

ORDINANCE NO. 1231-08-20

AN ORDINANCE AMENDING ARTICLE 2.07, CODE OF ETHICS, DIVISION 4, ENFORCEMENT MECHANISMS AND ESTABLISHING AN ETHICS REVIEW BOARD AND ITS AUTHORITY, AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, in May 2007, the citizens of Hondo approved the City's proposed Home Rule Charter and Article XIV of the Charter required the City Council to adopt an Ethics Ordinance, and

WHEREAS, in May 2008 the City Council adopted an Ethics Ordinance and now wishes to amend such Ordinance to establish an Ethics Review Board and its authority and jurisdiction;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HONDO:

SECTION 1. AMENDMENT. Article 2.07, "Code of Ethics", Division 4, "Enforcement Mechanisms" of the Municipal Code of Ordinances of the City of Hondo is amended so that Division 4, shall read as follows:

Division 4. Enforcement Mechanisms

Sec. 2.07.091 Scope

In addition to other remedies provided by law, the following remedies are available with respect to violations of this code of ethics.

Sec. 2.07.092 Ethics Review Board

- (a) **Establishment.** There is hereby established an Ethics Review Board, which shall have the powers and duties specified in Division 4 of this Ordinance.
- (b) **Composition.** The Ethics Review Board shall consist of six (6) members and the Mayor each member of the council shall appoint one member of the board, subject to the approval by a majority vote of the council.
- (c) **Terms of Office.** Board members shall be appointed to three-year terms to serve concurrently with the corresponding Mayor/Council Member's term. Upon the Mayor/Council Member vacating his/her seat, the corresponding appointment immediately expires. No member shall serve for more than two three-year terms.
- (d) **Qualifications.** Members of the Board shall have good moral character and shall be residents of the city. No member of the Board shall be:

- (1) a salaried city officer or employee;
- (2) an elected public official;
- (3) a candidate for elected city office;
- (4) a member of a governing body of a taxing entity.

(e) **Removal.** Members of the Ethics Board may be removed from office for cause by a majority of the City Council only after a public hearing at which the member was provided with the opportunity to be heard. Grounds for removal include: failure to satisfy, or to continue to satisfy, the qualifications set forth in this Code; substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; or violation of any provision in the code of ethics.

(f) **Vacancies.** The council member who appointed a vacating member of the Ethics Board shall appoint another to serve the remainder of the vacated term, subject to approval by a majority vote of the city council.

(g) **Recusal.** A member of the Ethics Board shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Board member also may not participate in official action on any complaint:

- (1) that the Ethics Review board member initiated; or
- (2) filed against the City Council member who appointed the Board member.

(h) **Chair and Vice-Chair.** The Chair shall be the Mayor's appointee to the Ethics Review Board. Each year, the Board shall meet and elect a vice-chair from among its members, who will serve one-year term and may be re-elected. The Board shall meet upon a complaint or grievance being filed and at the request of the council or the city manager. The chair of the Board may call a meeting of the Board. The chair shall preside at meetings of the Ethics Board, may not vote unless there is a tie and perform other administrative duties. The vice-chair shall assume the duties of the chair in the event of a vacancy in that position.

Sec. 2.07.093 Jurisdiction and Powers

(a) **Jurisdiction.** If a complaint is filed within two (2) years of the date of an alleged violation of the ethics laws, the Ethics Board shall have jurisdiction to investigate and make findings and recommendations concerning:

- (1) any alleged violation of this Code of Ethics by any person subject to those provisions, including, but not limited to current city officers and employees, former city officers and employees; or
- (2) any alleged violation by any person subject to the provisions of Chapter 171 of the Texas Local Government Code.
- (3) The Board shall not consider any alleged violation that occurred more than two (2) years prior to the date of the filing of the complaint.

(b) **Termination of City officer's or Employee's Duties.** The termination of a city officer's or employee's duties does not affect the jurisdiction of the Ethics Board with respect to alleged violations occurring prior to the termination of official duties.

(c) **Powers.** The Ethics Board has power:

- (1) to establish, amend, and rescind rules and procedures governing its own internal operations;
- (2) to meet as often as necessary to fulfill its responsibilities;
- (3) to render decisions on complaints or issue advisory opinions;
- (4) to request from the City Manager through the City Council the appointment or allocation of such staff as are necessary to carry out its duties;
- (5) to make notifications, extend deadlines, and conduct investigations both on complaint and as a result of an issue raised out of said complaint;
- (6) to prepare report, as needed, to recommend to the Mayor and City Council needed changes in ethical standards or procedures; and
- (7) to take such other action as is necessary to perform its duties of this ethics code.

