D) The rules shall require the City Council to schedule the hearing at a time that is reasonably convenient to both the person who submitted the Complaint and the subject of the Complaint.

- (7) The City Council shall consider the Complaint, the Respondent's response (if any), and the advisory opinion of the Reviewing Attorney, and evidence submitted in the course of the hearing. 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. The City Council shall use a preponderance of the evidence standard to determine whether a violation occurred. Only members of the City Council present for the hearing may participate in its decision.

- (8) The City Council shall consider, when it makes findings and recommendations, the severity of offense; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and whether the incident was isolated or part of a pattern.
 - (9) The City Council shall dismiss a Complaint if the Complainant does not appear at the hearing and if, in the opinion of the City Council, it would be unfair to the Respondent to proceed without the Respondent having the opportunity to question and address the issues raised in the Complaint.
 - (10) The decision of the City Council is final and non-appealable.
- (c) Findings / Consequences.
- (1) In the event the City Council determines that a City Official or Former City Official has violated the Code of Conduct, the City Council may impose the remedies available under Part F: Enforcement Mechanisms.

PART F: ENFORCEMENT MECHANISMS

In addition to other remedies provided by law, the following remedies are available with respect to violations of this Code of Conduct:

SECTION 1: DISCIPLINARY ACTION

- (a) City Officials who engage in conduct that violates this Code may be notified, warned, reprimanded, or suspended. Disciplinary action under Part F may be imposed in addition to any other penalty or remedy contained in this Code of Conduct or any other law.
- (b) City Officials deemed to be in violation of the Code are subject to the following consequences:
 - (1) Censure - If the City Council finds that a violation of this Code occurred, the City Council may issue a censure of the City Official, to the extent permitted by law.
 - (2) Letter of Notification – The City Council may issue a letter of notification if the City Council finds that a violation of this Code was unintentional. A letter of notification must advise the City Official of any steps to be taken to avoid future violations.
 - (3) Letter of Admonition – The City Council may issue a letter of admonition if the City Council finds that a violation of this Code was minor, but where the circumstances call for a more substantial response than a letter of notification.
 - (4) Reprimand – To the extent permitted by law, City Council may issue a reprimand if the City Council finds that a violation of this Code was not

minor and was committed intentionally or through reckless disregard.

- (5) Removal from Leadership Position – In addition to, or in place of, the consequences outlined above, the City Council may remove a City Official from any leadership position held by that City Official as a member of the body in which the City Official serves.
- (6) Removal from Administrative Boards and Advisory Boards – In addition to, or in place of, the consequences outlined above, the City Council may remove an appointed City Official from Administrative Boards and Advisory Boards.

SECTION 2: CIVIL FINE

The City Council may impose a civil penalty against any City Official or former City Official violating this Ordinance of not more than Five Hundred Dollars (\$500.00). Each continuing day's violation under this Ordinance may constitute a separate offense. This Section shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 3: PROSECUTION FOR PERJURY

Any person who files a false sworn Complaint under Part E of this Code is subject to criminal prosecution for perjury under the laws of the State of Texas.

SECTION 4: VOIDING OR RATIFICATION OF CONTRACT

If a Conduct Review finds that there has been a violation of any provision in Sections 1 through 10 of Part B; Sections 1 through 3 of Part C; or Part D that is related to the awarding of a contract, the City Council must vote on whether to ratify or void the contract. Such action shall not affect the imposition of any penalty or remedy contained in this Code of Conduct or any other law.

PART G: ADMINISTRATIVE PROVISIONS

SECTION 1: OTHER OBLIGATIONS

This Code of Conduct is cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this code shall not excuse or relieve a City Official from any obligation imposed by state or federal law and/or City policy regarding conduct, financial reporting, lobbying activities, or any other issue addressed herein.

SECTION 2: EFFECTIVE DATE

This Code of Conduct shall take effect following its adoption and publication as required by law (the "Effective Date").

SECTION 3: REVIEW OF CONDUCT CODE

At least once every five (5) years, the Governance Committee of the City Council shall review the Code of Conduct, who shall report its findings and present its recommendations to the City Council.

SECTION 4: DISTRIBUTION AND TRAINING

- (a) Every person shall be provided reasonable opportunity to review this Code as a condition of their candidacy and/or application to be a City Official. At the time of application for a position of City Official, every applicant shall be furnished with a copy of this Code of Conduct. No application shall be considered complete without a signed acknowledgement of receipt and understanding of this Code by the applicant.
- (b) Individuals seated as City Officials on the Effective Date of this Ordinance shall be bound by it and shall sign a written acknowledgement of receipt and understanding of this Code within 30 days of the Effective Date. All City Officials elected, appointed or retained following the Effective Date of this Code shall sign a written acknowledgement of receipt and understanding of this Code before performing any of the duties or functions of the City Official's position.
- (c) The City Attorney or City Manager shall develop educational materials and conduct educational programs for the City Officials on the provisions of this Code of Conduct, Article 14 of the City Charter, and Sections 171 and 176 of the Texas Local Government Code. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these conduct laws.

SECTION 5: SEVERABILITY

If any provision of this Code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Code which can be given effect without the invalid or unconstitutional provision or application.

PASSED AND APPROVED by the City of Frisco, Texas, on this the 5th day of July, 2022.



BY: Jeff Cheney
Jeff Cheney, Mayor

ATTEST:

APPROVED AS TO FORM:

By: Kristi Morrow
Kristi Morrow
City Secretary

By: Richard Abernathy
Richard Abernathy
City Attorney
Abernathy, Roeder, Boyd & Hullett, P.C.

COMPLAINT AGAINST [NAME]

AFFIDAVIT OF [NAME] IN SUPPORT OF COMPLAINT

STATE OF TEXAS §
 §
COUNTY OF [COUNTY] §

On this day, personally appeared, [NAME], a person known to me, who, being duly sworn, stated as follows:

1. “My name is [NAME]. I am over 18 (eighteen) years of age, have never been convicted of a felony, and am fully competent to testify to the truth of the matter stated herein. Each and every statement contained herein is based upon my personal knowledge and is true and correct and is made subject to the laws of perjury, the penalties set forth in Ordinance No. 2022-07-26, and/or sanctions applicable to falsification of a government record.

2. [Identify the person or persons who allegedly committed the violation].

3. [Provide a statement of the facts¹ and any evidence on which the Complaint is based].

4. [To the extent possible, identify the rule or rules allegedly violated].
Further, Affiant, sayeth not.

[NAME]

SUBSCRIBED AND SWORN TO BEFORE ME on this [DAY] day of [MONTH] [YEAR].

Notary Public in and for the State of Texas

My Commission expires: _____

¹ For purposes of the Code of Conduct, the definition of “facts” is: a) thing that is known or proved to be true; b) information used as evidence; or c) the truth about events as opposed to interpretations.