



May 28, 2010

SENT VIA CERTIFIED MAIL, CMRR # 70081830000304994730

Office of the Attorney General
Attention: Open Records Division MC-014
P. O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Request: Ken Martin Request #10

Dear Sir or Madam:

The City of Georgetown (City) received an Open Records Act Request No. 10 (Request) from Mr. Ken Martin by email on May 16, 2010. A copy of the Request, reflecting the date of the email transmission, is attached as Exhibit "A."

Mr. Martin is requesting the following information:

"The evaluations of the performance of Mark Sokolow as city attorney for Georgetown that were delivered in writing by the mayor and members of the Georgetown City Council during executive sessions held on or about May 13, 2010, and on any other dates on which Mark Sokolow may have received such written evaluations by the mayor and council members."

The City objects to the disclosure of the requested information pursuant to Tex. Gov. Code Sections 552.101, 552.107 and 552.111, as well as Sections 552.102 and 552.109. A copy of the requested information is attached as Exhibit "B."

The City submits the following written comments stating the reasons why the exceptions would allow information to be withheld. The City requests that the Attorney General's Office issue an opinion pursuant to Tex. Gov. Code Section 552.301.

Requested Evaluation Not Complete
Tex. Gov. Code Section 552.022(a)(1)

The Act provides for required public disclosure of “a *completed* report, audit, *evaluation*, or investigation made of, for, or by a governmental body...” The requested information is exempt from disclosure in its entirety because the evaluation is not complete.¹

Mark Sokolow currently serves as the City Attorney of the City of Georgetown. Mark Sokolow has been a licensed attorney in the State of Texas for thirty years and is Board Certified in Civil Trial Litigation. For the last twenty years Mark Sokolow has been a City Attorney, for various Texas municipalities.

Mark Sokolow was hired as the City Attorney of the City of Georgetown as of October 19, 2009. Prior to that time, all of the City’s legal services were outsourced to various private attorneys. The Employment Contract between Mark Sokolow and the City, executed on September 14, 2009, provides in pertinent part:

“On or before October 19, 2009, the City agrees to employ Employee as City Attorney of Georgetown to perform the functions and duties specified in the City Charter and to perform other legally permissible and proper duties and functions which the City Council shall, from time to time, request and assign. The Employee is appointed by and shall, at all times, serve as City Attorney, pursuant to the specific terms of Section 5.06 of the Georgetown City Charter...

...Except as otherwise provided herein, all provisions of the City Ordinances and Code, and personnel policy manual of the City...shall apply to the Employee, in the same manner they apply to other employees of the City.

The City Council shall provide Employee with an annual performance evaluation and review each year he is employed by the City as City Attorney. Any review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. Such criteria may be revised by the City Council, from time to time, with notice of any such revision provided to the Employee. Any discussion of Employee’s evaluation or review of the Employee shall be conducted only in closed Executive Session, unless otherwise requested by Employee. The Employee shall be provided a copy of any written statement or findings of the City Council or any of its members and shall have an adequate

¹ This case is clearly distinguishable from circumstances where a final written evaluation is completed in accordance with applicable policies and procedures. See eg Open Records Decision 272 (1993).

opportunity to discuss his evaluations with the City Council, in Executive Session or in Open Session, if Employee so requests. Any written evaluation or statement concerning the Employee's performance shall be confidential and placed in the Employee's personnel file along with any written response by the Employee. In effecting the provisions of this Section, the City Council and Employee mutually agree to abide by the provisions of applicable State law concerning personnel matters, due process, and rights of the Employee and of the City.

After the first initial six months, the City will review and consider an annual increase of \$5,000 to be added to the base salary. On an ongoing basis, the City shall review and consider adjustment of the Employee's salary in conjunction with Employee's year-end performance evaluation and review."

Unless superseded by the Employment Contract, the provisions of the City personnel policies applies to Mark Sokolow in the same manner of other employees of the City. A copy of the Employment Contract is attached as Exhibit "C." A copy of the applicable section of the City Charter is attached as Exhibit "D." A copy of the applicable personnel policy concerning performance evaluation and review is attached as Exhibit "E."

There is no complete performance review and evaluation of the City Attorney as contemplated by the Employment Contract or the City's personnel policy requirements.

"Performance review and evaluation of the City Attorney is to be on an annual basis." The annual review is to be conducted at the end of the fiscal year (ie. October 2010). It is not time for Mark Sokolow's annual performance review and evaluation.

"Any review and evaluation of Mark Sokolow, as City Attorney, is to be in accordance with specific criteria developed jointly by the City Council and Mark Sokolow." No criteria has been developed for the review and evaluation of Mark Sokolow.

"The City employee performance review form to be used for all formal performance reviews." City Council has not completed a performance review form for any review and evaluation of Mark Sokolow. Consequently, Mark Sokolow has not had an opportunity for full discussion with City Council, to comment thereon.

According to the Employment Contract, the \$5,000 increase was reviewed and approved by City Council at the April 27, 2010 meeting. A copy of the meeting minutes is attached as Exhibit "F."