Sec. 2.07.094 Complaints

(a) **Filing.** Any person (including a member of the Ethics Board), acting personally or on behalf of the Board who believes that there has been a violation of the ethics code may file a sworn complaint with the City Secretary. A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the Ethics Board, is subject to criminal prosecution for perjury.

(b) **Form.** A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

- (1) the name of the complaints;
- (2) the street or mailing address and the telephone number of the complainant;
- (3) the name of each person complained about;
- (4) the position or title of each person complained about;
- (5) the nature of the alleged violation, including, if possible, the specific rule or provision of law alleged to have been violated;
- (6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
- (7) all documents or other material relevant to the allegation and available to the complainant but that are in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.
- (8) the complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the

Ethics Code. If the complaint is based on information and belief, the complainant shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(c) Frivolous Complaint.

- (1) For purposes of this section, a “frivolous complaint” is a sworn complaint that is groundless and brought in bad faith or for the purpose of harassment.
- (2) By a vote of at least two-thirds of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant is a frivolous complaint.
- (3) In deciding whether a complaint is frivolous, the Board may consider:
 - (A) the timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - (B) the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the 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 shall be given to the complainant, with a copy to the respondent, and shall include:
 - (A) an explanation of why the complaint 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 is a frivolous complaint, the Board shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.
- (6) By a record vote of at least two-thirds of those present after the hearing under Subsection (5) of this section, the Board may determine that a complainant filed a frivolous complaint and may recommend sanctions against that complainant.

(d) **Sanctions.**

(1) Before recommending a sanction for filing a frivolous complaint, the Board shall consider the following factors:

- (A) the seriousness of the violation, including the nature, circumstance, consequences, extent, and gravity of the harm caused to persons or entities named in the frivolous complaint;
- (B) the sanction necessary to deter future violations; and
- (C) any other matters that justice may require.

(2) The Board may recommend the following sanctions:

- (A) a civil penalty of not more than five hundred dollars (\$500).
- (B) prosecution for perjury.
- (C) any other sanction permitted by law.

(e) **Confidentiality.** No city officer or employee shall reveal information relating to the filing or processing of a complaint except as required for the performance of official duties.

(1) All papers and evidence related to a pending complaint are confidential during the time any investigation is being conducted by the City Attorney or the Board. If the investigation is completed and a complaint is included as an agenda item to be considered in an open meeting of the Ethics Board, the papers and evidence become public documents when the related agenda item is opened for discussion by the Ethics Board.

(2) If an investigation is closed and no complaint is filed, all related papers and evidence become public information when the investigation is closed; provided the Board may reopen any investigation previously closed by the City Attorney.

(3) If the Ethics Board decides to investigate any allegation or complaint, the papers, evidence and documents compiled thereafter with respect to the investigation shall be and remain confidential until such time as the Ethics Board concludes the investigation.

(4) With the exception of an executive session held by the Ethics Board with respect to an item being investigated by the Ethics Board, all meetings of the Ethics Board shall be posted and held as open meetings in compliance with the Open Meetings Act.

(5) When any complaint is included as an agenda item to be considered in an open meeting of the Ethics Board, the complaint and all related papers and evidence become public documents when the related agenda item is opened for discussion by the Ethics Board.

(f) **Notification.** A copy of a complaint shall be promptly forwarded by the City Secretary to the City Attorney and to the respondent(s), even if the complaint fails to meet the filing requirements of Sec. 2.07.094 (Form). A complaint that is not sworn as required shall not

be forwarded by the City Secretary to the City Attorney, but shall be returned to the complainant. The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:

- (1) that, within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
- (2) that failure to file a response does not preclude the Ethics Board from adjudicating the complaint;
- (3) that a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within seven (7) days of receipt, respond by writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
- (4) that the respondent(s) may request a hearing; and
- (5) that city officers and employees have a duty to cooperate with the Ethics Board.

(g) **Assistance.** The City Secretary shall provide information to persons who inquire about the process for filing a complaint.

