AN ORDINANCE 100283

ADOPTING AMENDMENTS TO CHAPTER 2, ARTICLE III (CITY ETHICS CODE) OF THE CITY OF SAN ANTONIO CITY CODE

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WHEREAS, the City Council passed and approved Ordinance Number 88874 on November 19, 1998, establishing an Ethics Review Board and adopting a new Code of Ethics establishing standards of conduct for present and former city officials and employees, persons doing business with the City, and lobbyists;

WHEREAS, on May 15, 2004, the voters approved amending the City Charter to establish an independent Ethics Review Board with jurisdiction over the City Ethics Code and the Municipal Campaign Finance Regulations;

WHEREAS, on May 27, 2004, the City Council, by Ordinance No. 99252, declared the amendment establishing the new independent Ethics Review Board adopted;

WHEREAS, the City Council has also reviewed revisions to the Ethics Code recommended by the City Council Governance Committee, the Ethics Review Board (established in 1998 under Ordinance No. 88874) and the City Attorney's Office, **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Code Sec. 2-81(a) (Structure of the Ethics Review Board) which established the Ethics Review Board pursuant to Ordinance No. 88874 (1998) is hereby repealed as follows:

> ~~**There is established an ethics review board, which shall have the powers and duties specified in this division.**~~

By this ordinance, the Ethics Review Board established under Ordinance No. 88874 is hereby dissolved, effective on the date the City Council appoints at least of quorum of members to the new independent Ethics Review Board pursuant to Section 166 of the City Charter and those members are qualified by taking the oath of office.

SECTION 2. City Code Sec. 2-81(a) (Structure of the Ethics Review Board) is revised to state:

In accordance with Article XIII of the City Charter, there is hereby established an independent Ethics Review Board, which shall have the powers and duties specified in Article XIII of the City Charter, Chapter 2, Article III of the City Code (Ethics Code), and Chapter 2, Article VII of the City Code (Municipal Campaign Finance Regulations), and other powers and duties prescribed by ordinance.

Upon appointment and administration of the oath of office of a quorum of this Ethics Review Board pursuant to Article XIII of the City Charter, the former Ethics Review Board established under Ordinance No. 88874 (1998) shall be dissolved.

SECTION 3. In accordance with the provisions of Article XIII of the City Charter and the recommendations of the City Council Governance Committee, the following amendments are also made to the provisions of the Ethics Code pertaining to the Ethics Review Board.

Section 2-80 (Definitions) is amended as follows:

As used in this division, the term "ethics laws" includes this code of ethics, Section 141 of the City Charter, and Section 171 of the Texas Local Government Code. The term "ethical violation" includes violations of any of those enactments. Other terms used in this division are defined in Section 2-42.

The term "municipal campaign finance regulations" refers to the code of municipal campaign finance regulations, codified as Chapter 2, Article VII of the City Code.

Section 2-81(c) (Structure of the Ethics Review Board) is amended as follows:

Terms of Office. ~~**Board members shall be appointed to two-year terms. Initial appointments shall be made so that terms are staggered. No member shall serve for more than three two-year terms.**~~ **Initial board appointments shall be made so that terms are staggered, with six members to serve an initial term of two years and five members to serve an initial term of three years, determined after appointment by lottery. Subsequent appointments shall be for a term of two years beginning on the day after the expiration of the preceding full term. No member of the Board shall serve for more than three full terms.**

Section 2-81(d) (Qualifications) is amended as follows:

Qualifications. Members of the Board shall have good moral character and shall be residents of the city. No member of the Board shall be:

(1) a salaried city official or employee;
(2) an elected public official;
(3) a candidate for elected public office;
(4) an officer of a political party;
(5) a campaign treasurer, campaign manager, officer or other policy or decision-maker for the campaign of any candidate for elected public office;
(6) a campaign treasurer, campaign manager, officer or other policy or decision-maker for any political action committee as defined in the Texas Election Code;
(7) a member of any city board or commission other than the Ethics Review Board;
(8) a member of any board or commission for which the position is appointed by City Council;
(9) ~~(5)~~ a lobbyist required to register under Division 5 of this ethics code;

Further, no member of the Ethics Review Board shall have any convictions for a felony or a crime of moral turpitude, or shall have been found in violation of any provision of the city's Code of Ethics. The San Antonio Police Department will conduct a criminal background check through the NCIC system for each applicant to the board.

The City Council shall support the inclusion of at least one attorney and one individual with expertise in finance or accounting within the membership of the Ethics Review Board.

Section 2-81(e) (Structure of the Ethics Review Board) is amended as follows:

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

Section 2-81(f) (Vacancies) is amended as follows:

Vacancies. ~~A vacancy shall be filled by a person who will serve for the remainder of the unexpired term. The appointment shall be made by the member of the city council who is entitled to make appointments to the seat that was vacated, and must be confirmed by a majority of the city council.~~ **The City Council shall fill any**

vacancy on the Board by a person who will serve the remainder of the unexpired term. The nomination to fill a vacancy shall be made by the member of the City Council (or his or her successor) who had nominated the person whose successor is to be selected to fill the vacancy.

Section 2-81(g) (Structure of the Ethics Review Board) is amended as follows:

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

(1) that the member initiated;
(2) that involves the member of City Council who nominated him or her for a seat on the Ethics Review Board; or
(3) during the pendency of an indictment or information charging the member with an**y felony or misdemeanor** offense, or after a finding of guilt of such an offense.

If the number of Board members who are recused from a case is so large that an Ethics Panel cannot be constituted, as provided for in section 2-85, the Mayor shall nominate a sufficient number of *ad hoc* members so that the case can be heard. Ad hoc members of the Ethics Review Board must be confirmed by a majority vote of the City Council and serve only for the case in question.

SECTION 4. In accordance with the provisions of Article XIII of the City Charter and the recommendations of the City Council Governance Committee, the following amendments are also made to the provisions of the Ethics Code pertaining to the powers and jurisdiction of the Ethics Review Board.

Section 2-82(a) (Jurisdiction) is amended as follows:

~~**Jurisdiction. If a complaint is filed pursuant to section 2-83 (Complaints) within two (2) years of the date of an alleged violation of the ethics laws, the Ethics Review Board shall have jurisdiction to investigate and make findings and recommendations concerning:**~~

~~**(1) any alleged violation of this code of ethics or Section 141 of the City Charter by any person subject to those provisions, including, but not limited to, current city officials and employees, former city officials and employees, persons doing business with the city, and persons required to register as lobbyists, or**~~

~~(2) any alleged violation by a San Antonio city official of Section 171 of the Texas Local Government Code, the state conflict-of-interest law applicable to certain local public officials.~~

Jurisdiction. The Ethics Review Board shall have jurisdiction to investigate and make findings and conclusions concerning:

(1) **an alleged violation of an ethics code enacted from time to time by ordinance;**
(2) **an alleged violation of regulations governing lobbying enacted from time to time by ordinance; and**
(3) **an alleged violation of local campaign finance regulations enacted from time to time by ordinance; and**
(4) **an alleged violation of Section 141 of the City Charter, provided, however, that the Ethics Review Board has no jurisdiction to find or conclude that a city officer or employee has forfeited his or her office or position.**

The Board shall not consider any alleged violation that occurred more than two (2) years prior to the date of the filing of the complaint.