On May 11, 2010, the City Council held another meeting. A copy of the documents delivered to Mark Sokolow at that meeting, during executive session, is attached as Exhibit "B." The first two pages of the document includes comments from various Council Members, compiled by one Council Member, without attributing the comments to the Council Member who made them. Said Council Member handed the document attached as Exhibit "B" to the City Attorney. These documents do not constitute a completed performance evaluation of the City Attorney by City Council. There was no vote or other action resulting from the May 11, 2010 executive session. If the documents are considered an evaluation, the evaluation is not complete, as Mark Sokolow has not had any opportunity to fully discuss same with City Council, comment or make a written response.

The initial comments included in the documents at issue may change and be further clarified once the City Attorney has the opportunity for full discussion with City Council and has had a full opportunity to review all of the documents contemplated by the City Attorney's agreement and by the personnel policies. The documents that were provided in the executive session on May 11, 2010 are only the first step of a process that will not be complete until at least October 2010 when the City Attorney will receive his annual performance review and evaluation by City Council as delineated in the Employment Contract. There is no completed evaluation as contemplated under Section Tex. Gov. Code Section 552.022 and it is inappropriate for interim and incomplete documents to be released as a performance evaluation.

Information Confidential by Law
Tex. Gov. Code Section 552.101
and
Attorney-Client Privilege
Tex. Gov. Code Section 552.107

The Act does not mandate the disclosure of information that other law requires be kept confidential. Tex. Gov. Code Section 552.352. The City has no discretion to release information deemed confidential by law. Tex. Gov. Code Section 552.007. Consequently, the City must withhold disclosure of information considered to be confidential by law, either constitutional, statutory or by judicial decision.

The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of Tex. Gov. Code Section 552.022. See Open Records Letter Ruling. 2010-06099 citing *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Consequently, the City contends that the requested information is exempt from

disclosure as privileged attorney-client communications pursuant to TRE 503.² See Open Records Letter Ruling Nos 2010-06099; 2005-00098.

Information is excepted from public disclosure if it is information that an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct. The duties of the City Attorney are delineated in Section 5.06 of the City Charter of Georgetown as noted in Exhibit "D":

"The City Council shall appoint a competent attorney who shall have practiced law in the State of Texas for at least two (2) years immediately preceding the appointment. The City Attorney shall be the legal adviser of, and attorney for, all of the offices and departments of the City, and shall represent the City in all litigation and legal proceedings. The City Attorney shall draft, approve or file written objections to every ordinance adopted by the Council, and shall pass upon all documents, contracts and legal instruments in which the City may have an interest..."

The City Council has not authorized the City Attorney to act in any capacity, other than as an attorney.

The attorney-client privilege protects from disclosure confidential information between a client and its attorney to facilitate the rendition of legal services. The privilege allows unrestrained communications and contact between an attorney and client in all matters in which the attorney's professional advice or services are sought, without fear that these confidential communications will be disclosed by the attorney voluntarily or involuntarily in any legal proceeding. The privilege attaches to the complete communication between the attorney and client, including legal advice and factual information. *In re Valero Energy Corporation*, 973 S.W. 2d 453 (Tex. App. – Houston [14th Dist.]1998) (the subject matter of the information contained in the communication between attorney and client is irrelevant when determining whether the privilege applies). If a governmental body demonstrates that any portion of a communication is protected under the attorney-client privilege, then the entire communication will be excepted from disclosure under section Tex. Gov. Code Section 552.107. *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996)(privilege extends to entire communication, including facts contained therein).

² The City also claims that the requested information is excepted from disclosure pursuant to Tex. Gov. Code Section 552.107(1).

Mark Sokolow, as City Attorney, has served in accordance with, and within the parameters of, the City Charter by providing confidential opinions as to the legal roles of the Mayor, City Council, City Manager, the documentary process, litigation, potential claims, and other matters. These opinions and related discussions took place between City representatives and the City's Attorney and were intended to be privileged among the attorney and client, not for disclosure to outside third parties.

The standard for demonstrating the attorney-client privilege under the Act is the same as the standard used in discovery under Rule 503. Open Records Decision Nos. 676 at 4 (2002), 429 at 5 (1985). The information the City seeks to withhold as protected by the attorney-client exemption meets the requisite standard: 1) the information constitutes or documents a communication; 2) the communication was made "for the purpose of facilitating the rendition of professional legal services" to the City; 3) the communication was between or among the City, City representatives, current and former City Attorneys or private attorneys engaged by the City to perform legal services, and their respective staff; 4) the communication was confidential; and, 5) the communication has remained confidential.

