

ORDINANCE NO. 2014-25

AN ORDINANCE REPEALING AND REPLACING THE CODE OF ORDINANCE OF THE CITY OF BOERNE, TEXAS, CHAPTER 2, ADMINISTRATION, ARTICLE V. ETHICS; DECLARING AN ETHICS POLICY; DEFINING CERTAIN TERMS; PROVIDING FOR STANDARDS OF CONDUCT; ESTABLISHING AN ETHICS REVIEW COMMISSION, POWERS AND DUTIES; ESTABLISHING THE ROLE OF AN ETHICS ADVISOR; PROVIDING FOR THE COMPLAINT PROCESS; PROVIDING FOR DISPOSITION OF ALLEGED VIOLATIONS AND SANCTIONS; PROVIDING FOR PROOF OF COMPLIANCE; AND PROVIDING AN EFFECTIVE DATE AND SAVINGS CLAUSE; AND RELATED MATTERS.

WHEREAS, the conduct of the public business should be accomplished by City Officials that have no personal financial interest in such business clearly separate from that of the general public; and

WHEREAS, it is important that City Officials be provided with a process and procedure to give notice and to then refrain from participation in any specific business of the City in which such official has a personal financial interest different from that of the general public; and

WHEREAS, some actions of a City Official in the conduct of City business may constitute, or have the appearance of constituting, a conflict of interest because these actions provide undue and inappropriate advantage to another person or organization closely related to the City Official by affinity; and

WHEREAS, a reasonable ethics ordinance with disclosure requirements will provide a basis for continuing public confidence in the conduct of the business and affairs of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BOERNE, TEXAS, THAT THE CODE OF ORDINANCES IS HEREBY AMENDED AS FOLLOWS:

Sec. 2.120. Declaration of policy.

A. It is the policy of the City that the proper operation of democratic government requires City Officials to be independent, impartial, and responsible; and that no City Official permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction, or professional activity to conflict with the proper discharge of duties in the public interest; that governmental decisions and policies be made in the proper channels of the governmental structure; that public office not be used for illegal or improper personal gain; and that City Officials shall at all times strive to avoid even the appearance of impropriety or partisanship. The City Council shall be maintained as a nonpartisan body.

B. This Chapter has four purposes:

1. To establish high ethical standards in official conduct by City Officials;
2. To establish guidelines for ethical standards of conduct for all City Officials;
3. To require disclosure by City Officials of private, financial or other interests in matters affecting the City; and
4. To provide discipline for those who violate this Chapter.

C. The City recognizes that City Officials are also members of society and, therefore, cannot and should not be without any personal and economic interest in the decisions and policies of government; that City Officials retain their rights as citizens in interests of a personal or economic nature and their rights to publicly express their views on matters of general public interest. It is not the intent of this Chapter to diminish the rights of City Officials as citizens of the community.

D. The provisions of this Chapter do not apply to political contributions, loans, expenditures, reports, or regulation of political campaigns or to the conduct of candidates in campaigns.

E. This Chapter defines two types of conflicts of interest and treats them differently. A "Substantial Interest" is defined in Section 171.002 of the Texas Local Government Code, and the provisions applicable to local Public Officials who have a "Substantial Interest" are set forth in Chapter 171 of the Texas Local Government Code. This Chapter is intended to go beyond the requirements of Chapter 171 of the Texas Local Government Code by addressing "Economic Interests." An Economic Interest is more comprehensive than a "Substantial Interest" and covers various kinds of Economic Benefits that might accrue to a City Official that are not included in the Texas statute.

Sec. 2.121. Definitions.

For the purposes of this Chapter the following definitions apply.

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

"City Official" means the Mayor, every member of the City Council, and all members of the Board of Adjustment, the Planning and Zoning, the Historic Landmark Commission, the Convention and Visitors Bureau Advisory Board, and the Ethics Review Commission.

"Client" means a business relationship of a highly personalized nature, but not ordinary business-customer relationships.

"Complainant" means a person filing a sworn complaint alleging a violation of this Chapter against a City Official.

"Confidential Information" means any information that a City Official would be privy to because of the official's position but otherwise is not available to the public under the provisions of the Texas Public Information Act (Tex. Gov. Code ch. 552).

"Day" means a calendar day. If a deadline falls on a Saturday, Sunday or legal holiday, the due date is the following business day.

"Economic Benefit" means any money, real or personal Property, contract rights, sale, lease, option, credit, loan, discount, service, or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

"Economic Interest" means a legal or equitable interest in real or personal Property or a fiduciary obligation to such Property or contractual right in such Property that is more than

minimal or insignificant and would be recognized by reasonable persons to have an effect in deciding a case or an issue. This occurs if the following criteria are met:

- (1) The action is likely to have an effect on that interest, either positive or negative, that is distinguishable from its effect on members of the public in general or a substantial segment of the public; and
- (2) The effect of the action on that interest is direct, and not secondary or indirect.

