

## Chapter 2- ADMINISTRATION

### ARTICLE VI.- ETHICS COMMISSION

#### Sec. 2-150. - Ethics commission.

- (a) *Creation of ethics commission.* An ethics commission (hereinafter "commission") shall be created and consist of eight members, all of whom must reside within the corporate limits of the city. Each member of the city council will appoint a member to the commission after taking office and that individual's term in office will run concurrent with the term of the city councilmember who made the appointment. The member of the commission appointed by the mayor shall serve as the commission chair and only vote in the event of a tie. Members of the commission may not hold or be a candidate for any city elected or appointed office at the time of their service on the commission, nor may a member be related within the second degree of consanguinity or affinity to a member of the city council or city staff
- (b) *Terms of office and commission vacancies.* The members of the commission shall serve staggered three-year terms beginning in January 1<sup>st</sup> and ending December 31<sup>st</sup>. All vacancies shall be filled for the unexpired terms. Appointments to fill vacancies on the commission shall be made within 30 calendar days by the same appointing authority that appointed the prior holder of the position. A vacancy or vacancies shall not impair the right of the remaining members to exercise the powers of the commission. Members shall hold office until their successors have been appointed and shall continue to hold office after their successors have been appointed for the limited purpose of disposing of all complaints filed and unresolved during the member's term. Should a member become incapacitated, disqualified, or die, the successor may immediately take over the term and may participate in a decision regarding an unresolved issue.
- (c) *Removal of commission members.* Members of the commission may be removed by:
  - (1) An affirmative vote of six city council members for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office or violation of this article after written notice of the grounds on which removal is sought and an opportunity for a reply;
  - (2) An affirmative vote of seven city council members at the discretion of the city council;  
or
  - (3) Automatic removal for non-attendance of two administrative enforcement hearings.
- (d) *Officers/quorum.* The commission shall elect a vice chairperson at its June annual meeting. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position and shall serve a one-year term. Five of the members of the commission shall constitute a quorum.
- (e) *Meetings.* The commission shall meet when necessary to carry out its responsibilities, but in any event the commission shall hold two annual meetings. One meeting will be held during the month of January and a second meeting will be held during the month of June. Officers will be elected during the June meeting. The chairperson, three members of the commission or the city attorney may call a meeting provided that reasonable notice is given to each member. The commission shall comply with the Texas Open Meetings Act when applicable.

(f) *Role of the commission.* The ethics commission shall have jurisdiction of complaints involving the city council.

(g) *Duties of the commission.* The commission shall:

- (1) Make recommendations to the city council concerning matters relating to the standard of conduct.
- (2) To the extent allowed by law, preserve and maintain the confidentiality of any documentation filed with the commission for a period of five years after a finding has been rendered at which time such documents shall be destroyed.
- (3) Review and investigate complaints when presented and issue a written finding of the commission's determination when appropriate.

The commission may:

- a. Prepare reports and make recommendations to the city council regarding ethical issues affecting the city.
- b. Seek any necessary assistance from the city council and city manager regarding financial support needed to carry out the commission's duties.
- c. Adopt rules of procedures for carrying out the provisions of the standard of conduct.

(h) *Role of the city attorney.*

- (1) The city attorney may serve as legal counsel to the ethics commission, or independent legal counsel may be utilized to advise the commission and take part in hearings.
- (2) The city attorney shall receive all sworn complaints and conduct a preliminary analysis and review of the complaint. If the city attorney determines it is necessary, he/she shall forward an initial legal review and recommendation to the commission for action.

(i) *Complaints.*

- (1) Any person may file a written complaint alleging possible violations of federal, state and city laws relating to conflicts of interest, governmental ethics and standards of conduct. All complaints shall:
  - a. Be submitted in writing, on a form prescribed by the city council and filed with the city attorney;
  - b. Be signed under oath;
  - c. Be dated; and
  - d. Provide, with as much detail and specificity as possible, all information requested on the form, including the name and address of the alleged violator, the provision(s) of law allegedly violated, facts constituting the alleged violations(s), the names and addresses of potential witnesses, additional information, if any, and an address and telephone number at which the complainant may be reached during normal business hours. All such information shall be provided to the best of the complainant's knowledge and belief.

