



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Meeting Agenda

Board of Ethics

Monday, November 4, 2024

5:30 PM

Council Work Session Room

Special Called

After determining that a quorum is present, the Board of Ethics of the City of Denton, Texas, will convene in a Special Called Meeting on Monday, November 4, 2024 at 5:30 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

SPECIAL CALLED MEETING - CALL TO ORDER

1. ROLL CALL

2. ITEMS FOR CONSIDERATION

- A. [BOE24-039](#) Evidentiary Hearing regarding Ethics Complaint No. 24-002, determined to be Actionable by a Panel of the Board of Ethics on October 7, 2024, concerning alleged violations of Ethics Ordinance Section 2-273. This Hearing is being conducted under the authority of Denton Code of Ordinance Article XI (Ethics) Section 2-281(c).

Attachments:

[Exhibit 1 - Agenda Information Sheet.pdf](#)

[Exhibit 2 - Received Ethics Complaint - Redacted.pdf](#)

[Exhibit 3 - Panel Determination.pdf](#)

[Exhibit 4 - Complainant Evidence Packet.pdf](#)

[Exhibit 5 - Respondent Evidence Packet.pdf](#)

[Exhibit 6 - Ordinance 23-2251 - Ethics Ordinance.pdf](#)

[Exhibit 7 - Board of Ethics Rules of Procedure.pdf](#)

[Exhibit 8 - Ethics Complaint Process Packet.pdf](#)

NOTE: The Board of Ethics reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on November 1, 2024, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

OFFICE OF THE CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.



City of Denton

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215 E. McKinney St.
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Legislation Text

File #: BOE24-039, **Version:** 1

AGENDA CAPTION

Evidentiary Hearing regarding Ethics Complaint No. 24-002, determined to be Actionable by a Panel of the Board of Ethics on October 7, 2024, concerning alleged violations of Ethics Ordinance Section 2-273. This Hearing is being conducted under the authority of Denton Code of Ordinance Article XI (Ethics) Section 2-281 (c).

City of Denton



City Hall
215 E. McKinney Street
Denton, Texas
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AGENDA INFORMATION SHEET

DEPARTMENT: City Auditor's Office

CITY AUDITOR: Madison Rorschach

DATE: November 4, 2024

SUBJECT

Consider and take necessary action regarding Ethics Complaint No. 24-002, determined to be Actionable by a Panel of the Board of Ethics on October 7, 2024, concerning alleged violations of Ethics Ordinance Section 2-273. This Hearing is being conducted under the authority of Denton Code of Ordinance Article XI (Ethics) Section 2-281(c).

BACKGROUND

On September 23, 2024, the City Auditor's Office received an Ethics Complaint Form from Mayor Gerard Hudspeth alleging that City Council Member Brian Beck violated City of Denton Code of Ordinances Chapter 2 Article XI (Ethics)—the "Ethics Ordinance"—Section 2-273 regarding Improper Influence. This Ethics Complaint was Accepted by the City Auditor on September 24, 2024, per Ethics Ordinance Section 2-279(h). The details of the Ethics Complaint can be seen in Exhibit 2.

On October 7, 2024, a three-member Panel of the Board of Ethics convened to determine if Ethics Complaint No. 24-002 was Actionable or Baseless per Ethics Ordinance Section 2-280. On October 7, 2024, the City Auditor received notification that the Panel had determined the Complaint to be Actionable. This notification can be seen in Exhibit 3.

Per Ethics Ordinance Section 2-282, at the conclusion of a hearing, the Board of Ethics may by simple majority vote (A) determine that a violation has occurred or (B) dismiss the Complaint upon finding: (1) the Complaint is Baseless; (2) the alleged violation did not occur; (3) the Respondent reasonably relied in good faith upon an Advisory Opinion, as provided in the Ethics Ordinance; or (4) the Complainant failed to testify at the Hearing. If the Board of Ethics determines that a violation has occurred, it may impose one of the Sanctions outlined in Section 2-282(b) within ten business days.

At the conclusion of a hearing, the Board of Ethics may also determine that a Complaint was Frivolous by a vote of two-thirds of its Members. Upon determining that an Ethics Complaint is Frivolous—defined as "a sworn Complaint that is groundless and brought in bad faith, or groundless and brought for the purpose of harassment"—the Board of Ethics may impose one of the Sanctions outlined in Section 2-282(b) within ten business days.

DISCUSSION

Per Board of Ethics Rules of Procedure Section E. Hearings, all parties to Ethics Complaint 24-002 were requested to submit the identities of their witnesses as well as a brief description of the matter(s) each would be expected to testify about, any sworn statements, and any documentary evidence they desired to be considered to the City Auditor by October 31, 2024. The City Auditor received the following items:

The Complainant submitted the following witness list:

- Council Member Brian Beck regarding “How much he has been paid by DME for power;”
- David Zoltner regarding “His comments in the Ethics Board meeting;” and
- Annetta Ramsay regarding “Her comments in the Denton Record Chronicle and comments during the Ethics Board meeting.”

No sworn statements were submitted by the Complainant. Documentary evidence submitted by the Complainant is listed below and compiled in Exhibit 4:

- C-1** October 7, 2024, [Board of Ethics Preliminary Panel](#) in its entirety
- C-2** October 25, 2024, Denton Record Chronicle article entitled: “Lack of Denton board members could stall an upcoming ethics hearing against a council member”
- C-3** September 23, 2024, email from Mayor Hudspeth to the City Auditor
- C-4** September 16, 2024, email from the City Auditor to the City Council
- C-5** August 30, 2024, email from Mayor Hudspeth to the City Auditor
- C-6** October 7, 2024, [Board of Ethics Meeting](#) in its entirety
- C-7** September 17, 2024, [City Council Meeting](#) in its entirety
- C-8** City of Denton Ethics Ordinance (attached as Exhibit 6)
- C-9** Google Maps satellite view of 124 Mill Pond Road, Denton, TX
- C-10** September 17, 2024, Council Meeting exhibits related to the solar program
- C-11** DME customer counts and categories data (taken from the September 11, 2024 Board of Ethics Advisory Opinion Agenda Information Sheet)
- C-12** City of Denton Charter

No witnesses or sworn statements were submitted by the Respondent. Documentary evidence items submitted by the Respondent are listed below and compiled in Exhibit 5:

- A-1** Ethics Hearing Brief re Councilman Brian Beck’s Participation in Solar Deliberation

EXHIBITS

1. Agenda Information Sheet
2. Received Ethics Complaint – Redacted
3. Panel Determination
4. Board of Ethics Evidence Packet
5. Respondent Evidence Packet
6. Ordinance 23-2251 – Ethics Ordinance
7. Board of Ethics Rules of Procedure
8. Ethics Complaint Process Packet

Respectfully submitted:
Madison Rorschach, 940-349-7228
City Auditor



ETHICS COMPLAINT FORM INSTRUCTIONS

1. Complete all sections of this Complaint form. Incomplete forms will not be processed.
2. A Complaint must state on its face an allegation that, if true, constitutes a violation of §§2-272 and/or 2-273 of the Ethics Ordinance.
3. The Complaint must include all documents or other material available to the Complainant that are relevant to the allegation(s).
4. 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 §§2-272 and/or 2-273 of the Ethics Ordinance.
5. The Complaint form shall include an oath by the Complainant to the facts presented, sworn before a Notary Public or other person authorized by law to administer oaths under penalty of perjury.
6. 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 §§2-272 and/or 2-273 of the Ethics Ordinance. Further, a Complaint will not be accepted more than two (2) years after the date of the act or omission.
7. Complaints shall be submitted to the City Auditor. Submission of Complaints may be made by hand delivery, U.S. Mail, or email directed to an email address publicly listed by the City Auditor.
8. A Complaint shall be considered Accepted when the City Auditor has deemed the submittal administratively complete and timely.

IMPORTANT ETHICS ORDINANCE PROVISIONS

In accordance with the City of Denton Ethics Ordinance, any individual filing a complaint with the Board of Ethics should be aware of the following provisions:

Prohibition Against Frivolous Complaints

Complainants who submit Frivolous Complaints are hereby notified that their actions may subject them to criminal prosecution for perjury, or civil liability for the torts of defamation or abuse of process. 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 §2-282(b).

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 the Denton Code of Ordinances Chapter 2 Article XI (Ethics). 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 Chapter 2 Article XI, 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.

Reconsideration

The Complainant or Respondent 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 Respondent, respectively). 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 Ethics'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 notice to the Parties.