Section 2-82(c) (Powers) is amended as follows:

Powers. The Ethics Review Board has **the** power:

~~(1) to establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with this division;~~
~~(2) to meet as often as necessary to fulfill its responsibilities;~~
~~(3) to designate Ethics Panels with the power to render decisions on complaints or issue advisory opinions on behalf of the Board;~~
~~(4) to request from the City Manager through the City Council the appointment of such staff as are necessary to carry out its duties;~~
~~(5) to review, index, maintain on file, and dispose of sworn complaints;~~
~~(6) to make notifications, extend deadlines, and conduct investigations both on complaint and as a result of an issue raised out of said complaint;~~
~~(7) to render, index, and maintain on file advisory opinions;~~
~~(8) to provide assistance to the Ethics Compliance Officer of the city in the training and education of city officials and employees with respect to their ethical responsibilities;~~
~~(9) to prepare an annual report and to recommend to the Mayor and City Council needed changes in ethical standards or procedures; and~~

~~(10) to take such other action as is necessary to perform its duties under this division.~~

(1) **to establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances pertaining to the Code of Ethics, including lobbying regulations, and the Code of Municipal Campaign Finance;**
(2) **to meet as often as necessary to fulfill its responsibilities;**
(3) **to designate panels with the power to render decisions on complaints or issue advisory opinions on behalf of the Board;**
(4) **to request from the City Manager the assignment of staff necessary to carry out its duties;**
(5) **to review, index, maintain on file, and dispose of sworn complaints;**
(6) **to make notifications, extend deadlines, and conduct investigations, both on referral or complaint;**
(7) **to compel the production of sworn testimony, witnesses and evidence;**
(8) **to recommend cases for prosecution by appropriate authorities and agencies;**
(9) **to enforce its decisions by assessing civil fines and other sanctions authorized by ordinance;**
(10) **to request the City Attorney to provide an independent counsel to advise and represent the Board, when appropriate or necessary to avoid a conflict of interest;**
(11) **to provide assistance in the training and education of city officials and employees with respect to their ethical responsibilities;**
(12) **to prepare an annual report and to recommend to the City Council needed or desirable changes in ordinances under its jurisdiction;**
(13) **to exercise such other powers and duties as may be established by ordinance.**

SECTION 5. The following amendments are made to the City Code pertaining to the Ethics Review Board and rules of procedure to address complaints alleging violations of the ethics code or the municipal campaign finance regulations:

Section 2-81(i) (Structure of the Ethics Review Board) is renumbered as Section 2-81(j) as follows:

> **(j)** ~~(i)~~ **Reimbursement.** The members of the Ethics Review Board shall not be compensated but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

Section 2-81(i) is amended to now provide:

Panels. Each year, at the time of the election of a chair and vice-chair, the chair will also make panel assignments. In the event of vacancies or absences, the chair may make reassignments as needed so that each panel has no fewer than three members of the Board.

Section 2-83(a) (Complaints) is amended as follows:

Filing. Any person (including a member of the Ethics Review Board or its staff, acting personally or on behalf of the Board) who believes that there has been a violation of the ethics laws **or the code of municipal campaign finance regulations** may file a sworn complaint with the City Clerk.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the Ethics Review Board, is subject to criminal prosecution for perjury [see section 2-95 **(Prosecution for Perjury)**] or civil liability for the tort of abuse of process.

Section 2-83(b) (Complaints) is amended as follows:

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

(1) the name of the complainant;
(2) the street or mailing address and the telephone number of the complainant;
(3) the name of each person complained about;
(4) the position or title of each person complained about;
(5) the nature of the alleged violation, including, if possible, the specific ~~rule or provision of law~~ **provision of the code of ethics or municipal campaign finance regulations** alleged to have been violated;
(6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
(7) all documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts

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

The complaint must state on its face an allegation that, if true, constitutes a violation of ~~a rule adopted by or~~ a law administered and enforced by the Board.

Section 2-83(d) (Sanctions for Frivolous Complaints) is amended as follows:

Sanctions for filing frivolous complaints.

(1) Before ~~recommending~~ **imposing** a sanction for filing a frivolous complaint, the Board shall consider the following factors:
   (A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;
   (B) the sanction necessary to deter future violations; and
   (C) any other matters that justice may require.

(2) The Board may ~~recommend~~ **impose** the following sanctions:
   (A) a civil penalty of not more than $500;
   (B) ~~prosecution for perjury~~;
   (C) **imposition of attorneys' fees incurred by the respondent of the frivolous complaint;**
   (D) any other sanction permitted by law.

(3) The Board may notify the appropriate regulatory or supervisory agency for their appropriate action. **This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.**

Section 2-83(e) (Confidentiality) is amended as follows:

Confidentiality. No city official or employee shall reveal information relating to the filing or processing of a complaint except as required for the performance of official duties. *Ex parte* communications by members of the Ethics Review Board are prohibited by subsection 2-85(d). All papers relating to a pending complaint are confidential.

(1) Except as otherwise provided by this section, all information relating to a sworn complaint known to or in the possession of the Board is confidential. The Board and its staff shall not communicate any information about a sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

(2) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or a ~~judicial proceeding.~~ **Ethics Review Board proceeding**.

(3) ~~Confidentiality may be waived only if the complainant and each respondent named in the sworn complaint provides a verified, written waiver of confidentiality to the Board.~~ **Requests for information pertaining to complaints shall be responded to in compliance with the Texas Public Information Act or the Texas Open Meetings Act.**

Section 2-83(f) (Notification) is amended as follows:

Notification to Ethics Review Board. A copy of a complaint shall be promptly forwarded by the City Clerk to the Ethics Compliance Officer **and to the respondent(s)**, even if the complaint fails to meet the filing requirements of subsection 2-83(b) above. A complaint that is not sworn as required by subsection 2-83(a), shall not be forwarded by the City Clerk to the Ethics Compliance Officer, but shall be returned to the complainant.

The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:

(1) that, within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the City Clerk;

(2) that failure to file a response does not preclude the Ethics Review Board from adjudicating the complaint;

(3) that a copy of any response filed by the respondent(s) will be provided by the City Clerk to the complainant, who may, within seven (7) days of receipt, respond by sworn writing filed with the City Clerk, a copy of which shall be provided by the City Clerk to the respondent(s);

(4) that the **complainant(s) or** respondent(s) may request a hearing; and;

(5) that city officials and employees have a duty to cooperate with the Ethics Review Board, pursuant to Section 6(e) of Part H (Ethics Panels).

Upon receipt, the City Clerk shall forward the response to the ethics compliance officer and the compliance officer shall forward to the Ethics Review Board.

Section 2-84(a) (Ethics Compliance Officer) is amended as follows:

City Attorney's Office. The City Attorney or an Assistant City Attorney designated by the City Attorney shall serve as the Ethics Compliance Officer for the city. The Ethics Compliance Officer shall:

(1) receive and promptly transmit to the Ethics Review Board complaints and responses filed with the City Clerk;
(2) investigate, marshal, and present to the Ethics Review Board the evidence bearing upon a complaint;
(3) act as legal counsel to the Ethics Review Board;
(4) issue advisory opinions to city officials and employees about the requirements imposed by the ethics laws; and
(5) be responsible for the training and education of city officials and employees with respect to their ethical responsibilities;
(6) review complaints for legal sufficiency;
(7) recommend acceptance or rejection of complaint ~~within 60 days of date made~~ to the Ethics Review Board; and
(8) request additional information from complainant as needed.

At least once each year, the Ethics Compliance Officer shall cause to be distributed to each city official and employee a notice setting forth the duties of the Ethics Review Board and the procedures for filing complaints. The Ethics Compliance Officer shall also ensure that such notices are posted in prominent places in city facilities.

Section 2-84(b) (Ethics Compliance Officer) is amended as follows:

Outside Independent Counsel. An independent outside attorney, who does not otherwise represent the city, shall be appointed at the recommendation of the City Attorney, to serve as the Ethics Compliance Officer for a particular case:

(1) when a complaint is filed relating to an alleged violation of the ethics laws by:
    (A) the Mayor or a member of the City Council, or
    (B) a city employee who is a department head or of higher rank;
(2) when the Ethics Review Board~~, at the recommendation of the City Attorney,~~ requests such an appointment; or
(3) when requested by the City Attorney.

An independent outside attorney who is appointed has the same duties and authority as the Ethics Compliance Officer under subsections (a)(1) – (3), (6) (8) of this section.

Section 2-84(c) (Exculpatory Evidence) is amended as follows:

Exculpatory Evidence. The Ethics Compliance Officer shall disclose to the Ethics Panel and provide to the person charged with violating the ethics **<u>or municipal campaign finance</u>** laws evidence known to the Ethics Compliance Officer tending to negate guilt or mitigate the seriousness of the offense.

