

**CITY OF LAGO VISTA
ORDINANCE NO. 18-09-20-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF LAGO VISTA, TEXAS AMENDING CHAPTER 1,
GENERAL PROVISIONS, OF THE LAGO VISTA CODE OF
ORDINANCES TO PROVIDE FOR PROCEDURES FOR
IMPLEMENTING LAGO VISTA CITY CHARTER SECTION
3.21, INVESTIGATIVE BODY, PROVIDING FOR
PENALTIES; PROVIDING FOR PUBLICATION;
SEVERABILITY AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City Council of the City of Lago Vista (City Council) desires to adopt procedures to implement Lago Vista City Charter Section 3.21, Investigative Body by adding Section 1.335, Investigations by City Council, to Chapter 1, General Provisions, of the Lago Vista Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the Lago Vista:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. ADOPTION OF SECTION

Section 1.355 Investigations by the City Council

(a) The City Council under the Charter has the power to inquire into and investigate the conduct of any City office, department or agency, inquire into the conduct or qualifications of any officer or employee of the City appointed or confirmed by the Council, and municipal affairs generally, and Council may subpoena witnesses, administer oaths and compel the production of books, papers and other evidence material to a specific inquiry. This Section, among other things, adopts procedures applicable to those inquiries and investigations, and sets penalties for failure to comply with such subpoenas. All references to state laws and rules in this section mean such provisions as they exist when applied in accordance with this section, including any future amendments or renumbering of those provisions. The term "subpoena" as used in this section means subpoenas issued on by or on behalf of the City Council for testimony or things, and includes any attachments, exhibits, schedules, or other documents that may be served with a subpoena or incorporated by reference into a subpoena. The terms "inquiry" and "investigation" as used in the Charter and in this section are synonymous.

(b) In all inquiries and investigations are pursuant to the City Council's Charter authority, except to the extent that Council may by resolution adopt different procedures:

- (i) Proceedings shall commence upon resolution of the Council, but the City Manager or City Attorney without further Council approval may take preliminary investigative steps short of issuing subpoenas or administration of oaths in order to determine the advisability of such Council resolution and will advise the Council of the results of their actions.
- (ii) City staff is deemed a party to all investigations. Council at its sole discretion may designate as an additional party any individual or entity whose vested property rights or reputation may in the sole judgment of Council may be materially affected by the results of the investigation. But no such party has the right to issue or cause to be issued subpoenas. Such additional parties, except to any extent limited by Council, will have the right to introduce and to examine documents unless doing so violates another's privileges, to examine witnesses, to call a reasonable number of witnesses if such appear voluntarily, and to request the issuance of subpoenas by the City Secretary on behalf of the City Council to compel the testimony of witnesses and the production of documents and things. Such additional parties and any individual or entity who would have qualified for designation as an additional party but who was not so designated, has the right to inspect and comment on the results of the investigation if they communicate their comments to the City Secretary and to all parties and to the City Attorney within 72 hours after receiving the results of the investigation. The right to comment does not apply to any extent that the results are unavailable under state or federal law to such person or entity. However, if such individual or entity declined the designation after being offered the opportunity to be an additional party, they will have no right beyond that of members of the public to inspect and comment on the results of the investigation to Council before the investigation becomes final, and by declining the additional party designation waives any right to judicially challenge any investigation results.. The findings of fact and any conclusions of fact and law of an investigation must be communicated to the Council promptly upon completion of the investigative proceedings. The communication need not be formally designate findings and conclusions and may be in

narrative form or any other form, as applicable. The communication of results may be written or oral, but if oral should be transcribed verbatim while being communicated. An investigation becomes final when the results are approved or adopted by City Council, but if an investigation recommends any Council action, the investigation becomes final only after Council has voted whether to implement all actions that an investigation may recommend. To the extent that may be authorized by state or federal law, an additional party may judicially challenge the results of an investigation only after the investigation is final.

- (iii) Council or a committee of the Council may conduct all or part of an investigation itself in open session or, to the extent permitted by state law, in executive session; or may direct the City Manager or City Attorney, or both, to conduct or to cause to be conducted such investigation including the administration of oaths by the City Secretary, taking live and written testimony, and obtaining documents and other things. When the Council or Council committee conducts an investigation itself, the presiding officer has the authority to administer oaths in addition to the authority of any other person under state law or the City Charter. When another person investigates that includes the taking of testimony under oath, the proceedings will conform to the extent practicable to those mandated by the Texas Rules of Civil Procedure for depositions upon oral questions or upon written questions.
- (iv) Subpoenas shall conform in form substantially to the form of subpoenas prescribed by the Texas Rules of Civil Procedure, except that they shall be issued in the name of the Lago Vista City Council. No deviation of form will render the City subpoena defective or unenforceable except to the extent that the deviation renders the City subpoena unintelligible to a person of normal intelligence, and any defect in the form of subpoena, and any other matter rendering a portion of any City subpoena unenforceable will not affect the validity and enforceability of any remaining portion of such subpoena.
- (v) Only the Council has the authority to issue or cause to be issued subpoenas in aid of investigations and shall do so in the name of the City Council. Council need not authorize the issuance or service of each subpoena so long as the resolution authorizing the investigation authorizes the use of subpoenas in that investigation.