An Economic Interest does not exist when a City Official, or Family Member, serves as an officer or director with decision or policy making authority in an educational, religious, charitable, fraternal, or civic organization (the "Organization").

- (1) An Economic Interest does exist when a City Official, or Family Member, serves as an officer, board member or director with decision or policy making authority in the Organization when such Organization is entering into a contract with the City of Boerne.

An Economic Interest does not exist when a City Official has an ownership interest in a mutual or common investment fund that holds securities or other assets unless the City Official participates in the management of the fund.

"Ethics Advisor" means the duly appointed City Attorney of the City of Boerne, or Special Counsel utilized by the Ethics Review Commission when appropriate and necessary.

"Ethics Review Commission" means the Commission of citizens of the City of Boerne created by this Ordinance, and its members.

"Family Member" means the City Official's spouse, children, parents or spouse's parents and any other Family Member within two degrees of affinity or consanguinity. See Exhibit "A."

"Gift" means a favor, hospitality, or Economic Benefit other than compensation but which does not include campaign contributions reported as required by state law, Gifts received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an inter vivos or testamentary trust.

"Income" means Economic Benefit received.

"Just Cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this ordinance.

"Preponderance of the Evidence" means the greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier of fact to decide in favor of one side or the other.

"Property" means real estate, personal items, equipment, goods, crops, livestock, or an equitable right to Income from real estate, personal items, equipment, goods, crops, or livestock.

"Respondent" means a City Official against whom a sworn complaint has been filed which alleges a violation of this Ordinance.

"Second Degree of Consanguinity or Affinity" is defined in Exhibit A, which is attached hereto and incorporated herein for all purposes.

"Source of Income" means any Business Entity, employment, investment, or activity which earned or produced Income, including interest, dividends, royalties, or rents, which has been paid to or for the credit of a City Official, candidate, or Family Member or which would be taxable to said City Official, candidate, or Family Member under the United States Internal Revenue Code, as amended, even though not actually paid or credited.

"Substantial Interest" means an interest in a Business Entity if a City Official and/or a Family Member:

- (a) Owns ten percent or more of voting stock or shares of the Business Entity;
- (b) Owns ten percent or more or \$15,000.00 or more of the fair market value of the Business Entity; or
- (c) If funds received from the Business Entity exceeds ten percent or more of the person's gross Income for the previous year.

A City Official and/or Family Member has a Substantial Interest in real Property if he, his parent, or child or, if married, his spouse or his spouse's parent, controls or has an interest in the Property and the interest has a market value of \$2,500.00 or more.

Sec. 2.122. Standards of Conduct.

A. General Provisions.

1. No City Official may disclose any Confidential Information gained through the City Official's position concerning Property, operations, policies, or affairs of the City, for gain or advantage in an Economic Interest of the City Official or Family Member.

2. No City Official may use the official's position or City-owned resources not generally available to the public such as staff time, facilities, equipment, or supplies for personal gain, political campaign of the Official or Family Member.

3. Except as specifically authorized by City Ordinance, no City Official may appear before the body of which the official is a member to represent the City Official or Family Member. The City Official may designate and be represented by a person of the official's choice in any such matter, other than a Family Member.

4. No City Official may act as surety for any person or Business Entity that has a contract with the City or as a surety on any bond required by the City for a City Official.

5. These General Provisions do not prohibit a City Official from representing the City Official's interest in the City Official's owner-occupied homestead before any City body, except the body of which the official is a member.

6. City Officials shall respect and adhere to the Council-Manager structure of the City of Boerne government as provided in State law and the City Charter.

7. City Officials shall not attend internal staff meetings or meetings between city staff and third parties unless invited by City staff or directed by the City Council.

8. City Officials shall refrain from abusive conduct, actions and language and shall not knowingly make a false statement of material fact relating to the character or motives of other members of the City Council, boards, commissions, committees, City staff or the public.

9. City Officials shall make all reasonable efforts to attend all properly noticed public meetings where their attendance is required by State law or the City Charter.

10. Non-elected City Officials addressing the City Council or any other City board or commission as members of the general public during the public comments section, public hearing section or any other time during which public comments are taken during any Open Meeting shall identify themselves by name and disclose their position with the City.

11. A person related to the Mayor or a member of the City Council within the first degree of consanguinity or affinity shall not be eligible for appointment to nor service upon any City Board, Committee or Commission.