FOR OFFICIAL USE ONLY
 Case No. 24-002

City of Denton, Texas
 Ethics Complaint Form (§2-279)
 Updated: Jan. 2021

ETHICS COMPLAINT FORM

Your Full Name
Gerard Hudspeth

Your Address
 [Redacted]

City
Denton

State
TX

Zip Code
76201

Telephone Number
 [Redacted]

Email Address – redacted if the Complaint Form is publicized
 [Redacted]

Name of person accused of violating §§2-272 and/or 2-273 of the Ethics Ordinance. If you are complaining about more than one individual, a separate Complaint form must be completed for each. The Complaint form may be photocopied if needed.

Councilmember Brian Beck

Name the position or title of the person accused of violating §§2-272 and/or 2-273 of the Ethics Ordinance.

District 2 Representative

Please indicate which section(s) of the Ethics Ordinance you believe was violated.

- | | |
|---|---|
| <input type="checkbox"/> Sec. 2-272 (a) Duty to Report | <input type="checkbox"/> Sec. 2-273 (d) Representation of Others |
| <input type="checkbox"/> Sec. 2-272 (b) Financial Disclosures | <input checked="" type="checkbox"/> Sec. 2-273 (e) Improper Influence |
| <input type="checkbox"/> Sec. 2-272 (c) Business Disclosures | <input type="checkbox"/> Sec. 2-273 (f) Misuse of Information |
| <input type="checkbox"/> Sec. 2-273 (a) Conflicts of Interest | <input type="checkbox"/> Sec. 2-273 (g) Abuse of Resources |
| <input type="checkbox"/> Sec. 2-273 (b) Gifts | <input type="checkbox"/> Sec. 2-273 (h) Abuse of Position |
| <input type="checkbox"/> Sec. 2-273 (c) Outside Employment | <input type="checkbox"/> Sec. 2-273 (i) Subsequent Work on Prior Projects |

Provide a statement of facts constituting the alleged violation and the dates on which, or period of time in which, the alleged violation occurred. Only violation(s) listed under §§2-272 and/or 2-273 of the Ethics Ordinance will be considered for review. This statement does not constitute the required affidavit, which must be attached to this complaint.

See attached in email & next page



Provide detailed evidentiary facts supporting your allegations. Attach additional sheets, if necessary.

ON 9/17/24 Council member Brian Beck possibly violated Section 2-273 OF the Denton Ethics Ordinance. Specifically Section (E) Improper Influence (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. Council member Brian Beck exercised improper influence by participating in the deliberations regarding "value of solar study". He has solar panels on his home and directly benefits from the rate discussion. Per sec. 2-272, I am mandated and duty bound to report this conduct.

By affixing your signature below, you are affirming that you (1) have read the complaint and know its contents and (2) believe the alleged violations to be true.

Gerard Hudspeth

Your Full Name (Printed)

[Signature]

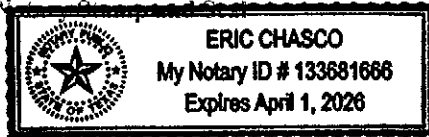
Your Signature

9-23-24

Date

Subscribed and sworn to before me, this 23rd day of September, 2024.

Eric Chasco, a Notary Public in and for
Denton County, State of Texas



EMU

Notary Public

My commission expires: 4-1-2026

Official Use Only:

Date Received: 9/23/24

Accepted By: Madison Rorschach, City Auditor Acceptance Date: 9/24/24

Mail completed and notarized form to:

City Auditor
215 E. McKinney St.
Denton, Texas 76201

(940) 349-7228

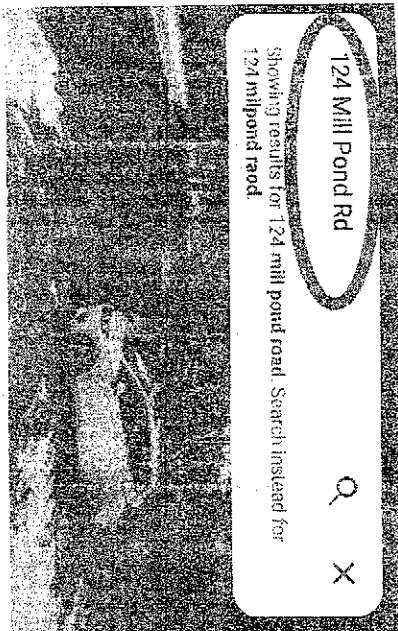
InternalAudit@CityofDenton.com
www.ci.denton.tx.us

CANDIDATE / OFFICEHOLDER CAMPAIGN FINANCE REPORT

FORM C/OH
COVER SHEET PG 1

The C/OH instruction Guide explains how to complete this form.		1 Filer ID (Enter Commission Filer)	2 Total pages filed: 10
3 CANDIDATE / OFFICEHOLDER NAME	MS / MRS / MR Dr.	FIRST Brian	MI W
	NICKNAME	LAST Beck	SUFFIX
4 CANDIDATE / OFFICEHOLDER MAILING ADDRESS	ADDRESS / PO BOX 124 Mill Pond Rd	APT / SUITE #	CITY STATE ZIP CODE Denton TX 76209
	Change of Address		
5 CANDIDATE / OFFICEHOLDER PHONE	AREA CODE (940)	PHONE NUMBER 557-5580	EXTENSION
6 CAMPAIGN TREASURER NAME	MS / MRS / MR	FIRST Sandra	MI
	NICKNAME Sandy	LAST Swan	SUFFIX
7 CAMPAIGN TREASURER ADDRESS	STREET ADDRESS (NO PO BOX PLEASE)	APT / SUITE #	CITY STATE ZIP CODE Denton TX 76209
	(Residence or Business)		
8 CAMPAIGN TREASURER PHONE	AREA CODE (940)	PHONE NUMBER 206-9215	EXTENSION
9 REPORT TYPE	<input checked="" type="checkbox"/> January 15 <input type="checkbox"/> 30th day before election <input type="checkbox"/> Runoff <input type="checkbox"/> 15th day after campaign treasurer appointment (Officers & ex-Officio Only)		
	<input type="checkbox"/> July 15 <input type="checkbox"/> 8th day before election <input type="checkbox"/> Expedited Modified Reporting Limit <input type="checkbox"/> Final Report (Attach C/OH - FR)		
10 PERIOD COVERED	Month 07	Day 01	Year 2023 THROUGH Month 12 Day 31 Year 2023
11 ELECTION	ELECTION DATE		ELECTION TYPE
	Month 05	Day 06	Year 2023 <input type="checkbox"/> Primary <input type="checkbox"/> Runoff <input type="checkbox"/> Other Description <input checked="" type="checkbox"/> General <input type="checkbox"/> Special
12 OFFICE	OFFICE HELD (if any) Denton City Council - Place 2		13 OFFICE SOUGHT (if known)

RECEIVED
IAN 16 2024
City Manager's / City Secretary's Office



124 Mill Pond Rd

Denton, TX 76209
Building

- Directions
- Save
- Nearby
- Send to phone
- Share

- Suggest an edit on 124 Mill Pond Rd
- Add a missing place



- Restaurants
- Hotels
- Things to do
- Transit
- Parking
- Pharmacies
- ATMs



October 7, 2024

Madison Rorschach
 City Auditor
 City of Denton
 215 E. McKinney Street
 Denton, Texas 76201

RE: Case No. 24-002, filed September 23, 2024, concerning alleged violations of Ethics Ordinance Section 2-273: Preliminary Assessment

City Auditor Rorschach:

Complaint, Case No. 24-002 alleges a possible violation by Denton City Council Member Brian Beck of Section 2-273(e)(2)¹ of the Denton Ethics Ordinance that the Council Member had “improper influence” on a matter by participating in the certain deliberations because “he has solar panels on his home” which would directly benefit the member from the “rate discussion.”

On October 7, 2024, a Panel of the Ethics Board conducted a preliminary assessment of the Complaint. The Panel determined that the Complaint is actionable on its face as the allegations, if true, would constitute a violation of the Denton Ethics Ordinance.

Please forward a copy of this determination to the Board of Ethics Chairperson, Complainant, Respondent and City Attorney within two (2) business days.

Dustin Palelek

Panel Chair

City of Denton Board of Ethics Panel

This opinion pertains only to the relevant sections of the City of Denton Ethics Ordinance. It is not intended as legal advice and does not absolve any party of obligations that may exist under other applicable law (e.g., Texas Local Government Code Chapter 171). All parties are encouraged to consult competent legal counsel concerning their obligations under the law.

¹ Denton Code of Ordinances ch. 2, art. XI, div. 2, §2-273(e)(2). **Improper Influence.** It shall be a violation of this Article for a City Official to use such person’s official title/position to: (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.