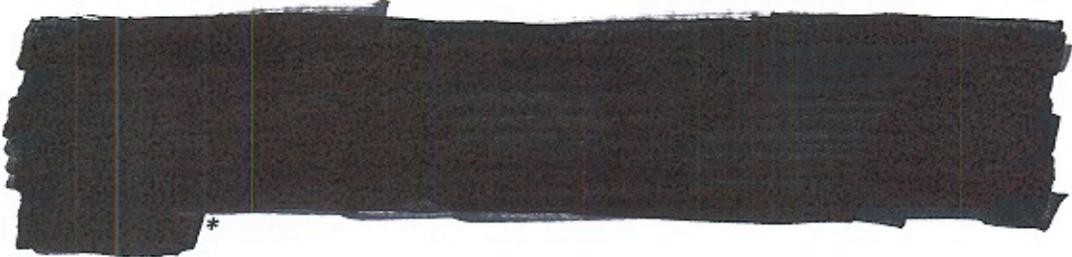
The documents at issue include privileged communications between the City Attorney and various City Council Members concerning issues on which the City Attorney, as attorney, has been advising the Mayor, City Council and/or the City Manager, as client, including document review and monitoring litigation. As a result, the documents are exempt from disclosure under TRE 503 and Tex. Gov. Code Section 552.107. For example:



This comment discusses the legal services provided by the City Attorney and former counsel and is clearly privileged and confidential. Other specific privileged communications included in the documents are highlighted in yellow.

Agency Memoranda
Tex. Gov. Code Section 552.111

The purpose of Section 552.111 is to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App. – San Antonio 1982, writ ref'd n.r.e.). The City objects to the disclosure of information pursuant to this exception to the extent that it constitutes internal communication consisting of advice, recommendations, opinions and other material reflecting policymaking processes. For example:



This comment is an internal communication of advice, recommendation and opinion of a council member concerning policy and is clearly exempt from disclosure. See eg Open Records Letter Ruling No. 2009-11598. Other specific examples of such policy discussion included in the documents are highlighted in pink.

If Mr. Martin's request is granted, then this decision would cause consternation with all government attorneys as they seek to consult with their elected or appointed bodies as well as further seek the necessary rapport as to facilitate the rendition of legal services.

Thank you for your attention to this matter. The City looks forward to receiving your opinion regarding the disclosure of documents responsive to the Request.

Sincerely,

Mark Sokolow
City Attorney, City of Georgetown

Bridget Chapman
Assistant City Attorney, City of Georgetown

*These sections have been redacted in the copy of the letter being sent to Mr. Martin to preserve the attorney-client privilege.

- Enclosures: Exhibit "A": Open Records Act Request # 10 from Mr. Ken Martin
- Exhibit "B": Documents as requested by Mr. Martin
- Exhibit "C": City Attorney Contract
- Exhibit "D": Section 5.06 of the City Charter
- Exhibit "E": Copy of applicable City Personnel Policies
- Exhibit "F": Minutes of April 27, 2010 Council Meeting

cc: Ken Martin (redacted copy w/o Exhibit "B") Sent Via U.S. Regular Mail

Exhibit "A"



Fw: Open Records Request No. 10

Mark Sokolow to: Skye.Masson@georgetown.org, Bridget Chapman

05/17/2010 08:08 AM

Sent by: Skye Masson

Mark Sokolow
City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78626
(512) 930-8158

msokolow@georgetowntx.org

----- Forwarded by Skye Masson/City of Georgetown on 05/17/2010 08:08 AM -----

Open Records Request No. 10

Ken Martin to: khutchinson

05/16/2010 07:12 PM

Cc: Mark Sokolow

Dear Keith Hutchinson,

This is a request for the City of Georgetown to produce records under the Texas Public Information Act.

Please promptly acknowledge receipt of this request to my e-mail address at ken@theaustinbulldog.org and produce the following records:

The evaluations of the performance of Mark Sokolow as city attorney for Georgetown that were delivered in writing by the mayor and members of the Georgetown City Council during executive sessions held on or about May 13, 2010, and on any other dates on which Mark Sokolow may have received such written evaluations by the mayor and council members.

Please note that the Texas Public Information Act, Section 552.102, Section 1, states:

"Because there is a legitimate public interest in the activities of public employees in the workplace, information about public employees is commonly held not to be excepted from required public disclosure under this test. Therefore, although this exception is commonly referred to as the "personnel file" exception, in reality this provision excepts very little of the information commonly found in the personnel files of public employees. For example, information about public employees' job performance or the reasons for their dismissal, demotion, promotion, or resignation is not excepted from public disclosure." 374 (Emphasis added).

374: Open Records Decision Nos. 444 at 5-6 (1986), 405 at 2-3 (1983).

Please also note that Section 552.107.1, Information Within the Attorney-Client Privilege, offers no basis for withholding the written evaluations of Mark Sokolow's performance as the city attorney of Georgetown. That section states, in part, "The privilege will not apply if the attorney...was acting in a capacity 'other than that of providing or facilitating professional legal services to the client.'"

Clearly, in receiving written evaluations of his performance, City Attorney Sokolow was not providing or facilitating professional legal services to the mayor and council that might conceivably be exempted from disclosure

under this provision.

He was being counseled--as any other city employee would be--about the mayor and council members' perceptions of the strengths and weaknesses of his performance as an employee of the City of Georgetown.

If clarification of this request is needed, please e-mail me at ken@theaustinbulldog.org to explain the clarification that is requested.

I look forward to your acknowledgement of receiving this e-mail and obtaining these records.

