



City of Fredericksburg

City Council Special Meeting/Work Session Agenda
Thursday, May 25, 2023 ~ 9:15 AM
Chase Bank - Conference Room
150 E. Main Street
Fredericksburg, Texas 78624

Jeryl Hoover, Mayor
Bobby Watson, Mayor Pro Tem
Emily Kirchner, Councilmember

Randy Briley, Councilmember
Tony Klein, Councilmember
Clinton Bailey, City Manager

The City of Fredericksburg City Council will meet in a special session on Thursday, May 25, 2023, at 9:15 AM. Link to City of Fredericksburg YouTube Channel (Fredericksburg, Texas USA - YouTube <https://www.youtube.com/c/FredericksburgTexasUSA>).

The City Council welcomes citizen participation and comments at all City Council Meetings on Agenda Items.

Comment Card for Written or Verbal Comments-submitted by 4:00 p.m. the day before the meeting.

- i. Complete the Comment Card online at www.fbgtx.org;
- ii. Make sure to check the appropriate box (verbal or written);
- iii. Only one (1) agenda item per Comment Card.

Sign up in person between 9:00 a.m. and 9:15 a.m. at the meeting location.

- i. Only one (1) agenda item per Comment Card;
- ii. Speakers will be limited to 3 minutes to speak. **Please Note:** The Mayor can reduce the number of minutes for any speaker during Public Comment on a single agenda item depending on the number of people who sign up for it.
- iii. Any citizen with handouts should provide them to the City Secretary before speaking. If you wish the City Council to receive your handouts for the meeting, please provide ten (10) copies; if not, the City Council will receive your handouts the following day.

NOTE: The City Council may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for discussion. An announcement will be made of the basis for the Executive Session discussion. The City Council may also publicly discuss any item listed on the agenda for Executive Session.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. DISCUSSION ITEMS

- A. City Manager's Overview of the Meeting and Agenda Items
- B. Review and provide possible amendments to the Council Rules of Procedure
- C. Review and discuss the City Charter and possible creation of a City Charter Review Committee
- D. Review and provide possible amendments to the City of Fredericksburg's Ethics Ordinance
- E. Review and provide City Council Budget/Community Priorities for the Fiscal Year 2024 Budget

4. ADJOURN

CERTIFICATION

This is to certify that I, Shelley Goodwin, posted this Agenda at 9:10 a.m. on May 22, 2023, on the bulletin board of the City of Fredericksburg City Hall, 126 W. Main St., Fredericksburg, Texas.

A handwritten signature in blue ink, appearing to read "Shelley Goodwin", is positioned above a horizontal line.

Shelley Goodwin, TRMC/CMC
City Secretary



May 25, 2023

Mayor and City Council

I wanted to take the opportunity to congratulate each of you on your election to the City of Fredericksburg City Council. Whether you are an incumbent or a newly elected member of the City Council, the City is excited you have been elected to serve the citizens, community, and employees of Fredericksburg. Serving on City Council will certainly be challenging but hopefully a rewarding experience as well.

Material regarding the Council Rules of Procedure, City Charter and Ethics Ordinance presented during this work session is intended to provide Council members with background information and guidance necessary to gain a fundamental understanding of the function, powers and essential procedures of City government and a better understanding of the roles and responsibilities of the City Council, City Manager and City Staff. Regarding the City Council budget and community priorities discussion, this item is intended to be an open discussion of priority projects and initiatives the Council would like to pursue for the remainder of the 2023 fiscal year and upcoming 2024 fiscal year. As we begin the annual budget process, it is important for the Council to discuss items you would like to discuss in more detail during the fiscal year 2024 budget development process. This can include both revenue items as well as expense items. It can also include new projects or improved services that you would like to fund in next year's budget. City department directors and other staff will attend the meeting to answer questions and provide input throughout the discussion.

Although this meeting is intended to be a relatively informal workshop/retreat, it is being noticed as a "Special Meeting" therefore the City Council may discuss and take action on items listed on the agenda. For example, if the Council wanted to change the order of business for Council meetings, changes to the City Council Rules of Procedure could be made by a vote of the Council during this special meeting.

We look forward to an informative and productive meeting and again, congratulations on your election to the City of Fredericksburg City Council.

Clinton Bailey, City Manager

The City of Fredericksburg

126 W. Main St. • Fredericksburg, Texas 78624-3708 • (830) 997-7521 • Fax (830) 997-1861



City of Fredericksburg

City Council Rules of Procedure

Section 1 – Rules

These Rules shall govern the procedures followed by the City of Fredericksburg City Council for the conduct of Council meetings and other Council activities pursuant to state law and the City Charter.

Section 2 – Open Public Meetings Act

The Council shall comply with the provisions of the Texas Open Meetings Act in the conduct of all meetings to which said Act is applicable.

Section 3 – Executive Sessions

The Council may discuss topics in executive session, which topics are specified in state law or relate to potential or pending litigation and are subject to attorney-client privilege. The City Attorney shall inform the Council whenever any proposed discussion in executive session is not legally allowed.

No member of the City Council, employee of the City or any other person present during executive session of the City Council shall disclose to any person the content or substance of any discussion which took place during said executive session, except during discussion of this issue in open meeting immediately following the executive session.

Section 4 – Work Sessions

Special meetings designated as work sessions shall be advertised and conducted in the same manner as regular meetings. Work sessions are for the purpose of in-depth review and discussion of specified issues. Council actions shall not be taken at designated work sessions.

Section 5 – Quorum

At all meetings of the Council a majority of the Council members shall constitute a quorum for the transaction of business.

Section 6 – Attendance

Attendance via telephone conference call or video conference call – To participate in a meeting, all members of the Council shall be present, except that a meeting held by telephone conference call or video conference may be held if:

1. an emergency or public necessity exists within the meaning of Section 551.045 of the Government Code, and
2. the convening at one location of a quorum of the government body is difficult or impossible, and
3. the other requirements of Section 551.125 are met

Additionally, a member may attend a meeting via videoconference if a quorum of the government body is physically present at one location of the meeting, the proper communication equipment is available, and the other requirements of Section 551.127 of the Government Code are met.

Section 7 – Chair of the Council

The Mayor shall be the Chair of the Council and shall preside at all Council meetings. A Mayor Pro-Tem shall be selected annually at the first regular meeting of a new Council. In the absence of Mayor, the Mayor Pro-Tem shall preside. If neither the Mayor nor the Mayor Pro-Tem is present at a meeting, the presiding officer for that meeting shall be selected by a majority of the vote of those Council Members present, providing there is a quorum.

The Chair of the Council may vote on all matters coming before the Council and may offer seconds to motions.

The Chair of the Council shall state all questions coming before the Council, provide opportunity for discussion from the Council Member, and announce the decisions of the Council on all subjects. Procedural decisions shall be made by the Chair of the Council, who may request advice on such matters from the City Attorney.

Section 8 – Agenda

The City Manager shall prepare the agenda of business for all Council meetings. Topics may be added to the agenda:

1. When deemed appropriate by the City Manager
2. At the direction of the Mayor
3. As directed by at least two City Council Members

Every agenda action item must be supported by a written staff report informing the Council and staff of the issue, background and/or analysis, and recommendation and/or conclusion, unless the item is self-explanatory or unless the City Manager has waived this requirement.

Agendas will be made available to the public at least 72 hours prior to Regular Council Meetings, Special Meetings and Work Sessions, in the following ways:

1. A copy is placed on the City website at www.fbgtx.org
2. Copies are placed on the front counter at City Hall in the Utility Cashier services area
3. A copy is posted on the main entrance bulletin board at City Hall

Section 9 – Order of Business

The Mayor may determine the order of business for a particular City Council meeting. The agenda should be arranged to best serve the needs and/or convenience of the Council and the public.

Public Comment: The Mayor will invite citizens to address the Council on an item on the Agenda. In offering input, one should address the City Council and not the audience. All persons wishing to be heard are asked to give their names and whether or not they are a City resident. To allow the Council to complete its legislative agenda, comments should be limited to no more than 3 minutes per person. At the discretion of the Mayor, or upon vote of the Council, this time period may be lengthened or shortened. Following any public comment, the Mayor or any member of the City Council may direct staff to research the issue or concern raised by the public and report back to the Council. The Council shall not deliberate or discuss issues raised in Public Comment. Written comments may be submitted into the record of a Council meeting by presenting the written document to the City Secretary prior to the meeting and posted on the City website under Agendas. All written comments will be provided to the City Council prior to the meeting. If any speaker wished to provide documents to the City Council for them to have while they speak, must provide 10 copies of the documents to the City Secretary prior to the start of the meeting. Anyone only providing one copy, the City Council and Staff will not receive until the following day.

The City Council request that the format of the Agenda Items are as follows:

- i. Staff Presentation
- ii. Public Comments
- iii. City Council deliberation/discussion and action

The items of business for Regular Council meetings may include the following:

1. Call to Order
2. Pledge of Allegiance

3. Invocation
4. Ceremonial Matters/Proclamations/Employee Recognition
5. Council Comments
6. Consent Agenda
7. Public Hearings and action items
8. Ordinances and Resolutions
9. Other Action Items and Updates
10. City Manager's Report
11. Future Agenda Items
12. Executive Session
13. Business Items (if an Executive Session is posted)
14. Adjournment

Section 10 – Voting

Each Council Member shall vote on all questions put to the Council unless a conflict of interest or appearance of fairness problem requires a Council Member to excuse him/herself, and the same shall be noted in the minutes.

Section 11 – Reconsideration of Previous Vote

The City Council may at times want to reconsider a vote previously taken. In order to proceed with reconsideration, a motion should be made for reconsideration and such motion should be voted on and passed by a majority of the Council before the agenda item can be discussed or reconsidered.

Section 12 – Decorum and Debate

When a measure is presented for consideration to the Council, the Mayor shall recognize the appropriate individual to present the matter. When two or more members wish to speak, the Mayor shall name the member who is to speak first. No member of the Council shall interrupt another while speaking except to make a point of order or privilege.