B. Gifts.

1. No City Official may solicit or accept any contribution, Gift, or Economic Benefit that is offered or given with the intention of influencing the judgment or discretion of such official; or given in consideration of the favorable exercise of the official's judgment or discretion in the past.

C. Conflict of Interest.

1. City Officials shall familiarize themselves and adhere to the following conflicts of interest and disclosure statutes and principles:
 - a. Chapter 171, Texas Local Government Code – requires City Council 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 Council or Board and thereafter abstaining from participation in discussion and a vote.
 - b. Chapter 176, Texas Local Government Code – requires City Council to file a conflicts disclosure statement disclosing any business relationship with a person or business doing business with the City or being considered by the City for a business relationship.
 - c. Section 176.003(a)(2)(B), Texas Local Government Code – requires the disclosure of gifts of an aggregate value of more than \$250.00 in a twelve month period, other than gifts of food, lodging, transportation or entertainment and accepted as a gift.
 - d. Sections 553.001-553.003, Texas Government Code – requires the filing of an affidavit before the date the City will acquire a property in which the public City Official has an interest.
 - e. Section 36.02, Texas Penal Code – prohibiting bribes.
 - f. Section 36.08(d), Texas Penal Code – prohibiting illegal benefits.
 - g. Section 36.09, Texas Penal Code – prohibiting receipt of certain gifts.
 - h. Section 39.02, Texas Penal Code – concerning abuse of official capacity.
 - i. Section 39.06(a), Texas Penal Code – concerning misuse of official information.

2. Substantial Interest. No City Official may vote on or participate in any decision-making process on a matter concerning a Client, Property or Business Entity if the City Official or pertinent Family Member has a Substantial Interest in same.
3. Economic Interest.
 - a. No City Official shall vote on or participate in any decision-making process on a matter if the City Official has an Economic Interest in the outcome of the matter under consideration.
 - b. To avoid the appearance and risk of impropriety, a City Official shall not vote on or participate in any decision-making process that the City Official knows is likely to affect the Economic Interests of:
 - i. A Family Member; or
 - ii. A Business Entity (profit or non-profit) for which the City Official serves as an officer or director in any policy or decision making position.

D. Disclosure of Interest and Recusal.

1. A City Official who has a Substantial or Economic Interest in the outcome of the matter under consideration shall disclose that the official has such an Interest and shall recuse himself/herself from voting on or participating in any decision-making process.

3. The City Official shall promptly file an affidavit with the City Secretary disclosing the nature and extent of the conflict, and the affidavit shall be included in the official minutes of the body, in accordance with state law. A copy of the required affidavit is located at Exhibit "B" at the end of this Ordinance.

4. Upon recusal, a City Official who has disclosed having either an Economic Interest or a Substantial Interest in the outcome of a matter under consideration shall leave the dais, but may remain at the open meeting.

Sec. 2.123. Ethics Review Commission

A. Created; purpose.

There is created an Advisory Commission which shall assist and advise the City Council and the City Manager on matters pertaining to the City's Ethics Ordinance as amended. The Commission shall be known as the Ethics Review Commission (hereinafter referred to as the "Ethics Review Commission" or the "Commission") and shall have no rule-making or judicial authority, but shall be solely advisory in nature and not subject to the Texas Open Meetings Act. The City Council delegates its investigatory authority to the Ethics Review Commission in order to administer oaths and affirmations and to take evidence and issue subpoenas in fulfillment of the duties expressed in this Ordinance.

B. Composition; term.

1. The Ethics Review Commission shall consist of five members and two alternates who are citizens of the City of Boerne and who shall be appointed by the Mayor, subject to review and approval by the City Council and shall serve without compensation.

2. The terms of the persons appointed as members and alternates of the Ethics Review Commission shall be as follows:

- a. All members shall be appointed to serve three-year terms. Subsequent terms of the members shall be for three year terms.
- b. The two alternates shall be appointed to serve three year terms.
- c. An alternate shall be appointed by the Mayor to fill any vacancy and shall serve for the unexpired term of the position to which the appointment is made.
- d. Appointments to the vacancy of any alternate position shall be for the unexpired term of the alternate position to which the appointment is made.
- e. Members shall serve until their successors have been appointed and qualified.
- f. No person shall serve for more than six years or be appointed for more than two terms.

C. Officers of the Commission

The Ethics Review Commission shall elect a Chair, Vice-Chair and Secretary at its first meeting each year. The City Secretary shall serve as staff liaison and shall be responsible for taking the minutes of the meetings.

D. Legal Consultation

The Ethics Advisor shall furnish the Ethics Review Commission legal assistance necessary in carrying out its function.

E. Rules of Procedure

1. The Commission shall establish its own parliamentary procedure, provided that such is not in conflict with the specific provisions of State law, City Charter or City Ordinance.