OUR CORE VALUES

Integrity • Fiscal Responsibility • Transparency • Outstanding Customer Service

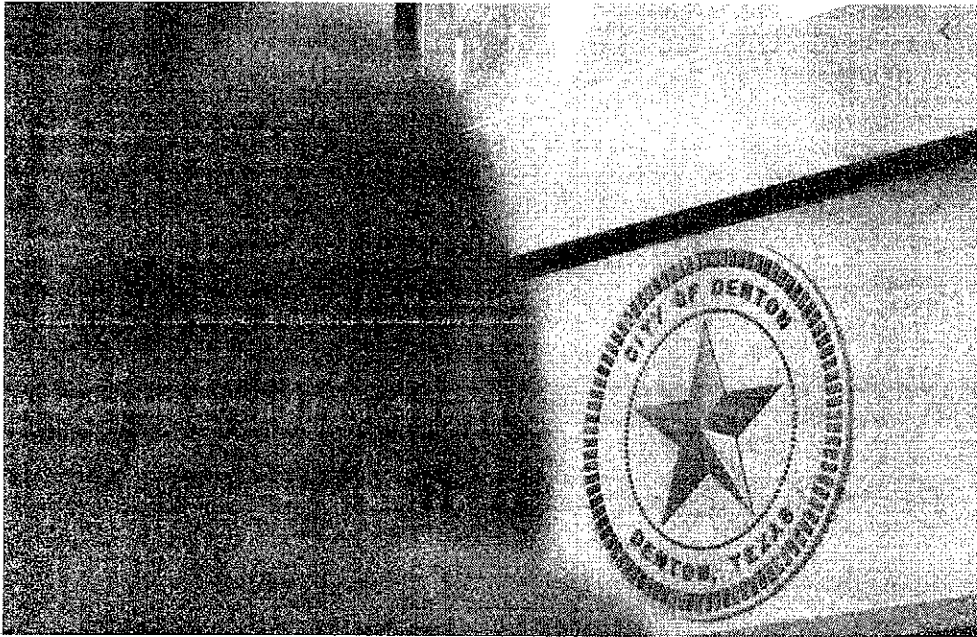
C-2

https://dentonrc.com/news/denton/lack-of-denton-board-members-could-stall-an-upcoming-ethics-hearing-against-a-council-member/article_37b6c2ae-92f9-11ef-a408-9b9183aec613.html

Lack of Denton board members could stall an upcoming ethics hearing against a council member

By Christian McPhate Staff Writer
Oct 25, 2024

1 of 2



DRC file photo



Brian Beck

A couple of weeks have passed since Denton’s Board of Ethics ruled that a panel hearing was needed to determine whether council member Brian Beck had violated the ethics code when he didn’t recuse himself from a Sept. 17 discussion about lowering rates for those with solar panels.

Beck’s Nov. 4 ethics hearing, however, may be delayed due to the lack of quorum, Board of Ethics liaison Madison Rorschach, the city auditor, told council members Tuesday.

The Board of Ethics, normally made up of seven council appointees, has only five members currently, two of whom — Patricia Reinke and Dustin Pavelek — will have to recuse themselves from Beck’s hearing since they were nominated by Beck and Mayor Gerard Hudspeth.



Gerard Hudspeth

Council members Jill Jester and Joe Holland have yet to make their appointments to the board.

On Tuesday, Rorschach brought the issue before the council at the special-called meeting because a vote was required to allow Reinke and Pavelek to hear Hudspeth's case against Beck despite their conflicts of interest.

Rorschach warned that not voting to do so could lead to a lack of quorum for Beck's hearing, which is scheduled for Nov. 4.

Council members discussed it briefly, and a majority reiterated that this issue was why it was important for them to find people to serve on boards and commissions. They voted 4-2 not to allow Reinke and Pavelek to hear the case.

Jester and Holland cast the dissenting votes in the affirmative.

"[There are] consequences if you don't," Mayor Pro Tem Paul Meltzer said. "This is one of them."

Hudspeth recused himself from the vote since he was the one who filed the ethics complaint against Beck. Now a petition to recall Hudspeth is circulating, in part because petitioners say he was "creating a hostile governing environment through the use of unfounded weaponized complaints."

In late August, Hudspeth sought an advisory opinion from the Board of Ethics that would lead to his ethics complaint against Beck.

"According to the Mayor, he currently has solar panels on his home and is being paid by Denton Municipal Electric (DME) for power (by proxy)," Annetta Ramsay, the chair of the Board of Ethics, wrote in the Sept. 11 advisory opinion. "Based on the current Ethics Ordinance, should Mayor Hudspeth recuse himself from voting on the [solar] rate."

And while the board's advisory panel found no conflicts of interest, Ramsay wrote that the panel did find that there could be improper influence if Hudspeth participated in the deliberations.

"I do not have solar on my home," Hudspeth said at the Sept. 17 meeting. "But I asked the question."

He also told council that he asked "if someone has solar" and said he had corrected the record with Rorschach after he received the report from the advisory panel.

Hudspeth declined to answer questions about why he had sought the advisory opinion from the Board of Ethics when he doesn't have solar panels until after the ethics panel hearing.

Rorschach told the council that the ordinance states that a city official can request an advisory opinion but doesn't specify whether it applies to seeking opinions related to other council members.

At this meeting, Hudspeth questioned Beck about whether he was aware of the advisory opinion from the Board of Ethics and whether he was recusing himself.

Beck said he had received the advisory opinion but wasn't recusing himself.

Hudspeth asked staff to clip the video recording of the meeting and email it to him because he had "a duty to report violations" of the ethics code.

"Failure to report a violation of this article is a violation of this article," Hudspeth said.

Council member Brandon Chase McGee, whom the mayor is also trying to recall, asked Hudspeth if he planned to recuse himself since he had sought the advisory opinion.

"I don't have solar," Hudspeth told him.

In early October, McGee told the *North Texas Daily* that Hudspeth was dishonest in his request for an advisory opinion.

“There was no confusion; the mayor flat out lied in order to get the advisory opinion,” McGee said to the *Daily*. “Why is he doing this? This is what he and his henchmen do. They constantly seek to go after people, obfuscate, accuse — meanwhile, they’re doing the same thing behind your back. This is who they are.”

At the Sept. 17 meeting, Beck said it was clear that the advisory panel thought Hudspeth was talking about himself and not another council member and had made their recommendation based on the limited information.

At the time, DME was requesting lowering the payout rate for the energy it receives from about 1,300 residents who have solar panels. The council later approved lowering it to 5 cents per kilowatt-hour at the Oct. 22 meeting.

“The discussion here for the value of solar revolves around increasing participation to a program that is a citywide program open to every single Dentonite,” Beck told Hudspeth.

Hudspeth said he didn’t think the ethics board would treat any other council member differently if they had made a similar request.

“The ordinance, the laws and the rules are for all,” Hudspeth said.

Meltzer also mentioned that the code wasn’t to be weaponized for political purposes.

On Monday, Ramsay reiterated this point to the *Denton Record-Chronicle*.

“The code isn’t supposed to be used for political reasons, but that appears to be how [Hudspeth] is using the code,” Ramsay wrote in a message.

CHRISTIAN McPHATE can be reached at 940-220-4299 and cmcphate@dentonrc.com

Christian McPhate
City of Denton reporter

[Privacy - Terms](#)

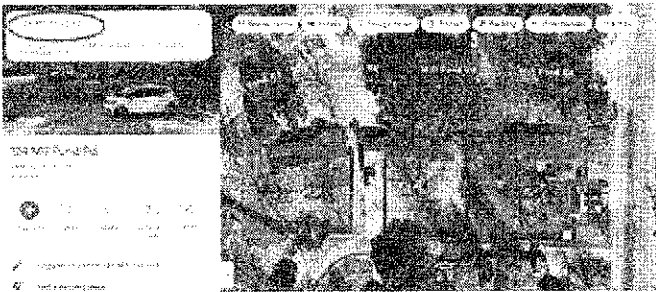
From: Hudspeth, Gerard Gerard.Hudspeth@cityofdenton.com
Subject: Ethics Complaint 9-23-24 - Re: Council Member Brian Beck
Date: Sep 23, 2024 at 5:46:44 PM

Madison,

I am submitting the attached Ethics Complaint for the boards consideration.

I've included the completed form, link to the video of the meeting and deliberation, color photos of the relevant address with solar panels and a notarized Office holder report with verifies Council Member Brian Becks' address.