Under the Texas Open Meetings Act, the City Council may not prohibit criticism of the governing body, including criticism of any act, omission, policy, procedure, program, or services, provided the criticism is not otherwise prohibited by law. Notwithstanding the previous sentence, behavior that fails to yield the floor when the speaker's time is concluded; is not relevant to the agenda item when required; repeatedly interrupts a Council or board member; disturbs the order of the meeting; involves defamatory, threatening, abusive, vulgar or obscene language; or disrupts the Council meeting is prohibited.

All speakers are asked to be respectful and courteous to Councilmembers, staff, other speakers, and those in attendance at the meeting.

Any speaker or audience member that violates these rules of decorum or engages in disruptive behavior may be subject to removal from the meeting.

Section 13 – Questions of Parliamentary Procedure

Questions of parliamentary procedure not covered by these Rules shall be governed by the current version of Robert's Rules of Order, Newly Revised

Section 14 – Notice of Public Hearings

Notice of all public hearings to be conducted by the City Council or any of its advisory boards and commissions shall be given by publishing written notice, as required by law, ordinance or other statute, or if there is not particular requirement, then at least once in the City's official newspaper prior to the date of the hearing.

Passed and approved by the City of Fredericksburg City Council July 1, 2013

Amended by the City of Fredericksburg City Council February 3, 2014

Amended by the City of Fredericksburg City Council June 4, 2018

Amended by the City of Fredericksburg City Council June 7, 2021

Amended by the City of Fredericksburg City Council December 6, 2021

Amended by the City of Fredericksburg City Council September 6, 2022

ARTICLE I. FORM OF GOVERNMENT AND BOUNDARIES*

Sec. 1.01. Form of Government.

The municipal government provided by this charter shall be known as the "council-manager government." Pursuant to its provision and subject only to the limitation imposed by the State Constitution and by this charter, all powers of the city shall be vested in an elective council, hereinafter referred to as the "city council" which shall enact local legislation, adopt budgets, determine policies, and employ the city manager, who shall execute the laws and administer the government of the city. All powers of the city shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed by ordinance, the State Constitution or the laws of the State of Texas.

Sec. 1.02. Boundaries.

The boundaries of the City of Fredericksburg shall be the same as have heretofore been established and as they existed on the day of ratification of this charter, which boundaries are more fully set out and described by the official city map of the City of Fredericksburg.

Sec. 1.03. Extension of Boundaries.

The boundaries of the City of Fredericksburg may be enlarged and extended by the annexation of additional territory, regardless of the size and configuration, by any of the methods hereinafter designated:

- (a) Annexation of Lands on Petition of Owners. The owner or owners of any land contiguous and adjacent to the city may, by petition in writing to the city council, request the annexation of such contiguous and adjacent land, describing it by metes and bounds. The city council shall thereafter hear such petition and the arguments for and against the same, and grant or refuse such petition as the city council may see fit. If the city council grants such petition, it may by proper

*State law reference—Form of government in home rule municipality, V.T.C.A., Local Government Code § 26.001.

ordinance, under such procedural rules as may be prescribed by law, receive and annex such territory as a part of the city.

- (b) Annexation of Lands by Ordinance. The city council may by ordinance annex territory contiguous and adjacent to the city subject to such procedural rules as may be prescribed by state law, with or without the consent of the inhabitants or owners thereof.
- (c) Annexed Territory to Become Part of City. Upon completion of any of the procedures hereinabove provided, the territory so annexed shall become a part of the city, and said land and its residents and future residents shall be entitled to all the rights and privileges of other citizens of the city and shall be bound by the act, ordinances, resolutions and regulations of the city.

State law references—Annexation, V.T.C.A., Local Government Code § 43.001 et seq.; map of municipal boundaries, V.T.C.A., Local Government Code § 41.001.

Sec. 1.04. Contraction of Boundaries.

Whenever there exists within the corporate limits of the City of Fredericksburg adjoining the other boundaries thereof any territory not suitable or necessary for orderly planning and development of the city, the city council may, if uninhabited, or if the same be inhabited, upon a petition signed by a majority of the qualified voters residing in such territory, by ordinance duly passed, deannex such property as a part of said city; and from and after the entry of such ordinance said territory shall cease to be a part of said city.

ARTICLE II. POWERS OF THE CITY

Sec. 2.01. General Powers.

The city shall have all powers possible for a city to have under the constitution and laws of this state, as fully and completely as though they were especially enumerated in this charter. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this charter, and, when not

prescribed herein, in such manner as may be provided by ordinance or resolution of the council of the City of Fredericksburg.

The enumeration of particular powers in this charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the city may have and shall exercise all other powers which, under the Constitution of the State of Texas, it would be competent for the charter specifically to enumerate. The City of Fredericksburg shall have and exercise all the powers conferred upon cities by what is known as the Home Rule Amendment to the Constitution of the State of Texas and the enabling act and all other laws passed or which may hereafter be passed by the legislature in relation to such matter.

The City of Fredericksburg may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with the Government of Texas or agency thereof, or with the Federal Government or any agency thereof, or with the government of any county, city or political subdivision to accomplish any lawful municipal purpose.

State law reference—Home-rule municipality has full power of local self-government, V.T.C.A., Local Government Code § 51.072.

Sec. 2.02. Eminent Domain.

The city shall have the full power and right to exercise the power of eminent domain where necessary or desirable to carry out any of the powers conferred upon it by this charter or by the constitution and laws of the State of Texas. The city may exercise the power of eminent domain in any manner authorized or permitted by the Constitution and laws of the state. The power of eminent domain hereby conferred shall include the right of the city to take the fee in land so condemned and such power and authority shall include the right to condemn public property for such purposes. The city shall have and possess the power of condemnation for any municipal or public purposes even though not specifically enumerated in this charter.

State law references—Municipal power of eminent domain, procedure, V.T.C.A., Local Government Code §§ 251.001—251.002; eminent domain, V.T.C.A., Property Code § 21.001 et seq.

ARTICLE III. THE CITY COUNCIL

Sec. 3.01. Number, Selection and Term.

The legislative and governing body of the city shall consist of a mayor and four (4) councilmembers and shall be known as the "City Council of the City of Fredericksburg." The mayor and councilmembers shall be elected from the city at large. The term for the mayor and councilmembers shall be two years. Each member of the city council shall serve until his successor is elected and qualified. The mayor or councilmembers may be elected to an unlimited number of terms, but to no more than four consecutive terms, in the same office.

The terms of the councilmembers shall be staggered so that two (2) members will be elected to a regular term each year. All elections shall be held in the manner provided in Article VI of this charter. Regular terms of office shall commence on May 15th of each year.

Sec. 3.02. Qualifications.

Each member of the city council shall be eligible to be a candidate for public elective office in the State of Texas, a qualified voter of the State of Texas, a resident citizen of the City of Fredericksburg and shall have been such resident citizen of the City of Fredericksburg for a period of not less than twelve months immediately preceding his election, and shall not be indebted to the City of Fredericksburg provided, however, that any person with the above qualifications, except as the residence, who shall have been a resident for a period of not less than twelve months immediately preceding his election of any of the territory not formerly within the corporate limits of said city, but which is annexed under the provisions of this charter, shall be eligible for said office. If any councilmember fails to maintain the foregoing qualifications, the city council must at its next regular meeting declare a vacancy to exist and shall fill said vacancy as set forth in Section 3.07 of this charter. If any councilmember shall be absent from three consecutive regular meetings without

valid excuse, the city council may declare a vacancy to exist and fill said vacancy as set forth in Section 3.07 of the charter.

(Amendment passed by voters, May 7, 2016)

Sec. 3.03. Council to be Judge of Election, Qualifications.

The city council shall be the judge of the election and qualifications of its own members.

Sec. 3.04. Compensation.

Compensation shall be set by municipal ordinance. Commencing June 1, 2017, the city council shall receive the following compensation: mayor, \$850.00 per month and each councilmember, \$550.00 per month. In addition, each shall be paid for any actual and necessary expenses incurred while in the discharge of the duties of the office, upon presentation of an itemized statement of such expense to the city council and approved by the city council. Any adjustments to salary compensation shall be by municipal ordinance. Any increase in salary compensation by ordinance shall not become effective until the date of commencement of terms of office of the councilmembers or mayor elected at the next scheduled regular election.

(Amendment passed by voters, May 7, 2016)

Sec. 3.05. Mayor Pro Tem.

At its first regular meeting after election each year, the city council shall elect from among its members a mayor pro tem who shall serve at the pleasure of the city council. In the absence or inability of the mayor to perform the duties of the office, the mayor pro tem shall perform the duties of office and in this capacity shall be vested with all of the powers conferred on the mayor.

Sec. 3.06. Emergency Power of Mayor.

In time of danger or emergency, the mayor may, with the consent of the city council, take command of the police and govern the city by proclamation and maintain order and enforce all laws.

Sec. 3.07. Vacancies.

When a vacancy occurs in the city council, the remaining members of the council shall, within thirty (30) days, appoint a qualified person to fill the vacancy until the next regular city election, at which time the unexpired term of such vacancy shall be filled by election.

Sec. 3.08. Powers of the City Council.

All powers and authority which are expressly or impliedly conferred on or possessed by the city shall be vested in and exercised by the city council.

Sec. 3.09. City Council Not to Interfere in Appointments.

Neither the city council nor any of its members shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the city manager or any of his subordinates are empowered to appoint, unless otherwise provided in this charter, but the city council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

Sec. 3.10. Meetings of the City Council.

City council meetings shall be held at city hall or at such place as the city council shall designate and the city council shall meet regularly at least once in every month at such time as the city council may prescribe by rule. Special meetings may be on the call of the mayor or two councilmembers and whenever practicable upon not less than twelve hours' notice to each councilmember; provided, however, that all meetings shall be open to the public, except for closed and/or executive meetings and sessions as provided and authorized by the Statutes of the State of Texas, as now or hereafter amended, and written public notice thereof given as required by the Statutes of the State of Texas, as now or hereafter amended.

Sec. 3.11. Rules of Procedure.

The city council shall determine its own rules and order of business and shall provide for

keeping of minutes of its proceedings. These minutes shall be a public record. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the minutes. Three members of the city council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the city council. At the beginning of each term of office the city council shall adopt rules of order which shall govern all meetings of the city council. No action of the city council, except as otherwise provided in the preceding sentence, and Section 3.02 of this charter shall be valid or binding unless adopted by the affirmative vote of a majority of the entire city council. Copies of the rules of order adopted by the city council shall be available in the office of the city secretary for examination by interested persons. The mayor shall be a voting member of the city council.