Ken Martin

Founder, Editor & Publisher

The Austin Bulldog



Investigative journalism in the public interest

An initiative of the Austin Investigative Reporting Project, a 501(c)(3) nonprofit

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<http://twitter.com/AustinBulldog>

<http://www.linkedin.com/myprofile>

P.O. Box 4400 Austin TX 78765

Organizer: [Austin Investigative Reporting Team](#) meetup group

Exhibit "C"



MANAGEMENT SERVICES
CITY OF GEORGETOWN

GEORGE GARVER, MAYOR
BILL SADLER, MAYOR PRO TEM

COUNCIL MEMBERS:
PATTY EASON
GABE SANSING
KEITH BRAINARD
PAT BERRYMAN
DALE ROSS
BEN OLIVER

September 14th, 2009

Mark T. Sokolow
4301 Lake Arthur, #906
Port Arthur, TX, 77641

Re: Letter of Agreement

Dear Mr. Sokolow,

Pursuant to the conversation you had with the Director of Human Resources, we are pleased to extend an offer of employment to you as the City Attorney for the City of Georgetown. This Letter of Agreement outlines the general terms and conditions of your employment (as an at-will "Employee") of the City of Georgetown, "Employer". The following terms and conditions apply:

SECTION 1. EMPLOYMENT CONDITIONS AND DUTIES

- A. On or before October 19, 2009, the City agrees to employ Employee as City Attorney of Georgetown to perform the functions and duties specified in the City Charter and to perform other legally permissible and proper duties and functions which the City Council shall, from time to time, request and assign. The Employee is appointed by and shall, at all times, serve as City Attorney, pursuant to the specific terms of Section 5.06 of the Georgetown City Charter.
- B. The City Council may fix such terms and conditions of employment as it may determine from time to time, relating to the duties and performance of Employee, provided such terms and conditions are not generally inconsistent or in conflict with the provision of this Agreement or the duties and performance standards of the position assigned at the time of the execution of this Agreement.
- C. Except as otherwise provided herein, all provisions of the City Ordinances and Code, and personnel policy manual of the City, as they exist now or may hereafter be amended, shall apply to the Employee, in the same manner they apply to other employees of the City.

SECTION 2. PERFORMANCE EVALUATION AND REVIEW

The City Council shall provide Employee with an annual performance evaluation and review each year he is employed by the City as City Attorney. Any review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. Such criteria may be revised by the City Council, from time to time, with notice of any such revision provided to the Employee. Any discussion of Employee's evaluation or review of the Employee shall be conducted only in closed Executive Session, unless otherwise requested by Employee. The Employee shall be



provided a copy of any written statement or findings of the City Council or any of its members and shall have an adequate opportunity to discuss his evaluations with the City Council, in Executive Session or in Open Session, if Employee so requests. Any written evaluation or statement concerning the Employee's performance shall be confidential and placed in the Employee's personnel file along with any written response by the Employee. In effecting the provisions of this Section, the City Council and Employee mutually agree to abide by the provisions of applicable State law concerning personnel matters, due process, and rights of the Employee and of the City.

SECTION 3. COMPENSATION AND BENEFITS

- A. The City shall compensate the Employee by providing: a bi-weekly salary of \$4,807.69 (equivalent to an annual base salary of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000).
- B. After the first initial six months, the City will review and consider an annual increase of \$5,000 to be added to the base salary. On an ongoing basis, the City shall review and consider adjustment of the Employee's salary in conjunction with Employee's year-end performance evaluation and review.
- C. Your Medical and Dental insurance will be effective the first day of the month following your first day of employment. Per City policy, 100% of the premium for your health insurance coverage will be paid by the City and from 50% of the premium will be paid by the City for dependent coverage if you choose to cover your dependents under the plan. The City also provides Long Term Disability insurance for its employees. Additional optional coverage is available for both you and your dependents through payroll deduction.
- D. You will become a member of the Texas Municipal Retirement System on the first day of your employment with the city. Your contribution into the plan will be 7% of your salary and the City will match that contribution on a 2:1 basis.

SECTION 4. RELOCATION EXPENSES

The City agrees to pay Employee for reasonable out-of-pocket relocation expenses in the form of a Relocation Stipend in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500), minus applicable taxes/deductions to be paid with the first pay check.

SECTION 5. VACATION

Employee shall, on the first day of his employment be deemed to have accrued fifteen (15) days of vacation leave. After the first year, Employee shall annually accrue a maximum of 15 days of vacation leave, which shall be accrued at a rate of ten (10) hours per month.

SECTION 6. RIGHT TO TERMINATE; NOTICE OF RESIGNATION

- A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, subject to the provisions set forth in Paragraph 7.A. of this Agreement, and to the terms of Section 5.06 of the City Charter.
- B. If Employee decides to resign voluntarily, he shall provide written notice of such intent to the City at least ninety (90) days prior to the effective date of such resignation, and shall not be entitled to severance pay under the terms of Section 7 of this Agreement.



SECTION 7. SEVERANCE PAY

- A. Except as provided in Paragraphs 7.B., below, at any time after Employee has been employed as City Attorney for twelve (12) months or more, during such time he has been willing and able to perform his duties under his Letter of Agreement with the City, if Employee's employment with the City is terminated by action of the City Council, the City agrees to pay to Employee a lump sum equal to one (1) month of his then-current base salary only (*i.e.*, excluding accumulated sick leave, vacation leave, or other untaken leave or benefits.) If Employee is terminated after having served for twelve (12) continuous months, he shall also be entitled to receive one (1) additional month of his then-current base salary for each full year of service, not to exceed three (3) months of severance pay.
- B. Employee shall not be entitled to any severance pay if he has voluntarily resigned, committed an unlawful action, failed to abide by the rules, regulations, or policies of the City, or failed to abide by the Code of Ethics of the Bar Association.