2. Three members of the Commission shall constitute a quorum. The Chairperson shall be entitled to vote upon any question and shall have no veto power.

3. Written notice of the date, hour, place and subject of each meeting of the Commission shall be properly posted at least seventy-two hours in advance.

4. Any meeting of the Commission shall be open to the public.

5. The Chairperson of the Commission may administer oaths and compel the attendance of witnesses.

6. The Commission shall keep minutes of its proceedings, which shall be filed in the office of the City Secretary. All records of the Commission shall be maintained in accordance with the provisions of the Texas Public Information Act (Tex. Gov. Code Ch. 552).

F. Powers and Duties

The Ethics Review Commission shall have only those powers and duties provided in this ordinance as now or hereafter amended.

Sec. 2.124. Role of the City Ethics Advisor.

A. The City Attorney serves as Ethics Advisor to the City Council as well as to the Ethics Review Commission. When complaints are filed relating to the Mayor or City Council members, Special Counsel may be utilized to advise the City Council and take part in its proceedings.

B. The Ethics Advisor is available to respond confidentially to inquiries relating to the Ethics Ordinance (this Chapter) and may render advisory opinions on potential conflicts of interest or violation of this Ordinance at the request of a City Official. The advisory opinion in any subsequent charges concerning the matter may be used as a defense to an alleged violation of this Ordinance unless material facts were omitted or misstated by the person requesting the opinion.

C. The Ethics Advisor shall have the responsibility to render legal advice to the Ethics Review Commission regarding the investigation and determination of any advisory finding by the Ethics Review Commission concerning an alleged violation of this Ordinance. The Ethics Advisor shall not represent or render legal advice to the Complainant or Respondent throughout the process.

D. The Ethics Advisor shall have the responsibility to render legal advice to the City Council regarding the investigation and determination of any advisory finding by the Ethics Review Commission concerning an alleged violation of this Ordinance.

Sec. 2.125. Complaint process.

A. Filing.

1. Any person who believes that there has been a violation of this Chapter may file a sworn complaint. A complaint alleging a violation of this Chapter must meet the requirements of Section 2.125.A.2 and must be filed with the City Secretary. A complaint alleging a violation of this Chapter by the City Attorney must also be filed with the persons named in Section 2.124.E. Complaints shall be filed in the manner described herein within forty-five (45) days of the date of the alleged acts forming the basis of the complaint. Complaints filed more than forty-five (45) days after the date of the alleged acts forming the basis of the complaint shall be dismissed as untimely.

2. Required Contents of a Complaint. An ethics complaint must be in writing, under oath and must set forth in simple, concise, and direct statements the following:

- a. The name of the Complainant;
- b. The street or mailing address and the telephone number of the Complainant;

- c. The name of the person who allegedly committed the violation;
- d. The position or title of the person who allegedly committed the violation;
- e. The nature of the alleged violation, including, if possible, the specific rule or provision of this Chapter alleged to have been violated;
- f. A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred, including the following:
 - i. Documents or other material available to the Complainant relevant to the allegation;
 - ii. A list of all documents or other material relevant to the allegation and available to the Complainant, but that are not in the possession of the Complainant, including the location of the documents, if known; and
 - iii. 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.
- g. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief.

3. The complaint must be accompanied by an affidavit stating that the information contained in the complaint is both true and correct or that the Complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Chapter.

4. Upon request, the City Secretary shall provide information to persons about the requirements of a complaint and the process for filing a complaint.

5. The City Secretary shall determine if the complaint meets the requirements of Section 2.125.A within five (5) days of receipt from the Complainant. If the City Secretary determines that the complaint does not meet the requirements of this Section 2.125.A, the City Secretary shall return the complaint and notify the Complainant, in writing, of the deficiencies. Such written return will be forwarded to the Complainant by the City Secretary via electronic mail and/or facsimile (with confirmation of successful delivery), if available. If such means are unavailable, the City Secretary shall forward via by certified mail, return receipt requested or overnight delivery.

B. Notification.

1. If the City Secretary determines that the complaint meets the requirements of Section 2.125.A then, within five (5) days of the City Secretary's receipt of the complaint, the City Secretary shall forward the sworn complaint to the Mayor, City Manager and Ethics Advisor. If the complaint alleges a violation by the Mayor, the Mayor Pro Tem shall receive all notifications in place of the Mayor where this Ordinance requires the Mayor to receive such notification.

2. Upon receipt of the sworn complaint from the City Secretary, the Ethics Advisor has five (5) days to submit a written preliminary review detailing whether the sworn complaint states a valid claim under this Ethics Ordinance to the City Secretary. The written preliminary review of the complaint does not advise on the merits of the complaint only whether the complaint states a valid claim under the Ethics Ordinance.

