



SPECIAL CALLED MEETING OF THE

TEMPLE CITY COUNCIL

MUNICIPAL BUILDING

2 NORTH MAIN STREET

3rd FLOOR – CONFERENCE ROOM

WEDNESDAY, AUGUST 23, 2017

9:00 A.M.

AGENDA

1. Receive a presentation on and discuss:
 - (A) Proposed amendments to Chapter 2, Article II of the City of Temple's Code of Ordinances; and
 - (B) The Council's policies governing City Board and Commission members which are currently found in Resolution No. 2004-4025-R and Resolution No. 2007-5245-R and possible amendments to those policies.

The City Council reserves the right to discuss any items in executive (closed) session whenever permitted by the Texas Open Meetings Act.

I hereby certify that a true and correct copy of this Notice of Meeting was posted in a public place at 4:30 PM, on August 16, 2017.

Lacy Borgeson
City Secretary

SPECIAL ACCOMMODATIONS: *Persons with disabilities who have special communication or accommodation needs and desire to attend this meeting should notify the City Secretary's Office by mail or telephone 48 hours prior to the meeting date.*

I certify that this Notice of Meeting Agenda was removed by me from the outside bulletin board in front of the City Municipal Building at _____ on the _____ day of _____ 2017.

Chapter 2

ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. City seal.

The seal of the city shall be the coat of arms of the State of Texas in a circle with the words "City of Temple, State of Texas" engraved around the margin thereof.

Sec. 2-2. Rental or sale of city property or materials.

It shall be unlawful for any officer or employee of the city to rent any equipment belonging to the city to any person, or to sell any materials belonging to the city, unless such rental or sale is previously authorized by the city manager.

Sec. 2-3. Change orders.

Change orders involving a decrease or increase in cost of twenty-five thousand dollars (\$25,000.00) or less in contracts for the construction of public works or for the purchase of materials, equipment, and supplies shall be approved by the city manager or his designee for the City of Temple, Texas.

Sec. 2-4. City Attorney--Qualifications.

The city attorney shall be a licensed lawyer and competent to discharge the duties required of him by the Charter and ordinances of the city.

Sec. 2-5. Same--Duties.

It shall be the duty of the city attorney to serve the city council, to advise it as a council, and each of the councilmen respectively, from time to time, with respect to the provisions and a proper interpretation of the Charter, and the powers and authority of the council as the governing body for the city, and to attend the meetings of the council. The city attorney is also charged with the duty to draw all ordinances and resolutions that may be passed on by the council, and to represent the city in all of its litigation in the courts, and to discharge such other duties as are usually imposed upon city attorneys, including advice and counsel from time to time to the city manager.

Sec. 2-6. Same--Opinions requested by appointive boards, committees, etc.

The city attorney shall, at the request of any appointive board, committee or

commission of the City of Temple, Texas, give written or oral opinions upon any question touching the public interest and concerning the official duties of said board, committee or commission. No request for an opinion of the city attorney shall be made by any board, committee or commission except upon the affirmative vote of a majority of the members thereof present and voting at a meeting open to the public. Every such request shall be made through the chairperson of said board, committee or commission.

Sec. 2-7. City engineer to ascertain monuments, make surveys, etc.

It shall be the duty of the city engineer to ascertain the established monuments of the city, and from them to extend surveys thereof and establish others and to locate, establish and survey all private property, streets and alleys where the interests of the city are involved, within the territorial limits of the city, when so called on or required to do so.

Sec. 2-8. Legal defense and indemnification of city officers and employees.

(a) *Definitions.* For purposes of this section the term "officer" shall include any elected or appointed official of the City, and the term "employee" shall include all employees of the City, whether under civil service or not; including firemen and policemen.

(b) *Indemnification.* Any officer or employee who is liable for the payment of any claims or damages, excluding punitive damages, arising out of the course and scope of employment shall be entitled to indemnification by the City provided that the acts or omissions resulting in such liability were done in good faith and without malicious or felonious intent. For the purposes of this section, the term, "arising out of the course and scope of employment" shall not include any action which occurs during a period of time in which the officer or employee is engaged in outside employment or is rendering contractual services to someone other than the City. Whether the acts were done in good faith, without malicious or felonious intent, and within the course and scope of employment shall be determined by the City, and such determination shall be final for the purposes of the representation and indemnity of this section; provided, however, that in the event such representation and indemnity have been denied by the City, if upon a trial on the merits the City determines that the officer or employee was acting in good faith, without malicious or felonious intent and within the scope of employment the indemnification hereunder shall be granted and reasonable legal expenses incurred in the defense of the claim reimbursed. The City shall not be liable for any settlement of any such claim or suit effected without its consent, and the City reserves the right to assert any defense and make any settlement of any claim or suit that it deems expedient.

(c) *Representation in actions.* The City shall have the right and duty to provide legal representation through the city attorney, or in its discretion through the selection of outside legal counsel, to any officer or employee sued in connection with any claim for damages or other civil action against such person arising out of the course and scope of

employment, provided that such officer or employee is entitled to indemnification as set forth in this section. Such legal representation shall be provided at no cost to the officer or employee, and any officer or employee may have his or her own counsel assist in the defense at the sole expense of the officer or employee. The officer or employee shall cooperate fully with the City in preparation and presentation of the case, and the failure to cooperate shall waive such officer's or employee's right to representation and indemnity under this section.

(d) *City's defenses.* Nothing in this section shall be construed as waiving the City's defense of governmental immunity to it or its employees or officers in any action brought against the City or such officer or employee. For any suit or claim arising under the Texas Tort Claims Act, the indemnity provided by this section shall be limited to the statutory limits applicable to the City provided in said Act, as amended.

(e) *Notice.* The provisions of this section shall apply only where the City has been given notice of the action brought against the city officer or employee within seven (7) calendar days of service of process upon the officer or employee.

(f) *Disciplinary actions.* Nothing in this section shall prevent the City from taking any disciplinary action against any officer or employee for conduct defended or indemnified by the City under this section, either before or after conclusion of the civil suit.

(g) *Suits in behalf of the City.* Nothing in this section shall require the City to indemnify any officer or employee for recoveries made against him or her in suits by or on behalf of the City.

Secs. 2-10 – 2-60. Reserved.

ARTICLE II. CODE OF ETHICS

2-61.- Purpose.

It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. Such confidence depends not only on the conduct of those who exercise official power, but on the availability of aid or redress to all persons on equal terms and on the accessibility and dissemination of information relating to the conduct of public affairs.

The purpose of this Code of Ethics is to promote confidence in the governance of the City of Temple, and thereby enhance the City's ability to function effectively. This Code of Ethics also establishes guidelines for standards of conduct for all officials of the City of Temple by discouraging conduct which is incompatible with the best interests of

the City.

2.62.- Title; Application.

This Article may be cited as the City of Temple's Code of Ethics. This Code of Ethics applies to all city officials as defined in this Code. The standards in this Code apply to individuals who are employed by the City on a full-time, part-time or internship basis, including employees who hold Council-appointed positions. Complaints and investigations about employees will be addressed as set forth in the City of Temple Personnel Policies and Procedures Manual.

This Code of Ethics is not intended to preempt or prevent the cumulative application and enforcement of State or Federal law, the City Charter or the Personnel Policies and Procedures Manual of the City of Temple.

This Code of Ethics is effective from the date of adoption by the City Council. This Code may not be applied retroactively, as it governs conduct from the date of adoption forward.

2.63.- Definitions.

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

Affinity - has the meaning set forth in Texas Government Code Sections 573.024 and 573.025, or as amended.

Benefit - anything reasonably regarded as economic gain, or advance, including a benefit to another person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

Board or Commission – for the purposes of this Article, “board or commission” refers to City boards and commissions that have quasi-judicial authority, or responsibilities beyond those that are advisory in nature, including, but not limited to, the Building and Standards Commission, Building Board of Appeals, Civil Service Commission, Development Standards Advisory Board, Planning & Zoning Commission, Reinvestment Zone Number One Board of Directors, and Zoning Board of Adjustment.

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

Candidate - an individual seeking to be elected or appointed to a position on the City Council, a City board or commission, or any employment position within the City

that is appointed by the City Council.

City official - a public official, either elected or appointed, that serves the City as a councilmember or board member for any of the city boards or commissions and all employees including those that are in council appointed positions.