SECTION 8. SUBSEQUENT WORK AS INDEPENDENT CONTRACTOR

- A. Employer may hire Employee as an independent contractor on an interim basis to perform work after Employee's termination or resignation. Employee and Employer agree that such work shall be paid at the then-prevailing average hourly rate, and that Employee will perform no such work unless it has been requested and approved in writing by the City Council. Employee agrees he will be responsible for and will pay all social security, federal income taxes, and all other liabilities and taxes relating to the performance of any work performed for the Employer after Employee's termination or resignation.
- B. After his termination or resignation, Employee agrees to cooperate with Employer in the defense of any lawsuits brought against the Employer where the Employee is a party or potential witness. Employee agrees that he will not voluntarily provide assistance to any party adverse to the Employer in any lawsuit or administrative proceeding involving any matters which occurred on or after October 19, 2009, or with which Employee was involved, while an employee of Employer, except to the extent required to do so by subpoena or other court order. If Employee is subpoenaed to testify in any lawsuit or administrative proceeding in which the Employer is a party, Employee agrees to immediately provide written notice to the city attorney for the City of Georgetown. Employee further agrees that if he is needed as a witness by the City of Georgetown, he will make himself available to the City of Georgetown's lawyers before he testifies.

SECTION 9. AGREEMENT VOLUNTARY

Employee acknowledges and agrees that he has carefully read this Letter of Agreement and understands the Agreement. He further agrees that he has entered into this Agreement for the above-stated reasons and consideration. He warrants that he is fully competent to execute this Agreement, which he understands to be contractual. He acknowledges that he executes this Agreement of his own free will, after having a reasonable period of time to review, study, and deliberate regarding its meaning and effect and after being advised to consult an attorney and without reliance on any representation of any kind or character not expressly set forth herein.



SECTION 10. GENERAL PROVISIONS

- A. The text herein shall constitute the entire agreement between the Parties.
- B. This Letter of Agreement shall become effective on the latest date accompanying the signature lines below.
- C. If any provision, or portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected by such invalidity or unenforceability, and shall remain in full force and effect.
- D. This Letter of Agreement will remain in effect until modified, in writing, or until canceled by mutual consent of the Parties, as evidenced by a written agreement of such action, fully executed and signed by all Parties to this Agreement.
- E. No waiver or amendment of this Agreement shall be valid unless delivered to all Parties, in writing, and consent of such waiver or amendment by the Parties is indicated by the authorized signatures of the Parties' representatives thereon.
- F. The rights and obligations of the City and Employee under this Agreement shall continue after termination of Employee's employment with the City for any reason, whether with or without cause, and whether initiated by any Party to this Agreement.

IN WITNESS WHEREOF, the City of Georgetown has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Secretary, both in duplicate, the day and year noted below.

THE CITY OF GEORGETOWN

By: George Garver 9-14-09
George Garver, Mayor Date

By: Mark T. Sokolow September 14, 2009
Mark T. Sokolow Date

ATTEST:

Jessica Hamilton
Jessica Hamilton, City Secretary

Exhibit "D"

ARTICLE V. ADMINISTRATIVE ORGANIZATION

Sec. 5.01. The City Manager.

The Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City. The City Manager shall be chosen by the Council solely on the basis of executive and administrative training, experience and ability, and need not, when appointed, be a resident of the City of Georgetown; however during the tenure of office, the City Manager shall reside within the City.

The City Manager shall not be appointed for a definite term, but may be removed at the will and pleasure of the Council by the vote of a majority of all Councilmembers qualified and serving. The action of the Council in removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such removal in the Council. The City Manager shall receive such compensation as may be fixed by the Council.

No member of the Council shall, during the time for which the councilmember is elected or for two (2) years thereafter, be chosen as City Manager.

Sec. 5.02. Powers and duties of the City Manager.

The City Manager shall be responsible to the Council for the proper administration of all the affairs of the City. The powers herein conferred upon the City Manager shall include, but shall not be limited by, the following:

- (a) To appoint and remove any officer or employee of the City except those officers and employees whose appointment or election is otherwise provided for by State law or this Charter;
- (b) To perform such other duties as may be prescribed by this Charter or required by the Council, not inconsistent with the provisions of this Charter.

(Ord. No. 86-12, Amend. No. 19, 2-25-86)

Sec. 5.03. Administrative divisions and departments.

There shall be such divisions and departments as are established by this Charter and as may be established by ordinance, all of which shall be under the control and direction of the City Manager. The Council may abolish or combine one (1) or more divisions or departments created by it, and may assign or transfer duties of any divisions or departments of the City from one division or department to another by ordinance.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 5.04. Directors of divisions.