Sec. 3.12. Procedure for Passage of Ordinances.

The city council shall legislate by ordinance, and the enacting clause of every ordinance shall be "Be it ordained by the city council of the City of Fredericksburg." The city attorney shall approve all ordinances adopted by the city council, as to the legality thereof, or shall file with the city secretary his written legal objections thereto. Evidence of the approval of an ordinance by the city attorney may be by notation on the ordinance itself, or by separate paper or instrument. Every ordinance enacted by the city council shall be signed by the mayor, mayor pro tem or two councilmembers and shall be filed with and recorded by the city secretary. All proposed ordinances shall be read in open meeting of the city council, provided that all readings of any ordinance may be by descriptive caption only, except that one member of the council may require a complete reading of any ordinance upon the reading thereof, and all ordinances shall be posted at city hall.

Except as otherwise provided by law or this charter, the city secretary shall give notice of the enactment of every ordinance imposing any penalty, fine or forfeiture for any violation of any

of its provisions, and of every other ordinance required by law or this charter to be published, by causing the said ordinance, or its caption and penalty, to be published at least one time within ten (10) days after final passage thereof in the newspaper of general circulation of the City of Fredericksburg. The affidavit of such publication by the publisher of such newspaper taken before any officer authorized to administer oaths and filed with the city secretary, shall be conclusive proof of the legal publication and promulgation of such ordinance in all courts. All ordinances shall become effective upon the date stated on the ordinance; if no date is stated, then the ordinance shall become effective ten (10) days after its passage.

(Amendment passed by voters, May 7, 2016)

Sec. 3.13. Official Bonds for City Employees.

The city manager and the city secretary and such other city officers and employees as the city council may require, shall, before entering upon the duties of their offices, enter into a good and sufficient fidelity bond in a sum to be determined by the city council, payable to the City of Fredericksburg and conditioned upon a faithful discharge of the duties of such persons and upon a faithful accounting for all monies, credits and things of a value coming into the hands of such persons, and such bonds shall be signed as surety by some company authorized to do business under the laws of the State of Texas, and the premium of such bonds shall be paid by the City of Fredericksburg, and such bonds must be acceptable to the city council.

Sec. 3.14. Investigation by the City Council.

The city council shall have the power to inquire into the conduct of any office, department, agency, officer or employee of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers, and other evidence. Failure to obey such subpoena or to produce such books, papers or other evidence as ordered under the provisions of this section shall constitute a

misdemeanor and shall be punishable by fine not to exceed two hundred (\$200.00) dollars and/or cancellation of a faithful performance bond.

Sec. 3.15. Audit and Examination of City Books and Accounts.

The city council shall cause an annual audit to be made of the books and accounts of each and every department of the city. A complete audit in accordance with standards set by the American Institute of Certified Public Accountants shall be made at the end of each fiscal year, and at such other times as may be necessary, by an Independent Certified Public Accountant who shall be selected by the city council. The audit report shall be filed with the city council and shall be available for public inspection and a summary thereof shall be published in a newspaper of general circulation of the City of Fredericksburg. The auditor selected shall not maintain or keep any of the city accounts or records.

State law reference—Audit of municipal finances, V.T.C.A., Local Government Code §§ 103.001—103.004.

ARTICLE IV. ADMINISTRATIVE SERVICES

Sec. 4.01. City Manager.

(a) **Appointment and Qualification.** The city council shall appoint a city manager who shall be the chief administrative officer of the city and shall be responsible to the city council for the administration of all the affairs of the city. He shall be chosen by the city council solely on the basis of his executive and administrative training, experience, ability and character. No member of the city council shall, during the time for which he is elected and for one (1) year thereafter, be appointed city manager.

(b) **Term and Salary.** The city manager shall not be appointed for a definite term but may be removed at the will and pleasure of the city council by a vote of the majority of the entire council. The action of the city council in suspending or removing the city manager shall be final; it being the intention of this charter to vest all authority and fix all responsibility of such suspen-

sion or removal in the city council. In case of the absence or disability of the city manager, the city council may designate some qualified person to perform the duties of the office during such absence or disability. The city manager shall receive such compensation as may be fixed by the city council.

(c) **Powers and Duties.** The powers herein conferred upon the city manager shall include but shall not be limited to the following:

- (1) To effectively enforce all state laws and city ordinances.
- (2) To appoint and remove any officer or employee of the city and establish compensation for officers and employees except those officers and employees whose appointment or election is otherwise provided for by law or this charter.
- (3) To prepare and submit the annual budget and a five (5) year capital improvement program to the city council.
- (4) To submit to the city council monthly a report on the finances and administrative activities of the city and a complete report as of the end of each fiscal year.
- (5) To perform such other duties as may be prescribed by this charter or required of him by the city council, not inconsistent with the provisions of this charter.

Sec. 4.02. Other Departments.

The city council may create, abolish or consolidate such offices and departments as it may deem to be to the best interest of the city and may divide the administration of any such departments and may discontinue any offices or departments at its discretion, except those established by this charter.

Sec. 4.03. City Attorney.

The city council shall appoint a city attorney who shall hold office at the pleasure of the city council, and whose compensation shall be fixed by the city council. The city attorney shall be a licensed attorney in the State of Texas. The city attorney shall be the legal advisor of and the

attorney and counsel for the city, shall represent the city in legal matters and shall perform other duties as prescribed by this Charter, by ordinance or other law. The city attorney shall have such staff as shall be approved by the city council. (Amendment approved by voters, May 7, 2016)

ARTICLE V. MUNICIPAL COURT

Sec. 5.01. Municipal Court.

There shall be established and maintained a court designated as a "municipal court" for the trial of misdemeanor offenses and other matters, with all such powers and duties as are now or hereafter may be prescribed by laws of the State of Texas.

(Amendment approved by voters, May 7, 2016)

Sec. 5.02. Judge of the Municipal Court.

(a) The judge of the municipal court, and any assistant judges, shall hold their offices at the pleasure of the city council, and shall receive such salary as may be fixed by the city council.

(b) In the case of the disability or absence of the judge of the municipal court, the city council shall appoint a qualified successor.

(Amendment approved by voters, May 7, 2016)

Sec. 5.03. Clerk of the Municipal Court.

(a) A clerk of the municipal court shall be appointed by the judge of the municipal court with the approval of the city manager.

(b) The clerk of the municipal court and his deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court thereto, and generally do and perform any and all acts usual and necessary by the clerk of said court in issuing process of said court and conducting the business thereof.

(Amendment approved by voters, May 7, 2016)

ARTICLE VI. ELECTIONS*

Sec. 6.01. Elections.

The regular city election shall be held annually on the first Saturday in May or at such other times as may be specified by state law, at which time officers will be elected to fill those offices which become vacant that year. The city council shall fix the place for holding such election. The city council may, by ordinance or resolution, order a special election, fix the date and place for holding same, and provide all means for holding such special election. Notice of the election shall be published in a newspaper of general circulation of the city of Fredericksburg, such publication to be not less than thirty (30) days before the election.

Sec. 6.02. Regulation of Elections.

All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the city council for the conduct of elections. The city council shall appoint the election judges and other election officials.

Sec. 6.03. Filing for Office.

Any person having the qualifications set forth for councilmember under Section 3.02 of this charter shall have the right to file an application to have his name placed on the official ballot as a candidate for any elective office, and such application in writing signed by such candidate, filed with the city secretary not less than forty-five (45) days prior to the date of election, shall entitle such applicant to a place on the official ballot.

Sec. 6.04. The Official Ballot.

The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be printed on official ballots without party designations in the order

*State law references—Application for home-rule city office, V.T.C.A., Election Code § 143.005; age and residency requirements for home-rule city office, V.T.C.A., Election Code § 141.003.

determined in a drawing of lots (for each position) conducted by the city secretary. All official ballots shall be printed at least twenty (20) days prior to the date of any general or special election, and shall provide a space for write-in candidates. Absentee voting shall be governed by the general election laws of the State of Texas.

Sec. 6.05. Candidates Elected.

(a) The candidate in the regular city election who receives the greatest number of votes cast for the office of mayor shall be declared elected. In the event of a tie vote between the candidates receiving the highest number of votes cast for the office of mayor, the city council shall within five (5) days order a special election between the tied candidates to be held between thirty (30) and forty-five (45) days after the said election at which the tie vote was cast.

(b) The candidates in the regular city election who receive the greatest and second greatest number of votes cast for the office of councilmember shall be declared elected. In the event there is a tie vote between candidates so that two candidates for council member do not receive the greatest and second greatest number of votes, the city council shall within five (5) days order a special election between the tied candidates to be held between thirty (30) and forty-five (45) days after the said election at which the tie vote was cast.

(c) The candidate in the regular city election who receives the greatest number of votes cast for the unexpired term of any office shall be declared elected. In the event of a tie vote between the candidates receiving the highest number of votes cast for such office, the city council shall within five (5) days order a special election between the tied candidates to be held between thirty (30) and forty-five (45) days after the said election at which the tie vote was cast.

Sec. 6.06. Reserved.

Editor's note—At an election held on May 7, 2016, voters approved the removal of § 6.06, Election of Mayor and Councilmembers.

Sec. 6.07. Laws Governing City Elections.

All city elections shall be governed by the laws of the State of Texas governing general and municipal elections.

Sec. 6.08. Conducting and Canvassing Elections.

The election judges and other necessary election officials for conducting all such elections shall be appointed by the city council. The election judges shall conduct the elections, determine, record and report the results as provided by the general election laws of Texas. Within five (5) days or as soon as practical after an election, the city council shall meet, open the returns, canvass and officially declare the results of the election as to candidate and questions. The mayor shall issue certificates of election to candidates elected as hereinbefore provided.

Sec. 6.09. Oath of Office.

Every officer of the city shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation of office to be filed and kept in the office of the city secretary.

ARTICLE VII. RECALL OF OFFICERS

Sec. 7.01. Scope of Recall.