Confidential Information - any information to which a city official has access in such person's official capacity which may not be disclosed to the public except pursuant to State and/or Federal law and which is not otherwise a matter of public record or public knowledge.

Consanguinity - has the meaning set forth in Texas Government Code Sections 573.022 and 573.023, or as amended.

Property - real estate, intellectual property, personal items, equipment, goods, crops, livestock, or an equitable right to income from real estate, intellectual property, personal items, equipment, goods, crops or livestock.

Relative - any person related to a city official within the first degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573.

Representation - all forms of communication and personal appearances in which a person, not acting in performance of official duties, formally or informally, serves as an advocate for private interests, regardless of whether the representation is compensated.

2.64. - Standards of Conduct.

(a) Conflicts of Interest/ Disclosure of Relationships.

(1) City officials and candidates are subject to State law governing dual office holding and the common law doctrine of incompatibility.

(2) City officials must comply with State law pertaining to conflicts of interest of local government officials, including, but not limited to Texas Local Government Code, Chapter 171, as amended, and Chapter 212, as amended, regardless of whether or not the individual defined as a "city official" in this Code would ordinarily be subject to the State law at issue. This provision specifically requires that the affected city official refrain from participation in discussion, deliberation or vote in any matter where a conflict exists, and disclose the nature and extent of the conflict.

(b) Confidential Information.

(1) A city official may not:

(A) Disclose confidential information;

(B) Disclose or reveal any information, or the contents of any discussion, considered during an executive session or closed meeting conducted pursuant to the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and held by the City Council, any City board, commission, committee, or department;

(C) Directly or indirectly use any confidential information that was gained by reason of such person's official position for such person's own gain or benefit or for the benefit of others;

(D) Disclose or reveal any information or the contents of any discussion when disclosure would violate the provisions of the Texas Public Information Act, Texas Government Code, Chapter 552, as amended, or the Texas Open Meetings Act, Texas Government Code Chapter 551, as amended; or

(E) Use his/her position to secure official information about any person or entity for any purpose other than the performance of his/her official duties.

(2) This section does not prohibit disclosure that is authorized or required by law or the confidential reporting of illegal or unethical conduct to authorities designated by law.

(c) Gifts.

(1) A city official may not accept or solicit any money, property, service or other thing of value, by way of gift, favor, loan or otherwise which the official knows, or should know, is being offered or given with the intent to unlawfully influence the exercise or performance of such person's official duties, or in return for having exercised or performed official duties.

(2) This provision does not apply to:

(A) an occasional non-pecuniary gift less than \$50.00 in value;

(B) an award publicly presented in recognition of public service;

(C) an occasional meal, breakfast, lunch, or dinner where public business was discussed;

(D) lawful campaign contributions;

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

(F) attending social functions, ground breakings, or civic events pertinent to the public relations and operations of the City;

(G) T-shirts, caps, and other similar promotional material;

(H) a gift to a city official relating to a special occasion such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and the recipient;

(I) floral arrangements, edible arrangements, fruit and/or gift baskets given to celebrate an achievement, special occasion or holiday, and clearly not given with intent to influence; or

(J) a gift that would have been offered or given to the official if such person were not a public official.

(3) A city official must take reasonable steps to persuade a relative not to solicit, accept, or agree to accept any gift or benefit that would violate subsection (1) if the official solicited, accepted, or agreed to accept it.

(d) Improper Economic Benefit; Unfair Advancement of Private Interests.

(1) A city official may not use his/her official position or knowledge from the official position to secure special privileges or exemptions for the purpose of achieving monetary gain for himself/herself or others.

(2) A city official may not grant any special consideration, treatment or advantage to any citizen, individual, business organization, or group beyond that which is normally available to every other citizen, individual, business or group.

(3) A city official may not appoint, nominate, or vote to nominate or appoint, any relative within the third degree of consanguinity or within the second degree of affinity. Degrees of consanguinity and affinity must be calculated as set out in Texas Government Code, Chapter 573, as amended.

(4) A member of the City Council, Planning and Zoning Commission, or Zoning Board of Adjustment, must file a statement with the record keeper, disclosing the existence of a financial interest in property within the statutory 200-foot notice area for a decision on a land matter. If the city official does not have a conflict of

interest under State law, and has not filed a protest, the city official may participate in deliberation about the item, but may not vote on the item. For this provision, the term “land matter” should be interpreted broadly to include zoning, permitting, plat approval and variances.

(5) A city official who is a member of a City board or commission, may not serve as a representative, before that board or commission, of any person, group or entity.

(6) A city official may not represent any person, group, or entity, other than himself/herself, his/her spouse, or his/her 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.

(e) City Property and Resources.

A city official may not use City supplies, personnel, equipment or facilities for any purpose, including political or campaign purposes, other than to conduct official City business or to the extent those resources are lawfully available for public use.

(f) Outside Employment and Activities.

(1) A city official may not accept other employment incompatible with the full and proper discharge of such person’s duties and responsibilities with the City, or which might impair the official’s independent judgment in the performance of his/her public duty.

(2) A city official may not knowingly engage in any outside activity which will conflict, or be incompatible with the person’s position as an official of the City.

(3) A City Councilmember who is on the board of a nonprofit organization may not vote on any funding request by that nonprofit organization, unless the nonprofit organization has a board of directors or trustees appointed in whole or part by the City Council.

2.65. - Disclosure of Interests.

(a) All appointed board and commission members are required to disclose economic, financial and property interests annually on a form provided by the City Secretary.

(b) All city officials shall be required to comply with disclosure of conflicts of interest pursuant to Texas Local Government Code, Chapter 171 and Section 212.017, as amended.

2.66. - Enforcement.

(a) **City Employees.** Complaints and investigations arising under this Code and involving employees will be addressed as set forth in the City of Temple Personnel Policies and Procedures Manual.

(b) City Officials.

(1) *Board and Commission Members.* Board and commission members serve at the will of the City Council and may be removed from their positions by the City Council at any time. If the City Council has reason to believe that a member has violated the standards set forth in this Code, the City Council may take any action necessary to investigate the situation. If the City Council ultimately finds that the member has violated the standards set forth in this Code, the City Council, by majority vote, may remove the member from the board or commission on which he/she serves.

(2) *City Councilmember.* If a City Councilmember is believed to have violated the standards set forth in this Code, the City Council may take any action necessary to investigate the situation. The Councilmember accused of a potential violation may not participate in any discussion, investigation, or vote related to the accusation. If the City Council ultimately finds that the Councilmember has violated the standards set forth in this Code, the City Council, by majority vote, may adopt a resolution of censure against the Councilmember. The resolution will be transmitted to the City Secretary's Office and a copy placed on the City's website. The City may also take any other action allowed by law.

(c) The City Council will not consider or investigate an alleged violation of this Code by a board or commission member or Councilmember if the alleged violation occurred more than 18 months prior to the date the City Council was made aware of the alleged violation.

2.67.- Ethics Advisory Opinions.

(a) Any city official or employee may request from the City Attorney's Office an advisory opinion with respect to whether proposed action by that person would violate the Ethics Code. Such request must be in writing.

(b) Within twenty (20) business days of receipt of the request, the City Attorney's Office must issue a written advisory opinion. Opinions that address new issues and that are instructive on the application of the Ethics Code must be posted on the City's website in a manner that does not reveal the identity of the individual requesting the opinion.

(c) A person who reasonably and in good faith acts in accordance with a written advisory opinion issued by the City Attorney's Office may not be found to have violated the Ethics

Code by engaging in conduct approved in the advisory opinion, provided that:

- (1) He or she requested the issuance of the opinion;
- (2) The request for an opinion fairly and accurately disclosed all relevant facts; and
- (3) Less than five (5) years has passed between the date the opinion was issued and the date of the conduct in question.

Sect. 2-68 – 2-111. Reserved.

ARTICLE III. PAYMENT BY CHECK OR CREDIT CARD

Section 2-112. Fee for returned checks.

The Director of Finance is hereby authorized and directed to assess and collect a fee on all checks issued to the City of Temple, Texas, or any of its departments, which checks are returned by the bank upon which they are drawn. The amount of the fee shall be established by resolution of the City Council. It shall be unlawful for any person who issues such a check to fail or refuse to pay the fee as authorized here.

Section 2-113. Postdated checks.

Postdated checks are not acceptable for payment of any funds owed to the City of Temple, Texas, or any of its departments. Upon receipt of a postdated check the City may either return the check to the sender or maker or immediately present the check for payment. Any person who makes payment to the City with a postdated check assumes the risk of overdraft and all consequences of overdraft if the postdated check is paid early.