At the head of each division there shall be a director who shall be appointed, and who may be removed, by the City Manager. Such directors shall have supervision and control over their respective divisions, and may head any departments within a division. Two (2) or more departments may be

headed by the same individual, and the City Manager may temporarily head one (1) or more divisions.
(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 5.05. Divisional and departmental organization.

The work of each division shall be distributed among such departments as may be established by ordinance. Pending passage of ordinances establishing departments or divisions, the City Manager may establish temporary departments.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 5.06. City Attorney.

The City Council shall appoint a competent attorney who shall have practiced law in the State of Texas for at least two (2) years immediately preceding the appointment. The City Attorney shall be the legal advisor of, and attorney for, all of the offices and departments of the City, and shall represent the City in all litigation and legal proceedings. The City Attorney shall draft, approve, or file written objections to every ordinance adopted by the Council, and shall pass upon all documents, contracts and legal instruments in which the City may have an interest.

There shall be such assistant City Attorneys as may be authorized by the Council and appointed by the City Attorney with the approval of the City Council, and such assistant City Attorneys shall be authorized to act for and on behalf of the City Attorney. The City Attorney(s) and any assistant City Attorney(s) serve solely at the will of the Council.

(Res. No. 050603-B, 5-3-03)

Sec. 5.07. Municipal Court.

There shall be a court known as the Municipal Court of the City of Georgetown, which court shall be deemed always open for the trial of causes, with such jurisdiction, powers, and duties as are given and prescribed by the laws of the State of Texas.

(Ord. No. 86-12, Amend. No. 20, 2-25-86)

Sec. 5.08. Judge of the Municipal Court.

The Municipal Court shall be presided over by a magistrate who shall be known as the Judge of the Municipal Court. The Judge shall be appointed by the Council for a term of two (2) years, from June first in even years until May thirty-first two (2) years later, or for the portion of such term unexpired at the time of his appointment. Except as hereinafter provided, the Judge of the Municipal Court shall be a competent attorney who at the time of the appointment has practiced law for at least two (2) years and who is a resident of the City of Georgetown; if a suitable resident of Georgetown cannot be found, the Council shall have the power to appoint a practicing attorney in the City of Georgetown who resides in the extraterritorial jurisdiction of said City. In the event an attorney with the above qualifications is not available, a citizen of this City considered qualified shall be appointed by the Council as the Judge of the Municipal Court. The Judge of the Municipal Court may be removed in accordance with State law.

In the event the Judge of the Municipal Court is temporarily unable to act for any reason, the

Council shall appoint a qualified person to act in the Judge's place. The Judge, or anyone acting in the Judge's place, shall receive such compensation as may be set by the Council.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 20, 2-25-86)

Sec. 5.09. Clerk of the Court.

The Municipal Judge shall appoint, with the approval of the City Manager, a City employee to serve as Clerk of the Municipal Court. The Clerk of the Municipal Court shall have the power to administer oaths, make certificates, affix the seal of said Court thereto and generally do and perform any and all acts usual and necessary by Clerks of Courts in issuing processes of said Court and conducting the business thereof.

(Ord. No. 86-12, Amend. No. 20, 2-25-86)

Sec. 5.10. Official bonds for City employees.

The City Manager and the City Secretary and such other officers and employees as the City Council may require, shall, before entering upon the duties of their offices, enter into a good and sufficient fidelity bond in a sum to be determined by the City Council, payable to the City of Georgetown and conditioned upon the faithful discharge of the duties of such persons and upon the faithful accounting for all monies, credits, and things of value coming into the hands of such persons, and such bonds shall be signed as surety by some company authorized to do business under the laws of the State of Texas, and the premium on such bonds shall be paid by the City of Georgetown, and such bonds must be acceptable to the City Council.

Exhibit "E"



EMPLOYEE PERFORMANCE APPRAISAL

I. PURPOSE

To provide a process by which the job performance of each employee is periodically and regularly appraised for purposes of development, merit bonus review and counseling, which enables the City to maintain a high standard of professionalism with competent, well-trained employees.

II. SCOPE

This policy applies to all City employees, except temporary seasonal and temporary on-call employees.

III. POLICY

The employee performance appraisal process is intended to accomplish the following objectives:

- A. To enhance individual employee performance and ensure effective City operations.
- B. To promote and support performance/behavior which is aligned with the City's values based culture.
- C. To document both formal and informal performance discussions held with employees throughout the review period.
- D. To document performance areas in which employees do well and those areas which require improvement. To establish performance goals and plans to correct performance shortcomings and focus on employee development.
- E. To link employee performance with merit bonus considerations.



IV. PROCEDURE

A. Supervisory Responsibilities

1. *Clear Performance Standards*

- a. Each supervisor is responsible for setting and communicating clear performance standards for his/her employees at the beginning of, and throughout, the review period.
- b. In evaluating employees, supervisors shall consider factors such as the experience and training of the employee, the job description, and the employee's attainment of previously set goals and objectives.

2. *Informal Appraisals*

Each supervisor is also responsible for observing and discussing with his/her employees both positive and negative aspects of the employee's performance throughout the review period. Written records of each significant incident requiring supervisory input shall be kept by all supervisors.