Section 2-85(f) is added to the City Code to state:

> **Extension of deadlines. A complainant or respondent who fails to meet a deadline to submit a filing with the Ethics Review Board may file a Request to Accept Late Filing. The complainant or respondent must include within the request a statement of good cause for the board to grant the request. The assigned panel may grant a request to accept a late filing for good cause.**

Section 2-85(g) is added to the City Code to state:

> **Timeliness of Notices or Submissions. When the ethics code or code of municipal campaign finance regulations requires a notice or other document to be submitted or otherwise given to a person or to the Ethics Review Board, the requirement is met in a timely fashion if the document is sent to the person or the board by first-class mail or certified mail addressed with postage or handling charges prepaid and it bears a post office cancellation mark indicating a date within the time required to provide notice or to submit a document, unless another method of submission is expressly required.**

Section 2-86 is amended as follows:

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

General Rules. At least three (3) members of the Ethics Panel must be present for the hearing. Any member of the Ethics Panel who is not present ceases to be a member of the Ethics Panel and may not participate in the disposition of the case. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the Ethics Panel or the Ethics Compliance Officer. The Ethics Panel may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws **or the municipal campaign finance regulations** unless a majority of the Ethics Panel so finds by a preponderance of the evidence. **The panel may also elect to bring a complaint to the board in its entirety to hear the matter as a panel of the whole board.**

Section 2-87(a) (Disposition) is amended as follows:

Written Opinion. The Ethics Panel shall issue a decision within ninety (90) days after the filing of a complaint. The Ethics Panel shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:

(1) dismiss the complaint; or
(2) upon finding that there that there has been a violation of the ethics **or campaign finance** laws:
  (a) impose sanctions in accordance with these regulations; or
  (b) ~~(a)~~ recommend criminal prosecution and/or civil remedies in accordance with this rule; or
  (c) ~~(b)~~ state why no remedial action is **imposed or** recommended.

Section 2-87(d) (Disposition) is amended as follows:

Similar Charges Barred. If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws **or the municipal campaign finance ordinance,** the Ethics Review Board shall not entertain any other similar complaint based on substantially the same evidence.

Section 2-87(e) (Disposition) is amended to incorporate Section 2-98 (Failure to report a violation) and to add additional provisions regarding factors relevant to the imposition of sanctions under the ethics code. Section 2-87(e) is amended as follows:

Factors Relevant to Sanctions.

(1) General Violations (Non-Reporting Violations). In deciding whether to recommend **or impose**, in the case of a violation of the ethics law, criminal prosecution and/or civil remedies, the Ethics Panel shall take into account relevant considerations, including, but not limited to, the following:
  (a) the culpability of the person charged in the complaint;
  (b) the harm to public or private interests resulting from the violation;
  (c) the necessity of preserving public confidence in the conduct of local government;
  (d) whether there is evidence of a pattern of disregard for ethical obligations; and
  (e) whether remedial action has been taken that will mitigate the adverse effect of the ~~ethical~~ violation.

To impose or recommend sanctions for a first violation of the ethics code or municipal campaign finance code, other than a letter of notification, a letter of admonition or a referral to training, the board must find by a preponderance of the evidence that the person acted knowingly.

(2) Reporting Requirement Violations. To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the ethics code or the municipal campaign finance regulations, the

board must determine by a preponderance of the evidence that the person knowingly failed:

(a) to file the report on time; or
(b) to include in the report information that is required to be included.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the City Clerk's Office, the City Attorney's Office or the Ethics Review Board may be considered evidence of a knowing failure to comply with reporting requirements.

Upon finding a second or subsequent untimely or incomplete submission of reports within a two year period of time, the board may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

In conjunction with the amendment of Section 2-87(e) (Disposition), Section 2-79, regarding the filing of reports under the city's Ethics Code, is also amended as follows:

> Failure to timely file a report required by ~~this rule stated in this division~~ **Chapter 2, Article III (Ethics Code)** is a violation hereof, as is the knowingly filing of a report with incorrect, misleading, or incomplete information. If an individual inadvertently files an incorrect or incomplete report, it is his or her responsibility to file an amended report as soon as possible**, though no later than fifteen (15) days after discovery of the error or after the error should have reasonably been discovered.**
>
> **To file a late or amended report, the person shall use the required report form provided by the City Clerk's Office and mark in the appropriate box whether the report is a late-filed or an amended report.**

SECTION 6. The following amendments are also made regarding sanctions for violations of the ethics code. These amendments reflect the power of the new Ethics Review Board to impose, as well as recommend sanctions. These amendments also represent a rearrangement of the Ethics Code's provisions to merge provisions addressing the same category of sanctions into a single provision:

Section 2-87(f)(1) (Disposition) incorporates Section 2-92 (Disciplinary Action) and is amended to read as follows:

Civil ~~Remedies~~ Sanctions for Ethics Code Violations. The following civil ~~remedies~~ **sanctions** may be recommended **or imposed** by an Ethics Panel which finds that the ethics laws have been violated:

(1) ~~review of the case by the City Manager, or his or her designate, for disciplinary action;~~ **Disciplinary Action. Civil service employees who violate this code of ethics may be disciplined in accordance with city personnel rules and procedures. Other city officials and employees who engage in conduct that violates this code may be notified, warned, reprimanded, suspended, or removed from office or employment by the appointing authority, or by a person or body authorized by law to impose such remedies. Disciplinary action under this Section may be imposed in addition to any other penalty or remedy contained in this code of ethics or any other law. The Ethics Review Board may refer a violation to the City Manager or his or her designate for disciplinary action in accordance with any applicable municipal civil service rules;**

Section 2-87(f)(2) (Disposition) incorporates Section 2-93 (Damages and Injunctive Relief) and is amended to read as follows:

(2) ~~a suit by the city for damages or injunctive relief in accordance with Section 2 of Part I (Damages and Injunctive Relief);~~ **Suit for Damages or Injunctive Relief. This code of ethics has been enacted not only to further the purposes stated in section 2-41, but to protect the City and any other person from any losses or increased costs incurred by the City or other person as a result of the violation of these provisions. It is the intent of the City that this ~~legislative enactment~~ ethics code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this code of ethics, municipal campaign finance or any other law. The Ethics Review Board may refer a violation of the ethics code or the municipal campaign finance regulations to the City Attorney's Office for consideration of a suit by the city for damages or injunctive relief.**

Section 2-87(f)(3) (Disposition) incorporates Section 2-97 (Disqualification from Contracting) and is amended to read as follows:

(3) ~~disqualification from contracting in accordance with Section 6 of Part I (Disqualification from Contracting);~~ **Disqualification from Contracting or Lobbying.**

(a) **If the Ethics Review Board finds that any person (including business entities and non-profit entities) has intentionally or knowingly violated any provision of division 4 (Persons Doing Business with the City) or division 5 (Lobbyists) of the Ethics Code, the Ethics Review Board may recommend to the City Council that the person be prohibited from entering into any contract with the city or prohibited from lobbying on behalf of clients before the city for a period not to exceed three (3) years.**

(b) **It is a violation of this code of ethics:**
   (1) **for a person debarred from entering into a contract with the city to enter, or attempt to enter, into a contract with the city during the period of disqualification from contracting; or**
   (2) **for a city official or employee to knowingly assist a violation of Subsection (b)(1) of this rule.**

(c) **Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.**

(d) **A business entity or nonprofit entity may be disqualified from contracting based on the conduct of an employee or agent, if the conduct occurred within the scope of the employment or agency.**

Section 2-87(f)(4) (Disposition) incorporates Section 2-96 and is amended to read as follows:

(4) ~~**voiding of a contract in accordance with Section 5 of Part I (Voiding or Ratification of Cotnract);**~~ **Recommendation to Void or Ratify Contract. If the Ethics Review Board finds that there has been a violation of any provision in sections 2-43 – 2-51 (Present City Officials and Employees), section 2-55 (Former City Officials and Employees), section 2-56 (Persons Doing Business with the City), or division 4, or section 2-67 (Restricted Activities) that is related to the awarding of a contract, the** ~~**City Council**~~ **the Ethics Panel must vote on whether to recommend to the City Council that the contract be ratified or voided. Such action shall not affect the imposition of any penalty or remedy contained in this code of ethics or any other law;**