- a. If the Ethics Advisor determines that the complaint does not state a valid claim under the Ethics Ordinance, the Ethics Advisor will forward the written preliminary review

dismissing the complaint to the City Secretary who will immediately, but in no event longer than (3) days, forward to the Mayor, the City Manager and the Complainant.

- i. If the written preliminary review dismisses the complaint, the Complainant has seven (7) days of receipt to appeal the decision, in writing, to the City Secretary.
 - ii. The City Secretary shall immediately, but in no event longer than three (3) days, forward such appeal to the Ethics Review Commission.
 - iii. The Ethics Review Commission will meet no later than fourteen (14) days of receipt of the appeal to consider the Complainant's appeal.
 - iv. If the Ethics Review Commission concurs with the written preliminary review, the complaint and the written preliminary review will be forwarded to City Council for final determination at the next regularly scheduled City Council meeting.
 - v. If the Ethics Review Commission determines that the complaint is sufficient to proceed, the Ethics Advisor will draft a new written preliminary review consistent with the Ethics Review Commission's findings and will proceed as required by Section 2.125(B)(2)(b).
- b. If the Ethics Advisor determines that the complaint does state a valid claim under the Ethics Ordinance, the Ethics Advisor will forward the written preliminary review to the City Secretary who will immediately, but in no event longer than (3) days, forward to the Mayor, City Manager, the Chair of the Ethics Review Commission, Complainant and the Respondent. Information shall be forwarded by the City Secretary to the Respondent by certified mail, return receipt requested, overnight delivery and/or facsimile (with confirmation of successful delivery).

3. Along with the written preliminary review, the Respondent shall be provided with a copy of the Ethics Ordinance (this Chapter) and the complaint and informed that:

- a. Within ten (10) days of receipt of the complaint, the person charged shall have the opportunity to file a sworn response, with such other information deemed to be relevant to the proceedings, with the City Secretary. An extension of time to file a sworn response may be granted, in writing, by the City Secretary.
- b. Failure to file a response does not preclude the Ethics Advisor from processing the complaint.
- c. A copy of any response to a complaint must be provided immediately, but in no event longer than three (3) days, by the City Secretary to the Complainant. Information shall be forwarded by the City Secretary to the Complainant by certified mail, return receipt requested, overnight delivery and/or facsimile (with confirmation of successful delivery).
- d. The Complainant may, within five(5) days of receipt, respond by sworn writing filed with the City Secretary.
- e. The City Secretary shall immediately, but in no event longer than (3) days, provide a copy of the sworn writing to the Respondent. Information shall be forwarded by the City Secretary to the Respondent by certified mail, return receipt requested, overnight delivery and/or facsimile (with confirmation of successful delivery).

4. The City Secretary shall forward a copy of all information received to all members of the Ethics Review Commission; including, the complaint, the Respondent's response, if any, and the Complainant's reply, if any. The City Secretary shall immediately, but in no event longer than (3) days, forward any additional information as it is received.

5. City Officials have a duty to cooperate with the Ethics Advisor pursuant to this Chapter.

6. The Respondent will only be found in violation of the Ethics Ordinance if the Respondent receives notice of the violation as set forth in Section 2.125.B.

Sec. 2.125.1. Review of a Complaint.

A. The Chair will convene, no sooner than twenty (20) days but no later than forty-five (45) days from receipt of the written preliminary review, the Ethics Review Commission to review the complaint and to determine whether the complaint constitutes a claim under the ordinance and is supported by Just Cause. The Ethics Review Commission, upon a majority vote, may grant an extension of time to meet if such circumstances exist.

B. If Just Cause is not found to exist by the Ethics Review Commission, the Ethics Advisor shall prepare a written decision recommending the complaint be dismissed within ten (10) days. Such written recommendation shall be forwarded by the Ethics Advisor to the City Council, City Secretary and City Manager for review at the next regularly scheduled City Council meeting. If, at that time, Just Cause is not found to exist by the City Council then the complaint shall be dismissed. The Ethics Advisor shall contact the Complainant and the Respondent, in writing, identifying the reason for dismissal within ten (10) days of City Council's determination.

C. After review of a no Just Cause written recommendation from the Ethics Review Commission, the City Council, by majority vote, determines the existence of Just Cause, the complaint shall be referred back to the Ethics Review Commission to conduct an investigation and a hearing as set forth below in Section 2.125.1(D).

