



ORDINANCE NO. 2023-05-31.5

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWK COVE, TEXAS,
ESTABLISHING PROCEDURES AND REQUIREMENTS FOR COUNCIL MEMBERS TO ACCESS
CITY'S INFORMATION AND RECORDS; PROSCRIBING COUNCIL
MEMBERS' IMPROPER ACCESS TO AND USE OF CITY'S INFORMATION;
SETTING PENALTIES FOR VIOLATION; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, The City of Hawk Cove, Texas ("City") is a Type-A General Law Municipality located in Hunt County, Texas, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of The State of Texas; and

WHEREAS, the final and ultimate responsibility for the government of City and administration of its business rests in The City of Hawk Cove, Texas, City Council ("Council" or "governing body"), which Council consists of the Mayor of The City of Hawk Cove, Texas, ("Mayor") and five (5) aldermen ("Council members"); and

WHEREAS, it is the duty of the Council to uphold all Federal and Texas state laws, and to enact, uphold and enforce all City ordinances, resolutions and regulations, thereby to protect and preserve the business, property, health, safety, morals, privacy and general welfare of City's citizens and City business and operations; to preserve peace and good order in the municipality (*see*, Local Government Code ("LGC"), Sections 22.042, 54.001, 54.002 and 54.003) so as to foster, establish and maintain goodwill and productive working City relationships, both within and outside of City; and

WHEREAS, it is a function of the Council to regulate itself (*see*, LGC, Section 22.072(b)) and ensure compliance by all members of the Council with all Federal, State and City laws and obligations, including the obligation to keep the City's business moving ahead smoothly and efficiently (*see*, p. 32, *Handbook for Mayors and Councilmembers*, Texas Municipal League, © 2022) as enacted by City's ordinances; and

WHEREAS, after due consideration, the Council hereby deems that City's present ordinances, resolutions and regulations are inadequate for: ensuring compliance by all members of the Council with all Federal, State and City laws and obligations, protecting and preserving the business, property, health, safety and general welfare of City's citizens and City's business and operations; preserving peace and good order in the municipality; and fostering, establishing and maintaining goodwill and productive working City relationships both within and outside of City; and

WHEREAS, the inadequacy of City's present ordinances, resolutions and regulations creates an emergency and/or an exigency, and/or unusual and unforeseen conditions that could not have been expected or considered through the use of reasonably diligent thought and attention (*see, e.g.*, LGC 102.009 and 12.0015), that calls for immediate action and now requires Council to acknowledge, respond to and fulfill its duties to enact and enforce additional, amended or replacement ordinances, resolutions and regulations to better ensure compliance by all members of the Council with all Federal,

State and City laws and obligations and, among others, City's debt contract with the U.S.D.A., all of which are vital to City's infrastructure; and

WHEREAS, All Council members have an ethical duty to prevent and avoid dissemination or disclosure of City's information to anyone outside of a Regular, Special or Executive Council meeting. No Council member shall, or is authorized to, circumvent the law. Information contained in confidential personnel files, or any other confidential files, should only be available on a need-to-know basis, other than as provided under the Public Information Act; and

WHEREAS, the Council intends specifically by this ordinance to: eliminate the detriments to City, including but not limited to the expense from, and to prohibit and penalize City Council members for, wrongful removal, dissemination, distortion and other improper uses of City's information and records; hold itself and its members accountable for violations of the Texas Open Meetings Act; promote the smooth and efficient flow of City's administration; continue the stable and productive work environment for City's limited Administrative Personnel; avoid conflicts and confusion from breaches of City's administrative hierarchy; and maintain transparency between and among Council members, as well as between City and all others; and

WHEREAS, City acknowledges that this ordinance is the most effective and efficient method of effecting City's goals, duties, responsibilities and intentions as referred to above; and

WHEREAS, in acknowledgment of, response to and fulfillment of Council's duties as recognized herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAWK COVE, TEXAS:

SECTION 1. The above recitals are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. The existence of the emergency and/or exigency conditions requiring this ordinance, and its importance to protecting, safeguarding and preserving City's business and operations, particularly related to City's debt obligations to the U.S.D.A., require that this ordinance shall be enacted by the unanimous vote of all five (5) voting members of the Council. Any change, or endeavor, to rescind, revoke, repeal, cancel, reverse or abrogate this ordinance shall require a unanimous vote of four (4) voting members, with all five (5) voting members of the Council in attendance.