Section 2-87(f)(5) (Disposition) incorporates Section 2-94 (Civil Fine) and is amended to read as follows:

(5) ~~a fine in accordance with Section 3 of Part I (Civil Fine).~~ **Civil Fine. The Ethics Review Board may impose upon any person, whether or not an official or employee of the city, who violates any provision of this code of ethics is subject to a fine not exceeding five hundred dollars ($500). Each day after any filing deadline imposed by division 5 (Lobbyists) and division 7 (Financial Disclosure) or the municipal campaign finance code for which any required statement has not been filed, or for which a statement on file is incorrect, misleading, or incomplete, constitutes a separate offense.**

Sections 2-87(f)(6) through 2-87(f)(9) (Disposition) are added to provide additional lesser sanction options for the Ethics Review Board. The amendments provide as follows:

(6) Letter of Notification. The Ethics Review Board may issue to any person, whether or not an official or employee of the city, when the board finds that a violation of the code of ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations;

(7) Letter of Admonition. The Ethics Review Board may issue to any person, whether or not an official or employee of the city, a letter of admonition when the board finds that the violation of the code of ethics was minor and/or may have been unintentional or inadvertent.

(8) Letter of Reprimand. The Ethics Review Board may issue to any person, whether or not an official or employee of the city, a letter of reprimand when the board finds that the person has intentionally or knowingly violated the code of ethics.

(9) Referral to Ethics Training. Upon finding of violation of the ethics code, the Ethics Review Board may require a city official or employee to attend ethics code training.

Section 2-87(g) (Criminal Prosecution) incorporates Section 2-95 and is amended as follows:

Criminal Prosecution. An Ethics Panel may recommend to the appropriate law enforcement agency criminal prosecution under Section 4 of Part I (Prosecution for Perjury) or under Section 171 of the Texas Local Government Law. Prosecution of any person by the City Attorney for a violation of this ethics code shall not be undertaken until a complaint is disposed of in accordance with Section 8. However, the absence of a recommendation to prosecute from an Ethics Panel to the City Attorney shall not preclude the City Attorney from exercising his or her

prosecutorial discretion to prosecute a violation of this ethics code. **Any person who files a false sworn statement under division 5 (Lobbyists), division 7 (Financial Disclosure), or division 8 (Ethics Review Board) or the municipal campaign finance code is subject to criminal prosecution for perjury under the laws of the State of Texas.**

Section 2-87(h) is added to provide a procedure for reconsideration of the Ethics Review Board's final decision. That provision reads as follows:

> (h) **Reconsideration. Within 5 business days of receiving the final opinion of the Ethics Review Board, the complainant or respondent may request the Ethics Review Board to reconsider its decision. The request must be filed with the Office of the City Clerk. Within fifteen (15) days after filing with the City Clerk, the originally assigned panel shall review the the request for reconsideration. If the panel concludes reconsideration is warranted, it shall bring the request within another fifteen (15) days to the full board for decision on whether to grant reconsideration. If the full board grants reconsideration, the board may then order further proceedings in accordance with the provisions of this code.**

The previous Section 2-87(h) (Council Action) is renumbered to accommodate the addition of the new Section 2-87(h) (Reconsideration). This provision is not changed, but merely renumbered (i):

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

Section 2-87(k) is added to provide procedure to appeal a final decision of the Ethics Review Board's. This provision reflects the amendment to the charter and reads as follows:

> **Appeals. A decision of the Ethics Review Board is final unless the person aggrieved by the decision appeals to the state district court in Bexar County no later than thirty days after the date the Board renders the decision. An appeal of a Board decision is initiated by filing a verified petition setting forth the specific points of error alleged. The District Court shall review an appeal under this section under the substantial evidence rule and shall base its decision on the court's review of the record of the hearing before the Board. The**

District Court will affirm the findings and decision of the Ethics Review Board and may not substitute its judgment for that of the board unless the Board's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence.

If the decision of the Ethics Review Board is not supported by substantial evidence, the District Court may reverse or affirm the Board's decision in whole or in part, or may modify the Board's decision if substantial rights of the aggrieved person have been prejudiced. The procedures and remedies of said appeals will be governed by the rules and regulations promulgated by the ordinance. Costs of an appeal may not be assessed against the Board, individual board members, or the City of San Antonio.

SECTION 7. The following amendment is also made to the provision Section 2-88 of the City Code to extend the availability of declaratory rulings to allegations concerning the Municipal Campaign Finance Regulations:

Any city official or employee against whom public allegations of ethics **or campaign finance** violations have been made in the media or elsewhere shall have the right to file a sworn statement with the City Clerk affirming his or her innocence, and to request the Ethics Review Board to investigate and make known its findings, and make any relevant recommendations concerning the issue.

SECTION 8. The following amendments are also made to the provision Section 2-89 (Advisory Opinions) of the City Code pertaining to advisory opinions on the ethics code:

(a) **Advisory Opinions Issued by the Ethics Review Board**

(1) Ethics Code Inquiries ~~Requests~~ by Persons Other Than City Officials and Employees.

a. By writing filed with the City Clerk, any person other than a city official or employee may request an advisory opinion with respect to the interpretation of the ethics laws, but only with respect to whether proposed action by that person would violate the ethics laws. The City Clerk shall promptly transmit all requests for advisory opinions to the Ethics Compliance Officer and the chair of the Ethics Review Board. (City officials and employees may request advisory opinions from the City Attorney pursuant to Subsection (b)).

b. Within thirty (30) days of receipt by the chair of the Ethics Review Board of a request for an advisory opinion, the Board, acting *en banc* or through a designated Ethics Panel, shall issue a written

advisory opinion. During the preparation of the opinion, the Board may consult with the Ethics Compliance Officer of the city and other appropriate persons. An advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. A copy of the opinion shall be indexed and kept by the Ethics Review Board as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the Ethics Review Board, or the Ethics Compliance Officer, to the person who requested the opinion, to the members of the Ethics Review Board, and to the City Clerk. The City Clerk shall make the opinion available as a public record in accordance with the Local Government Records Act. The Ethics Compliance Officer shall promptly post the opinion for a period of no less than five years on the Internet via the City of San Antonio homepage.

(3) ~~(2)~~ **Opinions Initiated by the Board.** On its own initiative, the Ethics Review Board, acting as the full board or through a designated Ethics Panel, may issue a written advisory opinion with respect to the interpretation of the ethics laws **or the municipal campaign finance regulations** as they apply to persons other than city officials and employees if a majority of the Board determines that an opinion would be in the public interest or in the interest of such person or persons subject to the provisions of the ethics laws. Such an opinion may not include the name of any individual who may be affected by the opinion. A copy of any such opinion shall be indexed and kept by the Ethics Review Board as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the Ethics Review Board, or his or her designate, to the Ethics Compliance Officer and to the City Clerk. The City Clerk shall make the opinion available as a public record in accordance with the Local Government Records Act. The Ethics Compliance Officer shall promptly post the opinion for a period of no less than five years on the Internet via the City of San Antonio homepage.

(4) ~~(3)~~ **Reliance.** If a person reasonably and in good faith acts in reliance on an advisory opinion issued by the Ethics Review Board, that fact may be considered by an Ethics Panel in adjudicating a complaint filed against that person, but does not by itself bar the finding of a violation.

(b) **Ethics Advisory Opinions Issued by the Ethics Compliance Officer.**

(1) **Ethics Inquiries by City Officials and Employees.**

a. By writing filed with the Office of the City Attorney, any city official or employee may request an advisory opinion with

respect to whether proposed action by that person would violate the ethics laws.

b. Within thirty (30) days of receipt of the request by the Office of the City Attorney, the Ethics Compliance Officer shall issue a written advisory opinion. The advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. Copies of the opinion shall be forwarded by the Ethics Compliance Officer to the members of the Ethics Review Board, to the person who requested the opinion, and to the City Clerk, and promptly posted by the Ethics Compliance Officer for a period of no less than five years on the Internet via the City of San Antonio homepage. The City Clerk shall make the opinion available as a public record in accordance with the Local Government Records Act.

