

# L.A.R.I.A.T.<sup>™</sup>

## Ethics Ordinance Worksheet:<sup>™</sup>

### *Module #6 – Redlined Draft*



**City of Denton's Code of Ethics**  
City Council Work Session  
Tuesday, March 20, 2018

**Public Hearing:**  
Draft "B" Ethics Ordinance

## EDITOR'S NOTES:

- 1. Draft Document:** The following material represents a rough *draft-in-progress*, which was prepared for discussion purposes; only, and is subject to modification following public notice and public hearings. Specific language will not be considered *final* until duly approved by a majority of the City Council at a properly-posted public meeting.
- 2. Training:** Prior to commencing the drafting process, the City Council completed two (2) hours of formal training on state ethics laws and common components of municipal ethics policies in Texas.
- 3. Broad Sampling:** The contents of this draft was selected from a sampling of more than nineteen (19) municipal ethics policies from across Texas.
- 4. Consensus:** This document represents the consensus of preferences expressed by the City Council over a period of five (5) public work sessions, which were broadcasted. Altogether, the work sessions exceeded thirteen (13) hours of deliberations.
- 5. Best Practices:** Where there were gaps or omissions in the feedback or direction provided by the City Council thus far, the editor inserted recommendations that reflect Best Practices in the field of Municipal Ethics, solely at the editor's discretion.
- 6. Applicability:** This Code of Ethics was drafted to apply to the Mayor, City Council, P&Z, ZBA, Department Heads appointed by the City Council, and Vendors. It is anticipated that a similar set of rules will be adopted subsequently for other employees.
- 7. Codification:** It is anticipated that certain non-substantive, grammatical and formatting edits will be made after (or just before) final adoption to make the Code of Ethics consistent with the broader Code of Ordinances.

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## TABLE OF CONTENTS

<b>DIVISION 1. GENERAL</b> .....	4
Sec. 3-105. Authority .....	4
Sec. 3-106. Purpose .....	4
Sec. 3-107. Prospective.....	4
Sec. 3-108. Applicability .....	5
Sec. 3-109. Definitions .....	5
Sec. 3-110. Cumulative & Non-Exclusive .....	7
<b>DIVISION 2. RULES OF CONDUCT</b> .....	7
Sec. 3-111. Expectations .....	7
Sec. 3-112. Mandates.....	8
Sec. 3-113. Prohibitions.....	8
<b>DIVISION 3. IMPLEMENTATION</b> .....	13
Sec. 3-114. Staffing .....	13
Sec. 3-115. Legal Counsel .....	13
Sec. 3-116. Training .....	13
Sec. 3-117. Board of Ethics .....	13
Sec. 3-118. Advisory Opinions.....	15
Sec. 3-119. Complaints.....	15
Sec. 3-120. Preliminary Assessment .....	17
Sec. 3-121. Meetings .....	18
Sec. 3-122. Disposition.....	19
Sec. 3-123. Reconsideration .....	21
Sec. 3-124. General Procedural Matters .....	21
Sec. 3-125. Lobbyists [ <i>reserved</i> ].....	21

**CITY OF DENTON**  
**CODE OF ORDINANCES**  
**CHAPTER 2: ADMINISTRATION**  
**ARTICLE XI. ETHICS**

**DIVISION 1. GENERAL**

**Sec. 3-105. Authority**

This Article is enacted pursuant to the authority granted to the City under Section \_\_\_ of the Charter.

**Sec. 3-106. Purpose**

The purpose of this Article is to foster an environment of integrity for those that serve the City of Denton and our citizenry. The City Council enacted this Article in order to increase public confidence in our municipal government. It is the policy of the City that all City Officials and employees shall conduct themselves in a manner that assures the public that we are faithful stewards of the public trust. City Officials have a responsibility to the citizens to administer and enforce the City Charter and City Ordinances in an ethical manner. To ensure and enhance public confidence in our municipal government, each City Official must strive not only to maintain technical compliance with the principles of conduct set forth in this Article, but to aspire daily to carry out their duties objectively, fairly, and lawfully. Furthermore, this Article was enacted to ensure that decision makers provide responsible stewardship of City resources and assets.

It is not the purpose of this Article to provide a mechanism to defame, harass or abuse their political opponents, or publicize personal grudges. Rather, this Article is intended to provide a framework within which to encourage ethical behavior, and enforce basic standards of conduct while providing due process that protects the rights of the Complainant and the Accused.

**Sec. 3-107. Prospective**

This Article shall apply prospectively, and shall not sustain any Complaints based on acts or omissions alleged to have taken place prior to adoption of this Article.