D. If Just Cause is found, an affirmative vote of a majority of the Commission members (three (3) affirmative votes) is required for the Commission to proceed to investigation and hearing. The Commission shall proceed to investigation and hearing. The Commission will notify the Complainant, the Respondent, the City Secretary, City Manager, the Mayor and the members of the City Council, and the Ethics Advisor within seven (7) days of the Just Cause determination.

E. If a complaint concerns a member of the Ethics Review Commission or City Council, such member shall have no involvement in the processing and review of the complaint and must immediately recuse him or herself from the complaint process.

F. The Respondent will only be found in violation of the Ethics Ordinance if the Ethics Review Commission meets as set forth in Section 2.125.1.

Sec. 2.125.2. Investigation and Hearing of Complaints.

A. If a complaint proceeds to a hearing, the Commission shall call or convene a hearing no less than thirty (30) days after a Just Cause determination.

1. If the Respondent and Complainant agree, the Ethics Review Commission may proceed to hearing in less than thirty (30) days.

B. The City Secretary shall provide immediate notice of the hearing to the Complainant and the Respondent but not less than twenty (20) days prior to the date of the hearing. Such notice must be by certified mail return receipt requested, facsimile (with confirmation of successful delivery), or personal delivery. The notice must state the specific provision or provisions of the ordinance alleged in the complaint to have been violated, as determined by the preliminary review. The Complainant and the Respondent may ask the Commission to request certain persons and written evidence for the investigation or hearing not less than fourteen (14) days prior to the hearing.

C. During an official convened meeting, the Commission shall hold a hearing on the case and shall hear such testimony as is presented by the Complainant, any witnesses and the Respondent. All witnesses must be sworn, and members of the Commission or its Ethics Advisor shall conduct the questioning of the witnesses.

D. The Commission is not bound by the rules of evidence.

E. The Respondent shall have the right to attend the hearing, the right to make a statement, the right to present and cross-examine witnesses and the right to be represented by legal counsel.

F. The Complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel. The legal representative may advise the Complainant during the proceedings, but may not speak on behalf of the Complainant, except to represent the Complainant while the Complainant is testifying. The Complainant may not present or cross-examine witnesses except with permission of the Commission.

G. The hearing shall be commenced and completed on the same calendar day unless extraordinary circumstances prevent such completion.

H. The Respondent will only be found in violation of the Ethics Ordinance if the Investigation and Hearing of Complaints proceeds as set forth in Section 2.125.2.

I. Confidentiality and Ex Parte Communications.

1. No City Official may reveal information relating to the filing or processing of a complaint except as required for the performance of official duties.

2. All documents relating to a pending complaint are confidential, unless they are required to be disclosed under the Texas Public Information Act (Tex. Gov. Code Ch. 552).

3. After a complaint has been filed, and during the consideration of a complaint by the Ethics Review Commission, neither a member of the Ethics Review Commission or the City Council may communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the Ethics Review Commission.

4. After a complaint has been referred by the Ethics Review Commission to the City Council for review, neither a member of the Ethics Review Commission nor the City Council may communicate directly or indirectly with an party or person about any issue of fact or law regarding the complaint, except at a meeting of the City Council, until after a final determination has been made on the complaint.

5. Nothing herein shall be construed to prevent or prohibit any member of the Ethics Review Commission or City Council from consulting with the Ethics Advisor regarding procedural and legal issues.

6. Nothing herein shall be construed to prevent or prohibit any member of any Board, Commission or City Council, if the complaint concerns such member, from preparing a defense to such complaint.

Sec. 2.125.3. Conclusions of Complaint Process.

A. The Commission will determine whether a violation of the ordinance has occurred within seventy-two (72) hours of conclusion of the hearing. The Commission may deliberate in closed session to review the evidence that was presented in open session pursuant to Section 2.123.E.4. Any recommendations and/or findings by the Commission will be made by the Chairman in open session pursuant to Section 2.123.E.4. The Ethics Advisor will be available to the Commission during any private session to advise the Commission concerning any procedural questions.

B. The Commission shall make its determination based on the Preponderance of the Evidence. The affirmative vote of a majority of the Commission members (three (3) affirmative votes) is required for any action of determination by the Commission.

C. The Commission shall direct the Ethics Advisor to prepare a written decision and recommendation, subject to final approval by the Commission, and shall make all reasonable efforts to issue the final written decision and recommendation within ten (10) days after the conclusion of the hearing. The Commission shall state its findings in the written decision and recommendation. The written decision and recommendation must either: 1) dismiss the complaint, with the grounds for dismissal set forth in the decision; or 2) find that there has been a violation of this Ethics Ordinance and identify in the decision the particular provision or provisions violated and the conduct forming the basis of the violation. If the Commission determines that a violation of the Ethics Ordinance has occurred, the Commission may, in its written decision and recommendation, recommend one of the following sanctions:

1. A letter of notification is an appropriate sanction when the violation is clearly unintentional. The letter of notification shall advise the official of any steps to be taken to avoid future violations.