Section 9. The provisions of Sections 2-92 through 2-97 (Enforcement Mechanisms) are incorporated into Sections 2-87(f)(1) – (5) and Section 2-87(g) (Disposition) as discussed in Section 6 of this ordinance:

~~Sec. 2-92 (Disciplinary action)~~
~~Civil service employees who violate this code of ethics may be disciplined in accordance with city personnel rules and procedures. Other city officials and employees who engage in conduct that violates this code may be notified, warned, reprimanded, suspended, or removed from office or employment by the appointing authority, or by a person or body authorized by law to impose such remedies. Disciplinary action under this Section may be imposed in addition to any other penalty or remedy contained in this code of ethics or any other law.~~

~~2-93 (Damages and injunctive relief)~~
~~This code of ethics has been enacted not only to further the purposes stated in Section 1 of Part A (Statement of Purpose), but to protect the City and any other person from any losses or increased costs incurred by the City or other person as a result of the violation of these provisions. It is the intent of the City that this legislative enactment can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this code of ethics or any other law.~~

~~Sec. 2-94 (Civil fine)~~
~~Any person, whether or not an official or employee of the city, who violates any provision of this code of ethics is subject to a fine not~~

~~exceeding five hundred dollars ($500). Each day after any deadline imposed by Part E (Lobbyists) and Part G (Financial Disclosure) for which any required statement has not been filed, or for which a statement on file is incorrect, misleading, or incomplete, constitutes a separate offense.~~

~~Sec. 2-95 (Prosecution for Perjury)~~
~~Any person who files a false sworn statement under Part E (Lobbyists), Part G (Financial Disclosure), or Part H (Ethics Review Board) is subject to criminal prosecution for perjury under the laws of the State of Texas.~~

~~Sec. 2-96 (Voiding or ratification of contract)~~

~~If an Ethics Panel finds that there has been a violation of any provision in Sections 1 through 9 of Part B (Present City Officials and Employees), Sections 1 or 2 of Part C (Former City Officials and Employees), Sections 1 through 3 of Part D (Persons Doing Business with the City), or Section 6 of Part E (Restricted Activities) that is related to the awarding of a contract, the City Council the Ethics Panel must vote on whether to ratify or void the contract. Such action shall not affect the imposition of any penalty or remedy contained in this code of ethics or any other law.~~

~~Sec. 2-97 Disqualification from contracting.~~

(a) ~~Any person (including business entities and non-profit entities) who intentionally or knowingly violates any provision of divisions 4 or 5 may be prohibited by the city council from entering into any contract with the city for a period not to exceed three (3) years.~~

(b) ~~It is a violation of this code of ethics:~~
   ~~(3) for a person debarred from entering into a contract with the city to enter, or attempt to enter, into a contract with the city during the period of disqualification from contracting; or~~
   ~~(4) for a city official or employee to knowingly assist a violation of Subsection (b)(1) of this rule.~~

(c) ~~Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.~~

(e) ~~A business entity or nonprofit entity may be disqualified from contracting based on the conduct of an employee or agent, if the conduct occurred within the scope of the employment or agency.~~

Section 2-98 (Failure to report) is incorporated into Section 2-54 (Persons required to report) as described in Section 11 of this ordinance.

~~**Sec. 2-98. Failure to report; penalty.**~~
~~**Any City official or employee who has knowledge that a violation of the Ethics Code has been committed and intentionally fails to report such violation as provided in section 2-54 (Persons Required to Report; Time to Report) is subject to the penalties herein.**~~

Section 10. The following amendments are made to the Statement of Purpose and the Definition provisions of the Ethics Code:

Section 2-41 (Statement of Policy) is amended as follows:

> ~~**Appearance of Impropriety**~~. Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of San Antonio to enforce the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in City Government, each city official must not only adhere to the principles of ethical conduct set forth in this code and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.

Section 2-42 (Definitions) is amended in part as follows:

> **Confidential Government Information.** "Confidential government information" includes all information held by the city that is not available to the public under the Texas ~~**Open Records Act**~~ **Public Information Act** and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, ~~**regardless of whether disclosure violates the Act.**~~ **unless disclosure is permitted under the Open Meetings Act.**

Economic Interest. "Economic interest" includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than de minimis value. Service by a city official or employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. ***{paragraph break added}***

Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund. **Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or**

official owns less than 10% of the voting stock or shares of the entity and the value of the stock is less than $15,000.

Official. Except in division 5 (Lobbyists), the term "official" or "city official" includes the following persons:

The Mayor;
Members of the City Council;
Municipal Court Judges and Magistrates;
The City Manager;
Deputy City Manager;
Assistant City Managers;
Assistants to the City Manager;
City Clerk;
Assistant City Clerk;
All department heads and assistant department heads;
Internal Auditor and all assistant internal auditors;
Market Square Superintendent;
Assistant to City Council;
Assistant to Mayor;
Secretary to City Manager;
Executive Secretaries;
Community Action Manager;
Public Utilities Supervisor; and
Members of all boards, commissions (except the Youth Commission whose members are minors), committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be advisory only in nature**, who are appointed by City Council or who are designated in the by-laws or organization papers of the entity to serve on behalf of the city**; and board members of any entity who are appointed by the City Council to such board membership.

The term "official" has a different meaning in division 5 (Lobbyists), which is defined in subsection 2-62(a) of that division. The term "officer" is defined in Section 2-52(c)(2) of division 2 (Prohibited Interests in Contracts) and Subsection 2-58(c)(2) of division 3 (Discretionary Contracts) and is not synonymous with any use of the term "official" in this code.

Ownership. Ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund. **Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or official owns less than 10% of the voting stock or shares of the entity and the value of the stock is less than $15,000.**

Respondent means an individual identified in a sworn complaint to have allegedly violated the Ethics Code **or the Code of Municipal Campaign Finance Regulations** of the City of San Antonio.

Section 11. The following amendments are made to the general standards of conduct of the Ethics Code for present city officials and employees:

Section 2-43(a) Improper Economic Benefit is amended as follows:

General Rule. To avoid the appearance and risk of impropriety, a city official or employee shall not take any official action that he or she knows is likely to affect the economic interests of:

(1) the official or employee;
(2) his or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
(3) his or her outside client;
(4) a member of his or her household;
(5) the outside employer of the official or employee or of his or her parent, child (unless the child is a minor), ~~or~~ spouse~~.~~**, or member of the household (unless member of household is a minor);**
(6) a business entity in which the official or employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest **as that term is defined in Section 2-43;**
(7) a business entity which the official or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest **as defined in Section 2-43;**
(8) a business entity or nonprofit entity for which the city official or employee serves as an officer or director or in any other policy making position; or
(9) a person or business entity **with whom, within the past twelve months:**
    (A) ~~from whom, within the past twelve months~~, the official or employee, or his or her spouse, directly or indirectly has
        (i) solicited **an offer of employment for which the application is still pending**,
        (ii) received **an offer of employment which has not been rejected**, or
        (iii) accepted an offer of employment; or
    (B) ~~with whom~~ the official or employee, or his or her spouse, directly or indirectly ~~is~~ engaged in negotiations pertaining to business opportunities**, where such negotiations are pending or not terminated**.

Section 2-45 (Gifts) is amended as follows:

(a) General Rule.

(1) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:
a. that reasonably tends to influence or reward official conduct; or
b. that the official or employee knows or should know is being offered with the intent to influence or reward official conduct.

A city official or employee may accept a public award or reward for meritorious service of professional achievement, provided that the award or reward is reasonable in light of the occasion and it is not prohibited under the Texas Penal Code Section 36.08.

