

ORDINANCE NO. 1232-08-20

AN ORDINANCE ESTABLISHING PROCEDURES ON THE CONDUCT OF INVESTIGATIONS PER SECTION 3.16 OF THE CITY CHARTER BY ADOPTING ARTICLE 2.02 “CITY COUNCIL”, TO INCLUDE DIVISION 2, PROCEDURES ON THE CONDUCT OF INVESTIGATIONS, AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, Section 3.16 of the Hondo City Charter requires the City Council, by Ordinance, to develop procedures on the conduct of investigations, penalties for contempt for failing or refusing to obey any subpoena issued as a result of a City Council investigation; and

WHEREAS, the City Council gave direction for the City Attorney to develop such procedures in case the majority of the City Council requested an investigation within the jurisdiction of Section 3.16 of the Hondo City Charter;

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

SECTION 1. AMENDMENT. Article 2.02 “City Council”, Division 2, “Procedures on the Conduct of Investigations”, of the Municipal Code of Ordinances of the City of Hondo is hereby adopted so that Division 2, shall read as follows:

ARTICLE 2.02 CITY COUNCIL

DIVISION 2. PROCEDURES ON THE CONDUCT OF INVESTIGATIONS

Sec. 2.02.031 General

(a) In accordance with Section 3.16 of the Hondo City Charter, the City Council shall provide by Ordinance procedures on the conduct of investigations, penalties for contempt for failing or refusing to obey any subpoena issued as a result of the investigation, including but not limited to testimony or to produce any books, papers or other evidence. In addition to any other specific authority of investigation and hearing provided for in the Charter, the City Council shall have the power to inquire into the official conduct of any department, agency, appointed boards, office, officers, employees or appointed board members of the City. For the purpose of investigations and hearings, the City Council shall have the power to:

- 1) Administer oaths;
- 2) Subpoena witnesses;
- 3) Compel the production of books, papers, and other evidence material to the inquiry;

- 4) To request from the City Manager the assignment of staff necessary to carry out its duties;
 - 5) To request the City Attorney to provide an independent counsel to advise and represent the Council, when appropriate or necessary to avoid a conflict of interest; and
 - 6) To hire a third party to conduct any necessary investigation.
- (b) The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The City Council shall have the power to punish any such contempt in the manner provided by this ordinance

Sec. 2.02.032 Complaints

- (a) Any member of the City Council who believes that there has been a violation of the City Charter or requires an investigation under Section 3.16 of the Charter may file a complaint with the City Secretary to allege such violation or request concurrence from City Council to conduct an investigation.
- (b) A complaint filed under Section 3.16 of the Hondo Charter or upon concurrence by Council that an investigation must commence, the official or employee must be provided in writing a simple, concise, and direct statements: (1) The name(s) of the complainant(s); (2) The name of each person complained about; (3) The position or title of each person complained about; (4) The nature of the alleged violation, including, if possible, the specific provision of the Charter alleged to have been violated; and (5) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred.
- (c) The person being investigated shall also be provided with a copy of the complaint and/or concise, and direct statements and shall be informed:
- 1) That, within ten (10) business days of receipt of the complaint, he or she may file a response with the City Secretary;
 - 2) That failure to file a response does not preclude the City Council from adjudicating the complaint;
 - 3) That a copy of any response filed by the person being investigated will be provided by the City Secretary to the City Council.

Sec. 2.02.033 Hearing Process for Forfeiture or Removal of Office

- (a) If the Council, by majority vote, determines that the complaint is in proper form and alleges sufficient facts to constitute an investigation under Section 3.16 of the City Charter, the Council shall schedule a hearing on the complaint. The following rules of procedures will be used to govern a hearing on a complaint. The rules will allow for the presentation of evidence by the complainant and the person accused, and witnesses. The City Council hearings shall comply with the following:

- 1) All hearings held under this subsection shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act;
- 2) The office holder or employee subject to any Council investigation and/or hearing under this section shall be entitled to written notice of the allegations of forfeiture and/or the alleged violation of this Charter or conduct as applicable;
- 3) A special meeting shall be called to hold the hearing;
- 4) The City Council shall state the nature of the hearing and the allegations to be considered, shall be provided the results of any investigation and a presentation of the evidence against the office holder including, but not limited to testimony from individuals;
- 5) The individual who is subject to the hearing shall be provided an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals;
- 6) City Council may ask questions of any individual; and
- 7) In the case of an alleged forfeitures of office pursuant to Section 3.05 (3) & (4) of this Charter City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant.

Sec. 2.02.034 Witnesses

- (a) The City Council may call current or former city employees, officials as witnesses. The Councilmember(s) who initiated the investigation and the person accused may also call any witnesses with relevant knowledge of the matter before the Council. The witnesses must have personal knowledge of the circumstances of the charges. Character witnesses or witnesses without personal knowledge are not acceptable and will not be permitted to testify. The Mayor, or the City Secretary, will administer oaths to persons who testify.
- (b) If the Council decides to call City witnesses, it must notify them at least **five (5) working days** before the hearing. City Secretary shall notify such witnesses. If complainant and the person accused wish to call city witnesses, they must provide the names to the City Secretary **ten (10) working days** before the hearing so that she will have sufficient time to notify the city witnesses. Witness identity submitted to the City Secretary must include the following information:
 - 1) Name of Witness
 - 2) Telephone Number of Witness
 - 3) Department and Supervisor of Witness

Sec. 2.02.035 Power to Subpoena Witnesses

The Council shall have the power to subpoena witnesses, require the production of evidence and administer oaths. The Council shall provide penalties for contempt for failing or refusing to obey a subpoena or to produce evidence, and shall have the power to punish any of these acts of contempt in the manner provided in this ordinance. Costs incident to actions under this section shall be borne by the party requesting the subpoena.