Sec. 2.07.095 City Attorney Duties under Ethics Code

(a) **City Attorney.** The City Attorney shall:

- (1) receive and promptly transmit to the Ethics board sworn complaints and responses filed with the City Secretary;
- (2) investigate, marshal, and present to the Ethics Board the evidence bearing upon a complaint;
- (3) act as legal counsel to the Ethics Board;
- (4) issue advisory opinions to city officers and employees about the requirements imposed by the ethics laws; and
- (5) work with the City Secretary in the training and education of city officers and employees with respect to their ethical responsibilities;
- (6) review complaints for legal sufficiency;
- (7) recommend acceptance or rejection of complaint within thirty (30) days of date made to the Ethics Board; and
- (8) request additional information from complainant as needed.

(b) **Conflict.** The City Attorney shall recommend to the City Council the appointment independent counsel if an ethics complaint is filed against the City Attorney. City Council may also appoint independent counsel regarding an Ethics Complaint filed against the Mayor/and or Council Member is the Council deems it appropriate.

Sec. 2.07.096 Ethics Board Process

a) **Board Review.** The Ethics Board shall have full power to investigate and dispose of a complaint received. The identity of the members of the Ethics Board shall be made public to the person charged in the complaint who, for good cause, may request the recusal of any

member of the Board, subject to the provisions of this Code.

- (b) **Notice of Charges.** The Ethics Board shall consider whether the facts of the case establish a violation of any provision in the ethics code, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. However, before the Ethics Board may find that a violation of a particular rule has occurred, the respondent must be on notice of which rule(s) is at issue and must have an opportunity to respond. Notice is conclusively established: if the complainant alleged that the rule was violated; if compliance with the rule is raised by the member of the Board or the City Attorney as a disputed issue at a hearing before the Ethics Board; or if the Board or the City Attorney provides the respondent with written notice of the alleged violation and a fourteen (14) day period within which to respond in writing to the charge.
- (c) **Scheduling of a Hearing.** Regardless of whether the complainant or the respondent requests a hearing, the Ethics Board has discretion to decide whether to hold a hearing.
- (d) **Ex Parte Communications.** It is a violation of this code:
 - (1) for the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in *ex parte* communication about the subject matter of a complaint with a member of the Ethics Board, or any known witness to the complaint; or
 - (2) for a member of the Ethics Board to:
 - (A) knowingly entertain an *ex parte* communication prohibited by Subsection (1) of this rule; or
 - (B) communicate directly or indirectly with any person, other than a member of the Ethics Board, its staff, or the City Attorney, about any issue of fact or law relating to the complaint.
- (e) **Duty to Cooperate.** All city officers and employees shall cooperate with the Ethics Board and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this subsection is a violation of this Code of Ethics.

SEC. 2.07.097 HEARINGS

At any hearing held by an Ethics Board during the investigation or disposition of a complaint, the following rules apply:

- (a) **General Rules.** A quorum of the Board must be present for the hearing. Any member of the Ethics Board who is not present may not participate in the disposition of the case. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the Ethics Board or the City Attorney. The Ethics Board may establish time limits and other rules relating to the participation of any person in the hearing. No person

may be held to have violated the ethics laws unless a majority of the Ethics Board so finds by a preponderance of the evidence.

- (b) **Evidence.** The Ethics Board shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs and may consider evidence not provided through the complaint, request for declaratory ruling, or request for advisory opinion. The Ethics Board shall further abide by the following:
 - (1) The Board shall hear evidence relevant to the allegations; and
 - (2) The Board shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (c) **Respondent.** The respondent in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the respondent in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the Chair of the Ethics Board. The time permitted for presentation will be at the discretion of the Board.
- (d) **The Complainant.** The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the Chair of the Ethics Board. Witnesses may not be presented by the complainant, except with the permission of the Ethics Board.

SEC. 2.07.098 DISPOSITION

- (a) **Written Opinion.** The Ethics Board shall issue a decision within ninety (90) days after the filing of a complaint. The Ethics Board shall state in a written opinion its finding of fact and conclusions of law. The Board may notify the parties that additional time is needed to finalize an opinion and may extend the issuance of a decision by an additional thirty (30) days. If the Ethics Board determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Ethics Board to comply within the above time limits may result in the charge being dismissed for want of prosecution. The written opinion shall either:
 - (1) dismiss the complaint; or
 - (2) upon finding that there has been a violation of the ethics laws:
 - (A) **A letter of notification** shall be the appropriate sanction when the violation is clearly unintentional, or when the violation was made in reliance on a written opinion of the city attorney and/or ethics compliance officer. A letter of notification shall advise the person to whom it is directed of any steps to be taken to avoid future violations.