Sec. 2-114. Payment of fees or costs by credit cards.

All municipal officers, officials and employees who collect fees, fines, court costs or other charges, including, but not limited to, the Director of Finance, Clerk of Municipal Court, Director of the Civic Center and the Building Inspector are hereby authorized to accept payment of any such fees, fines, court costs or other charges by credit card. Provided, however, ad valorem taxes shall not be payable in anything other than currency of the United States or by a check or money order or other method consistent with Section 31.06 of the Property Tax Code (V.A.T.C.S.) nor shall credit card payment be authorized if it is otherwise prohibited by law.

Sec. 2-115. Service charge.

There is hereby established a service charge, which shall be the same as the fee

charged by the City of Temple for the collection of a check drawn on an account with insufficient funds, which shall be collected from the person owing the fee, fine, court cost or other charge, if that person's payment by credit card is not honored for any reason by the credit card company on which the funds are drawn. This fee shall be in addition to the original fee, fine, court costs or other charge and is for the collection of the original amount. The municipal officer, employee or official collecting the service charge shall deposit the fee in the general fund.

Sect. 2-116. Encumbrance of credit cards; fee.

Any municipal officer, employee or official who collects fees, fines, court costs or other charges is hereby authorized to contract with the company issuing credit cards to collect and seize credit cards issued by the company that are returned or otherwise unauthorized. All such contracts shall be approved by the City Council and the City Attorney. The Director of Finance shall establish a reasonable fee to be charged the credit card company for return of the credit cards. The municipal officer, employee or official collecting the fee shall deposit the fee in the general fund.

Sec. 2-117 – 2-169. Reserved.

ARTICLE IV. RISK MANAGEMENT

Section 2-170. Policy.

(a) It is the goal of the City Council to provide the requisite municipal services to its citizens most cost-effectively in terms of human, material, and financial resources.

(b) The City Council recognizes that it has a responsibility to provide a safe working environment for its employees and that each employee must pursue the highest of standards in his or her assigned activities and that all municipal employees must recognize that the well-being of persons involved and the protection of our physical resources are as important as the activity and work being performed.

(c) The City Council, acting as a trustee of municipal funds and assets, recognizing that there is a constant exposure to risk of loss from occurrences involving damage to property, injury to employees and other individuals, and unforeseen liabilities imposed by law or assumed by contract, hereby establishes this policy for the intensive management of municipal risks, and directs that this policy be implemented in stages over the next several months. This policy applies to all pure risks, such as fire, liability suits, theft, workers compensation, and other risks of property and liability losses, both direct and indirect. It specifically does not apply to deliberately assumed loss of employee benefits, depreciation or normal obsolescence. The policies contained

herein supersede any policies currently in force and effect and to the extent that these policies are in conflict with current policies these policies shall control.

Sec. 2-171. Office of risk management.

There is hereby created an office of risk management within current personnel, material, and financial constraints for the purpose of recognizing, avoiding, preventing and controlling the chance of resource losses by whatever means feasible.

Sec. 2-172. Appointment and duties of risk manager.

The City Manager is hereby authorized to appoint a risk manager who will be responsible to the City Manager and whose duties will include, but not be limited to, the overall development, supervision, coordination, and implementation of the City of Temple's risk management plans and programs.

Sec. 2-173. Risk Management Committee.

The City Manager shall appoint a risk management committee. The committee's duties and responsibilities are to oversee the City's risk management plans and programs, provide general policy guidance to all City departments, evaluate and make recommendations to the City Manager to protect the interests of the City, its employees and citizens, as well as to review the City's operations to insure adequate protection from loss.

Sec. 2-174. Risk management techniques.

The Office of Risk Management, the Risk Management Committee, and all City departments will be guided by the following policies and techniques:

(a) Because of the need to protect the assets of this municipality against catastrophic loss (or to provide financial restitution if such loss should occur) and the expense involved in such protection, risk management is a critical part of the total management of the City of Temple, Texas.

(b) Risk management is a specialized discipline intended to provide the decision-making management level with data pertinent to the identification, analysis, evaluation, and alternative treatment of exposures to loss through chance events, for both program review and planning new undertakings. In these management areas, the City of Temple will utilize the services of qualified risk management specialists either in its own staff or through the use of risk management outside consultants, as required. Provided, however, consultants shall be hired only after approval by the City Council.

(c) The following techniques of risk management will be employed by the City of Temple, Texas.

1. *Recognition.* The recognition function will be to identify, analyze, and evaluate all exposure to loss through chance events, either in existence or subsequently created, that involve loss potentials of significant amounts either in one event or in the aggregate annually. In this municipality, acceptable loss exposures will be determined by the Risk Management Committee. From time to time this Committee shall assess such loss exposures and may modify them in accordance with current or anticipated fiscal limitations.
2. *Avoidance.* The anticipated financial rewards for assuming any exposures to loss should exceed or at least be approximately equal to potential loss. The City of Temple, Texas, will avoid incurring disproportionate exposures to loss in contractual agreements. All new undertakings shall be evaluated carefully and those already in existence shall be re-evaluated periodically for the purpose of determining if any loss exposure can be avoided.
3. *Loss Prevention.* Once it is decided that a loss exposure should be retained (or transferred) and not avoided, it is the policy of this municipality to try to utilize loss prevention techniques wherever possible, consistent with the costs involved. It is the belief of this municipality that it is preferable to attempt to prevent losses before considering other techniques for handling loss exposures.

The reduction of losses depends primarily upon a careful review of all operations, equipment, and facilities to identify potential hazards and to eliminate or reduce them to their practical minimum. This review must be a constant process--in the design, construction, and operating stages on the part of all management and supervisory personnel. Periodic safety inspections should serve as an overall second look in all the above stages. The essential part of these reviews is the corrective actions taken as a result of the recommendations enacted.

4. *Retention.* Generally, the City of Temple, Texas will retain a loss exposure under the following circumstances.
 - a. when the amount of annual potential loss is relatively so small that it may conveniently be treated as a normal operating expense; or

- b. when
 - (1) the probability of loss (frequency) is so great that loss is almost certain to occur; and
 - (2) the rates for insurance or other transfer mechanisms are disproportionately high; and
 - (3) potential loss amounts are within the financial ability of the City to retain; and
 - (4) no necessary insurance services are required; or
 - c. When the probability of occurrence is so remote that the ordinarily prudent businessman would not incur any amount of premium expense for insurance; or
 - d. When insurance is not available, or only available at prohibitive cost.
5. *Noninsurance Transfer.* In all contractual relationships, the City of Temple, Texas, will transfer to others all exposures to loss from chance events appropriate to the transaction and relationship of the parties. This means that the City of Temple, Texas, will consider before contractually transferring a loss exposure to another party, that party's ability to assume the potential loss, ability to control the loss, and the customs and traditions of the parties and the industries involved. In the absence of adequate net worth of other parties, contractual transfers shall be supported by insurance of the indemnitor and evidence thereof required. Whenever a choice exists among two or more methods of accomplishing a business purpose, the opportunity to transfer the exposure shall be given appropriate consideration.
6. *Insurance Transfer.* The City of Temple, Texas, will purchase insurance under the following circumstances:
- a. when required by law or contract; or
 - b. when the amount of potential loss is too large to be safely retained (measured against assets, operating income, earnings, and cash flow); or

- c. when the probable annual cost variation is unacceptable and insurance is available on acceptable terms; or
 - d. when insurance can better or more economically provide accessory services required, such as inspection, claims handling, legal qualifications, and loss prevention.
7. *Joint Insurance Transfer and Retention.* The City of Temple, Texas will combine insurance transfer and retention through the use of deductibles, franchises, excess insurance, and retrospective rating plans when relatively low loss amount exposures can be safely retained.

Sec. 2-175. Dissemination and implementation.

This risk management policy has been developed and will be disseminated by the risk manager to be used as a tool to help all department heads and supervisory personnel to minimize the City's exposure to loss, whether these losses be in the form of funds expended, theft, lost productivity, personal injury, vehicular accidents, inconvenience, pain and suffering, or in other areas. This office of risk management will make itself available to assist all departments in implementing these policies by providing such advice, guidance, or counseling as required.

Sect. 2-176. Departmental operation.