Sep 17, 2024 City Council on 2024-
09-17 2:00 PM - Denton, TX
new.swagit.com



CANDIDATE / OFFICEHOLDER CAMPAIGN FINANCE REPORT		FORM C/OH COVER SHEET PG 1	
The CDF Instruction Guide explains how to complete this form.		1. Filer ID #	2. Total Supply Cost
3. CANDIDATE / OFFICEHOLDER NAME	Dr. Brian Beck	W	OFFICE USE ONLY
4. CANDIDATE / OFFICEHOLDER MAILING ADDRESS	124 Mill Pond Rd Denton TX 76209		RECEIVED JAN 16 2011 City Manager / City Secretary's Office
5. CANDIDATE / OFFICEHOLDER PHONE	(940) 557-5580		
6. CAMPAIGN TREASURER NAME	Sandra Swain		
7. CAMPAIGN TREASURER ADDRESS	1413 Cambridge Denton TX 76209		
8. CAMPAIGN TREASURER PHONE	(940) 208-9215		
9. REPORT TYPE	<input checked="" type="checkbox"/> Annual	<input type="checkbox"/> 50th Anniversary Election	<input type="checkbox"/> Special
10. REPORT PERIOD	07 01 2023	12 31 2023	
11. REPORT ON	05 06 2023		
12. OFFICE	Denton City Council - District 2		

Gratefully,

Gerard Hudspeth, Mayor of Denton, TX

Please visit & "Discover Denton"

pdf

Ethics Complaint 9-23-24

Councilman Brian Beck.pdf

681 KB

From: Hudspeth, Gerard Gerard.Hudspeth@cityofdenton.com
Subject: Re: Board of Ethics Advisory Opinion 24-001 - Solar Program Rate
Deliberations
Date: Sep 16, 2024 at 12:54:24 PM

Madison,

Thank you and I do not want to mislead anyone...my ask was if I had panels. I do not currently have panels on my home.

Thank you for helping pull the Ethics Commission together and for the details consideration and analysis.

Gratefully,

Gerard Hudspeth, Mayor of Denton, TX

Please visit & "Discover Denton"

On Sep 16, 2024, at 12:45 PM, Rorschach, Madison
<Madison.Rorschach@cityofdenton.com> wrote:

Hello Mayor and City Council,

Last week, the Board of Ethics issued an Advisory Opinion regarding the upcoming "Value of Solar" discussion where they recommended that a City Official who participates in the City's solar program recuse themselves from Deliberations regarding the solar program's associated rates due to potential use of Improper Influence (Ethics Ordinance Sec. 2-273(e)). As this opinion may apply to more than one of you, I wanted to make sure you were all aware. The full opinion is available on the City's website here: <https://www.cityofdenton.com/DocumentCenter/View/9872/24-002-Solar-Program-Rate-Deliberations-Mayor-Gerard-Hudspeth-PDF>

Please let me know if you have any questions.

Sincerely,

Madison Rorschach, CIA, CGAP

Pronouns: she/he/they

City Auditor

Internal Audit

Office: (940) 349-7228 | Cell: (682) 667-4245

www.cityofdenton.com

<image001.png> <image002.png>

From: Rorschach, Madison Madison.Rorschach@cityofdenton.com
Subject: RE: Ethics advisory opinion request
Date: Aug 30, 2024 at 9:50:46 AM

Thank you, Mayor,

I'll let you know when the panel is scheduled to meet, but you are not required to attend the meeting. We should not have an issue getting the opinion back to you before the 17th.

If you have any questions in the meantime, please feel free to reach out.

Sincerely,

Madison Rorschach, CIA, CGAP

Pronouns: she/he/they

City Auditor

Internal Audit

Office: (940) 349-7228 | Cell: (682) 667-4245

www.cityofdenton.com



From: Hudspeth, Gerard <Gerard.Hudspeth@cityofdenton.com>
Sent: Friday, August 30, 2024 9:27 AM
To: Rorschach, Madison <Madison.Rorschach@cityofdenton.com>
Subject: Ethics advisory opinion request

Madison;

My question: If I have solar panels on my home and being paid by DME for power (by proxy).

Based on the current ethics ordinance, should I recuse myself from voting on the rate.
Understanding it is the rate I would be paid.

Please note the vote will be taken 9/17/24...if I can have the ethics boards advisory opinion in advance of that vote, that would be great.

Gratefully,

Gerard Hudspeth, Mayor of Denton, TX

Please visit & "Discover Denton"

From: Hudspeth, Gerard Gerard.Hudspath@cityofdenton.com
Subject: Ethics advisory opinion request
Date: Aug 30, 2024 at 9:26:58 AM

Madison;

My question: If I have solar panels on my home and being paid by DME for power (by proxy).

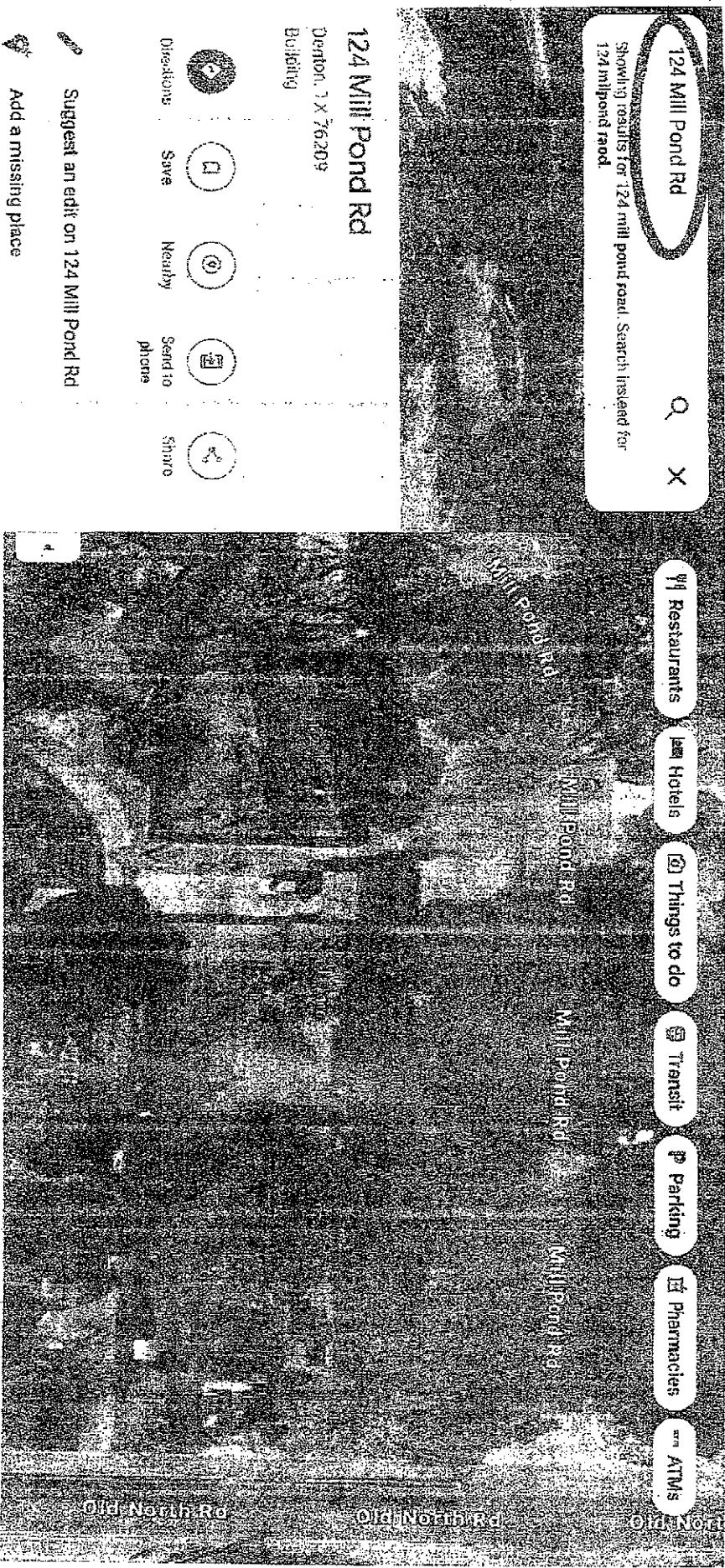
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Gratefully,

Gerard Hudspeth, Mayor of Denton, TX

Please visit & "Discover Denton"





AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

CM/DCM/ACM: Antonio Puente, Jr., DME General Manager

DATE: September 17, 2024

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the Value of Solar Study.