2. A letter of admonition is the appropriate sanction when the Commission finds the violation is minor.

3. A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed.

4. A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred or more than one serious violation or repeated serious violations of this ordinance have been committed.

D. The Commission shall deliver the written decision and recommendation within ten (10) days of the decision to City Secretary, City Manager, the Mayor, City Council and the Ethics Advisor.

E. The Respondent will only be found in violation of the Ethics Ordinance if the Conclusion of the Complaint process proceeds as set forth in Section 2.125.3.

Sec. 2.126. Sanction and Violations

A. After the City Council has received the written decision and recommendation from the Ethics Review Commission, the City Council shall review and take appropriate action with respect to the referral at the next available Regular Meeting or at a Special Called Meeting of the City Council, which, in no event, should be held any later than thirty (30) days from the date of receipt of the written decision and recommendation.

B. Upon receipt of the written decision and recommendation from the Ethics Review Commission, the City Council may take appropriate action. The City Council may request additional statements or testimony before taking action on the Commission's written decision and recommendation.

C. The City Council may accept the Ethics Review Commission's recommendation or it may impose one of the following sanctions:

1. A letter of notification is an appropriate sanction when the violation is clearly unintentional. The letter of notification shall advise the official of any steps to be taken to avoid future violations.

2. A letter of admonition is the appropriate sanction when the Commission finds the violation is minor.

3. A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed.

4. A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred or more than one serious violation or repeated serious violations of this ordinance have been committed.

D. The City Council may determine that no violation of this Ordinance has occurred. If the City Council makes such a determination, it may dismiss the complaint without imposing any sanctions.

E. Copies of all sanction letters issued by the City Council under Section 2.126 shall be filed of record with the City Secretary.

F. In addition, when the seriousness of the violation warrants, the City Council may suspend or remove from office any official serving in a Council-appointed position.

G. The City Council shall deliver, within ten (10) days, its final written determination to the Complainant and the Respondent.

H. The Respondent will only be found in violation of the Ethics Ordinance if the Investigation and Hearing of Complaints proceeds as set forth in Section 2.125.6.

Sec. 2.127. Distribution and Proof of Compliance.

A. The City Secretary shall make available to each new City Official designated in this ordinance a copy of the following: the text of this Ordinance; Chapter 171 of the Texas Local

Government Code pertaining to conflicts of interest; the Texas Open Meetings Act (Tex. Gov. Code Chapter 551; and the Texas Public Information Act (Tex Gov. Code Chapter 552) (collectively referred to as the "Ethics Statutes").

B. The City Attorney shall conduct one or more annual seminars devoted to educating City Officials and the Ethics Review Commission on the meaning and legal significance of the Ethics Statutes.

C. Each year each City Official shall file with the City Secretary a signed and dated affidavit in which the City Official acknowledges that he or she has read and understands this ordinance.

D. The affidavit required to be filed by Section 2.127 shall be filed with the City Secretary before the next regularly scheduled regular meeting of the City Council following the effective date of this Ordinance, or within ten (10) business days of the date new City Officials take office, as applicable.

PASSED and APPROVED on first reading this the 12th day of August, 2014.

PASSED, APPROVED and ADOPTED on second reading this the 26th day of August, 2014.

APPROVED:

s/s Michael D. Schultz
Mayor

ATTEST:

s/s Lori A. Carroll
City Secretary

APPROVED AS TO FORM:

s/s Kirsten B. Cohoon
City Attorney

Consanguinity and Affinity Chart – Exhibit “A”