The City Council of the City of Temple, Texas, recognizes that no risk management plan, policy, or statement for the City will be any more effective than the weakest link in its chain of command. Therefore, department heads and other supervisory personnel will be required to cooperate fully with the risk manager and the risk management committee to implement and enforce the risk management plan and policy.

Chapter 2

ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. City seal.

The seal of the city shall be the coat of arms of the State of Texas in a circle with the words "City of Temple, State of Texas" engraved around the margin thereof.

Sec. 2-2. Rental or sale of city property or materials.

It shall be unlawful for any officer or employee of the city to rent any equipment belonging to the city to any person, or to sell any materials belonging to the city, unless such rental or sale is previously authorized by the city manager.

Sec. 2-3. Change orders.

Change orders involving a decrease or increase in cost of twenty-five thousand dollars (\$25,000.00) or less in contracts for the construction of public works or for the purchase of materials, equipment, and supplies shall be approved by the city manager or his designee for the City of Temple, Texas.

Sec. 2-4. City Attorney--Qualifications.

The city attorney shall be a licensed lawyer and competent to discharge the duties required of him by the Charter and ordinances of the city.

Sec. 2-5. Same--Duties.

It shall be the duty of the city attorney to serve the city council, to advise it as a council, and each of the councilmen respectively, from time to time, with respect to the provisions and a proper interpretation of the Charter, and the powers and authority of the council as the governing body for the city, and to attend the meetings of the council. The city attorney is also charged with the duty to draw all ordinances and resolutions that may be passed on by the council, and to represent the city in all of its litigation in the courts, and to discharge such other duties as are usually imposed upon city attorneys, including advice and counsel from time to time to the city manager.

Sec. 2-6. Same--Opinions requested by appointive boards, committees, etc.

The city attorney shall, at the request of any appointive board, committee or

commission of the City of Temple, Texas, give written or oral opinions upon any question touching the public interest and concerning the official duties of said board, committee or commission. No request for an opinion of the city attorney shall be made by any board, committee or commission except upon the affirmative vote of a majority of the members thereof present and voting at a meeting open to the public. Every such request shall be made through the chairperson of said board, committee or commission.

Sec. 2-7. City engineer to ascertain monuments, make surveys, etc.

It shall be the duty of the city engineer to ascertain the established monuments of the city, and from them to extend surveys thereof and establish others and to locate, establish and survey all private property, streets and alleys where the interests of the city are involved, within the territorial limits of the city, when so called on or required to do so.

Sec. 2-8. Legal defense and indemnification of city officers and employees.

(a) *Definitions.* For purposes of this section the term "officer" shall include any elected or appointed official of the City, and the term "employee" shall include all employees of the City, whether under civil service or not; including firemen and policemen.

(b) *Indemnification.* Any officer or employee who is liable for the payment of any claims or damages, excluding punitive damages, arising out of the course and scope of employment shall be entitled to indemnification by the City provided that the acts or omissions resulting in such liability were done in good faith and without malicious or felonious intent. For the purposes of this section, the term, "arising out of the course and scope of employment" shall not include any action which occurs during a period of time in which the officer or employee is engaged in outside employment or is rendering contractual services to someone other than the City. Whether the acts were done in good faith, without malicious or felonious intent, and within the course and scope of employment shall be determined by the City, and such determination shall be final for the purposes of the representation and indemnity of this section; provided, however, that in the event such representation and indemnity have been denied by the City, if upon a trial on the merits the City determines that the officer or employee was acting in good faith, without malicious or felonious intent and within the scope of employment the indemnification hereunder shall be granted and reasonable legal expenses incurred in the defense of the claim reimbursed. The City shall not be liable for any settlement of any such claim or suit effected without its consent, and the City reserves the right to assert any defense and make any settlement of any claim or suit that it deems expedient.

(c) *Representation in actions.* The City shall have the right and duty to provide legal representation through the city attorney, or in its discretion through the selection of outside legal counsel, to any officer or employee sued in connection with any claim for damages or other civil action against such person arising out of the course and scope of

employment, provided that such officer or employee is entitled to indemnification as set forth in this section. Such legal representation shall be provided at no cost to the officer or employee, and any officer or employee may have his or her own counsel assist in the defense at the sole expense of the officer or employee. The officer or employee shall cooperate fully with the City in preparation and presentation of the case, and the failure to cooperate shall waive such officer's or employee's right to representation and indemnity under this section.

(d) *City's defenses.* Nothing in this section shall be construed as waiving the City's defense of governmental immunity to it or its employees or officers in any action brought against the City or such officer or employee. For any suit or claim arising under the Texas Tort Claims Act, the indemnity provided by this section shall be limited to the statutory limits applicable to the City provided in said Act, as amended.

(e) *Notice.* The provisions of this section shall apply only where the City has been given notice of the action brought against the city officer or employee within seven (7) calendar days of service of process upon the officer or employee.

(f) *Disciplinary actions.* Nothing in this section shall prevent the City from taking any disciplinary action against any officer or employee for conduct defended or indemnified by the City under this section, either before or after conclusion of the civil suit.

(g) *Suits in behalf of the City.* Nothing in this section shall require the City to indemnify any officer or employee for recoveries made against him or her in suits by or on behalf of the City.

Secs. 2-10 – 2-60. Reserved.

ARTICLE II. CODE OF ETHICS

2-61.- Purpose.

It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. Such confidence depends not only on the conduct of those who exercise official power, but on the availability of aid or redress to all persons on equal terms and on the accessibility and dissemination of information relating to the conduct of public affairs.

The purpose of this Code of Ethics is to promote confidence in the governance of the City of Temple, and thereby enhance the City's ability to function effectively. This Code of Ethics also establishes guidelines for standards of conduct for all officials of the City of Temple by discouraging conduct which is incompatible with the best interests of

the City.

2.62.- Title; Application.

This Article may be cited as the City of Temple's Code of Ethics. This Code of Ethics applies to all city officials as defined in this Code. The standards in this Code apply to individuals who are employed by the City on a full-time, part-time or internship basis, including employees who hold Council-appointed positions. Complaints and investigations about employees ~~are~~will be addressed as set forth in the City of Temple Personnel Policies and Procedures Manual.

This Code of Ethics is not intended to preempt or prevent the cumulative application and enforcement of State or Federal law, the City Charter or the Personnel Policies and Procedures Manual of the City of Temple.

This Code of Ethics is effective from the date of adoption by the City Council. This Code may not be applied retroactively, as it governs conduct from the date of adoption forward.

2.63.- Definitions.

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

Affinity - has the meaning set forth in Texas Government Code Sections 573.024 and 573.025, or as amended.

Benefit - anything reasonably regarded as economic gain, or advance, including a benefit to another person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

Board or Commission – for the purposes of this Article, “board or commission” refers to City boards and commissions that have quasi-judicial authority, or responsibilities beyond those that are advisory in nature, including, but not limited to, the Building and Standards Commission, Building Board of Appeals, Civil Service Commission, Development Standards Advisory Board, Planning & Zoning Commission, ~~Temple Economic Development Board of Directors,~~ Reinvestment Zone Number One Board of Directors, and Zoning Board of Adjustment, ~~and the Ethics Review Board.~~

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

Candidate - an individual seeking to be elected or appointed to a position on the

City Council, a City board or commission, or any employment position within the City that is appointed by the City Council.

City official - a public official, either elected or appointed, that serves the City as a councilmember or board member for any of the city boards or commissions and all employees including those that are in council appointed positions.

~~**Clear and Convincing Evidence**—the measure or degree of proof that produces in a person’s mind a firm belief or conviction as to the truth of the allegations sought to be established.~~

Confidential Information - any information to which a city official has access in such person’s official capacity which may not be disclosed to the public except pursuant to State and/or Federal law and which is not otherwise a matter of public record or public knowledge.

Consanguinity - has the meaning set forth in Texas Government Code Sections 573.022 and 573.023, or as amended.

~~**Culpable disregard**—conscious disregard of the effects of the city official’s conduct that would amount to a gross deviation from the standard of care that a reasonable person in a similar situation would observe.~~

~~**Intentionally**—acting with intent with respect to the nature of conduct or to a result of conduct when it is the conscious objective or desire to engage in the conduct or cause the result.~~

~~**Knowingly**—acting with knowledge with respect to the nature of conduct or the circumstances surrounding conduct when aware of the nature of the conduct or that the circumstances exist; a person acts knowingly with respect to his conduct when he/she is aware that the conduct is reasonably certain to cause the result.~~

~~**Probable cause**—after logical inquiry, enough facts exist to lead a reasonable person to believe that a violation has occurred.~~

Property - real estate, intellectual property, personal items, equipment, goods, crops, livestock, or an equitable right to income from real estate, intellectual property, personal items, equipment, goods, crops or livestock.