Any person holding an elected office, whether elected to office by the qualified voters of the city or appointed by the city council to fill a vacancy, shall be subject to recall and removal from office by the qualified voters of the city.

Sec. 7.02. Petitions for Recall.

Before the question of recall of such officer shall be submitted to the qualified voters of the city, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of city secretary; which said petition shall be signed by qualified voters of the city equal in number at least thirty percent (30 percent) of the number of votes cast at the last regular election of the city, but in no event less than two hundred (200) such petitioners. Each signer of such recall petition shall

personally sign his name thereto in ink or indelible pencil, and shall write after his name, his place of residence, giving name of street and number of place of residence, and shall also write thereon the day, the month and year his signature was affixed.

Sec. 7.03. Form of Recall Petition.

The recall petition mentioned above must be addressed to the city council of the City of Fredericksburg, must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and if there be more than one ground, shall specifically state each ground with such certainty as to give the officer sought to be removed notice of the matters and things with which he is charged. The signature shall be verified by oath in the following form:

"State of Texas

County of Gillespie

I, _____ being first duly sworn, on oath depose and say that I am one of the signers of the above petition; and that the statements made therein are true, and that each signature was made in my presence on the day and date it purports to have been made, and that each voter is a resident and registered voter within the City of Fredericksburg, and I solemnly swear that the same is the genuine signature of the person whose name it purports to be, and has stated to me that he or she knows the contents of this petition.

Signed: _____

Sworn to and subscribed before, this the ____ day of _____, 20 ____.

Notary Public, Gillespie County, Texas"
(Amendment approved by voters, May 7, 2016)

Sec. 7.04. Various Papers Constituting Petition.

The petition may consist of one or more copies, or subscription lists, circulated separately, and the signatures thereto may be upon the papers

or paper containing the form of petition, or upon the papers on paper containing the form of petition, or upon any other papers attached thereto. Verifications provided for in the preceding section of this article may be made by one or more petitioners, and the several parts of copies of the petition may be filed separately and by different persons; but no signatures to such petition shall remain effective or be counted which were placed thereon more than forty-five (45) days prior to the filing of such petition or petitions with the person performing the duties of the city secretary. All papers comprising a recall petition shall be filed with the person performing the duties of city secretary on the same day, and the said secretary shall immediately notify, in writing, the office so sought to be removed, by mailing such notice to his Fredericksburg address.

Sec. 7.05. Presentation of Petition to City Council.

Within thirty (30) days after the date of the filing of the papers constituting the recall petition, the person performing the duties of city secretary shall verify that the petition is in the correct form and is signed by the required number of registered voters. The city secretary will present such petition, along with his findings, to the city council. The city council will determine the validity of the petition, and act on it according to the council's determination of its validity. (Amendment approved by voters, May 7, 2016)

Sec. 7.06. Public Hearing to be Held.

The officer whose removal is sought may, within five (5) days after such recall petition has been presented to the city council, request that a public hearing be held to permit him to present facts pertinent to the charges specified in the recall petition. In this event, the city council shall order such public hearing to be held, not less than five (5) days nor more than fifteen (15) days after receiving such request for a public hearing.

Sec. 7.07. Election to be Called.

If an officer whose removal is sought does not resign, then it shall become the duty of the city

council to order an election and fix a date for holding such recall election, the date of which election shall be the next uniform election date following the date of the public hearing provided that the timing permits compliance with applicable election laws, otherwise, the date of the election shall be the following uniform election date.

(Amendment approved by voters, May 7, 2016)

Sec. 7.08. Ballots in Recall Election.

Ballots used at recall election shall conform to the following requirements:

- (a) With respect to each person whose removal is sought, the question shall be submitted: "Shall (name of person) be removed from the office of (name of office) by recall?"
- (b) Immediately below each such question there shall be printed the following words, one above the other, in the order indicated:
 "Yes"
 "No"

Sec. 7.09. Result of Recall Election.

If a majority of the votes cast at a recall election shall be "No," that is, against the recall of the person named on the ballot, he shall continue in office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at such an election be "Yes," that is, for the recall of the person named in the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office and the vacancy filled as provided in Section 3.07 of this charter.

Sec. 7.10. Restrictions on Recall.

No recall petition shall be filed against any officer of the City of Fredericksburg within three (3) months after his election, nor within three (3) months after an election for such officer's recall.

Sec. 7.11. Reserved.

Editor's note—At an election held on May 7, 2016, voters approved the removal of § 7.11, Failure of City Council to Call an Election.

ARTICLE VIII. LEGISLATION BY THE PEOPLE, INITIATIVE AND REFERENDUM

Sec. 8.01. General Power.

Qualified voters of the City of Fredericksburg shall have the power to direct legislation by initiative and referendum as provided by the city charter.

Sec. 8.02. Initiative.

Registered voters of the City of Fredericksburg may initiate legislation by submitting a petition addressed to the city council which requests the submission of a proposed ordinance or resolution to a vote of the registered voters of the city. Said petition must be signed by registered voters of the city equal in number to ten percent (10%) of the number of registered voters of the City Fredericksburg or two hundred (200), whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. The petition shall be signed within the same time as recall petitions are signed, in the same manner as recall petitions are signed, and shall be verified by oath and presented to the city secretary in the manner and form as recall petitions are verified and preserved as provided in this charter. The petition may consist of one or more copies as permitted for recall petitions. Such petition shall be filed with the person performing the duties of city secretary. Within thirty (30) days after the filing of such petition, the person performing the duties of city secretary verify that the petition is in the correct form and is signed by the required number of registered voters. The city secretary will present such petition and proposed ordinance or resolution, along with his findings, to the city council. The city council will determine the validity of the petition, and act on it according to the council's determination of its validity. Upon presentation to the city council of the petition and draft of the proposed ordinance or resolutions, and following the determination of the city council of its validity, it shall become the duty of the city council, within ten (10) days or at the next regular council meeting, whichever is later, after the receipt thereof, to pass and adopt such

ordinance or resolution without alteration as to meaning or effect, or to call a special election, to be held on the next uniform election date provided that the timing permits compliance with applicable election laws, otherwise, the date of the election shall be the following uniform election date.

(Amendment approved by voters, May 7, 2016)

Sec. 8.03. Referendum.

Registered voters of the City of Fredericksburg may require that any ordinance or resolution, in whole or in part, with the exception of ordinances or resolutions issuing bonds (except as required by state law), levying taxes or appropriating money, passed by the city council be submitted to the voters of the city for approval or disapproval, by submitting a petition for this purpose within thirty (30) days after its publication. Said petition shall be addressed, prepared, dated, signed and verified as required for petitions initiating legislation as provided in this charter and shall be submitted to the person performing the duties of city secretary. Within thirty (30) days after the filing of such petition, the person performing the duties of city secretary shall verify that the petition is in the correct form and is signed by the required number of registered voters. The city secretary will present such petition and proposed ordinance or resolution, along with his findings, to the city council. The city council will determine the validity of the petition, and act on it according to the council's determination of its validity, and following the determination of the city council on its validity, the city council shall within ten (10) days or at the next regular council meeting, whichever is later, reconsider such ordinance or resolution, in whole or in part as stated in the petition, and if it does not entirely repeal same, shall submit it to popular vote as provided in Section 8.02 of this charter. Pending the holding of such election, such ordinance or resolution, or part thereof as stated in the petition, shall be suspended from taking effect and shall not later take effect unless a majority of the registered voters voting thereon at such election shall vote in favor thereof.

(Amendment approved by voters, May 7, 2016)

Sec. 8.04. Voluntary Submission of Legislation by the Council.

The city council, upon its own motion and by a majority vote of its members, may submit to popular vote at any election for adoption or rejection any proposed ordinance or resolution or measure or may submit for repeal any existing ordinance, resolution or measure, in the same manner and with the same force and effect as provided in this Article for submission on petition, and may at its discretion call a special election for this purpose.

Sec. 8.05. Form of Ballots.

The ballots used when voting upon such proposed and referred ordinances, resolutions, or measures, shall set forth their nature sufficiently to identify them and shall set forth upon separate lines the words:

"FOR THE ORDINANCE," and

"AGAINST THE ORDINANCE," or

"FOR THE RESOLUTION," and

"AGAINST THE RESOLUTION."

Sec. 8.06. Publication or Proposed and Referred Ordinances.

The person performing the duties of city secretary shall publish at least once in a newspaper of general circulation of the city the proposed or referred ordinance or resolution within fifteen (15) days before the date of the election, and shall give such other notices and do such other things relative to such election as are required in general municipal elections or by the ordinance or resolution calling such election.

Sec. 8.07. Adoption of Ordinances.

If a majority of the qualified voters voting on any proposed ordinance or resolution or measure shall vote in favor thereof, it shall thereupon, or at any time fixed therein, become effective as a law or as a mandatory order of the city council.

Sec. 8.08. Inconsistent Ordinances.

If the provisions of two or more proposed ordinances or resolutions approved at the same

election are inconsistent, the ordinance or resolution receiving the greatest number of votes shall prevail.

Sec. 8.09. Ordinances Passed by Popular Vote, Repeal or Amendment.

No ordinance or resolution which may have been passed by the city council upon a petition or adopted by popular vote under the provisions of this Article shall be repealed or amended except by the city council in response to a referendum petition or by submission to popular vote as provided in Section 8.04 of this charter.

Sec. 8.10. Further Regulations by City Council.

The city council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this Article consistent within.

Sec. 8.11. Franchise Ordinances.

Nothing contained in this Article shall be construed to conflict with any of the provisions of Article XI of this charter, pertaining to ordinances granting franchises when valuable rights shall have accrued thereunder.

ARTICLE IX. MUNICIPAL PLANNING AND ZONING

Sec. 9.01. Planning and Zoning Commission.

There shall be a city planning and zoning commission which shall consist of nine (9) members. The planning and zoning commission shall have all authority and duties as provided in state law and, or as otherwise determined by the city council.

(Amendment approved by voters, May 7, 2016)

Sec. 9.02. Reserved.

Editor's note—At an election held on May 7, 2016, voters approved the removal of § 9.02, Comprehensive City Plan.

ARTICLE X. MUNICIPAL FINANCE*

Sec. 10.01. Fiscal Year.