(c) Witnesses and custodians of things who are subject to a subpoena are entitled to fees as provided by the Civil Practice and Remedies Code, except that no fees are due until completion of the witness or custodian's performance as required by such subpoena. Council may at its discretion in the interests of justice and subject to available funds authorize additional financial assistance for the travel, lodging, and meals of witnesses. Non-parties may claim against the City for reimbursement for the actual, necessary, and reasonable costs of copying and producing documents and other things pursuant to subpoena.

(d) Subpoenas shall be served by any means permitted by the Texas Rules of Civil Procedure or by U.S. first class certified mail or by commercial express delivery service upon agents described in subsection (e) (iii) below. The City Council or the City Manager if authorized by the City Council, may authorize alternative means of service that a court could authorize under the Texas Rules of Civil Procedure upon finding that the factual predicates as provided by the Texas Rules of Civil Procedure for using such alternative means exist. However, no defect in service will affect the enforceability of any subpoena if the subject thereof received actual or constructive notice of the subpoena sufficient to enable compliance therewith or to put the subject on notice of the existence of the subpoena such that further inquiry into the full facts respecting the subpoena would have been reasonable under the circumstances.

(e) Any individual over 18 years of age may serve a subpoena.

(f) Subpoenas should not be served more than 100 miles from Lago Vista City Hall except that service is permitted as follows:

(g) Anywhere they may be found upon an individual permanently residing in the City;

(ii) Anywhere they may be found upon a business entity whose principle place of business in the City;

(iii) Anywhere they may be found upon any agent designated by contract or law as an agent to receive service of process for any individual or entity who has contracted with the City, provided goods or services to the City, or received anything of value from the City, if the subpoena or the investigation for which the subpoena issued relates in whole or in part to such individual's or entity's dealings with the City.

(h) In addition to any other remedies and penalties, any individual or entity who shall be served with a subpoena for testimony, documents, and/or other things who shall fail or refuse timely to obey all of the terms and conditions of the subpoena or subpoena duces tecum shall be deemed guilty of criminal contempt against the authority of City Council and such contempt is hereby declared to be an ordinance violation; and, upon conviction therefore, such person shall be punished as provided in this section.

(i) The municipal court of the city shall have the power to hear and determine alleged violations of this section, and upon the conviction of anyone thereunder shall punish all such guilty persons by a fine of not more than \$500.00.

(j) In addition to any other remedies and penalties, the municipal court of the city and any justice court, county court, county court at law, or state district court sitting in Travis County, Texas, is hereby granted jurisdiction and is authorized to hear and determine proceedings to enforce a subpoena. Such court may, in addition to any remedy authorized by law or equity, modify a subpoena as necessary to comply with constitution or statutory requirements, and/or order compliance with such subpoena as issued or as modified, punish failure to obey the court's compliance order as criminal contempt, and coerce compliance with the court's compliance order through civil contempt.

(k) The Texas Rules of Evidence as to privileges and authentication apply in all investigations but do not otherwise apply except to any extent the Council otherwise directs in the resolution authorizing a specific investigation. However, all oral testimony shall be under oath and neither the investigators nor City Council if it was not the investigator need consider any evidence, whether or not admitted, that they believe to be unreliable, including evidence that would be inadmissible hearsay under the Texas Rules of Evidence, and may exclude duplicative, redundant, unfairly prejudicial, unnecessarily inflammatory, and may decide to reject or to discredit expert opinions that are not adequately supported by the qualifications of the expert or by the expert's methodology.

(l) To any extent that procedural issues are not governed by the Charter or City Code, the Presiding Officer will consult the Texas Administrative Procedure Act, Texas Government Code chapter 2001, and the rules of procedure adopted thereunder by the State Office of Administrative Hearings and apply the rules of procedure to or as adapted in the investigation to the extent practicable. Otherwise, the investigation may adopt reasonable ad hoc procedures that adequately protect the rights of all parties and the City's interests upon reasonable notice to all parties and their opportunity to be heard respecting all proposed ad hoc procedures.

III. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable. If any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or *ultra vires* by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

IV. PENALTY

Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances, Sec. 1.109, General Penalty for Violations of Code; Continuing Violations of the City of Lago Vista, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) for each offense.

If the governing body of the City of Lago Vista determines that a violation of this Ordinance has occurred, the City of Lago Vista may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity.

V. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

VI. PUBLICATION

The City Secretary of the City of Lago Vista is hereby directed to publish in the Official Newspaper of the City of Lago Vista the Caption, and Effective Date Clause of this Ordinance as required by Section 52.013 of the Local Government Code.

VII. EFFECTIVE DATE

This Ordinance shall be and become effective immediately upon and after its passage and publication as provided by law.

PASSED AND APPROVED on this the 20th day of September 2018 by a vote of 7 ayes, 0 nays, and 0 abstentions of the City Council of the City of Lago Vista, Texas.

CITY OF LAGO VISTA, TEXAS

by: Ed Tidwell
Ed Tidwell, Mayor

ATTEST:

by: Sandra Barton
Sandra Barton, City Secretary