Relative - any person related to a city official within the first degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573.

Representation - all forms of communication and personal appearances in which a

person, not acting in performance of official duties, formally or informally, serves as an advocate for private interests, regardless of whether the representation is compensated.

2.64. - Standards of Conduct.

(a) Conflicts of Interest/ Disclosure of Relationships.

(1) City officials and candidates are subject to State law governing dual office holding and the common law doctrine of incompatibility.

(2) City officials must comply with State law pertaining to conflicts of interest of local government officials, including, but not limited to Texas Local Government Code, Chapter 171, as amended, and Chapter 212, as amended, regardless of whether or not the individual defined as a “city official” in this Code would ordinarily be subject to the State law at issue. This provision specifically requires that the affected city official refrain from participation in discussion, deliberation or vote in any matter where a conflict exists, and disclose the nature and extent of the conflict.

(b) Confidential Information.

(1) A city official may not:

(A) Disclose confidential information;

(B) Disclose or reveal any information, or the contents of any discussion, considered during an executive session or closed meeting conducted pursuant to the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and held by the City Council, any City board, commission, committee, or department;

(C) Directly or indirectly use any confidential information that was gained by reason of such person’s official position for such person’s own gain or benefit or for the benefit of others;

(D) Disclose or reveal any information or the contents of any discussion when disclosure would violate the provisions of the Texas Public Information Act, Texas Government Code, Chapter 552, as amended, or the Texas Open Meetings Act, Texas Government Code Chapter 551, as amended; or

(E) Use his/her position to secure official information about any person or entity for any purpose other than the performance of his/her official duties.

(2) This section does not prohibit disclosure that is authorized or required by law or the confidential reporting of illegal or unethical conduct to authorities designated by law.

(c) Gifts.

(1) A city official may not accept or solicit any money, property, service or other thing of value, by way of gift, favor, loan or otherwise which the official knows, or should know, is being offered or given with the intent to unlawfully influence the exercise or performance of such person's official duties, or in return for having exercised or performed official duties.

(2) This provision does not apply to:

(A) an occasional non-pecuniary gift less than \$50.00 in value;

(B) an award publicly presented in recognition of public service;

(C) an occasional meal, breakfast, lunch, or dinner where public business was discussed;

(D) lawful campaign contributions;

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

(F) attending social functions, ground breakings, or civic events pertinent to the public relations and operations of the City;

(G) T-shirts, caps, and other similar promotional material;

(H) a gift to a city official relating to a special occasion such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and the recipient;

(I) floral arrangements, edible arrangements, fruit and/or gift baskets given to celebrate an achievement, special occasion or holiday, and clearly not given with intent to influence; or

(J) a gift that would have been offered or given to the official if such person were not a public official.

(3) A city official must take reasonable steps to persuade a relative not to solicit,

accept, or agree to accept any gift or benefit that would violate subsection (1) if the official solicited, accepted, or agreed to accept it.

(d) Improper Economic Benefit; Unfair Advancement of Private Interests.

(1) A city official may not use his/her official position or knowledge from the official position to secure special privileges or exemptions for the purpose of achieving monetary gain for himself/herself or others.

(2) A city official may not grant any special consideration, treatment or advantage to any citizen, individual, business organization, or group beyond that which is normally available to every other citizen, individual, business or group.

~~(3) A city official may not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the City. This subsection does not prohibit a city official from:~~

~~(i) Responding to a request for bid, request for proposal, or request for qualifications advertised or solicited by the City and responded to in accordance with State and local law; or~~

~~(ii) Contracting with the City if the contract is awarded to the city official in accordance with State and local law.~~

(43) A city official may not appoint, nominate, or vote to nominate or appoint, any relative within the third degree of consanguinity or within the second degree of affinity. Degrees of consanguinity and affinity must be calculated as set out in Texas Government Code, Chapter 573, as amended.

(54) A member of the City Council, Planning and Zoning Commission, or Zoning Board of Adjustment, must file a statement with the record keeper, disclosing the existence of a financial interest in property within the statutory 200-foot notice area for a decision on a land matter. If the city official does not have a conflict of interest under State law, and has not filed a protest, the city official may participate in deliberation about the item, but may not vote on the item. For this provision, the term "land matter" should be interpreted broadly to include zoning, permitting, plat approval and variances.

(65) A city official who is a member of a City board or commission, may not serve as a representative, before that board or commission, of any person, group or entity.

~~(7) A city official may not represent any person, group, or entity, other than~~

~~himself/herself, his/her spouse, or his/her minor children before the City.~~

(86) A city official may not represent any person, group, or entity, other than himself/herself, his/her spouse, or his/her 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.

(e) City Property and Resources.

A city official may not use City supplies, personnel, equipment or facilities for any purpose, including political or campaign purposes, other than to conduct official City business or to the extent those resources are lawfully available for public use.

(f) Outside Employment and Activities.

(1) A city official may not accept other employment incompatible with the full and proper discharge of such person's duties and responsibilities with the City, or which might impair the official's independent judgment in the performance of his/her public duty.

(2) A city official may not knowingly engage in any outside activity which will conflict, or be incompatible with the person's position as an official of the City.

(3) A City Councilmember who is on the board of a nonprofit organization may not vote on any funding request by that nonprofit organization, unless the nonprofit organization has a board of directors or trustees appointed in whole or part by the City Council.

~~2.65. -- Former City Officials.~~

~~(a) A former city official may not represent any person, group, or entity other than himself/herself, his/her spouse, or his/her minor child, before the City for a period of 18 months after vacating his/her position on the City Council, a city board or commission.~~

~~(b) A former city official may not represent any person, group, or entity other than himself/herself, his/her spouse, or his/her minor child, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to the interests of the City and the matter is one in which the former city official personally and substantially participated prior the termination of his/her official duties.~~

~~(c) A former city official has a continuing duty of confidentiality and may not use or disclose confidential information acquired during service as a city official. This provision does not prohibit disclosure that is authorized or required by law.~~

2.6665. - Disclosure of Interests.

(a) All appointed board and commission members are required to disclose economic, financial and property interests annually on a form provided by the City Secretary.

(b) All city officials shall be required to comply with disclosure of conflicts of interest pursuant to Texas Local Government Code, Chapter 171 and Section 212.017, as amended.

2.6766. - ~~Ethics Review Board~~ Enforcement.

(a) City Employees. Complaints and investigations arising under this Code and involving employees will be addressed as set forth in the City of Temple Personnel Policies and Procedures Manual.

(b) City Officials.

(1) Board and Commission Members. Board and commission members serve at the will of the City Council and may be removed from their positions by the City Council at any time. If the City Council has reason to believe that a member has violated the standards set forth in this Code, the City Council may take any action necessary to investigate the situation. If the City Council ultimately finds that the member has violated the standards set forth in this Code, the City Council, by majority vote, may remove the member from the board or commission on which he/she serves.

(2) City Councilmember. If a City Councilmember is believed to have violated the standards set forth in this Code, the City Council may take any action necessary to investigate the situation. The Councilmember accused of a potential violation may not participate in any discussion, investigation, or vote related to the accusation. If the City Council ultimately finds that the Councilmember has violated the standards set forth in this Code, the City Council, by majority vote, may adopt a resolution of censure against the Councilmember. The resolution will be transmitted to the City Secretary's Office and a copy placed on the City's website. The City may also take any other action allowed by law.

(c) The City Council will not consider or investigate an alleged violation of this Code by a board or commission member or Councilmember if the alleged violation occurred more than 18 months prior to the date the City Council was made aware of the alleged violation.