The fiscal year of the City of Fredericksburg shall begin the first day of October and shall end the last day of September of each calendar year.

Sec. 10.02. Preparation and Submission of Budget.

The city manager shall submit a proposed budget containing a complete financial plan for each fiscal year. Such a budget shall be submitted to the city council not more than one hundred twenty (120) days but not less than sixty (60) days prior to the beginning of each fiscal year. The budget shall contain the following:

- (a) A budget message shall outline the proposed financial policies of the city for the fiscal year, shall set forth the reasons for any major changes in expenditure and revenue items from the previous fiscal year, and shall explain any major change in financial policies.
 - (b) Revenue summary.
 - (c) Departmental expenditure summary.
 - (d) Departmental budget.
 - (e) Schedule of outstanding bonded debt.
 - (f) Schedule of capital outlays by department.
 - (g) Review of property valuations.
 - (h) An analysis of tax rates.
 - (i) Tax levies and tax collection by year for the last three (3) years.
 - (j) The appropriation ordinance.
 - (k) The tax levying ordinance.
 - (l) A provision for financing the current capital improvement program.
- (Amendment approved by voters, May 7, 2016)

*State law references—Municipal budget, V.T.C.A., Local Government Code §§ 102.001—102.111; general fiscal powers of home-rule municipality, V.T.C.A., Local Government Code § 101.022.

Sec. 10.03. Anticipated Revenues and Expenditures Compared With Other Years.

In preparing the budget, the city manager shall place in parallel columns opposite the several items of revenues and expenditures, the actual amount of each item for the last complete fiscal year, the estimated amount for the current fiscal year, and the proposed amount for the ensuing fiscal year.

Sec. 10.04. Budget—A Public Record.

The budget and all supporting schedules shall be a public record. It shall be filed with the person performing the duties of city secretary, and it shall be submitted to the city council. The city council shall make copies available for all interested persons.

Sec. 10.05. Public Hearing on Budget.

The city council shall fix the time and place for a public hearing on the budget, and shall cause to be published in a newspaper of general circulation of the City of Fredericksburg, at least fifteen (15) days before the date of such hearing, a notice of the hearing setting forth the time and place thereof. At any time and place set forth in the notice required by this section, or at any time and place to which such public hearing shall from time to time be convened, the city council shall hold a public hearing on the budget submitted and all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item therein contained.

Sec. 10.06. Proceedings on Budget After Public Hearing.

After the conclusion of such public hearing, the city council may increase or decrease the items of the budget, except items in proposed expenditures fixed by law. If the city council increases the total proposed expenditures, it shall also provide for an increase in the total anticipated revenue to at least equal such proposed expenditures.

Sec. 10.07. Adoption of Budget.

The budget shall be adopted by the affirmative vote of a majority of the entire city council.

Sec. 10.08. Date of Final Budget.

The budget shall be finally adopted not later than the beginning of the fiscal year, and should the city council fail to so adopt a budget, the then existing budget together with its tax-levying ordinance and its appropriation ordinance, shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it provided accordingly, until such time as the council adopts a budget for the balance of the fiscal year.

Sec. 10.09. Effective Date of Budget, Certification, Copies Made Available.

Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget as finally adopted shall be filed with the person performing the duties of the city secretary and the County Clerk of Gillespie County. The final budget shall be printed, mimeographed or otherwise reproduced, and copies shall be made available for the use of all offices, departments and agencies for the use of interested persons and civic organizations.

Sec. 10.10. Budget Established Appropriations.

From the effective date of the budget, the several amounts therein as proposed expenditures shall be and become appropriated to the several objects and purposes therein stated.

Sec. 10.11. Budget Establishes Amount to be Raised by Taxation.

From the effective date of the budget, the amount stated therein as the amount to be raised by taxation shall constitute a determination of the amount of levy for the purposes of the city in the corresponding tax year; provided however, that in no event shall such levy exceed the legal limit provided by the laws and Constitution of the State of Texas.

Sec. 10.12. Estimated Expenditures Shall Not Exceed Estimated Resources.

The total estimated expenditures of the general fund, available utility fund, and debt service shall not exceed the total estimated resources (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform to the uniform classification as promulgated by the American Institute of Certified Public Accountants or some other nationally accepted classification.

Sec. 10.13. Other Necessary Appropriations.

The city budget may be amended and appropriations altered in accordance therewith in case of public necessity, the actual fact of which shall have been determined and declared by the city council.

Sec. 10.14. General Obligation Bonds and other Debt.

The city shall have the power to borrow money on the credit of the city and to issue general obligation bonds, certificates of obligation, tax limited notes or any other debt instruments not prohibited by the constitution, and laws of the State of Texas, for permanent public improvements or for any other public purpose not prohibited by the constitution and laws of the State of Texas, and to issue refunding bonds to refund outstanding bonds of the city previously issued. All bonds shall be issued in conformity with the laws of the State of Texas.

(Amendment approved by voters, May 7, 2016)

Sec. 10.15. Revenue Bonds.

The city shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the constitution, and laws of the State of Texas and to issue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein pledged, or the income therefrom or both. The holders of the revenue bonds shall

never have the right to demand payment thereof out of monies raised to or to be raised by taxation. Revenue bonds may be issued secured by revenue but backed by taxation as a combination bond, in which case the holders of such bonds shall have the right to demand payment thereof out of monies raised to or to be raised by taxation according to the terms of such bonds. All such bonds shall be issued in conformity with the laws of the State of Texas.

(Amendment approved by voters, May 7, 2016)

Sec. 10.16. Sales of Bonds and Bonds Incontestable.

No bond (other than refunding bonds issued to refund and in exchange for previously issued outstanding bonds) issued by the city shall be sold for less than par value and accrued interest. All bonds of the city, having been issued and sold and having been delivered to the purchaser thereof, shall thereafter be incontestable, and all bonds issued to refund in exchange for outstanding bonds previously issued shall, after said exchange, be incontestable.

Sec. 10.17. Competitive Bidding.

The City of Fredericksburg shall take competitive bidding in accordance with Chapter 252 of the Texas Local Government Code.

(Amendment approved by voters, May 7, 2016)

Sec. 10.18. Enterprise Fund Usage.

The City of Fredericksburg shall not use proceeds or reserves from an Enterprise Fund (including, by [but] not limited to, the Electric, Water and Sewer, Solid Waste, and Drainage funds) except for expenditures within the purpose of the fund unless approved by the voters in elections that specify the amount and the fund from which the money will be withdrawn.

(Amendment of May 10, 2014)

ARTICLE XI. FRANCHISES AND PUBLIC UTILITIES*

Sec. 11.01. Powers of the City.

The City of Fredericksburg shall have the full power, to the extent the same is conferred by the constitution and laws of the State of Texas, to own, lease, operate, prohibit, regulate and control any public utility within or without the limits of the city and to provide for the compensation and rental to be paid to the city by any public utility for the use of its streets, highways and public areas.

In addition to the city's power to buy, construct, lease, maintain, operate, and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the city shall have such regulatory and other powers as may now or hereafter be granted under the constitution of the State of Texas.

Sec. 11.02. Franchise Powers of the City Council.

The city council shall have the power by ordinance to grant, amend, renew, and extend all franchises of all public utilities of every character, including cable television, operating within the City of Fredericksburg. All ordinances granting, amending, renewing, or extending franchises for public utilities shall be read at two (2) separate regular meetings of the city council and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until thirty (30) days after its final passage; and, pending such time, the full text of such ordinance shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the City of Fredericksburg and the expense of such publication shall be borne by the proponent of the franchise. No public utility franchise shall be granted for a term of more than twenty (20) years.

(Amendment approved by voters, May 7, 2016)

***State law references**—General powers of municipal utility systems, V.T.C.A., Local Government Code § 402.001; certain public services and utilities in home-rule municipalities, V.T.C.A., Local Government Code § 402.002.

Sec. 11.03. Franchise Value Not to be Allowed.

Franchises granted by the city under this charter shall be considered to be of no value in fixing reasonable rates and charges for utility service within the city, and in determining the just compensation to be paid by the city for public utility property which the city may acquire by condemnation or otherwise.

Sec. 11.04. Right of Regulation.

All grants, renewals, extensions, or amendments of public utility franchises, whether so provided in the ordinance or not, shall be subject to the right of the city council:

- (a) To repeal the same by ordinance at any time upon the failure of the grantee to comply with the terms of the franchise, the ordinance, this charter, any applicable statute of the State of Texas, or the rule of any applicable governmental body, such power to be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise, and setting a reasonable time for correction of such failure, and such power shall be exercised only after the grantee has been given the opportunity for hearing.
- (b) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (c) To require such expansion, extension, and improvements of plants and facilities as are necessary to provide adequate service to the public; and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.
- (d) To prescribe the accounts and accounting system to be used by a public utility so that they will accurately reflect the value of the property used in rendering its service to the public; and the expenses, receipts, and profits of all kinds of such franchises. It shall be deemed sufficient

compliance with this paragraph if the franchise keeps its accounts in accordance with the uniform system established by an applicable federal or state agency for such service. To examine and audit, at any time, the accounts and other records of any utility; and to require annual and other reports including reports on operations within the City of Fredericksburg.

- (e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare, and accommodation of the public.
- (f) To require such compensation and rental as may be permitted by the laws of the State of Texas.
- (g) To require the franchise holder to restore, at his expense, all public or private property to an equal or better condition than before damaged or destroyed by construction, maintenance, or removal by such franchise holder.

Sec. 11.05. Grant Not to be Exclusive.

No grant or franchise to construct, maintain, or operate a public utility and no renewal or extension of such grant shall be exclusive.

Sec. 11.06. Consent of Property Owners.

The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance, or operation of any public utility; but nothing in this charter or in any franchise granted hereunder shall ever be construed to deprive any such property owner of any right of action for damage or injury to his property as is now or hereafter may be provided by law.

Sec. 11.07. Extensions.

All extensions of public utility service within the city limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this charter. The extension of any public utility shall be

considered as a part of the original grant and shall be terminable at the same time and under the same conditions as the original grant.

Sec. 11.08. Other Conditions.