SECTION 3. A Council member, in that member's official capacity, shall have access to City's records and information, as stated herein. Council members are hereby informed of and should consider, in accessing City's information and records, that disclosure or dissemination of certain information is confidential under Federal, State or City laws, regulations, rules or policies, for which a Council member may be subject to criminal and civil penalties for accessing, disclosing and/or disseminating City information and records (*see, e.g., Tx. Utilities Code, 182.054; Texas Gov't Code, 552.021, 552.024, 552.033, and 552.102, et seq.*).

SECTION 4. Every Council member shall at all times act in accordance with, and shall not violate, any applicable Federal, State and City laws, ordinances, regulations, rules, and policies with regard to, or concerning, the safeguarding, access to and dissemination of City's non-public information, such as in

accordance the Public Information Act. Council members shall be subject to all criminal and civil penalties for each unauthorized access to, and/or use, dissemination or disclosure of City's information (e.g., information contained in personnel files; IRS Federal Taxpayer Information; Protected Health Information; and Sensitive Personal Information). Penalties may include, but are not limited to, any or all of the following: up to 1 year in jail and/or up to a \$1,000 fine (Texas Tax Code §171.361); up to 180 days in jail and/or a fine of up to \$2,000 (Texas Tax Code §22.27); or up to 5 years in prison and/or a fine of up to \$5,000 (26 U.S.C. §7213(a)).

SECTION 5. Council members shall have one e-mail account dedicated solely for use in the Council member's official capacity. Such accounts may include the Council member's official titles and the City logo. A Council member shall use this account only in the member's official capacity. No Council member may use this account to contact any person or entity prohibited by any City ordinance. No Council member may use this account for the Council member's personal records requests: such requests are outside the scope of Council members' official authorizations or duties. Personal requests and communications shall only be through Council members' private personal accounts, which may not display the City logo, official titles, nor in any other manner cause a recipient to believe the recipient's communication with the Council member is for anything but private, individual and personal correspondence.

SECTION 6. Other than as is permitted herein, Council members shall not use any form of identification that represents, states, implies or suggests that the Council member has any authority as a Council member, including but not limited to, to seek, collect or disseminate any kind or nature of information or records from or to any person or entity, such as, but not exclusively: a signature block; business card; letterhead; stamp; return address; e-mail address; or social media account.

SECTION 7. Council members shall make clear distinctions in their communications and communication accounts that remove all confusion between official and personal matters and avoid any confusion that may cause interference with City staff in conducting City's business. No Council member has any authority to conduct City's business other than at a properly noticed meeting of the entire governing body. Attempts to work independently of the governing body obviate good governance.

SECTION 8. A Council member may not use any City information acquired in the Council member's course of official Council duties and/or official capacity, for any purpose advancing any person's or entity's private or individual interest, including in any form of social media or contact, or otherwise for any person's or entity's private or individual interest or gain. To avoid Texas Open Meetings Act violations and inform all Council members at the same time, such information shall be disclosed or disseminated at a Regular, Special or Executive Council meeting, and it shall be used solely for City's interest and benefit. Other than as is required under the Texas Public Information Act, information or records obtained by a Council member from any confidential City file, including but not limited to personnel files, shall be available to a Council member, as set forth herein, upon the member's showing of the governing body's specific need of the information or records.

SECTION 9. A Council member shall have access to City's records and information only during the established hours of City's offices and not at any other time or times (Texas Gov't Code 552.021).

SECTION 10. An individual Council member requesting access to City's records and information in the Council member's official capacity shall do so only by: 1) written, signed and dated letter personally presented by the Council member to City's administrative staff, only during City's established hours of

business operations; 2) United States Postal Service ("USPS"), certified mail, return receipt requested; or 3) e-mail to City's e-mail account specifically dedicated by City for such Council members' requests. A Council member requesting access to City's information and records shall not make any such request by any other form of transmission. City shall not electronically transmit any information containing anything that requires redaction from public disclosure. Any electronic email request for information or records from any Council member that is received outside of City's established hours of operation by a City administrative staff member, shall result in that staff member receiving thirty (30) minutes overtime pay. Any request received by City from a Council member outside of City's established hours of operation shall be deemed, for purposes of any response, to be received on the next business day during which City has established hours of operation.

SECTION 11. Any Council member's request for access to City's information and records shall: be in writing; describe, specifically and in detail, the specific and particular item, items or category of items, to which the Council member requests access; the purpose for which the Council member requests access; and every use for which the requesting Council member will use each item, items, category or categories of items (Texas Gov't Code Sec. 552.232). Every Council member's request for access to City's information and records shall bear an appropriate form of the Council member's signature.

SECTION 12. A Council member shall not have private or unsupervised access to any of City's information and records. One Council member at a time may have supervised access to City's information and records, for up to one hour at a time.