- (2) Complaints and any evidence collected during the investigation of the alleged violation shall be kept confidential by the commission to the extent authorized by law.
- (3) Any complaint shall be filed with the city attorney within six months from the date on which the complainant knew of or should have known about the alleged violation.
- (4) No later than ten business days after receipt of the complaint, the city attorney shall acknowledge receipt of the complaint in writing to the complainant by certified mail, return receipt requested and provide copies of the complaint to each member of the commission and respondent by either certified mail or electronic mail with a request that each member and respondent reply acknowledging receipt. Respondent shall have 15 business days from receipt of the notice to submit a sworn written response to the city attorney. The city attorney shall provide a copy of any sworn written response to each member of the commission and the complainant, conduct a preliminary investigation and review the facts to determine whether there is a legal basis for the claim. The city attorney shall either:
  - a. Take no action on the complaint because the allegations do not warrant further action for reasons which may include, but are not limited to, any or all of the following:
    1. The evidence does not support the allegations;
    2. The complaint restates other complaints containing essentially similar or identical allegations which have already been disposed of, and the evidence presented does not warrant reopening the previous case;
    3. The complaint contains an expression of opinions, rather than specific actionable allegations;
    4. The allegations contained in the complaint are already under investigation by the commission or another governmental or law enforcement agency;
    5. The commission does not have jurisdiction; or
    6. Prior to the alleged violation respondent in the complaint consulted with the city attorney in good faith and respondent disclosed truthfully all the material facts pertinent to the case and respondent committed the acts or violations alleged in the complaint in good-faith upon the advice of the city attorney; or
  - b. Submit in writing a preliminary analysis and recommendation to the commission. The city attorney shall make one of the following recommendations to the commission:
    1. *Enforcement shall not be taken.* If the commission concurs with this recommendation and no further action is taken in the matter, the city attorney may still refer the information to another agency or department for appropriate action. A determination by the commission that no further action should be taken shall not prevent any other agency or department from initiating other enforcement action, including disciplinary action, based on the same allegations and facts;

2. *An administrative enforcement hearing should be commenced.* If the city attorney makes this recommendation to the commission then the city attorney shall prepare a probable cause report to be presented with the recommendation which shall contain a summary of law, facts and evidence gathered through the investigation, including exculpatory and mitigating information of which he has knowledge. The evidence may include hearsay, including declarations of investigators or others relating to the statements of witnesses or concerning the examination of physical evidence;
  3. *A civil action pursuant to any local, state or federal law should be commenced.* If the commission concurs with this recommendation, then the city attorney shall commence the appropriate civil action and the commission shall take no further action; or
  4. *A referral to another agency is appropriate.* If the commission concurs with this recommendation, then the city attorney shall refer the information to the appropriate agency and the commission shall take no further action.
- (j) *Notification of intent to take action.* No later than 60 calendar days after receipt of the complaint by the city attorney, the commission shall notify the complainant and respondent in writing if the commission intends to schedule an administrative enforcement hearing or take other action concerning the complaint. If the commission makes a determination that there is probable cause to schedule an administrative enforcement hearing, pursuant to subsection (m), then the city attorney shall serve respondent with a copy of the probable cause report and notification that respondent has the right to respond in writing to the probable cause report and to request a disposition conference with the city attorney at which the respondent may be present in person and represented by legal counsel or any representative of his or her choosing.
- (1) *Response to probable cause report.*
    - a. Respondent may submit a written response to the probable cause report, in which it may request a disposition conference pursuant to subsection (k). The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information.
    - b. Any response and request for a disposition conference must be filed not later than 15 business days following service of the probable cause report. If the probable cause report is not personally served, three business days shall be added to the prescribed period.
- (k) *Disposition conference.*
- (1) If requested, the disposition conference shall be held at a time fixed by the city attorney and shall be held informally by the city attorney. The respondent shall be given at least ten business days notice of the date, time and location of the conference.
  - (2) Formal rules of evidence shall not apply to such a conference.
  - (3) The conference shall be closed to the public unless the respondent otherwise requests and all other respondents agree to a public conference.