### ~~Sec. 3-107.~~Sec. 3-108. **Applicability**

This Article applies to the following persons:

- (a) City Officials;
- (b) Former City Officials whose separation from city service occurred less than two (2) years ~~ago~~from the date of the alleged violation of this Article. Application of this Article to Former City Officials shall be limited to alleged violations:
  - (1) that occurred during the term as a City Official;
  - (2) of the prohibition on representing others for compensation (§3-112(d)(2)); or
  - (3) of the prohibition of subsequent work on prior projects (§3-112(h)).
- (c) Vendors; and
- (d) Complainant(s).

### ~~Sec. 3-108.~~Sec. 3-109. **Definitions**

The following words, terms and phrases, when used in this ~~chapter~~Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accepted Complaint:* a sworn allegation of a violation of this Article after the required documentation has been submitted to the City Auditor and determined to be administratively complete.

*Accused:* a City Official who has been charged in a Complaint with having violated this Article.

*Actionable Complaint:* an Accepted Complaint that has been deemed by a Panel to contain allegations and evidence that, if accepted as true, would support a finding that a violation of this Article occurred.

*Advisory Opinions:* written rulings regarding the application of this Article to a particular situation or behavior.

*Article:* the Code of Ethics for the City of Denton.

*Baseless Complaint:* a Complaint that does not allege conduct that would constitute a violation of this Article, or that does not provide evidence that, if true, would support a violation of this Article.

*Board of Ethics:* the oversight entity established by the Council to administer this Article.

*Candidate:* a person who has filed an application for a place on a ballot seeking public office, or one who has publicly announced the intention to do so.

*Charged: to be charged with a violation of this Article is to have an Accepted Complaint deemed Actionable.*

*City:* the City of Denton in the County of Denton and State of Texas.

*City Auditor:* the person appointed to serve in the capacity provided for by Section 6.04 of the ~~Code~~City Charter, or their designee and clerical staff acting in the City Auditor's absence.

*City Official:* for purposes of this Article, the term consists of the Council Members, City Manager, ~~City Secretary,~~ City Attorney, ~~Chief of Police,~~ Department Heads, Planning and Zoning Commission Members, and Board of Adjustment Members.

*Code:* the Code of Ordinances of the City of Denton, Texas, as such Code may be amended from time to time.

*Complainant:* the human individual who submitted a Complaint to the City.

*Complaint:* written documentation submitted to the City accusing a City Official of violating this Article.

*Confidential Information:* any written information that could or must be excepted from disclosure pursuant to the Texas Public Information Act, if such disclosure has not been authorized; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized by the City Council or City Manager.

*Council:* the governing body of the City of Denton, Texas, including the Mayor and City Council Members.

*Department Heads:* the employees appointed by the City Council, those being the City Manager, ~~City Secretary,~~ City Attorney, City Auditor, and Municipal Court Judge. ~~Chief of Police, Fire Chief, and those other persons employees designated appointed by the City Council under the Code.~~

*Former City Official:* a City Official whose separation from city service occurred less than two (2) years from the date of an alleged violation of this Article.

*Frivolous Complaint:* a sworn Complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

*Interfere:* a person interferes with a process or activity pertaining to this section when they intentionally and wrongfully take part in, or prevent, a City process or activity from continuing or being carried out properly or lawfully.

*Panel:* an *ad hoc* subcommittee of the Board of Ethics consisting of three (3) members assigned by the Chairperson or designated by the City Auditor (as applicable) on a rotating basis, at least one (1) of which is an attorney or retired jurist.

*Person:* associations, corporations, firms, partnerships and bodies politic and corporate, as well as to individuals.

*Recklessly:* a person acts recklessly when they are aware of but consciously disregard a substantial and unjustifiable risk that a certain result is probable from either their conduct, or in light of the circumstances surrounding their conduct. The risk must be of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that an ordinary person would exercise under the circumstances.

*Shall:* a mandatory obligation, not a permissive choice.

*Special Counsel:* an independent, outside attorney engaged by the City to advise the City as an organization and/or the Board of Ethics.

*Vendor:* a person who provides or seeks to provide goods, services, real property to the City in exchange for compensation.

### **Sec. 3-109. Sec. 3-110. Cumulative & Non-Exclusive**

This Article is cumulative of and supplemental to all applicable provisions of the City Charter, other City Ordinances, and State/Federal laws and regulations. Compliance with this Article does not excuse or relieve any person from any obligation imposed by any other Rule. Attempts to enforce this Article shall be construed as foreclosing or precluding other enforcement options provided by other law.

## DIVISION 2. RULES OF CONDUCT

### ~~Sec. 3-110.~~Sec. 3-111. **Expectations**

The following list conveys the City Council's expectations for City Officials. These expectations are aspirational, and shall not serve as the basis for a Complaint.