(2) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, ~~save and except for items received that are of nominal value and meals in an individual expense of $50 or less at any occurrence, or meals with no more than a cumulative value of $500 in a single calendar year, from a single source~~, from:

a. any individual or business entity doing or seeking to do business with the City; or
b. any registered lobbyist or public relations firm; or
c. any person seeking **action** or advocating on zoning or platting matters before a city body~~.~~,

save and except for

i) items received that are of nominal value; or

ii) meals in an individual expense of $50 or less at any occurrence, and no more than a cumulative value of $500 in a single calendar year from a single source.

Doing business with the city includes, but is not limited to, individuals and business entities that are parties to a discretionary contract, individuals and business entities that are subcontractors to a discretionary contract, and partners and/or parents and/or subsidiary business entities of any individuals and business entities that are parties to a discretionary contract.

(b) **Special Applications.** Subsections ~~(a)(1) and~~ (a)(2) does not include:
(1) a gift to a city official or employee relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and recipient;

(2) **advancement for or** reimbursement of reasonable expenses for travel **in connection with official duties** authorized in accordance with city policies; **such payments must be disclosed in a travel report as required in Section 2-76; payment for or reimbursement of expenses for travel in excess of authorized rates under city policy will be treated as a personal gift to the official or employee for any applicable reporting requirements under Sections 2-74 or 2-78.**

a public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion **and it is not prohibited under the Texas Penal Code Section 36.08.**

(3) a loan from a lending institution made in its regular course of business on the same terms generally available to the public;

(4) a scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants;

(6) admission to an event in which the city official or employee is participating in connection with official duties;

(7) any solicitation for civic or charitable causes;

(8) admission to an event in which the city official or employee is participating in connection with his or her spouse's position;

(9) ceremonial and protocol gifts presented to city officials from a foreign government or international or multinational organization and accepted for the City of San Antonio;

(10) admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the sponsor of the event, and unsolicited by the City official or employee, if

(A) the official or employee participates in the event as a speaker or panel participant by presenting information related to matters before the City; or

(B) the official or employee performs a ceremonial function appropriate to that individual's position with the City; or

(C) attendance at the event is appropriate to the performance of the official duties or representative function of the official or employee;

(11) admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the City official or employee;

(12) admission to training or education program, including meals and refreshments furnished to all attendees, if such training is related to the official or employee's official duties and the training is in the interest of the City;

(13) lodging, transportation, or entertainment that the official or employee accepts as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law, up to $500 from a single source in a calendar year.

Section 2-47 (Representation of Private Interests) is amended as follows:

(a) **Representation Before the City by a Member of the Board.** A city official or employee who is a member of a board or other city body shall not represent any person, group, or entity:
   (1) before that board or body;
   (2) before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
   (3) before a board or other city body which has appellate jurisdiction over the board or body of which the city official or employee is a member, if any issue relates to the official's or employee's official duties.

(b) **Representation Before the City by City Officials and Employees**.
   (1) **General Rule**. A city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
   (2) **Exception for Board Members.** The rule stated in subsection (b)(1) does not apply to a person who is classified as a city official only because he or she is an appointed member of a board or other city body.

(c) ~~(3)~~ **Prestige of Office and Improper Influence.** In connection with the representation of private interests before the city, a city official or employee shall not:
   (1) ~~(A)~~ assert the prestige of the official's or employee's city position for the purpose of advancing private interests; or
   (2) ~~(B)~~ state or imply that he or she is able to influence city action on any basis other than the merits.

(d) ~~(c)~~ **Representation in Litigation Adverse to the City.**
   (1) **Officials and Employees (Other than Board Members).** A city official or employee, other than a person who is classified as an official only because he or she is an appointed member of a board or other city body, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city.
   (2) **Board Members.** A person who is classified as a city official only because he or she is an appointed member of a board or other city body shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person,

group, or entity are adverse to interests of the city and the matter is substantially related to the official's duties to the city.

Section 2-49 is amended as follows:

A city official or employee shall not use, request, or permit the use of city facilities, personnel, equipment, **or** supplies **or time while on city duty** for private purposes (including political purposes), except:

(a) pursuant to duly adopted city policies, or
(b) to the extent and according to the terms that those resources are lawfully available to the public.

Section 2-54(a) incorporates Section 2-98 is amended as follows:

A City official or employee who has knowledge of a violation of any of the provisions of this Ethics Code shall report this violation as provided below within a reasonable time after the person has knowledge of a violation. A City official or employee shall not delegate to, or rely on, another person to make the report. **Any City official or employee who has knowledge that a violation of the Ethics Code has been committed and intentionally fails to report such violation is subject to the penalties herein.**

Section 12. The following amendments are made to the general standards of conduct of the Ethics Code for former city officials and employees:

Section 2-56 (Subsequent representation) is amended as follows:

Sec. 2-56 Subsequent representation of private interests.

(a) **Representation of Private Interests Before the City by a Former Board Member.** A person who was a member of a board or other city body shall not represent any person, group, or entity for a period of two (2) years after the termination of his or her official duties:

(1) before that board or body;
(2) before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
(3) before a board or other city body which has appellate jurisdiction over the board or body of which the former city official or employee was a member, if any issue relates to his or her former duties.

(b) **Representation of Private Interests Before the City by Former City Officials and Employees.** A former city official or employee shall not represent for compensation any person, **private** group, or **private** entity, other than himself or herself, or his or her spouse or minor children, before the city for a period of two (2) years after termination of his or her official duties. This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member of a board or other city body. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation. ~~In connection with the representation of private interests before the city, a former city official or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.~~

(c) Improper Representation of Influence. In connection with the representation of private interests before the city, a former city official or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.

(d) ~~(c)~~ **Representation in Litigation Adverse to the City.** A former city official or employee shall not, absent consent from the city, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city and the matter is one in which the former city official or employee personally and substantially participated prior to termination of his or her official duties.

Section 13. The following amendments are made to the general standards of conduct of the Ethics Code for persons doing business with the city:

Section 2-60(b) is amended as follows:

Political Contributions. Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract, on a form provided by the city, all political contributions totaling one hundred dollars ($100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Subsection (a). ***{paragraph break added***

Indirect contributions by an individual include, but are not limited to, contributions made by an individual's spouse, whether statutory or common-

law. Indirect contributions by an entity include, but are not limited to, contributions made ~~through~~ **by** the officers, owners, attorneys, or registered lobbyists of the entity.

Section 14. The following amendments are made to the general standards of conduct of the Ethics Code for lobbyists:

Section 2-62 (Definitions) is amended as follows:

> *City official* means the Mayor, members of the City Council, Municipal Court Judges and Magistrates, the City Manager, Deputy City Manager, City Clerk, Assistant City Clerk, Assistant City Managers, Assistants to the City Manager, all department heads, assistant department heads, **Internal Auditor and assistant internal auditors;** Market Square Superintendent; Assistant to City Council; **Assistants to City Council, including contract personnel,** Assistant to Mayor; **Assistants to the Mayor, including contract personnel,** Secretary to City Manager; Executive Secretaries; Community Action Manager; Public Utilities Supervisor, members of bid committees, and members of the following boards and commissions: Board of Adjustment; Board of Appeals; City Public Service; Fire Fighter's and Police Officer's Civil Service Commission; Electrical Examining and Supervising Board; Ethics Review Board established pursuant to this Ethics Code; Greater Kelly Development Authority and any authority later created under Chapter 378, Defense Base Development Authorities, of Subtitle A, Title 12 of the Texas Local Government Code; Historic and Design Review Commission; Housing Authority of San Antonio; Municipal Civil Service Commission; Planning Commission; Plumbing Appeals and Advisory Board; Public Library Board of Trustees; San Antonio Water System; Urban Renewal Agency (SADA); Zoning Commission; and any other board or commission that is more than advisory in nature.

Section 2-63 (Persons required to register as lobbyists):

> Except as provided by section 2-64 (Exceptions), a person **or entity** who engages in lobbying must register with the City Clerk if:
>
> (a) with respect to any client, the person **or entity** engages in lobbying activities for compensation; or
>
> (b) the person **or entity** expends monies for lobbying activities.
>
> The terms "compensation" and "expenditure" are defined in section 2-62 (Definitions).