BACKGROUND

The City of Denton (City) has offered energy efficiency and solar rebates through the GreenSense and Solar Programs since 2003 and 2009 respectively. During this time, many DME customers took advantage of these incentives to improve the energy efficiency of their homes and businesses. Customers also took advantage of these programs to install Solar Photovoltaic (PV) systems on their houses and businesses. Since then, there have been a lot of changes to both the energy efficiency measures that are available and relevant to today's housing stock as well as substantial reductions to the cost of PV. In an effort to quantify the value of solar being sold back to DME and to mitigate any cross subsidy from the rest of the DME customers to Solar DG customers, DME hired NewGen to conduct a detailed analysis of our program and provide a report.

RECOMMENDATION

Staff Recommends:

1. Implementing the avoided cost method based on DME Solar PPAs rate of \$0.0379/kWh effective 10/1/2024.
2. Transferring estimated annual savings of \$463,069 to GreenSense Incentives program. GreenSense budget will increase from \$1 Million to \$1.46 Million.

PRIOR ACTION/REVIEW

PUB heard the presentation and had discussion July 8. There was majority consensus for Staff's recommendation with the following modification.

1. Since legal offered their opinion that Grandfathering would be discriminatory within the customer class, there was a suggestion to step into the \$0.0379 over the course of several years.
2. Transferring the annual savings, up to the cap of full phase in, to the GreenSense Incentive program.

Sustainability Framework Advisory Committee heard the presentation and had discussion June 7. The SFAC voted unanimously (4-0) on;

1. Accepting the avoided cost method if the rate used was the average of both the DME PPA Avoided Cost rate and the ERCOT Market Avoided Cost rate. The average rate using this approach is \$0.05405/kWh.
2. Transferring the estimated annual savings of \$350,364 to the GreenSense Incentives program budget.
3. Wanted further discussion to take place regarding Grandfathering.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Value of Solar Presentation

Exhibit 3: Value of Solar Report

Respectfully submitted:

Bill Shepherd

DME Executive Manager of Business Services



September 17, 2024 | City of Denton | Value of Solar

DENTON MUNICIPAL ELECTRIC VALUE OF SOLAR STUDY

ID 24-1341



OBJECTIVES

- Methodologies
 - Avoided Cost
 - Societal Benefits
 - Policy Driven Incentives
- Summary of Findings
- Bill Impacts – Average Residential vs. Solar
- Staff Recommendation
- Questions



Avoided Cost	Societal Benefits	Policy Driven Incentives
DME avoids costs by not having to generate or purchase power	Theoretical benefits to society of rooftop solar based on the avoidance of GHGs and other emissions associated with fossil fuels	May be considered to encourage the adoption of rooftop solar
Energy Costs: DME's Solar PPAs or ERCOT market-based pricing	DME is 100% Renewable GHGs are avoided	Local , State, and Federal Policies can be leveraged
Capacity Costs: Build to meet load	No Fed or State Market for GHGs although there have been some proxies developed; \$0.01 to \$0.08 per kWh depending on the source	City Policy drove the goal for DME to be 100% Renewable
		DME incentivized rooftop solar growth through aggressive rebate and net billing programs over the last 14 years

VALUE OF SOLAR METHODOLOGY

Represents energy purchased from a customer that is valued above the Avoided Cost based on the utility's policies

AVOIDED COST FINDINGS

Avoided Cost Component	Avoided Cost: ERCOT Mkt (\$/kWh)	Avoided Cost: DME Solar PPAs (\$/kWh)
ERCOT Energy	\$0.0524	N/A
ERCOT Ancillary	\$0.0044	N/A
Solar PPA	N/A	\$0.0244
ERCOT Transmission	\$0.0135	\$0.0135
Generation Capacity	\$0.0000	\$0.0000
Distribution Capacity	<u>\$0.0000</u>	<u>\$0.0000</u>
Avoided Cost for Solar DG	\$0.0702	\$0.0379

ERCOT Energy and Ancillary: Value of Solar Rates are paired with Buy-All Sell-All billing and metering setup. ERCOT Energy and Ancillary Avoided Cost assumes that the customer is selling 100% of their power to the Utility in a Buy-All Sell-All setup.

Solar PPA: is what DME pays for solar power through purchase power agreements.

ERCOT Transmission: is the ERCOT 4CP cost.

Generation Capacity: ERCOT does not have a capacity market. DME does not have any future generation planned or approved. There are no costs avoided.

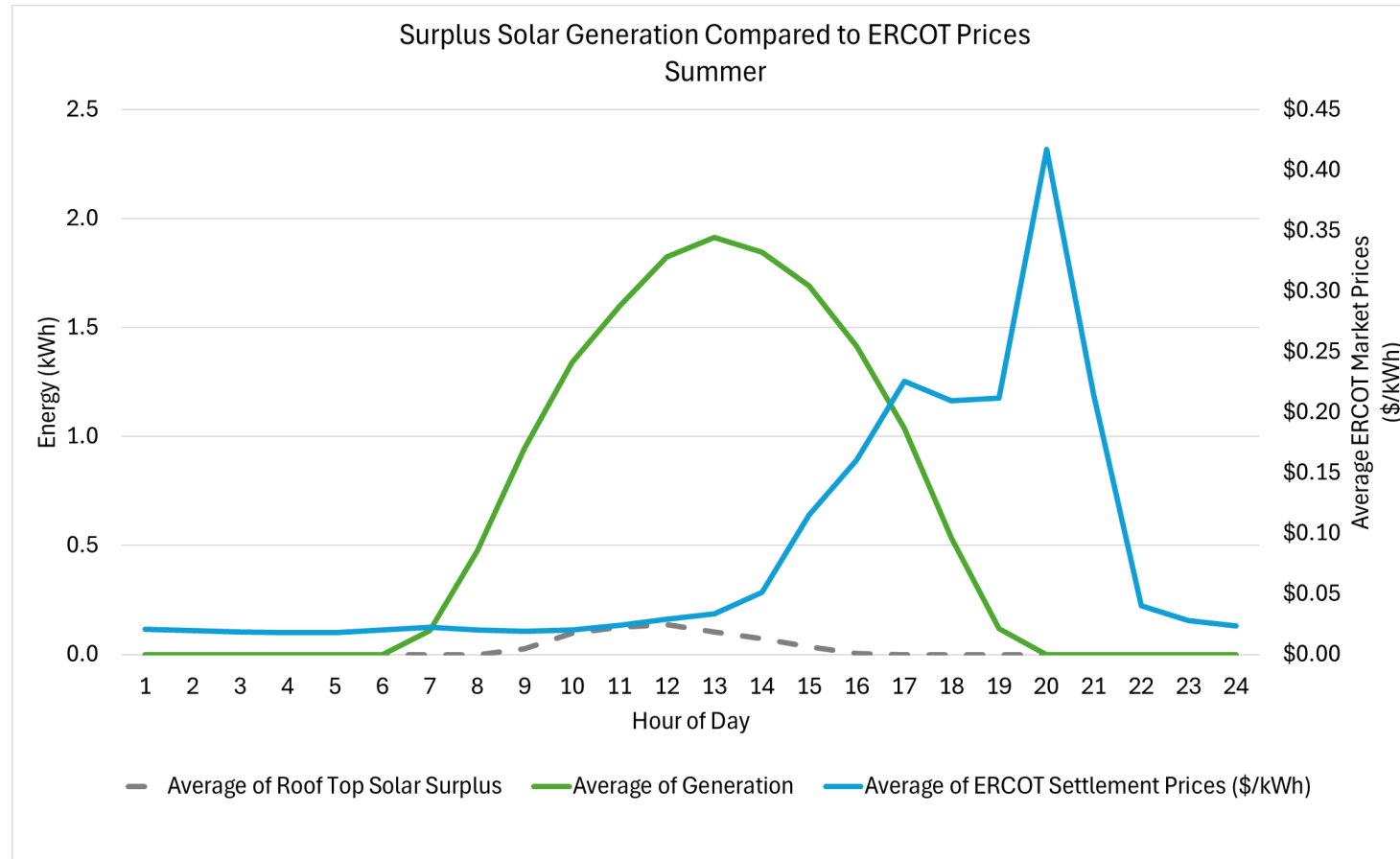
Distribution Capacity: Impacts to the distribution system are circuit specific. DME has plenty of capacity on their distribution system. There are no costs avoided.

TIMING IS IMPORTANT

Green Line → Solar generates the most in the middle of the day.

Grey Line → Electricity sold back to the grid most often occurs in the middle of the day.

Blue Line → ERCOT market prices are low in the middle of the day.