~~(a) An Ethics Review Board is hereby created to hear complaints under this Code. The Board will consist of five (5) members and two (2) alternate members. The Mayor and each member of the City Council must nominate one (1) member of the Board, and each nominee must be confirmed by a majority of City Council members. Two (2) alternate~~

~~members must be proposed and confirmed by unanimous vote of the City Council. The two (2) alternate members may be proposed by any member of the City Council, including the Mayor. The alternate members will serve on the Board in the case of a conflict of another Board member.~~

~~(b) Terms of office for each Board member will correspond with the terms of office of the City Council member who nominated him/her to the Board and will run for such councilmember's corresponding three (3) year term. No member of the Board may serve for more than three (3) full terms. A partial term to which a person is appointed will not be counted as a full three (3) year term for purposes of this Code, except that a partial term will be counted as a full three (3) year term if the person resigns or forfeits his position. If the City Council member who nominated the Board member resigns, forfeits his/her position, or passes away before the end of his/her three (3) year term, the Ethics Review Board member will continue to serve on the Board until the councilmember's successor is elected or appointed and a new Ethics Review Board member is nominated. The two (2) alternate Board members will serve three (3) year terms which will not correspond with any councilmember's term.~~

~~(c) In order to qualify as a member of the Board, a person must be of good moral character and a resident of the City of Temple. A member may not have any convictions for a felony or any crime of moral turpitude.~~

~~(d) A member of the Board may not be:~~

~~——(1) a salaried city official or employee;~~

~~——(2) an elected public official;~~

~~——(3) a candidate for public office;~~

~~——(4) a campaign treasurer, campaign manager, officer or other policy or decision-maker for the campaign of any candidate for the Mayor or any councilmember positions for the City of Temple; or~~

~~——(5) a member of any City board or commission other than the Ethics Review Board.~~

~~(e) The Board must include at least one member who is an attorney and one member with expertise in finance or accounting.~~

~~(f) The City Council will fill any vacancy on the Ethics Review Board by a person who will serve the remainder of the unexpired term. The nomination to fill the vacancy will 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.~~

~~(g) A member of the Board may be removed 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, but are not limited to: failure to satisfy, or continue to satisfy, the qualifications set forth above; substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; or violation of any provision of this Code of Ethics or a conviction of a felony or crime of moral turpitude.~~

~~(h) A member of the Board shall recuse himself/herself from any case in which, because of familial relationship (through consanguinity or affinity, as defined by this Article), employment, investments, or otherwise, his/her impartiality might reasonably be questioned. A Board member must not participate in any manner regarding any complaint that the member initiated, that involves the member of City Council who nominated him/her for a seat on the Board, or during the pendency of an indictment or information charging the member with any felony or crime of moral turpitude or after a finding of guilt of such an offense.~~

~~(i) A chair and vice chair must be elected from among the members and will serve a one year term. The chair may call a meeting of the Board when a quorum of the Board is present. The chair shall preside at meetings of the Board and perform other administrative duties. The vice chair shall assume the duties of the chair in the event of a vacancy in that position, or in the circumstances in which the chair has recused himself/herself from participation.~~

2.68 Jurisdiction and Powers of the Ethics Review Board

~~(a) The Ethics Review Board has jurisdiction to investigate and make findings and conclusions concerning an alleged violation of this Ethics Code.~~

~~(b) The Ethics Review Board will not consider any alleged violation that occurred more than eighteen (18) months prior to the date of the filing of the complaint.~~

~~(c) Three members will constitute a quorum of the Ethics Review Board.~~

~~(d) The termination of a city official's duties does not affect the jurisdiction of the Ethics Review Board with respect to alleged violations occurring prior to the termination of official duties.~~

~~(e) 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 Ethics Code;~~

~~———(2) To meet as often as necessary to fulfill its responsibilities;~~

~~——(3) To request from the City Manager the assignment of staff necessary to carry out its duties;~~

~~——(4) To review, maintain on file, and dispose of sworn complaints;~~

~~——(5) To make notifications, extend deadlines, and conduct investigations;~~

~~——(6) To compel the production of sworn testimony, witnesses, and evidence;~~

~~——(7) To recommend cases for prosecution by appropriate authorities and agencies;~~

~~——(8) To request the City Attorney to designate an independent counsel to advise and represent the Board, when appropriate or necessary to avoid a conflict of interest; and~~

~~——(9) To provide assistance in the training and education of city officials and employees with respect to their ethical responsibilities under this Code of Ethics.~~

~~2.70. Complaint Procedures.~~

~~(a) Any person, including a member of the Ethics Review Board, acting personally or on behalf of the Board, who believes there has been a violation of this Code may file a sworn, written complaint with the City Secretary's Office that alleges such violations.~~

~~(b) A complaint filed under this section must be in writing and under oath and must set forth the following information:~~

~~——(1) The name of the complainant;~~

~~——(2) The street or mailing address, telephone number, and email address of the complainant;~~

~~——(3) The name of each city official and/or city employee complained about;~~

~~——(4) The position or title of each city official and/or city employee complained about;~~

~~——(5) The nature of the alleged violation, including, if possible, the specific provision of the Ethics Code alleged to have been violated;~~

~~——(6) A statement of the facts constituting the alleged violation and the dates or period of time during which the violation is alleged to have occurred; and~~

~~——(7) All documents or other materials in the possession of 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.~~

~~(c) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is based on personal knowledge and is true and correct, or that the complainant has good reason to believe and does believe, that the facts alleged constitute a violation of this Ethics Code. The complainant shall swear to or affirm the facts under oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. A complaint that is not sworn as required shall be returned to the complainant.~~

~~(d) The complaint must state on its face an allegation that, if true, constitutes a violation of this Code of Ethics.~~

~~(e) A complaint for violation of this Code must be made within 18 months from the date of the alleged violation(s).~~

~~(f) A general complaint lacking in detail or failing to identify one or more alleged violations of this code, will not be considered sufficient to invoke the procedures set forth herein.~~

~~(g) Anonymous complaints will not be accepted for filing or further action. A person who knowingly makes a false statement in a complaint shall be subject to criminal prosecution for perjury as allowed by the laws of this State.~~

2.71. - Processing of a Complaint.

~~(a) Within three (3) business days of filing of the complaint, the City Secretary will forward a copy of the complaint to the City Attorney's Office. The City Attorney's Office will review the complaint for compliance with the filing requirements established by this Code within five (5) business days of receipt from the City Secretary. If the complaint does not substantially comply with the filing requirements, the City Attorney's Office must return the complaint to the complainant with a letter explaining the defects in the complaint. The complainant must amend the complaint within five (5) business days of the date of the City Attorney's letter and file the amended complaint with the City Secretary's Office. If an amended complaint is not received within that time period, the complaint will be considered withdrawn.~~

~~(b) If the complaint alleges a violation of this Code against a city employee and substantially complies with all filing requirements, the complaint will be forwarded by the City Attorney to the Director of Human Resources and enforced as outlined in the~~

~~Personnel Policies and Procedures Manual.~~

~~(c) If the complaint alleges a violation of this Code against a city official and substantially complies with all filing requirements, the complaint will be forwarded by the City Secretary to the members of the Ethics Review Board and the city official(s) who is/are the subject of the complaint within fifteen (15) business days after receipt of the complaint by the City Secretary.~~

~~(d) The city official who is the subject of the complaint must also be provided with a copy of this Code of Ethics and informed:~~

~~———(1) That within ten (10) business days of receipt of the complaint, he or she may file a sworn response with the City Secretary which will be forwarded to the City Attorney's Office and the Ethics Review Board;~~

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

~~———(3) That the complainant will receive a copy of any response filed with the City Secretary by the city official and will be given five (5) business days to respond to the city official's response by sworn writing filed with the City Secretary, a copy of which must be forwarded to the city official;~~

~~———(4) That the complainant(s) and city official(s) are entitled to a hearing on the complaint; and~~

~~———(5) That city officials and city employees have a duty to cooperate with the Ethics Review Board.~~

~~(e) Except as required by law, the Board shall not disclose any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the city official who is the subject of the complaint, the complainant, a witness or potential witness to the alleged violation, or as otherwise provided by this Code.~~

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

~~(g) Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.~~

~~**2.72. – City Attorney's Duties.**~~

~~The City Attorney's Office may perform the following duties in administering this Code~~

of Ethics:

~~——(1) Act as legal counsel to the Ethics Review Board except when a conflict of interest exists which requires the designation of independent counsel;~~

~~——(2) Review complaints for legal sufficiency; and~~

~~——(3) Issue advisory opinions to city officials and city employees regarding the requirements and standards imposed by this Code of Ethics.~~

~~**2.73. – Review and Investigation of Complaint.**~~

~~(a) A complaint against a city employee will be reviewed and investigated by the Director of Human Resources in accordance with the City’s Personnel Policies and Procedures Manual.~~