- (a) City Officials are expected to conduct themselves in a manner that fosters public trust.
- (b) City Officials are charged with performing their public duties in a way that projects ~~their own personal~~ a high level of personal integrity and upholds the integrity of the organization.
- (c) City Officials must avoid behavior that calls their motives into question and erodes public confidence.
- (d) City Officials shall place the municipality's interests and the concerns of those the City serves above private, personal, ~~individual~~ interests.
- (e) Those who serve the City are expected to value honesty, trustworthiness, diligence, objectivity, fairness, due process, efficiency, and prudence as values the City professes.
- (f) City Officials must balance transparency with the duty to protect personal privacy and preserve the confidential information with which the City has been entrusted.
- (g) It is neither expected nor required that those subject to this Article relinquish or waive their individual rights.

### ~~Sec. 3-111.~~Sec. 3-112. **Mandates**

- (a) **Duty to Report.** City Officials shall ~~immediately~~ report any conduct that the person knows to be a violation of this Article. Failure to report a violation of this ~~Chapter Article~~ Article is a violation of this Article. For purposes of this section, submittal of a Complaint or a report made to the Fraud, Waste or Abuse hotline shall be considered to be a report under this Section. A report to the hotline may remain anonymous unless disclosed by the caller.
- (b) **Financial Disclosures.** All Candidates for City Council, including Candidates for Mayor, shall file financial information reports as required by, and in accordance with, State law. All prospective Vendors and City Officials shall file disclosure forms as required by, and in accordance with, State law.

### ~~Sec. 3-112.~~Sec. 3-113. **Prohibitions**

- (a) **Conflicts of Interest.**

- (1) *Deliberation Prohibited.* It shall be a violation of this Code for a City Official to knowingly deliberate regarding a pending matter for which the City Official has a Conflicting Interest. City Officials with a Conflicting Interest in a pending matter must recuse themselves and abstain from Deliberations. It is an exception to this recusal requirement if the City Official serves on the City Council, Planning and Zoning Commission, or Board of Adjustment; and a majority of the ~~Board or Commission on which the City Official serves~~ members of that body is composed of persons who are likewise required to file (and who do file) disclosures on the same pending matter.
- (2) *Disclosure Required.* If a City Official has a ~~e~~C~~o~~nfl~~i~~cting ~~i~~n~~t~~erest in a pending matter, the City Official shall disclose the nature of the ~~e~~C~~o~~nfl~~i~~cting ~~i~~n~~t~~erest by filing a sworn statement with the City Auditor. Disclosures under this subsection shall be for the time period, including the previous calendar year, and up to date where the Conflicting Interest arises before the City Official.
- (3) *Definitions.* For purposes of this Article, these terms are defined as follows:
  - (A) *Business Entity:* a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, political subdivision, government agency, university, or any other entity recognized by law.
  - (B) *Conflicting Interest:* a stake, share, equitable interest or involvement in an undertaking in the form of any one (1) or more of the following:
    - (1) ownership of five percent (5%) or more voting shares or stock in a business entity;
    - (2) receipt of more than six-hundred dollars (\$600.00) in gross annual income from a business entity;
    - (3) ownership of more than six-hundred dollars (\$600.00) of the fair market value of a business entity;
    - (4) ownership of an interest in real property with a fair market value of more than six-hundred dollars (\$600.00);
    - (5) serves on the Board of Directors or as an Officer of a business entity, unless the City Official was appointed to that position by the City Council; and/or
    - (6) serves on the Board of Directors or as an Officer of a nonprofit corporation or an unincorporated association, unless the City Official was appointed to that position by the City Council.

A City Official is considered to have a Conflicting Interest if the City Official's relative has a conflicting interest.

The term Conflicting Interest does not include ownership of an interest in a mutual or common investment fund that holds securities or assets unless the City Official participates in the management of the fund.

- (C) *Deliberations*: discussions at the dais; voting as a Member of the Board or Commission; presentations as a member of the audience before any City Board or Commission; conversing ~~to~~ or corresponding with other City Officials or staff. This term does not apply to a general vote on a broad, comprehensive or omnibus motion, such as approval of the City budget.
- (D) *Relative*: a family member related to a City Official within the third (3<sup>rd</sup>) ~~one (1)~~ degree of affinity (marriage) or consanguinity (blood or adoption).
- (E) *Pending Matter*: an application seeking approval of a permit or other form of authorization required by the City, State or Federal law; a proposal to enter into a contract or arrangement with the City for the provision of goods, services, real property or other things of value; a case involving the City that is (or is anticipated to be) before a civil, criminal or administrative tribunal.