All franchises heretofore granted are recognized as contracts between the City of Fredericksburg and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this charter, except that the power of the city to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved; and except the general power of the city, heretofore existing and herein provided for to regulate the rates and services of a grantee, shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and equipment at the highest reasonable standard of efficiency. All franchises hereafter granted shall be held subject to all terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise.

Sec. 11.09. Accounts of Municipally-Owned Utilities.

Accounts shall be kept for each public utility owned or operated by the city in such manner as to show the true and complete financial results of each such city ownership and operation. The accounts shall show the actual capital cost to the city of each public utility owned, the cost of all extensions, additions, and improvements; and the source of the funds expended for such capital purposes. The accounts shall also show all assets and all liabilities of each utility appropriately subdivided by classes, depreciation reserved, other reserves and surplus, and revenues, operating expenses including depreciation, interest payments, rentals, and other disposition of annual income including the cost of any service furnished to any other city department. The city council shall annually cause an audit report to be made, by a certified public accountant, and shall publish in a newspaper of general circulation of the City of Fredericksburg, a summary of such report showing the financial results of such city owner-

ship and operation, giving the information specified in this section and any other date the council shall deem to be pertinent.

Sec. 11.10. Sales of Electricity, Water, Sewer and Any Other Services.

The city council shall have the authority and power to sell and provide electricity, water, sewer and/or other utility services to persons or firms outside the city limits of Fredericksburg and permit them to connect with city systems under contract with the city, under terms as are fair and reasonable and for the best interests of the city. The council shall have the authority to prescribe the kind of materials used where it furnishes such services, to inspect same and require them to be kept in good condition, at all times, and to make such rules and regulations as shall be necessary and proper, and to prescribe penalties for non-compliance.

Sec. 11.11. Regulations of Rates and Services.

The city council shall have full power, after due notice and hearing, to regulate by ordinance the rates, charges, and fares of every public utility franchise holder operating in the city. Every franchise holder who shall request an increase in rates, charges or fares shall have, at a hearing of the council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investment property allocable to service in the city, the amount and character of its expenses and revenues connected with the rendering of such service, and any additional evidence required by the council. If no agreement between the council and the franchise holder can be reached on such request for an increase in rates, charges, or fares, the council may select and employ rate consultants, auditors and attorneys to investigate and, if necessary, litigate such request. The franchise holder shall reimburse the city for its reasonable and necessary expenses so incurred.

ARTICLE XII. GENERAL PROVISIONS

Sec. 12.01. Publicity of Records.

All records and accounts of every office, department or agency of the city shall be open to the

public in accordance with the open records laws of the United States and the State of Texas under such reasonable regulations as may be established by the city council. Records closed to the public by law shall not be considered records for the purpose of this section.

(Amendment approved by voters, May 7, 2016)

Sec. 12.02. Personal Financial Interest.

(a) Any city officer, appointee, or employee who has a substantial financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the city or in the sale of land, material, supplies, or services to the city or to a contract supplying the city shall make known that interest to the city council and refrain from voting upon or otherwise participating in his capacity as a city officer, appointee, or employee in the making of such sale or in the making or performance of such contract. Any city officer, appointee, or employee who conceals such a substantial financial interest or violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making sale to the city shall render the contract or sale voidable.

(b) Where ownership of stock in corporation is involved, such stock ownership in an amount in excess of ten (10) percent of the stock of such corporation shall constitute substantial financial interest.

Sec. 12.03. Prohibitions.

(a) Activities Prohibited.

(1) In appointments to and removal from any city office or employment, persons shall not be favored or discriminated against because of race, sex, political or religious opinions, or religious affiliations.

(2) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service, or

other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

- (3) No city official or employee, elected or appointed, shall orally, by letter, or otherwise solicit or assist in soliciting any assessment, subscription, or contribution for any political party or political purpose whatever from any subordinate city official or employee holding any compensated city position.
- (4) No person who holds any compensated city position shall solicit or receive any contribution to the campaign funds of any candidate for municipal office or take any part in the management, affairs, or political campaign of any municipal candidate.

(b) Penalties. Any person who by himself or with others violates any of the provisions or paragraphs (1) through (3) of the preceding subsection (a) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than the maximum permitted by law. Any person who by himself or with others violates any of the provisions of paragraph (4) of the preceding subsection (a) shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not more than the maximum permitted by law. Any person convicted under this section shall be ineligible for a period of five (5) years thereafter to hold any city office or position and, if an officer or employee of the city, shall immediately forfeit his office or position.

(Amendment approved by voters, May 7, 2106)

Sec. 12.04. Nepotism.

No person related within the second degree of affinity, or within the third degree by consanguinity to any elected officer of the city, or to the city manager, shall be appointed to any office, position or clerkship or other service of the city. This prohibition shall not apply, however, to any person who shall have been employed by the city

prior to and at the time of the election of the councilman or appointment of the city manager so related to him.

Sec. 12.05. Provisions Relating to Assignment, Execution and Garnishment.

The property, real and person, belonging to the city shall not be liable to be sold or appropriated under any writ of execution or cost bill. The funds belonging to the city, in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the city be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the city nor any of its officers or agents shall be required to answer any such writ or garnishment on account whatever.

Sec. 12.06. City Not Required to Give Security or Execute Bond.

It shall not be necessary in any action, suit or proceeding in which the City of Fredericksburg is a party, for any bond, undertaking, or security to be demanded or executed by or on behalf of said city in any of the state courts, but in all such actions, suits, appeals or proceedings same shall be conducted in the same manner as if such bond, undertaking or security has been given as required by law.

Sec. 12.07. Special Provisions Covering Damage Suits.

Before the city shall be liable to damage claim or suit, for personal injury, or damage to property, the person who is injured or whose property is damaged, or someone in his behalf, shall give the city manager or the person performing the duties of city secretary, notice in writing, duly verified, within sixty (60) days after the occurrence of the alleged injury or damage, stating specifically in such notice when, where, and how the injury or damage was sustained and setting forth the extent of the injury or damage as accurately as possible. No action at law for damages shall be brought against the city for personal injury or damage to property prior to the expiration of

thirty (30) days after the notice herein before described has been filed with the city manager or the person performing the duties of city secretary, and no later than two (2) years after the occurrence of the injury or damage to property. In case of injuries resulting in death, before the city shall be liable in damages therefor, the person or persons claiming such damages shall, after the death of the injured person, give notice as above required in case of personal injury, provided, however, that nothing contained shall be construed to mean that the City of Fredericksburg waives any rights, privileges, defense or immunities in tort actions which are provided under the common law, the constitution and general laws of the State of Texas.

(Amendment approved by voters, May 7, 2016)

Sec. 12.08. Insurance and/or Pension Plan for City Employees.

The city council shall have the power to make available a group insurance and/or a pension plan for any or all city employees as prescribed by the Texas Municipal Retirement System.

Sec. 12.09. Separability Clause.

If any section or part of a section of this charter shall be invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part to which such holding shall directly apply.

Sec. 12.10. Reserved.

Editor's note—At an election held on May 7, 2016, voters approved the removal of § 12.10, Effect of Charter on Existing Law.

Sec. 12.11. Reserved.

Editor's note—At an election held on May 7, 2016, voters approved the removal of § 12.11, Interim Municipal Government.

Sec. 12.12. Applicability of General Laws.

The Constitution of the State of Texas, the statutes of said state applicable to home-ruled municipal corporations, as now or hereafter enacted or amended, this charter and ordinances enacted pursuant thereto shall, in the order mentioned, be applicable to the City of Fredericksburg. The city shall also have the power to exercise any and all powers conferred by the laws of the State of Texas upon any other kind of city, town or village, not contrary to the provisions of said home-rule statutes, charter or ordinances. The exercise of any such powers by the City of Fredericksburg shall be optional, and the city shall not be required to conform to the law governing any other cities, towns or villages unless and until by ordinance it adopts the same.

Sec. 12.13. Amending the Charter.

Amendments to this charter may be framed and submitted to the voters of the city in the manner provided in V.T.C.A., Local Government Code § 9.004 as now existing or as may hereafter be amended.

Sec. 12.14. Construction of Charter.

This charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the City of Fredericksburg in the same manner as the Constitution of Texas is construed as a limitation on the powers of the legislature. Except where expressly prohibited by this charter, each and every power under Article XI, Section 5 of the Constitution of Texas, which it would be competent for the people of the City of Fredericksburg to expressly grant to the city, shall be construed to be granted to the city by this charter.

Sec. 12.15. Judicial Notice.

This charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places.

Sec. 12.16. Review of Charter.

This charter shall be reviewed at five (5) year intervals after the date of passage by the city council. If, in their opinion, any changes are necessary, such changes shall be submitted to the voters in accordance with Section 12.13 of this charter.

Sec. 12.17. Grammatical Construction.

(a) Whenever in this charter the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

(b) Whenever in this Charter the term qualified voter is used it shall mean registered voter qualified in accordance with the provisions of Section 11.002 of the Elections Code of the State of Texas, who is a resident of the City of Fredericksburg.

(Amendment approved by voters, May 7, 2016)

Sec. 12.18. Reserved.

Editor's note—At an election held on May 7, 2016, voters approved the removal of § 12.18, Submission of Charter to Voters.

ARTICLE VI. ETHICS

Sec. 2-201. Policy.

- (a) It is hereby declared to be the policy of the City that the proper operation of democratic government requires that public officers and employees be independent, impartial and responsible only to the people of the city; that no officers, employees or members of any standing committee or board shall permit any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity to conflict with the proper discharge of their duties in the public interest; that public office not be used for illegal or improper personal gain; and that the city council at all times shall be maintained as a nonpartisan body. To implement such a policy, the City Council deems it advisable to enact the following standards of conduct for all officers and employees, whether elected or appointed, paid or unpaid and the sanctions set forth for failure to adhere to the standards of conduct.
- (b) The city further recognizes that public servants 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 public servants retain their rights as citizens to 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 article to prevent the exercise and enjoyment of public servants' rights as citizens of the community.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-202. Purpose.

The purpose of this article is to:

- (1) Encourage high ethical standards by city officers and employees in conducting official business, and
- (2) Establish minimum guidelines for ethical standards of conduct to be followed by city officers and employees, and
- (3) Provide a mechanism for punishment of those officers and employees who violate the established standard of conduct.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-203. Definitions.