Section 2-64 (Exceptions) is amended to include the following in the list of individuals not required to register as lobbyists:

The following persons **and entities** are not required to register under section 2-65(Registration) or file an activity report under section 2-66 (Activity Reports):

(a) **Media Outlets.** A person who owns, publishes or is employed by:
   (1) a newspaper;
   (2) any other regularly published periodical;
   (3) a radio station;
   (4) a television station;
   (5) a wire service; or
   (6) any other bona fide news medium that in the ordinary course of business disseminates news, opinions, or paid advertisements that directly or indirectly oppose or promote municipal questions or seek to influence official action relating thereto, if the person does not engage in other activities that require registration under this division. (Lobbyists). This subsection does not exempt the news media or a person whose relation to the news media is only incidental to a lobbying effort or if a position taken or advocated by a media outlet directly impacts, affects, or seeks to influence a municipal question in which the media outlet has a direct or indirect economic interest.

(b) **Mobilizing Entity Constituents and Not-for-Profit Organizations.** A person whose only lobbying activity is to encourage or solicit the members, employees, or owners (including shareholders) of an entity by whom the person is compensated to communicate directly with one or more city officials to influence municipal questions. This exception is intended to apply to neighborhood associations and not-for-profit organizations.

(c) **Governmental Entities.** Governmental entities and their officials and employees, provided the communications relate solely to subjects of governmental interest concerning the respective governmental bodies and the city.

(d) **Unknown Municipal Questions.** A person who neither knows nor has reason to know that a municipal question is pending at the time of contact with a city official. This Subsection does not apply if the existence of a municipal question is discovered during on-going contacts with a city official and the person then engages in additional lobbying of the same official or other city officials with respect to that municipal question.

(e) **Dispute Resolution.** An attorney or other person whose contact with a city official is made solely as part of resolving a dispute with the city, provided that the contact is solely with city officials who do not vote on or have final authority over any municipal question involved and so long as such an attorney complies with Rule 4.02 of the Texas Disciplinary Rules of Professional Conduct, as amended.

(f) **Compensation of Registrant.** A client who would only be required to register under Section 3 because of any expenditure to compensate a registrant, other than an employee, to lobby on a municipal question of interest to the client, provided that the compensated registrant files a registration statement or activity report for the period in question.

(g) Agent or employee. An agent or employee of a lobbying firm or other registrant that tiles a registration statement or activity report for the period in question fully disclosing all relevant information known to the agent or employee.

(h) ~~(g)~~ **Individual.** An individual who engages in lobbying but who neither receives compensation nor expends monies for lobbying with respect to any client. The term "expends" does not include the cost of photocopying documents, or creating other informational material by individuals who communicate with public officials to express personal opinions on behalf of themselves, their family or members of their household.

(i) Attorneys. A licensed attorney who is performing an act that may be performed only by a licensed attorney.

Section 2-65 (Registration) is amended as follows:

(a) **Separate Registrations.** A person **or entity** required to register as a lobbyist under Section 2 of Part E (Persons Required to Register as Lobbyists) must file a separate registration form for each client. A registrant who makes more than one lobbying contact for the same client shall file a single registration form covering all lobbying contacts for that client. Each registration form must be signed under oath. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form.

(b) **Initial Registration.** An initial registration form relating to a client must be filed by a person required to register under Section 2 of Part E (Persons Required to Register as Lobbyists) within 90 days after the start of lobbying activity for that client. However, in no event shall a registrant knowingly fail to register~~,~~ or knowingly fail to disclose such registration to relevant city officials, prior to official city action relating to the subject matter of the lobbying activity.

(c) **Subsequent Annual Registration.** Except as provided in Subsection (e) (Termination of Registration) subsequent registration forms must be filed annually each January for each client for whom a registrant previously filed, or was required to file, an initial registration form.

(d) An individual, firm or organization that registers as a lobbyist and that employs agents or employees who engage in lobbying activity on behalf of the registrant's clients may include the agents or employees within the registrant's initial and annual registration, by identifying the agents or employees and disclosing lobbying activity as required under Subsection (e) by each agent or employee,

(e) Required Disclosures. Initial or subsequent registration shall be on a form prescribed by the City Clerk and shall include, to the extent applicable:

(1) the full name, telephone number, permanent address, and nature of the business of:
   (A) the registrant;
   (B) the client;
   (C) any person, other than the client, on whose behalf the registrant has been engaged by the client to lobby;
   (D) any person, other than the client, who is known by the registrant to contribute financially to the compensation of the registrant, or which, in whole or in major part, plans, supervises, or controls the registrant's lobbying activities on behalf of the client;
   (E) any lobbying firm for which the registrant is an agent or employee with respect to the client; and
   (F) each employee or agent of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client;

(2) a statement of all municipal questions on which the registrant has lobbied for the client in the year preceding the filing of the registration or foreseeably will lobby;

(3) a list of any positions held by the registrant as an official or employee of the City of San Antonio, as those terms are defined in Section 2 of Part A (Definitions) during the past two (2) years.

(4) if the registrant is a former city official or employee, a statement that the registrant's lobbying activities have not violated and will not foreseeably violate Section 2(a) or (b) or Section 3(b) of Part C (Former City Officials and Employees) of this ethics code.

(f) Termination of Registration. A registrant shall file a notice of termination of registration with the City Clerk if the registrant is no longer

required to register by Section 2 of Part E (Persons Required to Register as Lobbyists). A filing under this Subsection does not relieve the registrant of reporting requirements imposed by Section 5 of Part E (Activity Reports) for the reporting period in question.

(g) **Fee.** At the time of initial or subsequent annual registration with respect to a client, a registrant shall pay to the city, and the City Clerk shall collect, a fee of $300 for the registrant **and $300 for each agent or employee of the registrant that engages in lobbying activity on behalf of the registrant's clients, up to a maximum total fee for a registrant of $1200.** All lobbyist registration fees shall be deposited into a separate account within the general fund, which account shall be used to offset the costs of administering the city's lobbying ordinance and the costs of handling disclosure filings.

(h) **Ethics Code Briefing.** During the registration process, the Ethics Compliance Officer shall offer a briefing to each new registrant on Part E Lobbyists of the Ethics Code and each shall be provided a copy of the Ethics Code.

Section 2-67(i) (Restricted Activities – Limitations on Gifts) is amended as follows:

(i) **Limitations on Gifts.** A person who lobbies or engages another person to lobby, or any other person acting on behalf of such persons, shall not give gifts to a City official or a City employee or his or her immediate family, save and except for ~~items received that are of nominal value and meals in an individual expense of $50 or less at any occurrence, or meals with no more than a cumulative value of $500 in a single calendar year, from a single source, or other gifts allowable under Division 2, Section 2-45.~~

(1) items received that are of nominal value; or

(2) meals in an individual expense of $50 or less at any occurrence, and no more than a cumulative value of $500 in a single calendar year, from a single source, as permitted in section 2-45, or

(3) other gifts permitted under section 2-45.

Section 15. The following amendments are made regarding financial disclosure and gift reports:

Section 2-73(a) is amended to provide:

(3) Exception. City officials required to file financial disclosure statements pursuant to Local Government Code Chapter 145 shall file financial disclosure statements in compliance with the Local Government Code in place of filing statements required

by this code of ethics. Such officials shall also complete an addendum to the statement disclosing information required by this code of ethics, but not required under the Local Government Code. The addendum shall be prepared by the Office of the City Clerk. Deadlines for filing the financial disclosure documents shall be governed by Chapter 145 of the Local Government Code.