Sec. 2.02.036 Representation

The person accused of a violation, may be represented at the hearing by any person of their choice, including an attorney.

Sec. 2.02.037 Hearing Procedures

(a) The format for hearings will be as follows:

- 1) Introduction of hearing by Mayor and having all parties and their representatives introduce themselves for the record. The Council person or citizen initiating the complaint shall outline the nature of allegation, charter or ordinance provisions involved, and issues to be determined by the Council.
- 2) Presentation of evidence by complainant of violation (including testimony, witnesses, documents, tangible items). Witnesses may be cross-examined by accused person or representative and members of the Council.
- 3) Presentation of evidence by accused person (including testimony, witnesses, documents, tangible items). Witnesses may be cross-examined by complainant or representative and members of the Council.
- 4) Council may request the testimony of any witness or evidence they deem relevant to the hearing.
- 5) Summation remarks by person alleging violation.
- 6) Summation remarks by accused person or representative.

Sec. 2.02.038 Summation

The complainant and the person accused or their representatives will have a maximum of **ten (10) minutes** to summarize.

Sec. 2.02.039 Deliberations

The Council, upon completion of the Hearing Procedures listed above, may recess into Executive Session to consult with their attorney. The Council must then reconvene the hearing into Open Session and determine, by a preponderance of the evidence, whether any violations were committed and render the determination in Open Session.

Sec. 2.02.040 Decorum

Both the complainant and the person accused and representatives must be respectful to Council, witnesses and each other. No person present shall be permitted to indulge in personalities, use language personally offensive, and question motives of the Council or charge deliberate misrepresentation. IT IS IMPERATIVE THAT THE MAYOR MAINTAIN ORDER AT ALL TIMES. THE MAYOR MUST NOT PERMIT DEBATE OR COMMENTS FROM ANY PERSON WHO HAS NOT BEEN RECOGNIZED. INTERRUPTIONS MUST BE SILENCED BY VOICE, USE OF THE GAVEL OR OTHER MEANS, AND, IN THE EVENT OF ANY PERSON'S FAILURE TO HEED THE DIRECTIONS OF THE MAYOR, THE MAYOR MAY HAVE THAT INDIVIDUAL REMOVED FROM THE ROOM.

Sec. 2.02.041 Appeal

A decision of the City Council is final unless the person aggrieved by the decision appeals to the State District Court in Medina County no later than thirty days after the date the Council renders the decision. An appeal of a Council decision is initiated by filing a verified petition setting forth the specific points of error alleged. The District Court shall review an appeal under this section under the substantial evidence rule and shall base its decision on the court's review of the record of the hearing before the Council. The District Court will affirm the findings and decision of the Council and may not substitute its judgment for that of the Council unless the Council's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence. If the decision of the Council is not supported by substantial evidence, the District Court may reverse or affirm the Council's decision in whole or in part, or may modify the Council's decision if substantial rights of the aggrieved person have been prejudiced. The procedures and remedies of said appeals will be governed by the rules and regulations promulgated by the ordinance. Costs of an appeal may not be assessed against the Council, individual Council members, or the City of Hondo.

Sec. 2.02.042 Penalty

(a) The following civil remedies may be recommended or imposed by Council:

- 1) ***Disciplinary action.*** City employees may be disciplined in accordance with City personnel rules and procedures. Other City officials who engage in conduct that violates the Charter may be notified, warned, reprimanded, or removed from office. The City Council shall refer a violation to the City Manager or his or her designee for disciplinary action in accordance with any applicable personnel rules;
- 2) ***Suit for damages or injunctive relief.*** It is the intent of the City that a violation of the Charter can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in the City Code or any other law. The City Council may refer a violation to the City Attorney's Office for consideration of a suit by the City for damages or injunctive relief.
- 3) ***Civil fine.*** The City Council may impose upon any person, whether or not an official or employee of the City, who violates any provision of the Charter or Code of Ordinances a fine not exceeding five hundred dollars (\$500.00).
- 4) ***Letter of notification.*** The City Council may issue a letter of notification to any person, whether or not an official of the City, when the Council finds that a violation was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations.
- 5) ***Letter of admonition.*** The City Council may issue to any person, whether or not an official or employee of the City, a letter of admonition when the Council finds that the violation was minor and/or may have been unintentional or inadvertent.

6) **Letter of reprimand.** The City Council may issue to any person, whether or not an official or employee of the City, a letter of reprimand when the Council finds that the person has intentionally or knowingly violated the Charter or Code of Ordinances.

7) **Criminal prosecution.** The City Council may recommend to the appropriate law enforcement agency criminal prosecution for any crime determined to have allegedly occurred.

SECTION 2. The remainder of Article 2.02, "City Council", Division 2, "Procedures on the Conduct of Investigations", of the Municipal Code of Ordinances of the City of Hondo shall remain unchanged by this Amendment.

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

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

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void; and that in lieu of each clause or provision of this Ordinance that is invalid, illegal, or unenforceable there be added by the Mayor as necessary with the approval of the City Attorney as to form, and as a part of the Ordinance a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

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

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



JAMES W. DANNER, SR., MAYOR

ATTEST:



**MIGUEL CANTU
CITY SECRETARY**