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## MEMORANDUM

TO: Mayor Feinsod and Members of the City Council

FROM: Kelly M. Fernandez, Esq., City Attorney

DATE: January 15, 2020

RE: City's Code of Conduct and Ethics

In 2019, the City's Code of Conduct and Ethics (hereinafter referred to as "City's Code") became the source of attention with four Complaints either filed or attempted to be filed against elected officials. During the course of handling these matters, City staff identified a number of deficiencies with the City's Code and the complaint review process. I am therefore recommending that the City rescind or substantially revise the City's Code as further explained below.

### Background:

The City's Code in Chapter 2, Article III, Division 2 of the City Code of Ordinances was established in 2006 as a result of a Compliance Agreement entered into with the U.S. EPA related to Clean Water Act violations. The Compliance Agreement expired in 2009. The City's Code is extremely broad in application in that it applies to "every employee, official, contractor, volunteer, and others who participate in the city's governance whether they are elected, appointed, hired, or otherwise selected to an office or position with the city, or any subdivision thereof, whether such individual is paid or unpaid." It delineates expected conduct and prohibited conduct as well as impermissible conduct after leaving city service. The City's Code also provides a complaint process for any violations of the City's Code with penalties specified for any violations found.

The City's Code is supplemental to the Florida Code of Ethics in Chapter 112, Part III, Florida

Statutes (hereinafter referred to as the “Florida Code”). The Florida Code addresses a multitude of items including, but not limited to: prohibitions on dual public employment, solicitation or acceptance of gifts, doing business with one’s agency, and misuse of public position; post-employment restrictions; and voting conflicts. The Florida Code also contains a well-established process for handling complaints. The City’s Code cannot conflict with any portion of the Florida Code.

Analysis of City Code:

Section 2-171, “Definitions”. The definition of “affected individual” is extremely broad and consideration should be given to narrowing to whom the City Code applies.

Section 2-172, “Appropriate conduct”. This Section, which can form the basis of a complaint, contains largely subjective, aspirational provisions. These conduct standards are in essence also contained in the City’s Personnel Procedures and Rules which apply to all employees and are enforced by the Human Resources Department. I recommend the City at a minimum eliminate this as a Section under which a complaint can be filed.

Section 2-173, “Prohibited Conduct.” This Section contains substantial overlap with the Florida Code, but with wording differences. This can result in a complaint being filed against an individual at both the local and state level, either concurrently or back-to-back, for the same alleged misconduct opening the door to the possibility of harassment and conflicting decisions. I recommend the City either eliminate this Section or remove any provisions that are essentially repetitive of the Florida Code.

Section 2-175, “Complaint process.” To the extent the City retains a complaint process, revisions are needed to clarify how the review will be handled and to protect against misuse. The following are some suggested revisions:

1. Define who is to serve as the ethics compliance officer, which may differ whether an employee or elected official is the subject of the complaint.
2. Allow the ethics compliance officer to perform a preliminary review of the complaint for sufficiency before an investigation has to be initiated.
3. Clarify how the optional evidentiary hearing process is handled.
4. Clarify confidentiality aspects of the complaint process.
5. Consider additional safeguards to prevent abuse/misuse of the system.

Section 2-176, “Penalties for noncompliance.” To the extent the City retains a complaint process, the penalties should be reviewed, updated and revised to ensure they adequately cover all potential violations.

Recommended Action:

After discussion of the foregoing, I recommend that City Council provide direction to staff to rescind or revise the City’s Code of Conduct and Ethics.