Section 2-73(c) is amended to state:

Annual Filing Date. Annual financial disclosure reports filed by City officials who are City employees and by City employees who are required to report must be received by the City Clerk by 4:30 p.m. on the 31st day of January. Annual financial disclosure reports filed by City officials who are not City employees and who are required to report must be received by the City Clerk by 4:30 p.m. on the **3**1st day of March When the deadline falls on a Saturday or Sunday, or on an official city holiday as established by the City Council, the deadline for receipt by the City Clerk is extended to 4:30 p.m. of the next day which is not a Saturday or Sunday or official city holiday. The City Clerk shall grant an extension of time in which to file a report upon written request submitted in advance of the deadline. The extension shall not exceed fifteen (15) days.

Unforeseen Circumstances. In the event of an unforeseen circumstance, including, but not limited to, military service ~~abroad~~ or acute illness **or leave without pay under the Family Medical Leave Act**, the deadline for receipt by the City Clerk is extended until such time as the city official or employee resumes his city duties.

Section 2-73(e)(1) is amended to state:

City Clerk. The City Clerk shall:
prior to January 15 of each year, notify city officials **who are city employees** and employees specified in subsection (a)(1) of their obligation to file financial disclosure reports and provide forms to be completed; **and prior to February 15 of each year, notify city officials who are not city employees of their obligation to file financial disclosure reports and provide the forms to be completed.**

Section 2-74(n) regarding the contents of financial disclosure reports is amended to state:

the name of each person, business entity, or other organization from whom the reporting party, or his or her spouse, received a gift with an estimated fair market value in excess of one hundred dollars ($100) during

the reporting period and the estimated fair market value of each gift. Excluded from this requirement are:

(1) lawful campaign contributions which are reported as required by state statute **or local ordinance**;

(2) gifts received from family members within the second degree of affinity or consanguinity;

(3) **gifts from an individual based on personal friendship who during the preceding three calendar years: a) has not done or sought to do business with the city; b) has not sought city action on any issue before the City Council or any city board or commission; c) is not associated with any business or entity that has done or sought to do business with the city; and d) is not associated with any business or entity that has sought city action on any issue before the City Council or a city board or commission.**

(4) ~~(3)~~ gifts received among and between fellow city employees and city officials; and

(5) ~~(4)~~ admission to events in which the reporting party participated in connection with official duties;

(6) ~~(5)~~ **payment of or reimbursement of travel and accommodations expenses accepted in connection with official duties which have been reported under Part G, Section 4; payment for or reimbursement of expenses for travel in excess of authorized rates under city policy are gifts subject to the reporting requirements under this section.**

Section 2-76 regarding the travel reporting requirements is amended to state:

(a) Any ~~person listed in Subsection (b)~~ **city official or employee** who, in connection with his or her official duties, accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Clerk, before embarking on the travel, a disclosure statement identifying:

(1) the name of the sponsor;

(2) the places to be visited; and

(3) the purpose and dates of the travel.

(4) **the estimated amount of the expenses paid**.

(b) ~~The following persons are required to report under this Section: the Mayor, members of the City Council, Municipal Court Judges and Magistrates, City Manager, Deputy City Manager, City Clerk, Assistant City Clerk, Assistant City Managers, Assistants to the City Manager, and all department heads, assistant department heads, and employees in positions listed on the executive pay plan (Job Class 1000 through 1999).~~ Acceptance of a trip or excursion by ~~an individual listed above other than the Mayor or a member of the City Council~~ **Municipal Court Judges and Magistrates, City Manager, Deputy City Manager, City Clerk, Assistant City Clerk, Assistant City Managers, Assistants to the City Manager, and all department heads, assistant department heads, and employees in positions listed on the executive pay plan (Job Class 1000 through 1999)** must receive prior written approval of the City Manager. **Other personnel must receive written approval by their department director. Boards and commissions members must receive approval by a vote of their board or commission.**

Section 2-78 regarding the contents of annual gift reports filed by specified employees is amended to state:

In addition to the gift reporting requirements imposed by the financial disclosure rules stated in Section 2-74(n) (Contents of Financial Disclosure Reports), other city employees specified on a list compiled annually by the Human Resources Department (or its successor department) and submitted to the City Clerk, and contract administrative assistants to members of City Council are also required to file an annual report on or before the 31st day of January of each year showing the source of **a** gift~~s~~ received during the previous year with a value of over one hundred dollars ($100.00). Excluded from this requirement are: ~~gifts received from family members within the second degree of affinity or consanguinity and gifts among and between city employees and city officials.~~

(1) lawful campaign contributions which are reported as required by state statute;

(2) gifts received from family members within the second degree of affinity or consanguinity;

(3) gifts from an individual based on personal friendship who during the preceding three calendar years: a) has not done or sought to do business with the city; b) has not sought city action on any issue before the City Council or any city board or commission; c) is not associated with any business or entity that has done or sought to do business with the city; and d) is not associated with any business or entity that has

sought city action on any issue before the City Council or a city board or commission.

(4) gifts received among and between fellow city employees and city officials;

(5) admission to events in which the reporting party participated in connection with official duties;

(6) payment of or reimbursement of travel and accommodations expenses accepted in connection with official duties which have been reported under Part G, Section 4; payment for or reimbursement of expenses for travel in excess of authorized rates under city policy are gifts subject to the reporting requirements under this section.

Section 16. Section 2-91 regarding public records and open meetings is amended as follows:

Except as otherwise provided in Part H (Ethics Review Board), records relating to an alleged violation of the ethics laws, or the preparation of an ethics opinion requested by a person who asked for anonymity, shall not be open to the public and shall be treated as information that is excepted from public disclosure as required or permitted under the Texas Open Records Act or other law. ~~No meeting or other proceeding relating to an alleged violation of the ethics law shall be treated as open to the public unless closed sessions in connection therewith are not permitted or required by the Texas Open Meetings Act or other law.~~ **Meetings and other proceedings of the Ethics Review Board will be conducted in compliance with the Texas Open Meetings Act.**

Section 17. Because the provisions of Division 9 (Enforcement Mechanisms) Sections 2-92 through 2-98 have been incorporated into other sections, Division 10 (Administrative Provisions) is renumbered Division 9. The sections within administrative provisions are amended and renumbered as follows:

Sec. 2-92 ~~Sec. 2-99~~ **Other obligations**

This code of ethics **and the municipal campaign finance code are** ~~is~~ cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this code shall not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, lobbying activities, or any other issue addressed herein.

Even if a city official or employee is not prohibited from taking official action by this code of ethics, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

Sec. 2-93 ~~Sec. 2-100~~ Effective Date

(a) This ordinance shall be effective January 1, 1999.

(b) Article III of Chapter 2 of the City Code is repealed as of January 1, 1999, except that Article III is continued in effect for the purpose of governing the conduct of former city officials and employees whose official duties terminated before January 1, 1999.

Sec. 2-94 ~~Sec. 1-101~~ (Distribution and Training)

(a) Prior to the effective date of this code of ethics, and periodically thereafter as appropriate, the City Attorney or designated Ethics Compliance Officer shall provide information about the code to every official and employee of the city, and copies of the code shall be made readily available to city officials, employees, and the public. Within thirty (30) days after entering upon the duties of his or her position, every new official or employee shall be furnished with information about this code of ethics. The failure of any person to receive a copy of this code shall have no effect on that person's duty to comply with this code or on the enforcement of its provisions. Upon appointment to a board or commission, such official shall be provided with a copy of the Ethics Code.

(b) The City Attorney or designated Ethics Compliance Officer, in consultation with the Ethics Review Board, shall develop educational materials and conduct educational programs for the officials and employees of the city on the provisions of this code of ethics, Section 141 of the City Charter, and Section 171 of the Texas Local Government Law. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws.

Sec. 2-95 ~~Sec. 102~~ (Severability)

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

SECTION 18 This ordinance shall be effective ten days after passage. The changes in the City Code's ethics provisions reflected in this ordinance apply only to events taking place on or after the effective date of this ordinance. Any events occurring before the effective date of this ordinance are governed by the

City Code provisions in effect on that date of that event. The prior versions of the Code are continued in effect for that purpose.

PASSED AND APPROVED this 13th day of January, 2005.

MAYOR
Edward D. Garza

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
Andrew Martin
City Attorney