3. *Formal Appraisals*

On a regular basis and as described in this policy, each supervisor is responsible for conducting formal performance appraisals on each subordinate employee. Performance appraisals shall include a summary of all past discussions related to performance during the review period and future performance goals.

4. *Accountability*

Supervisors will be held accountable for the performance of their employees and for the negligent retention of an employee that consistently performs below City standards.

B. Timing

1. *Frequency*

Regular employees will receive a mid-point review and an annual appraisal each fiscal year. Midpoint reviews will be conducted half-way



through the fiscal year and annual appraisals will be conducted at the end of the fiscal year. All forms must be completed, approved, and submitted to the Human Resources Department following the performance appraisal discussion.

2. *Timely Processing*

The Human Resources Department will maintain a system to assist supervisors to complete performance appraisals on time. The timely processing of performance appraisals is one of the most important leadership responsibilities for those in supervisory positions.

3. *New Hires & Promotions*

Newly hired employees and employees who have received a promotion will be appraised ninety (90) days from date of hire or date of promotion. During this ninety (90)-day period, supervisors should closely monitor employees and perform frequent, informal counseling and evaluations (See New Position Orientation Period #030).

C. Performance Appraisal Form

A copy of the employee performance review form can be obtained from the Human Resources Department. The City form should be used for all formal performance reviews.

D. Self Evaluations

In addition to regular and periodic review by supervisors, each City employee is asked to perform an annual evaluation of their own performance during the proceeding year. In this regard:

1. Employees are asked to submit to their supervisors a signed self-evaluation form.
2. A copy of the self-evaluation form can be obtained from the Human Resources Department.
3. Employees have the option of not performing a self-evaluation, however, the form must be signed indicating their choice not to do so.

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1. Supervisors will hold a discussion with the employee regarding the performance appraisal. The purpose of the discussion is to review past performance, address any questions about the performance review, and to set goals and objectives for the period ahead.
 2. The discussion should be held at a prearranged time in a private location free from interruptions.

G. Employee Signature

1. The employee will be asked to comment on the appraisal and acknowledge it by signing and dating the form.
2. He/she will then be given a copy of the signed appraisal. If the employee has concerns regarding the performance review, which they are unable to resolve at the time of discussion, those concerns may be addressed according to the City's Grievance Procedure. See Grievance Procedure Policy # 540.
3. If the employee declines to sign the form, he or she should be encouraged to discuss any concerns.
4. If, after such discussion, the employee still declines to sign the appraisal, the supervisor should write "employee declined to sign" at the bottom of the form, add his or her initials and the date, and give the employee a copy of the appraisal.
5. A supervisor should notify his or her manager and the Human Resources Department of instances when an employee declines to sign his/her performance appraisal form.

Exhibit "F"

Secretary; Kimberly Garrett, Director of Parks and Recreation; Jim Briggs, Assistant City Manager for Utility Operations; Micki Rundell, Chief Financial Officer; Tom Benz, Systems Engineering Director; Skye Masson, Legal Assistant

Minutes

Policy Development/Review Workshop - Call to order at 04:00 PM

A Parks and Recreation Operational Issues and Update -- Kimberly Garrett, Director of Parks and Recreation

With a Powerpoint presentation, Garrett review the Parks and Recreation Operational Issues. She introduced members of the Parks Board to the Council and said she is going to give Council an update on what's happening in the Parks and Recreation department. She reviewed the points that will be discussed in the presentation. She spoke about the recreation center and said it is a very busy place and there are a large number of people that utilize the facility. She spoke about the increase in recreation center memberships. She said, after the opening of the new recreation center, the membership skyrocketed. She said, so far in 2010, we are on track to meet or exceed the 2009 numbers. She said they currently have over 9,000 active memberships and noted the largest percentage of those users are families. She said over 25% of the users are seniors. She said all memberships, including youth and senior memberships, are for the whole facility and not just portions of the center. She reviewed the recreation center fees and said they are reviewed each year by the Parks and Recreation Advisory Board. She said they added a senior rate in 2009 because those people are normally on a fixed income.

Garrett said, in February, Williamson County was named the healthiest community in Texas. She said the fees were doubled when the new recreation center opened in 2009. She said, however, they did not double the youth fee. Councilmember Ross arrived at the dais. She said they increased the fees by 10% across the board in January 2010 after seeing the increase in membership in 2009. She said they charge the highest fees when compared to the surrounding areas. She showed Council a chart demonstrating the fee comparison with other cities. She said they offer monthly and quarterly memberships that are more palatable, but also more expensive in the long run. She showed Council a graph of the increase in membership revenue between 2005 and 2010. Brainard asked about the debt service on the recreation center. Brewer said she does not know off the top of her head, but she will get that information for Council. Garrett reviewed the recreation center's cost recovery and added the recreation center is recovering at about 50% of their costs. She spoke about the cost recoveries at various recreation centers around the

area. Brainard asked and Garrett said the costs include everything but the bond. Garrett spoke about the senior center in Round Rock.