- (B) **A letter of admonition** shall be the appropriate sanction in those cases in which the Board finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.
- (C) **A letter of reprimand** shall be the appropriate sanction when the Board finds that a violation has been committed intentionally or through disregard of this ordinance. A copy of a reprimand directed to an employee, city officer, Council member, or Board member shall be sent to the City Manager and City Council. A reprimand directed to an employee shall be included in the employee's personnel file. A letter of reprimand directed to an elected city officer shall be transmitted to the City Secretary and published in the official City newspaper.
- (D) **A letter of censure** shall be the appropriate sanction when the Board finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by an elected city officer. A letter of censure directed to an elected city officer shall be transmitted to the City Secretary and thereafter published in the official newspaper of the City.
- (E) A recommendation of removal from employment, or a recommendation of suspension from employment, as well as a recommendation of suspension, shall be the appropriate sanction when the Board finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by city employees. Any such recommendation shall be made to the City Manager, unless the employee is in a position filled by Council appointment.
- (F) A recommendation of criminal prosecution and/or civil remedies, in accordance with this Rule may be found;
- (G) A finding of a violation but no remedial action may be found. The Board must state why no remedial action is recommended; or
- (H) In appropriate cases the Board may recommend to the City Council or City Manager that action be taken under Subsections (c) and (f) below.

- (b) **Notification.** Copies of the opinion shall be forwarded to the complainant, the respondent, the City Attorney, and any member of the Ethics Board who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the City Secretary, who shall make it available as authorized by law.
- (c) **Recommendations.** A recommendation for criminal prosecution shall be forwarded to the District Attorney's Office or an appropriate law enforcement agency. A recommendation of civil remedies shall be forwarded through the City Attorney to the City Council for action.
- (d) **Similar Charges Barred.** If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the Ethics Board shall not entertain any other similar complaint based on substantially the same evidence.
- (e) **Reliance.** If a person reasonably and in good faith acts in reliance on a legal opinion of the City Attorney, or the Ethics Board, that fact may be considered by the Ethics Board in adjudicating a complaint filed against that person, but does not by itself bar the finding

of a violation.

(f) **Civil Remedies.** The following civil remedies may be recommended by the Ethics Board after a finding that the ethics laws have been violated:

- (1) review of the case by the City Manager, or his or her designate, for disciplinary action;
- (2) a suit by the city for damages or injunctive relief;
- (3) a fine in accordance with this section.

(g) **Criminal Prosecution.** The Ethics Board may recommend criminal prosecution to the District Attorney's Office or appropriate law enforcement agency. Prosecution of any person for a violation of this ethics code shall not be undertaken until a complaint is disposed of by the Ethics Board. However, the absence of a recommendation to prosecute from the Ethics Board shall not preclude prosecutorial discretion to prosecute a violation of this ethics code.

(h) **Council Action.** If the City Council receives a recommendation by the Ethics Review Board, the City Council shall dispose of a recommendation from the Ethics Board within ninety (90) days of receiving such recommendation. The recommendation(s) of the Ethics Board may be accepted, rejected, modified, or recommitted to said Board for further action or clarification. Failure to act within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

SEC. 2.07.099 DAMAGES AND INJUNCTIVE RELIEF

This code of ethics has been enacted not only to further the purposes of this Code, but to protect the City and any other person from any losses or increased costs incurred by the City or other person as a result of the violation of these provisions. It is the intent of the City that this legislative enactment can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this Code of Ethics or any other law.

SECTION 2. The remainder of Article 2.07, "Code of Ethics", Division 4, "Enforcement Mechanisms" of the Municipal Code of Ordinances of the City of Hondo shall remain unchanged by this Amendment.

SECTION 3. INCORPORATION OF RECITALS. The City Council finds the recitals in the preamble of this Ordinance are true and correct and incorporates them as findings of fact.

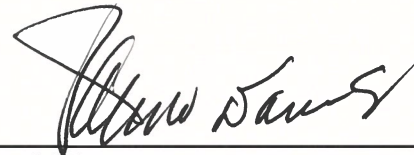
SECTION 4. REPEALER. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it

would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void; and that in lieu of each clause or provision of this Ordinance that is invalid, illegal, or unenforceable there be added by the Mayor as necessary with the approval of the City Attorney as to form, and as a part of the Ordinance a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective upon the adoption of this ordinance.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HONDO, TEXAS, THIS 24th DAY OF AUGUST 2020.



JAMES W. DANNER, SR., MAYOR

ATTEST:



**MIGUEL CANTU
CITY SECRETARY**