**(b) Gifts.**

- (1) *General*. It shall be a violation of this Article for a City Official to accept any gift that might reasonably tend to influence such Officer in the discharge of official duties.
- (2) *Specific*. It shall be a violation of this Article for a City Official to accept any gift for which the fair market value is greater than fifty dollars (\$50.00) ~~or greater~~. It shall be a violation of this Article for a City Official to accept multiple gifts from a single source for which the cumulative fair market value exceeds two-hundred dollars (\$200.00) in a single fiscal year.
- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to a City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two-hundred dollars (\$200.00) per a single fiscal year.
- (4) *Definition of Gift*. Anything of monetary value, such as including but not limited to cash, the extension of credit, personal property, real property, services, meals, entertainments, and travel expenses.
- (5) *Exceptions*. This definition shall not apply to the following, which are allowed under this Article:
  - (A) a lawful campaign contribution;
  - (B) meals, lodging, transportation, entertainment, and related travel expenses paid for (or reimbursed by) the City in connection with the City Official's

attendance at a conference, seminar or similar event, or the coordinator of the event;

- (C) meals, lodging, transportation, or entertainment furnished in connection with public events, appearances or ceremonies related to official City business, or charity functions, or community events, if furnished by the sponsor of such ~~public~~ events;
- (D) complimentary copies of trade publications and other related materials;
- (E) attendance at hospitality functions at local, regional, state or national association meetings and/or conferences;
- (F) any gift ~~which that~~ would have been offered or given to the City Official because of a personal, familial, professional relationship regardless of the City Official's capacity with the City;
- (G) tee shirts, caps and other similar promotional material;
- (H) complimentary attendance at political or charitable fund raising events.

(6) Donations. It is not a violation under this Article for a City Official to accept a Gift prohibited by this Article on behalf of the City of Denton. Conveyance of a Gift prohibited by this Article to the City of Denton or a nonprofit corporation cures any potential violation.

**(c) Outside Employment.**

- (1) *Applicability of Section.* This subsection applies to the following City Officials: ~~City Manager, City Secretary, City Attorney, Chief of Police, and Department Heads.~~
- (2) *Prohibition.* It is a violation of this Article for a City Official covered by this subsection to solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (3) *Disclosure and Consent.* It is a violation of this Article for the ~~City Officials covered by this subsection~~ Department Heads to accept employment from any Person other than the City without first disclosing the prospective employment arrangement in writing to the City Manager and receiving the City Manager's written consent.
- (4) *Disclosure and Consent- ~~City Manager~~Others.* It is a violation of this Article for the City Manager, City Secretary, City Attorney, or Municipal Court Judge to accept employment from any Person other than the City without first disclosing the prospective employment arrangement in writing to the Mayor and receiving the Mayor's written consent.

**(d) Representation of Others.**

- (1) *Current City Officials.* It shall be a violation of this Article for a City Official to represent for compensation any person, group, or entity before the City. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- (2) *Former City Officials.* It shall be a violation of this Article for a City Official to represent for compensation any person, group, or entity before the City for a period of two (2) years after termination of official duties. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation. The prohibition in this subsection solely applies to the Former City Official, and shall not be construed to apply to other Persons.

**(e) Improper Influence.** It shall be a violation of this Article for a City Official to use such person's official title/position to:

- (1) secure special privileges or benefits for such person or others;
- (2) grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group;
- (3) assert the prestige of the official's or employee's City position for the purpose of advancing or harming private interests;
- (4) state or imply that the City Official is able to influence City action on any basis other than the merits; and
- (5) state or imply to state or local governmental agencies that the City Official is acting as a representative of the City, as an organization, or as a representative of the City Council without first having been authorized by the City Council to make such representation (except the Mayor, City Manager, and City Attorney).

**(f) Misuse of Information.**

- (1) *Personal Gain.* It shall be a violation of this Article for a former City Official ~~or former Employee~~ to use any confidential information to which the City Official had access by virtue of ~~his~~their official capacity and which has not been made public concerning the property, operations, policies, or affairs of the City, to advance any personal or private financial interest of any Person.
- (2) *Confidential Information.* It shall be a violation of this Article for a City Official to intentionally, knowingly, or recklessly disclose any confidential information gained by reason of ~~said the City~~ Official's ~~or Employee's~~ position concerning the property, operations, policies or affairs of the City. This rule does not prohibit the reporting of illegal or unethical conduct to authorities designated by

law.

- (g) **Abuse of Resources.** It shall be a violation of this Article for a City Official to use, request, or permit the use of City facilities, personnel, equipment, software, supplies, or staff time for private purposes (including political purposes), except to the extent and according to the terms that those resources are generally available to other citizens and the City ~~Council~~ Officials for official City purposes.
- (h) **Abuse of Position.** It shall be a violation of this Article for any City Official to:
- (1) *Harassment & Discrimination.* Use the Official's position to harass or discriminate against any person based upon ethnicity, race, gender, gender identity, sexual orientation, marital status, parental status, or religion.
  - (2) *Interference.* Interfere with any criminal or administrative investigation alleging the violation of any provision of this Article, the City Charter, administrative policy or executive order in any manner, including but not limited to seeking to persuade or coerce City employees or others to withhold their cooperation in such investigation is a violation of this Article.
- (i) **Subsequent Work on Prior Projects.** It shall be a violation of this Article for any former City Official, within two (2) years of the cessation of official duties for the City, to perform work on a compensated basis relating to a City contract or arrangement for the provision of goods, services, real property or other things of value, if while in City service the former City Official personally and substantially participated in the negotiation, award or administration of the contract or other arrangement.