Relationships within the Second Degree of Consanguinity or Affinity*

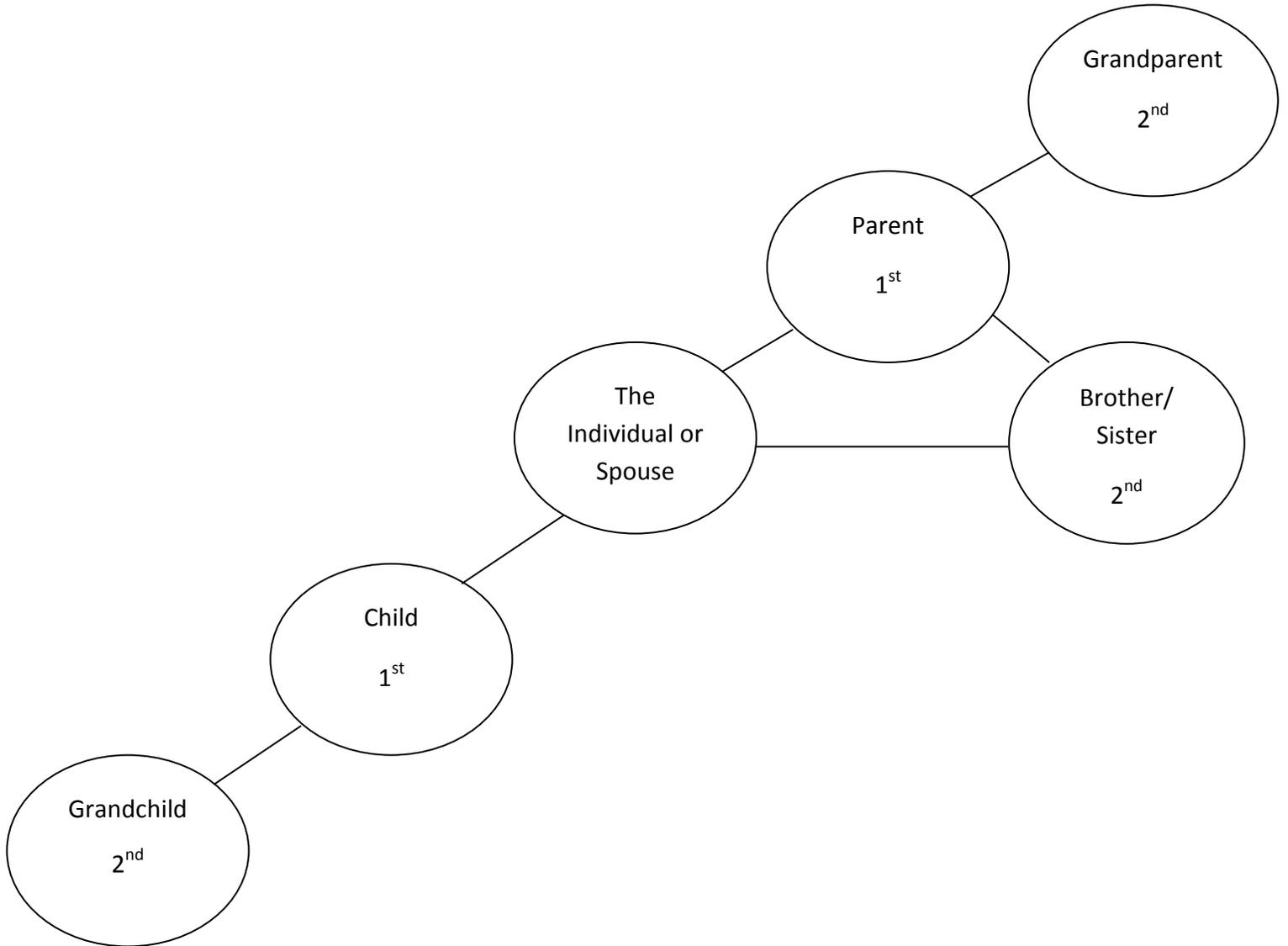


Exhibit "B"

AFFIDAVIT OF SUBSTANTIAL OR ECONOMIC INTEREST

THE STATE OF TEXAS

COUNTY OF KENDALL

I, [insert name], as a member of [insert the name of the Board or Commission or City Council] of the City of Boerne make this affidavit and hereby on oath state the following: I, and/or a person or persons related to me, have a substantial interest in a business entity that would be particularly affected by a vote or decision concerning [identify the matter generally] as those terms are defined in Section 171.002 of the Local Government Code.

Reference: [identify the matter specifically].

I, [insert name], have a substantial economic interest for the following reasons:

- ___ Ownership of 10% or more of the voting or shares of the business entity by myself or a pertinent family member.
- ___ Ownership of \$2,500 or more of the fair market value of the business entity by myself or a pertinent family member.
- ___ Funds received from the business entity exceed 10% of my income for the previous year or the income of a pertinent family member.
- ___ Real Property is involved that I own or pertinent family member owns with a fair market value of at least \$2,500.
- ___ I have an economic interest in the matter.
- ___ A pertinent family member has an economic interest in the matter.
- ___ I serve as an officer or director with policy or decision making position with this entity.
- ___ A pertinent family member serves as an officer or director with policy or decision making position with this entity.

Upon the filing of this affidavit with the City Secretary for the City of Boerne, I affirm that I will abstain from voting on any decision involving this business entity and from any further participation on this matter whatsoever.

Signed this ____ day of _____, 20__.

Signature of Official

Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of [his/her] knowledge or belief.

Sworn to and subscribed before me on this ____ day of _____, 20__.

Notary Public in and for the State of Texas

My Commission expires: _____.