2023 ERCOT Settlement Prices \$/kWh

SOCIETAL BENEFITS FINDINGS

- Proxy Range:
 - \$15 to \$190 per ton depending on the study.
 - Equivalent to \$0.01 to \$0.08 per kWh.
- DME purchases 100% renewable power.
 - The DME cost of carbon is already being mitigated with DME's power supply strategy of 100% renewables.
 - DG does not offer any additional value in this context.
- Recommendations:
 - Recommend the Societal Benefit for solar DG for DME be set to \$0.00/kWh.
 - City Council may make the policy decision to include societal benefits in the Value of Solar rate.

POLICY DRIVEN INCENTIVES FINDINGS

- Federal Policies: Inflation Reduction Act
- State Policies: Property tax exemption
- City of Denton and DME Policies do not require local solar
- Recommendations:
 - No requirement for local renewable generation.
 - Recommend the Incentive for solar DG for DME be set to \$0.00/kWh.
- Options to support local renewables, outside of the Value of Solar:
 - Streamline the installation process, permits, and inspections.
 - Waive application or connection fees.
 - Provide grants or rebates to customers.
 - Provide low-cost loans for installation.

SUMMARY OF FINDINGS

- **Avoided Costs:**
 - Range of \$0.0379 to \$0.0702 per kWh is reasonable.
 - DME’s current Renewable Cost Adjustment (RCA) at \$0.0381 per kWh is reasonable.
- **Societal Benefits:**
 - Policy Decision for City Council (to incentivize solar DG).
 - Current DME carbon emissions are neutralized by 100% renewable energy.
- **Policy Driven Incentives:**
 - Policy Decision for City Council (to incentivize solar DG).
 - Current adopted policies do not require local solar generation.

Components	Avoided Cost: ERCOT Mkt (\$/kWh)	Avoided Cost: DME Solar PPAs (\$/kWh)
Avoided Cost	\$0.0702	\$0.0379
Societal Benefits	\$0.0000	\$0.0000
Policy Driven Incentives	<u>\$0.0000</u>	<u>\$0.0000</u>
Total	\$0.0702	\$0.0379

BILL IMPACTS

Average Residential Customer (2023)	Units	Non-Solar Customer	Net Billing Customer	Avoided Cost: DME PPA	Avoided Cost: ERCOT Mkt
Usage					
Bi-Directional Net Energy Used	kWh	1,365	1,365	1,365	1,365
Bi-Directional Net Energy Sold	kWh	N/A	(390)	(390)	(390)
Rates					
Bi-Directional Net Energy Used	\$/kWh	\$0.06840	\$0.06840	\$0.06840	\$0.06840
Bi-Directional Net Energy Sold	\$/kWh	N/A	\$0.06840	\$0.03790	\$0.07020
ECA/TCRF	\$/kWh	\$0.05820	\$0.05820	\$0.05820	\$0.05820
RCA	\$/kWh	N/A	\$0.03810	N/A	N/A
Facility Charge	\$/month	\$8.67	\$8.67	\$8.67	\$8.67
Monthly Bill					
Bi-Directional Net Energy Used	\$	\$93.37	\$93.37	\$93.37	\$93.37
Bi-Directional Net Energy Sold	\$	N/A	(\$26.68)	(\$14.78)	(\$27.38)
ECA/TCRF	\$	\$79.44	\$79.44	\$79.44	\$79.44
RCA	\$	NA	(\$14.86)	N/A	N/A
Facility Charge	\$	<u>\$8.67</u>	<u>\$8.67</u>	<u>\$8.67</u>	<u>\$8.67</u>
Total Monthly Bill		\$181.48	\$139.94	\$166.70	\$154.10
Annual Savings from Current				\$463,069	\$236,040

PRIOR ACTIONS

- PUB July 8th:
 - Step into the \$.0379/kWh Value of Solar rate over several years.
 - Transfer annual savings, up to the cap of full phase-in, to Green Sense Incentive program.
- SFAC June 7th:
 - Make Value of Solar rate \$0.05405/kWh
 - Transfer estimated annual savings of \$350,364 to GreenSense Incentives program.
 - Wanted further discussion to take place regarding Grandfathering.

STAFF RECOMMENDATIONS

- Recommendations:
 1. Implementing the Avoided Cost Method based on DME Solar PPAs rate of \$0.0379/kWh effective 10/1/2024.
 2. Transfer estimated annual savings of \$463,069 to GreenSense Incentives program. GreenSense budget will increase from \$1 million to \$1.46 million.



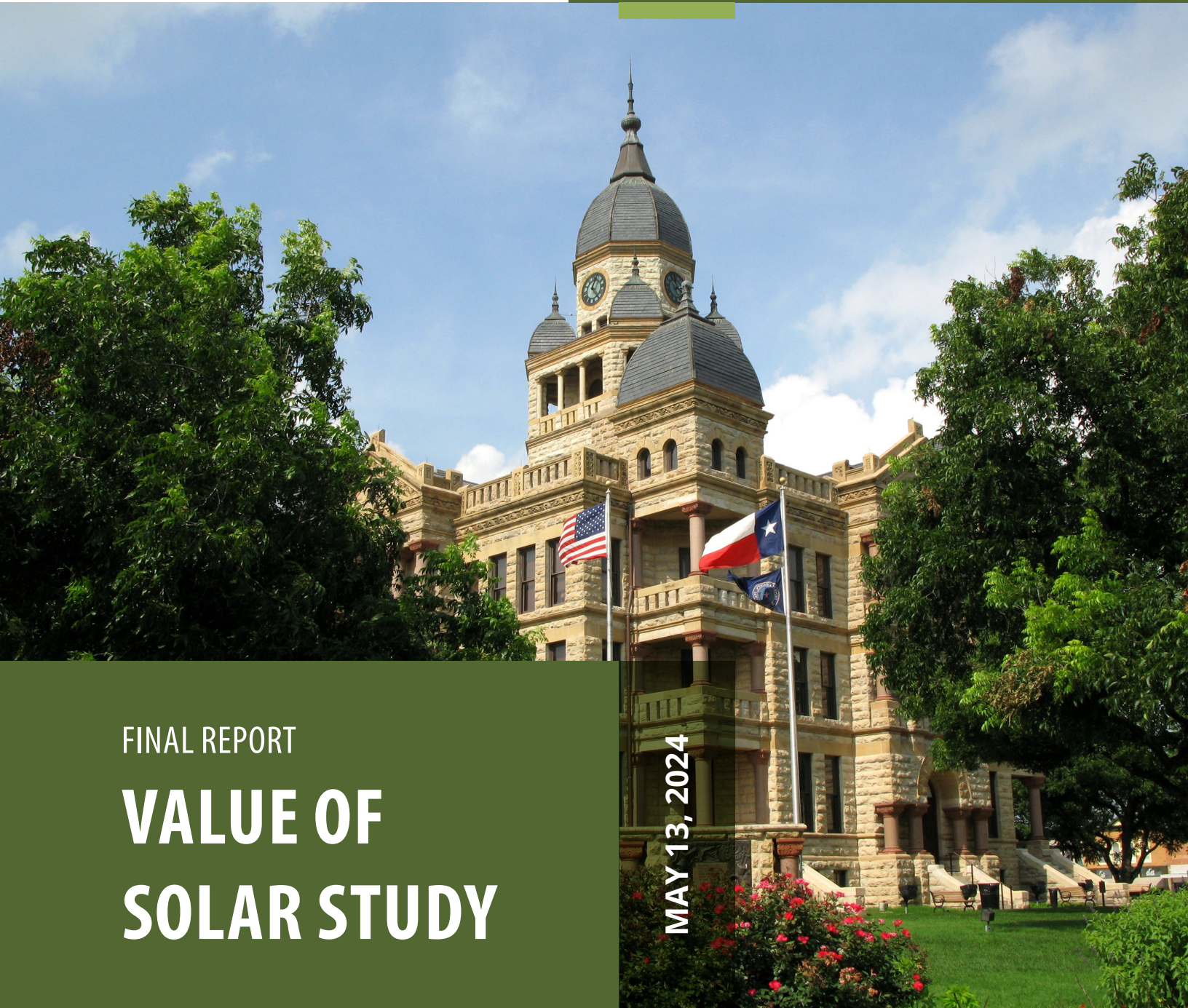
QUESTIONS?