SECTION 13. The requesting Council member shall be scheduled for a one-hour access appointment by City's Administrator and City's Secretary, only upon City receiving from the Council member original, "wet" signature, signed confidentiality and non-disclosure agreements, as shall be provided by City staff, together with any applicable costs, if costs are to be paid, associated with the Council member's access (*see, e.g.,* Ordinance No. 2020-005; Texas Gov't Code Sections 552.222 and 552.275).

SECTION 14. A Council member shall not, at any time, photocopy, photograph, reproduce or remove, in any manner or by any means, any of City's original, or any unredacted copies of, information and/or records (Texas Gov't Code, Section 552.226). For the security of City's information and records and compliance with Federal and State laws and this ordinance, a requesting Council member shall surrender all recording devices of any kind or nature to supervising personnel for the duration of that Council member's access to City's information and records. A Council member may take notes during the Council member's access to City information or records, and the Council member shall surrender all such notes to City's supervising personnel for photocopying at the conclusion of the Council member's access. Upon photocopying the notes, supervising personnel shall return the notes and any surrendered recording device to the Council member. All such notes shall be presented to the Council at the next Regular, Special or Executive Council meeting (Texas Gov't Code, Section 552.226).

SECTION 15. At the next Regular, Special or Executive Council meeting following a Council member's access to City's information or records, and with due regard for confidentiality mandates, City's Administrator and City's Secretary shall present to the Council all information relating to each Council member's access. Such information shall include, and is not limited to: the descriptions of the specific and particular item, items or category of items to which the Council member requested access; those which the Council member actually accessed; all particulars that occurred during supervision of each such access; the actual cost to City for preparing and supervising the access to the requested information

and records; the supervising personnel's time for preparation and such supervision and access; and, if costs were to be paid, the costs paid.

SECTION 16. Other than with the Council during the next Regular, Special or Executive meeting, a Council member shall not, at any time, use, disseminate, share, or in any way publish or distribute, any portions or subjects of notes or any of City's records and information to or with any person or entity, by any means or method, including personally, on any social platform, by any medium or contact, including by telephone, e-mail, or any and all other means, methods or communications.

SECTION 17. When no longer a Council member, a former Council member shall not, at any time, use, disseminate, share, or otherwise publish or distribute, any portions or subjects of notes relating to any access, or any of City's records and information acquired by the former Council member during or while such former member was a City Council member: without limitation, for any reason, to any person or entity or, by any medium, platform or contact (Texas Gov't Code, Section 552.233). A current or former Council member does not have a personal or property right to information or records that the Council member created, received or acquired while acting in that official capacity, but is a temporary holder and temporary custodian of such information or records, charged with the safekeeping of all of the same. Any Council member having such temporary possession, custody, or control of any information or records created, received or acquired in or during any official City capacity shall surrender or return all such information to the City not later than the tenth (10th) day after the date the Council, the City's Administrator or the City's Secretary requests the Council member temporary holder to surrender or return the information or records (Texas Gov't Code, Section 552.233).

SECTION 18. Subject to Ordinance 2020-005, nothing herein prevents or prohibits Council members, solely and only in their individual capacities as citizens, from requesting records under the Freedom of Information Act ("FOIA") or the Texas Public Information Act ("PIA").

SECTION 19. This ordinance shall be and is hereby declared to be cumulative with, and not be limited to, all other ordinances, resolutions, policies, sections, subsections, articles, paragraphs, sentences, clauses, phrases or words and procedures relating or pertaining to City information and records. This ordinance shall not operate to repeal or affect, whether in whole or in part, any other such ordinances, policies and procedures, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinances, policies and procedures are hereby repealed, but only to the extent of any such conflict.

SECTION 20. If any provision, section, subsection, article, paragraph, sentence, clause, phrase or word of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, or for any reason unenforceable, whether in whole or in part, the validity of the remaining portions of this ordinance or the application to such other persons or sets of circumstances shall not be affected thereby, it being the intent of the Council in adopting this ordinance that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any other portion or provision.

SECTION 21. Any Council or governing body member violating any provision of this Ordinance shall be prosecuted for such an offense, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00). Each separate violation hereof shall be deemed a separate offense and shall be punished accordingly, provided, however, compliance may be further sought through injunctive relief

in the District Court of Hunt County, Texas. In addition to any criminal prosecution, all available and applicable civil remedies shall be pursued against each such person or persons.

SECTION 22. This ordinance shall be effective immediately upon its passage.

CONCLUSION

Passed and approved this ____ day of _____, 2023.

Darren Evans, Mayor

ATTEST: _____
City Secretary

APPROVED AS TO FORM: _____
City Attorney