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

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

City council or *councilmember* means the elected legislative and governing body of the city consisting of the mayor, mayor pro tem and councilmembers.

Economic benefit means any money, real or personal property, contract rights, sale, lease, option, credit, loan, discount, employment, service or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated, and shall include that for Family Members.

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 for one's self or a Family Member, and would be recognized by reasonable persons to have weight in deciding a case or an issue. Service by a city official as an officer or director with decision or policy making authority, but not as a general volunteer or contributor, in an educational, religious, charitable, fraternal, or civic organization does create an economic interest in the property of that organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in the securities or other assets unless the city official participates in the management of the fund. A person does not have an economic interest in a matter if the economic impact on the city official is indistinguishable from the impact on the public or on the particular group affected by the matter.

Employee means any person employed by the City including part-time and temporary employees.

Family Member means the spouse, children, parents, spouse's parents and any other family member within two degrees of affinity or consanguinity of the Councilmember, Officer, City Official or employee.

Officer or City Official means any appointive member of a city board, commission, or committee set up by city council action, ordinance, charter, state law, or federal law on a permanent or ad hoc basis. Officer or City Official shall also include the City Manager or Municipal Judge.

Respondent means the person against whom a complaint is made; a person who allegedly violates this Chapter.

Substantial interest means an interest in an entity or property if a Councilmember, Officer, City Official or employee of the City and/or any Family Member:

- (a) owns ten percent or more of the stock of a corporation or ownership interest in any entity, trust or estate, or
- (b) owns ten percent or more or \$2,500.00 or more of the fair market value of a corporation or of any entity, trust or estate, or
- (c) if funds received from any of the above described entities exceeds ten percent or more of the person's gross income for the previous year.

A Councilmember, Officer, City Official or employee of the City and or any Family Member has a substantial interest in real property if he or she, owns or controls an interest in said property, and the interest owned or controlled interest has a market value of \$2,500.00 or more. A prima facie determination of value will be the percentage of the property owned or controlled applied to the appraised value of the property by the Appraisal District records of the County in which the property is located for the year in which the complained of action occurs.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-204. Standards of conduct.

(a) *General prohibitions.*

- (1) No Councilmember, Officer, City Official or Employee 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.

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- (2) The provisions of this Article do not prohibit a Councilmember, Officer, City Official or Employee from representing his or her interest in his or her owner-occupied homestead before any city body, except the body of which the official is a member.
 - (3) Councilmembers, Officers and City Officials shall respect and adhere to the City Manager structure of the City of Fredericksburg's government as provided in state law and the City Charter.
 - (4) Councilmembers, Officers and City Officials, except Employees, 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.
 - (5) Councilmembers, Officers, City Officials and Employees 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.
 - (6) Councilmembers, Officers and 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.
 - (7) Officers and 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.
 - (8) A Councilmember who serves on the board of a public or private nonprofit organization shall be permitted to take part in discussions of, but shall have no vote on any funding request or contract by that organization, unless the organization has a board of directors or trustees appointed in whole or in part by the city council.
 - (9) Councilmembers, Officers, City Officials and City Employees shall abide by the laws of the State and Federal Government, pay all taxes before delinquency, pay all City utility accounts prior to delinquency and not otherwise be indebted to the City of Fredericksburg. Bona fide disputes and the entering into payment plans which are kept current are defenses to this prohibition.

Final conviction of a penal offense other than Class C offenses, or the equivalent, under Federal Law, the Texas Transportation Code or the Texas Penal code, except those involving moral turpitude or assault, shall be grounds for dismissal as to Officers, City Officials and City Employees. Final convictions for felonies shall be grounds for removal for Councilmembers. Failure to abide by other laws, shall be grounds for the imposition of other sanctions hereunder such as reprimands, fines, the recommendation of recall etc., which are listed in the Consequences of a Finding of Violation section.

(b) *Prohibition against gifts.*

- (1) Councilmembers, Officers, City Officials and Employees of the City shall not accept or solicit any gift, favor, service, employment or other economic benefit from any person or business entity doing business with the City that might reasonably tend to:
 - a. influence him or her in the discharge of their official duties, or
 - b. influence or encourage him or her to grant any improper favor, service or thing of value, or
 - c. influence his or her judgment or discretion.
- (2) Factors which may be considered in evaluating whether a gift is prohibited include the value of the gift, any preexisting relationship between the donor and donee, whether the benefit of the gift flows to the City or to an individual Councilmember, Officer, City Official or Employee and whether any consideration is given or expected in exchange for the gift. Those items or services that do not constitute prohibited gifts include, but are not limited to, political contributions made and reported in

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- accordance with state law, awards publicly presented in recognition of public service, entertainment, meals or refreshments furnished to attendees of public events, appearances or ceremonies, or ceremonial gifts by other dignitaries or exchange program participants.
- (3) Any item offered to a Councilmember, Officer, City Official or Employee may be accepted and donated to a charitable organization or be presented to the City.
- (c) *Substantial interest.* Councilmembers, Officers, City Officials and Employees shall not vote on or participate in any decision-making process with regard to any matter concerning property or a business entity in which they have a direct or indirect Substantial Interest.
- (d) *Economic interest/Economic Benefit.* Councilmembers, Officers, City Officials and Employees shall not vote on or participate in any decision-making process on a matter if he or she has an economic interest in the outcome of the matter under consideration or on a matter in which he or she may obtain an Economic Benefit.
- (e) *Conflict of interest.*
- (1) No former Councilmember, Officer, City Official or Employee shall represent or appear on behalf of themselves or on behalf of the private interests of others before the City Council or any city board, commission or committee when such person has a Substantial Interest, an Economic Interest, may receive and Economic Benefit or represent the private interest of others in any action or proceeding involving the city for a period of one year following the termination of his or her service or employment.
- (2) No former city employee may, for a period of one year, for compensation, appear on behalf of any person other than a governmental entity, or make any appearance before, or negotiate with any City Officer or Employee in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge relating to any matter that involved the employee's former employment.
- (3) Except as specifically authorized below or by other city ordinance, no Councilmember, Officer, City Official or Employee may appear before the body of which he or she is a member to represent himself, herself or any other person or entity, nor may that Councilmember, Officer, City Official or Employee contact another member of such body regarding a matter which he or she is representing himself, herself or another. Such person may designate and be represented by a person of his or her choice in any such matter, other than a Family Member or member or employee of the same entity as such Councilmember, Officer, City Official or Employee. This prohibition shall not apply to a person who serves as an officer or director of an educational, religious, charitable, fraternal, or civic organization and has no economic interest in the property of that organization and who receives no compensation from such organization, nor to a person who has ownership of an interest in a mutual or common investment fund that holds securities or other assets unless such person participates in the management of the fund, nor to a person who has an economic interest in a matter if the economic impact on such person is indistinguishable from the impact on the public or on the particular group affected by the matter.
- (4) A Councilmember, Officer, City Official or Employee shall recuse himself or herself from meetings, discussions or other participation in matters where he or she is an adverse party to that of the City or the body of which he or she is a member and in which matters confidential to the City or body are to be discussed. An adverse party is a party whose interests are opposed to another party in a legal action or threatened legal action, and/or a person whose presence would otherwise prevent privileged communication from taking place.
- (f) *Disclosure of interest and recusal.*
- (1) A Councilmember, Officer, City Official or Employee who has a Substantial Interest, an Economic Interest in the outcome of the matter under consideration or a Conflict of Interest regarding the matter

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- under consideration shall disclose the same and shall recuse himself/herself from voting on or participating in the relevant decision-making process.
- (2) Such Councilmember, Officer or City Official, if required by State Law, shall also promptly file an affidavit with the city secretary disclosing the nature and extent of the Interest, and the affidavit shall be included in the official minutes of the body, in accordance with state law.
 - (3) Upon recusal, a person who has disclosed having either a Substantial Interest, Economic Interest or a Conflict of Interest in the outcome of a matter under consideration shall leave the dais, if applicable, but may remain at the open meeting in the public seating area.
- (g) *Confidential information.* Councilmembers, Officers, City Officials and Employees of the City shall not directly or indirectly disclose information that such person is privy to because of his or her position but which is otherwise unavailable to the public under the provisions of any applicable United States or Texas public information laws as the same may be amended from time to time, nor directly or indirectly use any information gained solely by reason of their official position or employment, for their own personal gain or benefit or for the private interest of others.
 - (h) *Use of City property.* Councilmembers, Officers, City Officials and Employees of the City shall not use city supplies, equipment, resources or facilities for any purpose other than to conduct official city business, unless otherwise provided for by law, ordinance or city policy.
- (Ord. No. 23-012, 8-5-2013)

Sec. 2-205. Administration of ethics complaints.

- (a) The City Council of the City of Fredericksburg shall serve as the body which enforces the provisions of this Chapter as to Councilmembers, Officers and City Officials. The City Manager shall have jurisdiction of complaints involving Employees other than those who are Officers or Officials, and shall enforce the provisions of this Article with regard to them, and shall follow the City's personnel policies where they may conflict with the provisions hereof. This jurisdiction shall be exclusive for complaints arising solely from the provisions of this Article and non-exclusive for any other complaints regardless of the source of law for which a violation is alleged.
- (b) The Council, at its discretion, may appoint one or more persons who are not members of the Council, and who are not City Employees, to fully participate in or advise on a particular case. In such event, the participation of such a person shall not be or create a waiver of any confidentiality or privilege.
- (c) The city secretary shall serve as staff liaison and shall be responsible for taking the minutes of the meetings.
- (d) Rules of procedure.
 - (1) The Council 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, and provided that the terms of this Chapter are followed.
 - (2) A quorum of the Council is required for hearings hereunder.
 - (3) In the event a member of the Council is the Respondent, he or she shall not be a member of the body with regard to his or her ethics complaint. The quorum, voting requirements and the like shall be adjusted accordingly and set in advance of the hearing.
 - (4) The chairperson of the Council may administer oaths and compel the attendance of witnesses.
- (e) Role of the City Attorney.