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LAKWOOD, COLORADO 80228

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(720) 924-7134
JSCHUEPBACH@NEWGENSTRATEGIES.NET

NewGen Strategies & Solutions

www.newgenstrategies.net



FINAL REPORT

VALUE OF SOLAR STUDY

MAY 13, 2024



Prepared for:
Denton Municipal Electric

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Section 1

INTRODUCTION, BACKGROUND, AND METHODOLOGY

Introduction

Denton Municipal Electric (DME) retained NewGen Strategies and Solutions, LLC (NewGen) to develop a Value of Solar (VOS) Study (Study) in November 2023. The goal of this Study is to provide a rate (\$/kilowatt-hour [kWh]) to compensate DME customers who have installed solar distributed generation (solar DG) for surplus energy pushed into the DME distribution system. There are a variety of ways to calculate a compensation rate for customers who sell energy back to DME. Customers can be compensated at the current retail rate, an Avoided Cost rate, or a VOS rate. This report (Report) develops the VOS method, which includes the Avoided Cost rate. The Avoided Cost rate was calculated using the costs that DME avoids by not having to generate or purchase an additional kWh to serve load. The VOS rate (\$/kWh) was determined based on three primary components: Avoided Cost, Societal Benefits, and Policy Driven Incentives.

In the industry, the VOS rate compensation method is generally paired with the Buy-All Sell-All billing and metering setup. The Buy-All Sell-All metering setup requires two meters: one meter registers all the energy generated by the customer's solar DG facility and the second meter measures all the energy that the customer consumes. The customer is billed at the standard residential tariff rate for all the power they use. The customer is compensated for the energy generated from their solar DG facility at the VOS rate. Customers served by a Buy-All Sell-All program do not consume the energy produced by their solar DG facility. The Buy-All Sell-All program has been used by Austin Energy since 2012 and is currently being considered for use by the City of Georgetown.

Current DME solar DG customers have one bidirectional meter and cannot be billed under a Buy-All Sell-All program. DME has over 1,100 solar DG customers and a Buy-All Sell-All program would require a second meter at each customer's site. This Report summarizes our analyses with respect to the development of an Avoided Cost rate to be used with a bidirectional program and a VOS rate to be used with a Buy-All Sell-All program (which would require installation of second meters for all solar DG customers) for the City of Denton, Texas (City) and DME.

DME Description

DME is an enterprise of the City providing electricity to customers within and outside the boundaries of the City. DME operates the utility with oversight by the Denton City Council (the City Council), which is advised by the Public Utility Board (PUB). The City Council retains authority for approval of the annual budget, rates for electric service, eminent domain, and approval of debt issuances.

DME serves approximately 64,000 retail electric customers in northwest Texas and delivers around 1.6 billion kWh annually. DME operates their own transmission and distribution system which encompasses 33 miles of transmission lines and 950 miles of overhead and underground distribution lines. The City passed Resolution No. 18-085 in 2018 requiring DME to serve customers using 100% renewable energy. Since 2021, DME has served their customer energy needs with 100% renewable power through solar and wind Purchase Power Agreements (PPAs) and Renewable Energy Credits (RECs).



Section 1

DME also owns and operates the Denton Energy Center (DEC). The DEC is a natural gas plant with quick start reciprocating engines that can be called upon when needed. The DEC helps provide DME with a revenue stream to offset power costs when energy demand and prices suddenly change. The DEC has the flexibility to produce energy at different levels while supporting DME's renewable power purchase portfolio.

DME currently has approximately 1,100 residential customers and 25 commercial customers with solar DG that contribute approximately 10.7 million kWh annually (less than 1% of DME's load).

Background

Solar DG refers to the generation of electricity from solar photovoltaic (PV) systems installed on or near the site where the electricity is consumed, such as rooftops of residential or commercial buildings. This approach to electricity generation gives customers the opportunity to reduce their electricity bills while also contributing to environmental sustainability by reducing their carbon footprint and reliance on fossil fuels. The next few paragraphs provide a summary of solar DG metering options and energy outflow compensation options.

Solar DG Metering and Billing Options in the Industry

The three most common ways to meter solar DG customers' inflow and outflow are Traditional Net Energy Metering (NEM), Net Billing, and Buy-All Sell-All metering. Descriptions of each method are provided below along with a summary in Table 1-1, and billing examples can be found in Appendix A in Tables A-1 and A-3.

Traditional Net Energy Metering

Net Energy Metering (NEM) is the most common compensation mechanism used by utilities. Under NEM, the utility meters the net of the electricity generated by the customer's solar DG system and the electricity consumed from the grid. The metering may be as simple as one meter with one dial that runs forward and backward.

Most often, the term NEM refers to the monthly netting of energy inflow and outflow. When the solar system produces more electricity than the customer consumes, the excess electricity is exported to the utility grid and the customer receives kWh credits for the excess energy generated. These credits can be used to offset future energy use. Often, the customer receives full retail credit for the outflow. In net metering, the utility is operating as a virtual bank for the solar DG customer by allowing the customer to generate during daylight hours and send power to the grid, but then use power any time they need it, often after the sun sets. The customer receives the benefit of using their generation to offset their usage at any time.

Net Billing

This metering method measures the inflow and outflow instantaneously or at specific time intervals (5 minutes, 15 minutes, hourly, etc.).¹ Net Billing allows the utility to track the actual energy provided to the

¹ <https://www.nrel.gov/state-local-tribal/energy-compensation-mechanisms.html#:~:text=In%20net%20billing%2C%20DG%20system,consumption%20to%20the%20utility%20grid.>

customer and the actual energy provided to the utility. Often, the customer is credited for the outflow based on the utility’s Avoided Cost.

Buy-All Sell-All

Buy-All Sell-All is a metering and billing method or program in which the customer is served power under their applicable class tariff as recorded by a consumption meter. The production from the customer’s solar DG facility is metered separately and 100% of the power is sold to the utility. The customer pays the full applicable retail rate for any energy usage and is credited an Avoided Cost rate, VOS rate, or other approved rate for all sales to the utility. In any hour, the customer can have both sales of energy and purchases of energy. The “netting” occurs on a dollar basis on the customer’s monthly bill (customer’s total bill for power less credit for energy sent to the utility).

Buy-All Sell-All requires either the addition of an export validation meter to a bidirectional meter or the use of two unidirectional meters. This is required for the utility to accurately track both the customer’s usage and generation separately, unlike the net usage tracked in NEM.

**Table 1-1
Industry Solar DG Metering Options**

	Traditional Net Metering (Monthly Netting)	Net Billing	Buy-All Sell-All (No Energy Netting)
No. of Meters	1 net meter	1 two-channel bidirectional meter	2 meters
Netting Frequency	Billing cycle	Instantaneously	Not applicable
Self-Consumption Allowed	Yes	Yes	No
Solar DG Customer Purchases Inflow	Retail rate	Retail rate	Retail rate
Outflow Compensation to Customer	Retail rate	Avoided Cost	Value of Solar, Avoided Cost
Credits Carry Forward	Varies	Varies	Not applicable
Credits Recorded In	Energy (kWh)	Dollars	Not applicable
Credits Expire	Varies	Varies	Not applicable

Outflow Compensation Options

Utilities compensate customers for energy sent back to the utility (outflow) using primarily three types of rates which include the retail rate, Avoided Cost rate, or a VOS rate.

Retail Rate

For the retail rate, NEM customers receive a credit in kWh rather than a dollar-based credit for their outflow. While some utilities allow these kWh credits to offset future energy consumption, effectively compensating customers at the full retail rate, other utilities may not permit such credit applications towards future bills.

Avoided Cost

The “Avoided Cost” is the cost to the utility of the electric energy avoided due to the purchase of energy from the customer’s solar DG facility. The Avoided Cost rate may include energy or energy and capacity. The calculation of the Avoided Cost rate varies from state to state and there are multiple ways to calculate the Avoided Cost. The Avoided Cost calculation should also account for lower system losses. Because the customer is generating power where the power is consumed, there are no transmission or distribution line losses. Background information regarding the development of an Avoided Cost methodology for DME is further described in Section 2.

Value of Solar (VOS)

Energy purchased from a solar DG customer may be valued at a rate that is greater than the traditional Avoided Cost rate depending on the utility’s policies. The utility may support or encourage renewable energy and therefore place a higher value on renewable energy related to various benefits that can be defined as Societal Benefits (including cleaner air and general public welfare concerns) as well as Policy Driven Incentives (costs intended to further the city’s or utility’s renewable energy goals). The rate resulting from these considerations is referred to as a Value of Solar rate.

Subsidization of Solar Customers

A major concern with the metering and billing of solar DG customers is the level of subsidization that may exist. Depending on rate structure and rate levels, customers with solar DG facilities are subsidized by customers without solar DG. This has been acknowledged by the National Association of Regulatory Utility Commissioners (NARUC), by the American Public Power Association (APPA), and by multiple public utility commissions.