## DIVISION 3. IMPLEMENTATION

### ~~Sec. 3-113.~~Sec. 3-114. **Staffing**

- (a) **City Auditor.** The City Auditor's Office shall be responsible to provide staff and clerical support to the Board of Ethics to assist in the implementation and enforcement of this Article. The degree of support required shall be at the discretion of the City Auditor. Nothing herein creates a duty for the City Auditor to enforce this Article.
- (b) **Conflicts Log.** The City Auditor's Office shall, in cooperation with the City Secretary's Office, maintain a Conflicts Log on an ongoing basis listing the Conflicting Interests disclosed by City Officials in accordance with this Article. The log is a public record. The City Auditor is neither authorized nor required to inspect or act upon the content of the Conflicts Log.
- ~~(b)~~(c) **City Manager.** If a Complaint accuses the City Auditor of violating this Article, the duties of the City Auditor under this Article shall be performed by the City Manager for purposes of processing that Complaint.

### ~~Sec. 3-114.~~Sec. 3-115. **Legal Counsel**

- (a) **City Attorney.** The City Attorney shall provide legal support to the Board of Ethics.
- (b) **Special Counsel.** Independent, outside legal services shall be engaged by the City Attorney on the City's behalf to provide legal support to the Board of Ethics when:
  - (1) in the City Attorney's discretion it is necessary in order to comply with the Texas Disciplinary Rules of Professional Conduct (for lawyers), or is in the best interest of the City; or
  - (2) when the City Council deems Special Counsel is necessary.

### ~~Sec. 3-115.~~Sec. 3-116. **Training**

- (a) **Curriculum.** The City Auditor shall approve a training program that provides an introduction and overview of the expectation, mandates and prohibitions provided for by this Article.
- (b) **Orientation.** City Officials shall complete a training session regarding this Article within ninety (90) days of commencing the official duties.
- (c) **Annual.** City Officials shall complete an annual training session regarding this Article.
- (d) **Exiting Officials.** Information shall be provided to City Officials terminating their City service regarding the continuing restrictions on the representation of others by certain former City Officials.

### ~~Sec. 3-116.~~Sec. 3-117. **Board of Ethics**

- (a) **Creation.** There is hereby created a Board of Ethics for the City of Denton.

- (b) **Appointment.** The Board of Ethics shall be appointed by majority vote of the City Council.
- (c) **Number.** The Board of Ethics shall consist of seven (7) regular members.
- (d) **Terms.** Board of Ethics members (regular and alternates) shall be appointed for two (2) year, staggered terms. Members may be reappointed for successive terms. Appointment to fill a vacancy shall be for the remainder of the unexpired term. Members of the inaugural Board of Ethics shall draw straws to determine which three (3) members shall receive an initial term of one (1) year in order to stagger terms. In total, members may only serve three (3) terms.
- (e) **Eligibility.** Membership on the Board of Ethics is limited to residents of the City of Denton. Preference in appointments shall be given to professionals such as attorneys, architects, engineers, doctors, teachers, pastors, mediators, retired jurists, licensed professional counselors, and those with licenses demonstrating high levels of education or master craftsmanship in the building trades. The Board shall be comprised of at least three (3) members who are attorneys or retired jurists.
- (f) **Ineligibility.** The following shall disqualify a person from serving on the Board of Ethics:
- (1) current service as a City Official;
  - (2) separation from city service as a City Official within two (2) years of the appointment;
  - (3) familial relations within the ~~first (1<sup>st</sup>)~~third (3<sup>rd</sup>) degree of affinity (marriage); or ~~the first (1<sup>st</sup>) degree of~~ consanguinity (blood or adoption);
  - (4) current service as an elected official in Denton County; and / or
  - (5) conviction of a felony, or crime of moral turpitude.
- (g) **Alternates.** Alternate members of the Board of Ethics shall attend meetings only upon request~~ed~~ by the City Auditor's Office. The role of an alternate is to participate in meetings of the Board of Ethics as a replacement for a regular member who is absent or abstaining.
- (h) **Scope of Authority.** The Board of Ethic's jurisdiction shall be limited to implementation and enforcement of this Article.
- (i) Amendments. The Board of Ethics may recommend amendments to this Article. A recommendation from the Board of Ethics is not required for the City Council to exercise its discretion in amending this Article.
- (j) Officers. At the first meeting of each fiscal year the Board of Ethics shall select from among its members a Chairperson and Vice-Chairperson.
- (k) Rules of Procedure: The Board of Ethics shall adopt rules of procedure governing how to conduct meetings and hearings. Such procedural rules are subject to confirmation or modification by the City Council.