(l) *Ex parte communications.* After a complaint has been filed and during the consideration of a complaint by the commission, a member of the commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the commission, nor may any commission member conduct an independent investigation or gathering of information.

(m) *Administrative enforcement hearings.*

(1) *Administrative prosecution.* The city attorney shall prepare and present the case in support of the accusation to be heard at the hearing.

(2) *Informal disposition.* An informal disposition may be made of an administrative enforcement hearing by:

- a. Stipulation;
- b. Agreed settlement; or
- c. Default.

All informal dispositions through stipulation or agreed settlement shall be negotiated through a disposition conference pursuant to subsection (k). The commission has the right to accept or reject any stipulation or agreed settlement.

(3) *Open or closed hearing.* If the commission and respondent do not informally dispose of the administrative enforcement hearing, respondent may request either a closed or open hearing and may have legal counsel present. If respondent does not request a hearing, the commission in any event shall conduct a hearing. The hearing shall be held as expeditiously as possible, but in any event no later than 150 calendar days from the date the complaint was received. Respondent shall be given at least 14 calendar days notice of the hearing. The notice shall be in substantially the following form but may contain additional information:

"You are hereby notified that a hearing will be held before the Ethics Commission at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at the hour of \_\_\_\_\_, upon the charges made in the complaint filed against you on \_\_\_\_\_. You may be present at the hearing, but need not be represented by counsel, you may present any relevant evidence, and you will be given full opportunity to cross-examine all witnesses testifying. If you choose not to attend this hearing a default may be taken."

(4) *Default.* If respondent does not appear at a scheduled hearing the commission may declare a default and make a recommendation to council without the need to reschedule a hearing.

(5) *Waiver.* If respondent waives his or her right to a hearing the commission may schedule a hearing without any further notice to respondent.

(6) *Standard of proof.* The issue at the hearing shall be whether the violation alleged in the complaint occurred. The commission shall make its decision based on clear and convincing evidence presented during the hearing.

(7) *Finding of violation.* An affirmative vote of a majority of the members of the commission holding office and qualified to vote shall be required for the determination that a violation has occurred and to recommend any sanction under this section. If the commission determines that a violation has occurred, it shall state its finding(s) in writing, identifying the particular provision(s) which have been violated, make a sanctions recommendation and deliver a copy of the findings to the complainant, respondent and the city council within ten business days.

(n) *Sanctions.*

- (1) If the commission determines that a city officer or employee appointed by the city council has violated the standard of conduct, it shall declare its findings along with any recommended sanctions in a report to the city council. An affirmative vote of a majority of the members of the commission holding office and qualified to vote shall be required for the determination that a violation has occurred and to recommend any sanction under this section.
- (2) If the commission determines that a board member or city official has violated the standard of conduct, it may recommend a private or public reprimand, temporary suspension, removal from office or any other sanction or corrective action within the power of the city council.
- (3) In arriving at its recommendation, the commission shall consider the seriousness of the violation, the importance of deterrence, the impact on public confidence in government, the number of times the violation occurred, the mental state with which the violation was committed and any previous violations committed and any previous violations committed by respondent. A written recommendation shall be forwarded to the city council with a copy to respondent.
- (4) If the commission determines that the conduct occurred, but the facts indicate that the violation was unintentional or de minimus, the commission may recommend that the complaint be dismissed and no sanction imposed. The commission may issue a clarifying opinion to help guide future cases.
- (5) If the commission determines a member of city council has violated the standard of conduct, the commission will have the final determination in such cases. In addition to declaring its findings, the commission may reprimand or recommend recall of the councilmember in question. An affirmative vote of a majority of the members holding office and qualified to vote shall be required for the determination that a violation has occurred and to approve any sanctions under the standard of conduct. A letter of reprimand or a recommendation of recall directed to an elected city official shall be delivered to the city secretary and published in a local newspaper of the largest general circulation.