Garrett spoke about the pyramid methodology, which is a pricing structure model that will encompass a comprehensive look at all programs and will allow for resource allocation. She showed Council a list of some of the programs parks and recreation offers to its citizens. She showed Council a picture demonstrating pyramid methodology and said this is a very long process. She noted most of the programs will be community benefits programs. She noted, as you go up the pyramid, you get more privatized programs. She noted there should be healthy conversations about which type of programs should be located in what area of the pyramid. She said the whole basis of the pyramid is based on the values of the City. She showed Council an example of a cost recovery pyramid that was done in Arlington, Virginia. She reviewed which programs were located in what area of that pyramid. She said the 50% cost recovery applies solely to the recreation center, but most of the parks and recreation programs actually make money. She said the swimming pools do not make money, but they are considered a community benefit, which is at the bottom of the pyramid.

Ross asked about programs at private gyms and how the recreation center competes with those businesses. Berryman said the private gyms in the area offer very specialized programs and one on one attention and the programs at the recreation center are more generalized. Eason said these were bonds that were voter approved to build a recreation center, so it is inferred that the public wanted this type of services. She agreed that private enterprise businesses will not be able to provide the quality of the facility because of the fact that, as a public entity, it was important enough to the community that every citizen have access to the services the recreation center can provide. Garrett said some people still prefer to go to the private and specialized facilities. Berryman said this is a community asset for the community to use and the fees must be put at a level that members of the community can afford. Sansing added that the two other fitness centers opened after the new recreation center opened and they knew what their competition was.

Mayor asked and Brandenburg described the conversations he has had with other private companies and fitness centers on this issue. Garrett said, along with success, comes additional problems. She said their revenue is about \$1.2 million a year and they are open from 5:30 a.m. until 9:00 p.m. She noted there are different staff members there throughout the day. She said they changed their cash handling processes and added the increased membership limits their customer service. She said there are sometimes 300-400 people there at night. She said there is a larger population, increased members and more demand for programming, including special needs programming. She said they have to start offering programs for people with disabilities. She noted they recognize and plan for persons with disabilities using their facilities and attending programs. She noted the Parks and Recreation Board has formed the Friends of Georgetown Parks and Recreation (501c3) to help with scholarships, recruit volunteers and projects. Garrett reviewed the recommendations from staff. She said they need a staff person dedicated to cash handling and administrative duties at the recreation center. She said they also need to anticipate a program for special needs population (required by the ADA). She said they are also requesting temporary staff to help with safety and security during special events and peak times.

Brainard said it would be helpful if Council could see a cost comparison that includes all of the costs of the recreation center and also a comparison with like facilities. He asked if they can explore the cost and feasibility of opening on Sunday and possibly closing on another day, such as Monday. He spoke about the need to create a program for children who are autistic.

B Discussion related to issues of alignment, design, environmental, Right of Way and other issues related to the constructability of the Southwest Bypass from SH 29 to IH-35 -- Jim Briggs, Assistant City Manager for Utility Operations and Ed Polasek, Principal Planner

Briggs and Polasek described the issue and said all options for the area went to the Georgetown Transportation Advisory Board (GTAB) at a special meeting. Polasek said GTAB started their meeting considering two options for the bypass. He described those two options and routes. He said GTAB had a

very detailed discussion and noted they came up with the motion to work on the Northern route as their preferred option. He added there is a southern route that is a development driven road. He noted GTAB said ~~and said the project has moved onto the next step in the approval process. One said she understands the~~ goal from the City Council is to get traffic off of downtown Highway 29. She said, in order to to that, they need this project or the "smiley" road as they call it. She noted, the reason why the lines on the map are red and yellow is to show the difference between the two projects. She said the only problem with doing just the red road is that it limits citizens to moving in one direction, from west to east. She said the yellow is necessary to allow for two way traffic. She noted it accomplishes all that the City and County wants to accomplish at this point. She said it will take more to get the yellow built and not the red.

Berryman asked and Covey spoke about the timing of the two sections. Brainard said both the City and the County have really wanted to get this job done and they really need to keep it moving. Covey said the County is voting on how they are to split up the bond money. She said, if Council chooses not to approve the contract at tonight's meeting, they can not move forward and the money will go somewhere else. She said, if this were easy, it would have been done a long time ago. Ross asked about the frontage road and Covey noted the County is paying for that at a cost of roughly \$5 million. She said that project would be the frontage road as well as road reversals. Ross asked and Covey continued to answer questions on the costs of the various projects. Ross asked and Covey said some of the yellow road is TXDOT right of way. She said they do not have a firm number on the yellow road at this time. Ross asked and Covey said she would ask that the City and the County partner on that project together. Ross asked and Briggs said the cost of the yellow line will depend on the road being in alignment with the frontage road. Briggs said the cost can range from \$2 to \$3.5 million. Ross asked and Covey said there has been no discussion yet on the cost allocation of this issue. Brainard said this issue tonight to just to agree to work on these projects together. He said the cost details will be worked out later. Covey agreed. Berryman said this is a major moment. Mayor asked and Briggs clarified the related item on the regular Council meeting agenda.

Council recessed to Executive Session under Sections 551.071, 551.074 and 551.086 -- 5:19 p.m.

Council returned to Open Session and adjourned -- 6:12 p.m.

Adjournment

The meeting was adjourned at 06:12 PM.

Approved : Attest:

Mayor George Garver City Secretary Jessica Hamilton