~~Sec. 3-117.~~Sec. 3-118. **Advisory Opinions**

- (a) **Requests.** Any City Official may request an Advisory Opinion on a question of compliance with this Article. Requests shall be submitted in writing to the City Auditor, who shall assign the request to a Panel.
- (b) **Issuance.** A Panel of the Board of Ethics shall issue Advisory Opinions upon request. Advisory Opinions shall be issued within thirty (30) days of receipt of the request.
- (c) **Reliance.** It shall be an affirmative defense to a Complaint that the Accused **reasonably** relied ~~in good faith~~ upon an Advisory Opinion. In making a determination on the proper disposition of a Complaint, the Board of Ethics may dismiss the Complaint if the Board finds that:
  - (1) the Accused ~~requested~~ reasonably relied in good faith upon an Advisory Opinion;
  - (2) the request for an Advisory Opinion fairly and accurately disclosed the relevant facts; and
  - (3) less than five (5) years elapsed between the date the Advisory Opinion was issued and the date of the conduct in question.

~~Sec. 3-118.~~Sec. 3-119. **Complaints**

- (a) **Complainants.** Any person who has first-hand knowledge that there has been a violation of Sections 3-112 and 3-113 of this Article may allege such violations by submitting a Complaint. The persons who may submit Complaints includes (but is not limited to) the City Auditor and members of the Board of Ethics.
- (b) **Form.** Complaints shall be written on, or accompanied by, a completed form promulgated by the City Auditor.
- (c) **Contents.** A Complaint filed under this section must be in writing and under oath and must set forth in simple, concise, direct statements and must state:
  - (1) the name of the Complainant;
  - (2) the street or mailing address, email address, and the telephone number of the Complainant;
  - (3) the name of each person Accused of violating this Article;
  - (4) the position or title of each person Accused of violating this Article;
  - (5) the nature of the alleged violation, including (whenever possible) the specific provision of this Article alleged to have been violated;
  - (6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

- (7) all documents or other material available to the Complainant that are relevant to the allegation.
- (d) **Violation Alleged.** The Complaint must state on its face an allegation that, if true, constitutes a violation of this Article.
- (e) **Affidavit.** A Complaint must be accompanied by an affidavit stating that the Complaint is true and correct or that the Complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Article. The Complainant shall swear to the facts by oath before a Notary Public or other person authorized by law to administer oaths under penalty of perjury.
- (f) **Limitations Period.** To be accepted, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Article. A Complaint will not be accepted more than two (2) years after the date of the act or omission.
- (g) **Filing.** Complaints shall be submitted to the City Auditor. Submission of Complaints may be made by hand delivery, by U.S. Mail, or email directed to an email address publicly listed by the City Auditor.
- (h) **Acceptance of Complaint.** Within five (5) business days of receiving a Complaint, the City Auditor shall determine if it is administratively complete, and timely.
- (1) *Administratively Complete.* A Complaint is administratively complete if it contains the information described above. If the Complaint is administratively complete, the City Auditor shall proceed as described in this Article. If the Complaint is incomplete the City Auditor shall send a written deficiency notice to the Complainant identifying the required information that was not submitted.
- The Complainant shall have ten (10) business days after the date the City Auditor sends a deficiency notice to the Complainant to provide the required information to the City Auditor, or the Complaint is automatically deemed abandoned and may not be processed in accordance with this Article. Within five (5) business days of a Complaint being abandoned, the City Auditor shall send written notification to the Complainant and the Accused.
- (2) *Timely.* To be timely, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Article. A Complaint will not be accepted more than two (2) years after the date of the act or omission.
- (i) **Notification of Acceptance.** Within five (5) business days of determining that a Complaint is administratively complete, the City Auditor shall send a written notification of acceptance to the Complainant, the Accused, and the City Attorney.

For purposes of this provision, a Complaint shall be considered Accepted when the City Auditor has deemed the submittal administratively complete, and timely.