~~(b) A complaint against a city official may be reviewed and investigated by the Ethics Review Board or a designated committee of the Board, the City Attorney’s Office, or independent counsel, except that the City Attorney’s Office may not investigate complaints made against the Mayor or any City Councilmember.~~

~~(c) Within thirty (30) days of receipt of the complaint by the Ethics Review Board, the Board must meet to determine who will handle review and investigation of the complaint. The City Attorney or Ethics Review Board may request the appointment of an independent counsel for a particular case.~~

~~(d) If the Board votes to review and investigate a complaint, it will meet to review the complaint, responses, replies to responses, and any other information it has requested be provided to assist in investigation of the complaint. The Board must consider whether the facts of the case establish a violation of any provision in this Code, regardless of whether such provisions were identified in the complaint. The Board review and meeting required by this Section may be held in conjunction with the hearing required under subsection (f) and Section 2-74 or separately from those hearings.~~

~~(e) If the Board votes to assign the review and investigation of the complaint to the City Attorney’s Office or independent counsel, the City Attorney’s Office or independent counsel must present the findings of the investigation to the Ethics Review Board within sixty (60) days of the assignment. If the City Attorney’s Office or independent counsel finds that the complaint fails to allege a violation of this Code of Ethics when assuming all facts set forth in the complaint to be true, they may recommend that the Board dismiss the complaint without further proceedings.~~

~~(f) For the purposes of this section, a “frivolous complaint” is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of~~

harassment.

~~—— (1) By a majority vote of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant against a city official is a frivolous complaint.~~

~~—— (2) In deciding if a complaint is frivolous, the Board may consider:~~

~~—— (a) The time of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant;~~

~~—— (b) The nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Board;~~

~~—— (c) The existence and nature of any relationship between the city official and the complainant before the complaint was filed;~~

~~—— (d) If the city official is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the city official;~~

~~—— (e) Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and~~

~~—— (f) Any evidence of the complainant's motives in filing the complaint.~~

~~—— (3) Notice of an order to show cause must be given to the complainant, along with a copy to the city official, and shall include:~~

~~—— (a) An explanation of why the complaint appears to be frivolous; and~~

~~—— (b) The date, time, and place of the hearing to be held under this section.~~

~~—— (4) Before making a determination that a sworn complaint is frivolous, the Board must hold a hearing at which the complainant may be heard. The complainant may be accompanied by counsel retained by the complainant.~~

~~—— (5) By a majority vote of those Board members present after the hearing, the Board may determine that a complainant filed a frivolous complaint against a city official and dismiss the complaint.~~

2.74. – Hearing before the Ethics Review Board.

~~(a) Except as provided for in Section 2.73(f), before a complaint is disposed of by the Board, a public hearing must be held during which the complainant and the city official who is the subject of the complaint have the right to be represented by counsel, to call, examine, and cross examine witnesses, and to present evidence.~~

~~(b) At any hearing held by the Board during the investigation or disposition of a complaint, the following rules apply:~~

~~———(1) All witnesses must be sworn. The Board may establish time limits and other rules relating to the participation of any person in the hearing.~~

~~———(2) No person may be held to have violated this Ethics Code, unless a majority of the Ethics Review Board finds by a preponderance of the evidence that a violation was committed.~~

~~———(3) The Ethics Review Board must rely on evidence of which a reasonably prudent person would commonly rely on in the conduct of their own affairs. The Board must:~~

~~———(a) Hear evidence related to the allegations; and~~

~~———(b) Consider only information that is presented and found to be reliable and useful.~~

~~———(4) The city official who is subject to the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. The time permitted for presentation will be at the discretion of the Board.~~

~~———(5) The complainant has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. The time permitted for presentation will be at the discretion of the Board.~~

~~2.75. -- Disposition and Sanctions.~~

~~(a) In deciding whether to recommend sanctions, the Ethics Review Board will take into account relevant considerations, including, but not limited to, the following:~~

~~———(1) The culpability of the person alleged to have violated this Code;~~

~~———(2) The harm to public or private interests resulting from the violation;~~

~~———(3) The necessity of preserving public confidence in the conduct of local~~

government;

~~——(4) Whether there is evidence of a pattern of disregard for ethical obligations; and~~

~~——(5) Whether remedial action has been taken that will mitigate the adverse effect of the violation.~~

~~(b) If it is determined that a violation of this Code of Ethics has occurred, the Board may recommend, and the City Council may impose one of the following sanctions:~~

~~——(1) A Letter of Notification when the violation is clearly unintentional or inadvertent; a letter of notification must advise the city official of any steps to be taken to avoid future violations;~~

~~——(2) A Letter of Admonition when the violation is minor and/or may have been unintentional and inadvertent, but requires a more substantial response than a letter of notification;~~

~~——(3) A Letter of Reprimand when the violation is serious and/or the City Council finds that a violation has been committed intentionally or through disregard of this code;~~

~~——(4) Recommendation of suspension or removal when the official involved is a board or commission member, as well as a recommendation for a length of suspension, if a suspension is recommended, when the City Council finds that a serious or repeated violation has been committed intentionally or with culpable disregard of this Code;~~

~~——(5) Letter or Resolution of Censure if the City Council finds that a serious or repeated violation of this Code has been committed intentionally or through culpable disregard by an elected city official.——~~

~~(A) A Letter of Censure directed to an elected city official shall be transmitted to the City Secretary and published in the official newspaper of the City and shall be posted on the City's website.~~

~~(c) A recommendation to impose sanctions must be agreed to by a majority of the Board members present and by record vote. Within thirty (30) business days of the Ethics Review Board's recommendation, the City Council must consider the recommendation at a regularly scheduled City Council meeting. If the complaint involves one or more members of the City Council, the members complained against may not participate in the deliberation or decision regarding the complaint. The City Council may sustain, reverse, or modify the Board's recommendation. The City Council's decision regarding the complaint is final.~~

~~(d) In the case of a complaint against a majority of the City Council, if the Ethics Review~~

~~Board or independent counsel finds that a violation did occur, the Ethics Review Board or independent counsel must file its findings with the City Secretary, announce the findings in a public hearing, and may recommend if the circumstances are serious, repeated and/or committed intentionally or with culpable disregard, that the public file a petition for a recall election.~~

~~(e) If the Board, either on its own recommendation or at the recommendation of the City Attorney or independent counsel, following an investigation, or after a public hearing, finds that no violation has been committed, the dismissal of the complaint shall be announced in an open public hearing.~~

2.7667.- Ethics Advisory Opinions.

(a) Any city official or employee may request from the City Attorney's Office an advisory opinion with respect to whether proposed action by that person would violate the Ethics Code. Such request must be in writing.

(b) Within twenty (20) business days of receipt of the request, the City Attorney's Office must issue a written advisory opinion. Opinions that address new issues and that are instructive on the application of the Ethics Code must be posted on the City's webpage in a manner that does not reveal the identity of the individual requesting the opinion.

(c) A person who reasonably and in good faith acts in accordance with a written advisory opinion issued by the City Attorney's Office may not be found to have violated the Ethics Code by engaging in conduct approved in the advisory opinion, provided that:

(1) He or she requested the issuance of the opinion;

(2) The request for an opinion fairly and accurately disclosed all relevant facts; and

(3) Less than five (5) years has passed between the date the opinion was issued and the date of the conduct in question.

2.77. Public Records and Open Meetings

~~Meetings and other proceedings of the Ethics Review Board will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.~~

Sect. 2-78-68 – 2-111. Reserved.

ARTICLE III. PAYMENT BY CHECK OR CREDIT CARD

Section 2-112. Fee for returned checks.

The Director of Finance is hereby authorized and directed to assess and collect a fee on all checks issued to the City of Temple, Texas, or any of its departments, which checks are returned by the bank upon which they are drawn. The amount of the fee shall be established by resolution of the City Council. It shall be unlawful for any person who issues such a check to fail or refuse to pay the fee as authorized here.

Section 2-113. Postdated checks.

Postdated checks are not acceptable for payment of any funds owed to the City of Temple, Texas, or any of its departments. Upon receipt of a postdated check the City may either return the check to the sender or maker or immediately present the check for payment. Any person who makes payment to the City with a postdated check assumes the risk of overdraft and all consequences of overdraft if the postdated check is paid early.

Sec. 2-114. Payment of fees or costs by credit cards.