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- (1) The City Attorney shall serve as legal counsel and staff liaison to the Council or City Manager as applicable. When complaints are filed relating to the City Attorney, independent legal counsel shall be utilized to advise the Commission, take part in hearings and fill the role of the City Attorney in this section. When complaints are filed relating to the Mayor, City Councilmembers, City Manager, City Prosecutor or Municipal Court Judge, or when the City Attorney has a conflict of interest or is otherwise unable to fulfill this role, independent legal counsel shall be utilized at the request of the City Attorney to advise the Commission and take part in hearings.
 - (2) The City Attorney shall serve as ethics advisor to city Employees and Officers. As ethics advisor, the City Attorney is available to respond confidentially to inquiries relating to this section. Provided however, the City Attorney shall not be required to act in cases prohibited by the Texas Rules of Disciplinary Procedure or other relevant ethical considerations.
 - (3) The City Attorney shall receive all sworn complaints and conduct a preliminary analysis and review of the complaint. The City Attorney shall forward a legal review and recommendation to the Council for action as set forth below. If a Complainant alleges a violation by the City Attorney, the complaint must be sent to each member of the Council, with a copy to the City Manager. The City Manager shall employ independent counsel.
- (f) Procedure for Complaints.
- (1) Any person may file a complaint alleging possible violations of federal, state and city laws relating to the provisions of this Chapter. All complaints shall:
 - a. Be submitted in writing, on a form prescribed by and filed with the City Attorney;
 - b. Be signed under oath;
 - c. Be dated; and
 - d. Provide, with as much detail and specificity as possible, all information requested on the form, including the name and address of the Respondent, the provision(s) of law allegedly violated, facts constituting the alleged violations(s), copies of any evidence substantiating the allegations or the relevant facts, the names and addresses of potential witnesses, additional information, if any, and an address and telephone number at which the complainant may be reached during normal business hours. All such information shall be provided to the best of the complainant's knowledge and belief.
 - (2) Complaints and any evidence collected during the investigation of the alleged violation shall be kept confidential until the formal Council hearing, if any, at which time the provisions of the Texas Open Meetings Act shall control. The provisions of the Texas Open Records act shall also be applicable to all cases including those of Employees.
 - (3) A complaint shall be filed with the City Attorney within six months from the date on which the complainant knew of or should have known about the alleged violation.
 - (4) No later than 30 business days after receipt of the complaint, the City Attorney shall acknowledge receipt of the complaint in writing to the complainant and provide a copy of the complaint to the Respondent by certified mail. Respondent shall have 30 business days from receipt of the notice to submit a sworn written response to the City Attorney along with any information the Respondent desires to have considered. The City Attorney shall provide a copy of any sworn written response to the complainant, conduct a preliminary investigation and review the facts to determine whether there is a legal basis for the claim. The City Attorney shall submit in writing a preliminary analysis and recommendation to the Council or City Manager as applicable. The City Attorney shall make one of the following recommendations to the Council:

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- a. Enforcement shall not be taken, and stating the reasons therefor. If the Council/City Manager concurs with this recommendation and no further action is taken in the matter, the City Attorney may still refer the information to another agency or department for appropriate action. A determination by the Council/City Manager that no further action should be taken shall not prevent the City Manager or any other agency or department from initiating other enforcement action, including disciplinary action, based on the same allegations and facts;
 - b. An administrative enforcement hearing should be commenced. If the City Attorney makes this recommendation to the Council/City Manager then the City Attorney shall prepare a probable cause report to be presented with the recommendation which shall contain a summary of law, facts and evidence gathered through the investigation, including exculpatory and mitigating information of which he or she has knowledge. The evidence may include hearsay, including declarations of investigators or others relating to the statements of witnesses or concerning the examination of physical evidence;
 - c. A civil action pursuant to any local, state or federal law should be commenced. If the Council/City Manager concurs with this recommendation, then the City Attorney shall commence the appropriate civil action and the Commission shall take no further action; or
 - d. A referral to another agency for criminal or civil action is appropriate. If the Council/City Manager concurs with this recommendation, then the City Attorney shall refer the information to the appropriate agency and the Council shall take no further action. However, the City Manager may still take disciplinary action, and the determination of the Council shall not prevent the City Attorney from such referral.
- (g) Notification of intent to take action. No later than 75 business days after receipt of the complaint by the City Attorney, the Council/City Manager shall notify the complainant and Respondent in writing if the Council/City Manager intends to schedule an administrative enforcement hearing or take other action concerning the complaint. If the Council/City Manager makes a determination that there is probable cause to schedule an administrative enforcement or other hearing, then the City Attorney shall serve, personally or by certified mail, Respondent with a copy of the probable cause report and notification that Respondent has the right to respond in writing to the probable cause report and to request a disposition conference with the City Attorney at which the Respondent may be present in person and represented by legal counsel or any representative of his or her choosing.
- (h) Response to probable cause report.
- a. Respondent may submit a written response to the probable cause report, in which it may request a disposition conference. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information.
 - b. Any response and request for a disposition conference must be filed not later than 15 business days following service of the probable cause report. If the probable cause report is not personally served, three business days shall be added to the prescribed period.
- (i) Disposition conference.
- (1) If requested, the disposition conference shall be held at a time fixed by the City Attorney and shall be held informally by the City Attorney. The Respondent shall be given at least ten business days notice of the date, time and location of the conference.
 - (2) Formal rules of evidence shall not apply to such a conference.
 - (3) The conference shall be closed to the public unless the Respondent otherwise requests and all other Respondents agree to a public conference.

(j) Ex parte communications. After a complaint has been filed and during the consideration of a complaint by the Council, neither a member of the Council nor the Council's appointees may not 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 Council, nor may any Council member or appointee conduct an independent investigation or gathering of information.

(k) Administrative enforcement hearings before Council or City Manager.

(1) *Administrative prosecution.* The City Attorney shall prepare and present the case in support of the accusation to be heard at the hearing.

(2) *Informal disposition.* An informal disposition may be made of an administrative enforcement hearing by:

- a. Stipulation;
- b. Agreed settlement; or
- c. Default.

All informal dispositions through stipulation or agreed settlement shall be negotiated through a disposition conference pursuant to the above provision. The Council/City Manager has the right to accept or reject any stipulation or agreed settlement. In the event of an Agreed Settlement of agreed Stipulation, the sanctions shall be included in such agreement, and no further action will be taken.

(3) *Open or closed hearing.* If the Council/City Manager and Respondent do not informally dispose of the enforcement action, Respondent may request either a closed or open hearing and may have legal counsel present. If Respondent does not request a hearing, the Council/City Manager in any event shall conduct a hearing. The hearing shall be held as expeditiously as possible, but in any event no later than 120 days from the date the complaint was received. Respondent shall be given at least 14 days notice of the hearing. The notice shall be in substantially the following form but may contain additional information:

"You are hereby notified that a hearing will be held before the City Council/City Manager at _____ on the _____ day of _____ 20____, at the hour of _____, upon the charges made in the complaint filed against you on _____. You may be present at the hearing, but need not be represented by counsel, you may present any relevant evidence, and you will be given full opportunity to cross-examine all witnesses testifying. If you choose not to attend this hearing a default may be taken."

(4) *Default.* If Respondent does not appear at a scheduled hearing the Council/City Manager may declare a default and make a determination without the need to reschedule a hearing.

(5) *Waiver.* If Respondent waives his or her right to a hearing the Council/City Manager may schedule a hearing without any further notice to Respondent.

(6) *Standard of proof.* The issue at the hearing shall be whether the violation alleged in the complaint occurred. The Council/City Manager shall make its decision based on clear and convincing evidence presented during the hearing.

(7) *Finding of violation.* An affirmative vote of a majority of the members of the Council, including appointees, if any, or an affirmative finding by the City Manager shall be required for the determination that a violation has occurred and to impose any sanction under this Chapter. If the Council/City manager determines that a violation has occurred, it, he or she shall state its, his or her finding(s) in writing, identifying the particular provision(s) which have been violated, make a sanctions determination and deliver a copy of the findings and Consequences determination to the complainant and Respondent within ten business days.

(Ord. No. 23-012, 8-5-2013)

Sec. 2-206. Consequences of a finding of violation.

- (a) One or more sanctions may be imposed as follows. It is specifically provided that the following are actions by the City and do not preclude action by any other agency or person with jurisdiction, and do not supersede penalties that may be imposed through State or Federal action. Sanctions may be imposed on entities based on the conduct of an employee or agent in violation of this Chapter.
- (b) Sanctions:
 - (1) Disciplinary action. Employees and City Officers who are employees may be disciplined in accordance with City policies, including termination. Employees and others may be notified, warned, reprimanded, suspended or removed from office;
 - (2) Fines as set forth in section 1-6 of this Code of Ordinances;
 - (3) Suit for Damages or Injunctive relief;
 - (4) Disqualification from Contracting with the City or Lobbying. The time and manner shall be specified. It is a violation of this code for a person debarred from so contracting or lobbying to enter into, attempt to enter into or aid another in entering into or attempting to enter into a contract with the City during the term of disqualification;
 - (5) Void contract: if the violation involved the award of a contract, the Council may void the contract;
 - (6) Letter of notification may be used when the determination is that the violation was unintentional or inadvertent. The letter should advise the person to whom it is directed of any steps to be taken to avoid future violations;
 - (7) Letter of admonition may be used when the determination is that the violation was minor and may have been unintentional or inadvertent;
 - (8) Letter of reprimand may be used when the determination is that the violation was intentional or knowing. A letter of reprimand directed to a Councilmember may, at the Council's direction, be delivered to the City Secretary and published in a local newspaper of the largest general circulation;
 - (9) Referral to ethics training; or
 - (10) Recommendation for recall for Council members. A letter recommending recall directed to a Councilmember shall be delivered to the City Secretary and published in a local newspaper of the largest general circulation.
- (c) In arriving at its determination, the Council/City manager shall consider the seriousness of the violation, the importance of deterrence, the impact on public confidence in government, the number of times the violation occurred, the mental state with which the violation was committed and any previous violations committed and any previous violations committed by Respondent.
- (d) If the Council/City Manager determines that the conduct occurred, but the facts indicate that the violation was unintentional or de minimus, the Council/City Manager may dismiss the complaint and no sanction will be imposed.

(Ord. No. 23-012, 8-5-2013)

Secs. 2-207—2-249. Reserved.