- (j) **Confidentiality.** A Complaint that has been submitted to the City is hereby deemed confidential until such time as the Complaint is either dismissed or placed on an agenda for consideration by the Board of Ethics in accordance with this Article. Clerical and administrative steps shall be taken to identify and manage confidential information in accordance with this Article. The confidentiality created by this Article includes the fact that a Complaint was submitted and the contents of that Complaint. It shall be a violation of this Article for a City Official to publicly disclose information relating to the filing or processing of a Complaint, except as required for the performance of official duties or as required by law. Requests for records pertaining to Complaints shall be responded to in compliance with the State law. The limited confidentiality created by this Article is limited in scope and application by the mandates of the Texas Public Information Act, Chapter 552 of the Texas Government Code.
- (k) **Ex Parte Communications.** After a Complaint has been filed and during the pendency of a Complaint before the Board of Ethics, it shall be a violation of this Article:
- (1) for the Complainant, the Accused, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a Complaint in *ex parte* communication with a member of the Board of Ethics or any known witness to the Complaint; or
  - (2) for a Member of the Board of Ethics, to knowingly allow an *ex parte* communication about the subject matter or merits of a Complaint, or to communicate about any issue of fact or law relating to the Complaint directly or indirectly with any person other than a Member of the Board of Ethics, the City Auditor's office, the City Attorney's office, or Special Counsel.

**Sec. 3-119, Sec. 3-120. Preliminary Assessment**

- (a) **Referral to Chairperson.** Accepted Complaint(s) shall be referred to the Chairperson of the Board of Ethics within five (5) business days of being determined administratively complete.
- (b) **Assignment of Panel.** Within five (5) business days of receiving an Accepted Complaint, the Chairperson of the Board of Ethics shall assign the Complaint to a Panel for Preliminary Assessment. The Chairperson shall order a meeting of the Panel, which shall be conducted in compliance with the Texas Open Meetings Act. Each Panel shall select a Presiding Officer to conduct Panel deliberations.
- (c) **Panel Determination.** Within ~~five (5)~~ ten (10) business days of being assigned an Accepted Complaint, the Panel shall review the Complaint on its face and determine whether the Complaint is:
- (1) *Actionable:* the allegations and evidence contained in the Complaint, if true, would constitute a violation of this Article.
  - (2) *Baseless:* the allegations and evidence contained in the Complaint, if true, would not constitute a violation of this Article.

Actionable Complaints shall be returned to the Chairperson for listing on an agenda for a public hearing. Baseless Complaints shall be dismissed. Written notification of the Panel's determination shall be filed with the City Auditor and sent to the Chairperson, Complainant, the Accused, and the City Attorney within two (2) business days. Written notifications of dismissal shall include notice of the right to appeal.

- (d) **Appeals.** ~~Determinations of a~~ A Panel's preliminary assessment under this Section 3-119 may be appealed to the Board of Ethics by either the Complainant or the Accused, as applicable. An appeal shall be perfected by filing a written notice of appeal with the City Auditor within ten (10) business days of the date of the written notification.

### ~~Sec. 3-120.~~ Sec. 3-121. **Meetings**

- (a) **Calling Meetings.** Meetings of the Board of Ethics shall be called upon request of the Chairperson, three (3) members, or the City Auditor.

- (b) **Quorum.** The quorum necessary to conduct meetings of the Board of Ethics shall be four (4). The Chairperson (or acting chairperson) shall count toward the establishment of a quorum and retains the right to vote.

(c) **Hearings:**

- (1) *Scheduling:* Hearings shall be scheduled by the City Auditor upon the filing of:

- (A) a Panel determination that a Complaint is Actionable; or  
(B) an Appeal challenging a Panel's dismissal of a Complaint as Baseless.

- (2) *Purpose:* The purpose of the hearing(s) shall be solely to determine whether:

- (A) a violation of this Article occurred, and if so to assess the appropriate sanction;  
(B) an Accepted Complaint was erroneously dismissed as Baseless by a Panel; and/ or  
(C) an Accepted Complaint is Frivolous.

~~(3) *Rules of Procedure:* The Board of Ethics shall adopt rules of procedure governing how to conduct hearings on Actionable Complaints. Such procedural rules are subject to confirmation or modification by the City Council.~~

~~(4)~~(3) *Sworn Testimony:* All witness testimony provided to the Board of Ethics shall be under oath.

~~(5)~~(4) *Burden of Proof:* Because the burden of showing that a violation of this Article occurred is placed on the Complainant, it is the Complainant that has the obligation to put forth evidence, including testimony, supporting the Complaint. The Complainant is required to testify at the hearing. A Complainant's failure to testify at a hearing shall be grounds for dismissal of a Complaint.

(5) Representation: The Accused shall have a right to present a defense. Both the Complainant and the Accuser have a right to be represented by legal counsel.

(d) **Open Meetings.** All meetings and hearings of the Board of Ethics, including Panel deliberations, shall be conducted pursuant to the Texas Open Meetings Act. The Board of Ethics may convene in Executive Session (i.e., conduct a closed meeting) as allowed by the Act. All final actions of the Board of Ethics shall take place in open session.

(e) **Postponement in Certain Instances.**

(1) Proceedings may be postponed upon majority vote of het members of the Board of Ethics.

(2) The Complainant and the Accused are each entitled to one (1) postponement without cause. Additional postponements shall be solely for good cause and at the discretion of the Board of Ethics.