All municipal officers, officials and employees who collect fees, fines, court costs or other charges, including, but not limited to, the Director of Finance, Clerk of Municipal Court, Director of the Civic Center and the Building Inspector are hereby authorized to accept payment of any such fees, fines, court costs or other charges by credit card. Provided, however, ad valorem taxes shall not be payable in anything other than currency of the United States or by a check or money order or other method consistent with Section 31.06 of the Property Tax Code (V.A.T.C.S.) nor shall credit card payment be authorized if it is otherwise prohibited by law.

Sec. 2-115. Service charge.

There is hereby established a service charge, which shall be the same as the fee charged by the City of Temple for the collection of a check drawn on an account with insufficient funds, which shall be collected from the person owing the fee, fine, court cost or other charge, if that person's payment by credit card is not honored for any reason by the credit card company on which the funds are drawn. This fee shall be in addition to the original fee, fine, court costs or other charge and is for the collection of the original amount. The municipal officer, employee or official collecting the service charge shall deposit the fee in the general fund.

Sect. 2-116. Encumbrance of credit cards; fee.

Any municipal officer, employee or official who collects fees, fines, court costs or other charges is hereby authorized to contract with the company issuing credit cards to

collect and seize credit cards issued by the company that are returned or otherwise unauthorized. All such contracts shall be approved by the City Council and the City Attorney. The Director of Finance shall establish a reasonable fee to be charged the credit card company for return of the credit cards. The municipal officer, employee or official collecting the fee shall deposit the fee in the general fund.

Sec. 2-117 – 2-169. Reserved.

ARTICLE IV. RISK MANAGEMENT

Section 2-170. Policy.

(a) It is the goal of the City Council to provide the requisite municipal services to its citizens most cost-effectively in terms of human, material, and financial resources.

(b) The City Council recognizes that it has a responsibility to provide a safe working environment for its employees and that each employee must pursue the highest of standards in his or her assigned activities and that all municipal employees must recognize that the well-being of persons involved and the protection of our physical resources are as important as the activity and work being performed.

(c) The City Council, acting as a trustee of municipal funds and assets, recognizing that there is a constant exposure to risk of loss from occurrences involving damage to property, injury to employees and other individuals, and unforeseen liabilities imposed by law or assumed by contract, hereby establishes this policy for the intensive management of municipal risks, and directs that this policy be implemented in stages over the next several months. This policy applies to all pure risks, such as fire, liability suits, theft, workers compensation, and other risks of property and liability losses, both direct and indirect. It specifically does not apply to deliberately assumed loss of employee benefits, depreciation or normal obsolescence. The policies contained herein supersede any policies currently in force and effect and to the extent that these policies are in conflict with current policies these policies shall control.

Sec. 2-171. Office of risk management.

There is hereby created an office of risk management within current personnel, material, and financial constraints for the purpose of recognizing, avoiding, preventing and controlling the chance of resource losses by whatever means feasible.

Sec. 2-172. Appointment and duties of risk manager.

The City Manager is hereby authorized to appoint a risk manager who will be responsible to the City Manager and whose duties will include, but not be limited to, the overall development, supervision, coordination, and implementation of the City of Temple's risk management plans and programs.

Sec. 2-173. Risk Management Committee.

The City Manager shall appoint a risk management committee. The committee's duties and responsibilities are to oversee the City's risk management plans and programs, provide general policy guidance to all City departments, evaluate and make recommendations to the City Manager to protect the interests of the City, its employees and citizens, as well as to review the City's operations to insure adequate protection from loss.

Sec. 2-174. Risk management techniques.

The Office of Risk Management, the Risk Management Committee, and all City departments will be guided by the following policies and techniques:

(a) Because of the need to protect the assets of this municipality against catastrophic loss (or to provide financial restitution if such loss should occur) and the expense involved in such protection, risk management is a critical part of the total management of the City of Temple, Texas.

(b) Risk management is a specialized discipline intended to provide the decision-making management level with data pertinent to the identification, analysis, evaluation, and alternative treatment of exposures to loss through chance events, for both program review and planning new undertakings. In these management areas, the City of Temple will utilize the services of qualified risk management specialists either in its own staff or through the use of risk management outside consultants, as required. Provided, however, consultants shall be hired only after approval by the City Council.

(c) The following techniques of risk management will be employed by the City of Temple, Texas.

1. *Recognition.* The recognition function will be to identify, analyze, and evaluate all exposure to loss through chance events, either in existence or subsequently created, that involve loss potentials of significant amounts either in one event or in the aggregate annually. In this municipality, acceptable loss exposures will be determined by the Risk Management Committee. From time to time this Committee shall assess such loss exposures and may modify them in accordance with current or anticipated fiscal limitations.

2. *Avoidance.* The anticipated financial rewards for assuming any exposures to loss should exceed or at least be approximately equal to potential loss. The City of Temple, Texas, will avoid incurring disproportionate exposures to loss in contractual agreements. All new undertakings shall be evaluated carefully and those already in existence shall be re-evaluated periodically for the purpose of determining if any loss exposure can be avoided.
3. *Loss Prevention.* Once it is decided that a loss exposure should be retained (or transferred) and not avoided, it is the policy of this municipality to try to utilize loss prevention techniques wherever possible, consistent with the costs involved. It is the belief of this municipality that it is preferable to attempt to prevent losses before considering other techniques for handling loss exposures.

The reduction of losses depends primarily upon a careful review of all operations, equipment, and facilities to identify potential hazards and to eliminate or reduce them to their practical minimum. This review must be a constant process--in the design, construction, and operating stages on the part of all management and supervisory personnel. Periodic safety inspections should serve as an overall second look in all the above stages. The essential part of these reviews is the corrective actions taken as a result of the recommendations enacted.

4. *Retention.* Generally, the City of Temple, Texas will retain a loss exposure under the following circumstances.
 - a. when the amount of annual potential loss is relatively so small that it may conveniently be treated as a normal operating expense; or
 - b. when
 - (1) the probability of loss (frequency) is so great that loss is almost certain to occur; and
 - (2) the rates for insurance or other transfer mechanisms are disproportionately high; and
 - (3) potential loss amounts are within the financial ability of the City to retain; and

- (4) no necessary insurance services are required; or
 - c. When the probability of occurrence is so remote that the ordinarily prudent businessman would not incur any amount of premium expense for insurance; or
 - d. When insurance is not available, or only available at prohibitive cost.
5. *Noninsurance Transfer.* In all contractual relationships, the City of Temple, Texas, will transfer to others all exposures to loss from chance events appropriate to the transaction and relationship of the parties. This means that the City of Temple, Texas, will consider before contractually transferring a loss exposure to another party, that party's ability to assume the potential loss, ability to control the loss, and the customs and traditions of the parties and the industries involved. In the absence of adequate net worth of other parties, contractual transfers shall be supported by insurance of the indemnitor and evidence thereof required. Whenever a choice exists among two or more methods of accomplishing a business purpose, the opportunity to transfer the exposure shall be given appropriate consideration.
6. *Insurance Transfer.* The City of Temple, Texas, will purchase insurance under the following circumstances:
- a. when required by law or contract; or
 - b. when the amount of potential loss is too large to be safely retained (measured against assets, operating income, earnings, and cash flow); or
 - c. when the probable annual cost variation is unacceptable and insurance is available on acceptable terms; or
 - d. when insurance can better or more economically provide accessory services required, such as inspection, claims handling, legal qualifications, and loss prevention.
7. *Joint Insurance Transfer and Retention.* The City of Temple, Texas will combine insurance transfer and retention through the use of deductibles, franchises, excess insurance, and retrospective rating plans when relatively low loss amount exposures can be safely retained.

Sec. 2-175. Dissemination and implementation.

This risk management policy has been developed and will be disseminated by the risk manager to be used as a tool to help all department heads and supervisory personnel to minimize the City's exposure to loss, whether these losses be in the form of funds expended, theft, lost productivity, personal injury, vehicular accidents, inconvenience, pain and suffering, or in other areas. This office of risk management will make itself available to assist all departments in implementing these policies by providing such advice, guidance, or counseling as required.

Sect. 2-176. Departmental operation.

The City Council of the City of Temple, Texas, recognizes that no risk management plan, policy, or statement for the City will be any more effective than the weakest link in its chain of command. Therefore, department heads and other supervisory personnel will be required to cooperate fully with the risk manager and the risk management committee to implement and enforce the risk management plan and policy.