~~(1)~~(3) If a Complaint alleges facts that are involved in a criminal investigation or a criminal proceeding before a grand jury or the courts, the Board of Ethics may, when a majority of its members deem appropriate, postpone any hearing or any appeal concerning the Complaint until after the criminal investigation or criminal proceedings are terminated.

### **Sec. 3-121. Sec. 3-122. Disposition**

(a) **Dismissal.** If the Board of Ethics determines at the conclusion of a hearing by simple majority vote of its members that a Complaint should be dismissed, it may do so upon finding:

- (1) the Complaint is Baseless;
- (2) the alleged violation did not occur;
- (3) the Accused reasonably relied in good faith upon an Advisory Opinion, as provided in this Article; ~~and or~~
- (4) the Complainant failed to testify at the hearing.

(b) **Sanctions.** If the Board of Ethics determines at the conclusion of a hearing that a violation has occurred, it may within ten (10) business days impose or recommend any of the following sanctions:

- (1) *Letter of Notification.* If the violation is clearly unintentional, or when the Accuser's action was made in reliance on a written opinion of the City Attorney. A letter of notification shall advise the Accused of any steps to be taken to avoid future violations.
- (2) *Letter of Admonition.* If the Board of Ethics finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notification.

- (3) *Letter of ~~A~~ Reprimand.* If the Board of Ethics finds that the violation:
- (A) was minor and was committed knowingly, intentionally or in disregard of this Article; or
  - (B) was serious and may have been unintentional.
- (4) *Recommendation of Suspension.* If the Board of Ethics finds that a violation was committed by a Member of the Planning & Zoning, or Zoning Board of Adjustment, or a Department Head, and it:
- (A) was serious and that was committed knowingly, intentionally or in disregard of this Article or a state conflict of interest law; or
  - (B) was minor but similar to a previous violation by the Person, and was committed knowingly, intentionally or in disregard of this Article.

The final authority to impose a suspension rests with the City Council, ~~regarding Board Members, the City Manager, City Secretary and City Attorney; and with the City Manager regarding Department Heads.~~

- (5) *Ineligibility.* If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Notice of all sanctions imposed by the Board of Ethics shall be transmitted to the Accused, Complainant, City Auditor, City Attorney, and City Council.

**(c) Frivolous.**

- (1) *Prohibition.* It is a violation of this Article for a Person to submit a Frivolous Complaint.
- (2) *Super-Majority Vote.* If the Board of Ethics determines at the conclusion of a hearing by a vote of two-thirds (2/3) of its Members that a Complaint was Frivolous, the Board may impose a sanction as provided by Section 3-122(b).
- (3) *Factors.* In making a determination on frivolity, the Board of Ethics shall consider the following factors:
  - (A) the timing of the sworn Complaint with respect to when the facts supporting the alleged violation became known or should have become known to the Complainant, and with respect to the date of any pending election in which the Accused is a Candidate or is involved with a candidacy, if any;
  - (B) the nature and type of any publicity surrounding the filing of the sworn Complaint, and the degree of participation by the Complainant in

- publicizing the fact that a Complaint was filed;
- (C) the existence and nature of any relationship between the Accused and the Complainant before the Complaint was filed;
  - (D) if the Accused is a Candidate for Election to Office, the existence and nature of any relationship between the Complainant and any Candidate or group opposing the Accused;
  - (E) any evidence that the Complainant knew or reasonably should have known that the allegations in the Complaint were groundless; and
  - (F) any evidence of the Complainant's motives in filing the Complaint.
- (4) *External Remedies.* Complainants who submit Frivolous Complaints are hereby notified that their actions may subject them to criminal prosecution for perjury (criminal prosecution), or civil liability for the torts of defamation or abuse of process.

### **Sec. 3-122, Sec. 3-123. Reconsideration**

The Complainant or Accused may request the Board of Ethics to reconsider its decision. The request must be filed with the City Auditor within five (5) business days of receiving the final opinion of the Board of Ethics. The request for reconsideration shall be sent to the Chairperson of the Board of Ethics and the non-filing party (Complainant or Accused). If the Chairperson finds, in the Chairperson's sole discretion, that the request includes new evidence that was not submitted at a prior hearing, and that the new evidence bears directly on the Board of Ethic's previous determination, the Chairperson shall schedule a hearing on the request for reconsideration to occur within thirty (30) business days after filing with the City Auditor. Absent new evidence, the Chairperson shall unilaterally dismiss the request for reconsideration and provide to the Parties.

### **Sec. 3-124. General Procedural Matters**

**(a) Deadlines.** Any deadline provided in this Article shall be construed as expiring at 5:00 p.m. local time on the last day.

**(b) Mailbox Rule.** \_\_\_\_\_

### **Sec. 3-123, Sec. 3-125. Lobbyists [*reserved*]**