NARUC states in its Distributed Energy Resources Rate Design and Compensation publication that:

However, DER customers who supply most, if not all, of their own needs annually, but not necessarily daily, may be undercompensating the utility under certain NEM rate designs for the generation, transmission, and distribution investments that were made on behalf of the DER customer. Under such a situation, it is difficult to design a single rate that is appropriate for all customers in an existing rate class, as non-DER customers end up subsidizing DER customers. The solution would be to design rates that recover from DER customers an appropriate amount to compensate the utility for the investments it has made.²

APPA states in its Rate Design for Distributed Generation publication that:

Most utilities in the U.S. use net metering to measure and compensate customers for the generation they produce. However net metering has several shortcomings and results in non-DG customers subsidizing DG customers.

As more customers install DG systems, the cost-revenue disparity grows wider, leading to even more cross subsidization.

Net metering causes revenue shortfalls for utilities, and creates a situation where one class of customers is subsidizing another. In the long run, this is untenable, especially as more customers

² <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0>

*install DG systems. Utilities should consider modified approaches to net metering, or completely new billing arrangements . . .*³

APPA⁴ states in its Value of the Grid publication⁵ that:

Net energy metering (NEM), the most common rate design for DG customers, creates subsidies between customers in the same class. This is because though a high proportion of a utility's costs are fixed, however, 90 percent or more of utility revenue is normally recovered through variable charges. Therefore, the recovery of fixed costs through variable charges creates an imbalance where net metered customers are compensated (or credited) for their excess generation at retail rates, and non-DG customers pay a greater share of the cost through the variable charges.

California Public Utilities Commission

The California Public Utilities Commission's (CPUC) net metering policy, NEM 3.0, was updated to reduce the amount that customers without solar DG pay to support customer with solar DG. The CPUC altered the rates because paying solar DG owners near-retail prices allows these mostly wealthy property owners to avoid paying their fair share to maintain the grid, potentially burdening other consumers with higher electric bills, including low-income customers.⁶ The CPUC stated the following in the proposed decision on this topic:

*Affordability is front and center in this proceeding, given the finding that a significant and growing cost shift exists in the previous tariff and, to a lesser extent, remains in the adopted successor tariff. This cost shift is created by the ability of distributed generation customers to avoid fixed costs, including grid costs and public purpose program costs, which then become the responsibility of non-participating ratepayers, including low-income customers. The successor tariff adopted in this decision is designed to compensate customers for the value of their exports to the grid based on the Avoided Cost Calculator. This improved valuation will significantly reduce the cost shift and improve affordability for nonparticipating ratepayers, particularly low-income ratepayers. The subsidization of solar DG customers by non-solar DG customers can occur in many ways, including rate design, rate levels, rebates, and incentives.*⁷

Subsidization from Rate Structure and Rate Design

Subsidization primarily and most commonly results from the standard tariff's rate structure and rate levels. The source of these subsidies can be traced back to the utilities' need to maintain rates that generate the necessary revenues to cover their costs, especially fixed costs. Residential electric rate offerings typically include a fixed monthly charge and a variable usage charge. Fixed monthly charges are intended to recover the costs that do not change based on a utility's customers' usage, such as building and maintaining the transmission and distribution system, servicing debt, labor for accounting, customer service/billing, regulatory compliance, and administrative expenses. Variable charges are typically recovered on a \$/kWh basis and include the cost of energy (fuel, purchased power, ancillary services) that changes depending on how much their customers are using.

³ https://www.publicpower.org/system/files/documents/ppf_rate_design_for_dg.pdf

⁴ https://www.publicpower.org/system/files/documents/ppf_rate_design_for_dg.pdf

⁵ https://www.publicpower.org/system/files/documents/Value%20of%20the%20Grid_1.pdf

⁶ <https://calmatters.org/environment/2023/11/california-solar-payment/>

<https://www.utilitydive.com/news/california-puc-net-metering-policy-nem-appeals-court/702569/>

⁷ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M499/K921/499921246.PDF>

This discrepancy arises from traditional utility billing structures that primarily utilize \$/kWh rates and have been slow to implement fixed monthly charges that recover all fixed costs. This is most often seen in residential and small commercial rates as these rates usually do not include a demand charge. In our experience, the Customer Charge is consistently set too low to collect the utility's fixed costs of service. To make up for the difference, the energy charge includes recovery of the fixed and variable costs. Therefore, if a solar DG customer is given full retail credit for each kWh they generate, they are not paying their share of the fixed cost of service.

As a result of this rate design discrepancy, a utility may not fully recover its fixed costs from solar DG customers. Since solar DG customers rely less on grid-provided electricity during times of solar generation, they contribute less toward covering the fixed costs of the grid infrastructure. NARUC has been aware of this issue and suggests that utilities take a closer look at their fixed costs and fixed cost recovery methods.⁸ Addressing this imbalance may require adjustments to rate structures to ensure that all customers, including solar DG customers, contribute proportionately to the fixed costs of maintaining the grid infrastructure.

Subsidization from Solar Grants and Rebates

If the utility provides grants, rebates, or incentives to support solar DG installations, these costs are often recovered from all utility customers, not just those installing the solar facilities. This results in non-solar DG customers effectively subsidizing solar DG customers, which leads to concerns about equity and fairness in cost-sharing across a utility's customer base.

DME Proposed Value of Solar Methodology

The VOS rate credit is an element of compensation provided to solar DG customers to assist the utility in achieving its renewable energy goals. However, to the extent that the VOS credit is greater than the direct economic savings to DME, the VOS credit may result in a subsidy to solar DG customers from non-solar DG customers. The appropriate basis for a VOS credit is a policy decision regarding the appropriate balance between equity (minimizing subsidy) and attainment of DME's policy objectives.

There are at least two approaches that the City and DME could employ to establish a VOS credit. One is an incentive policy (which may include consideration of subjective societal benefits and policy driven goals) and the other is a calculation of estimated cost savings (i.e., cost avoidance) to DME as a result of the generation from solar DG.

For the purposes of this Study, the proposed DME VOS rate (\$/kWh) was determined based on three primary components: Avoided Cost, Societal Benefits, and Policy Driven Incentives.

⁸ <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0>

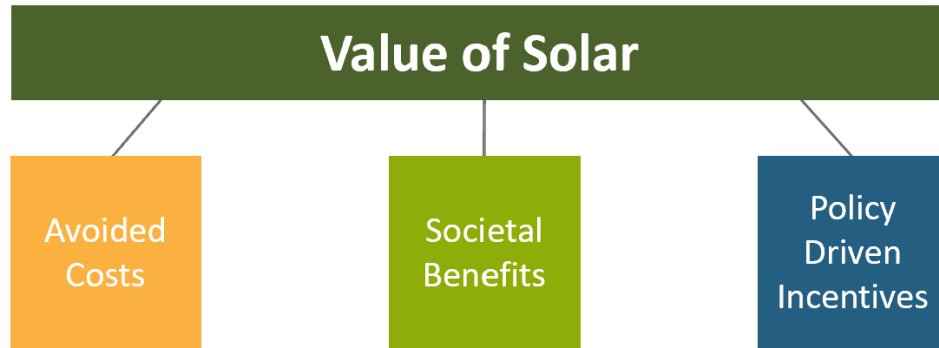


Figure 1-1. Value of Solar Components

Avoided Costs

Avoided Costs refer to the expenses that a utility or energy provider saves by not having to generate or procure electricity from traditional sources. This includes savings in energy production costs, such as fuel and operating expenses, as well as the costs avoided related to building new capacity or procuring additional PPAs to meet future power needs. Additionally, avoided losses, such as transmission and distribution losses, contribute to cost savings by reducing inefficiencies in the energy delivery process. By analyzing factors such as historic peak demand periods and fluctuating energy prices within the Electric Reliability Council of Texas (ERCOT) market, utilities can estimate the economic benefits provided by solar DG customers and optimize their financial viability. While solar DG aligns with daytime electricity demand, grid operators must balance its output with other energy sources to ensure reliable electricity supply, particularly during peak demand times.

Societal Benefits

The Societal Benefits portion of the VOS can represent the theoretical benefits to society of solar DG, including avoidance of greenhouse gases and other emissions associated with fossil fuel generation resources. It should be noted that in certain states like California, avoided emissions for pollutants with established markets (such as those for nitrous oxide [NO_x] and sulfuric oxide [SO_x]) are generally associated with the Avoided Cost methodology. There are a variety of methods that can be used to estimate the savings associated with the avoidance of greenhouse gases and other fossil fuel emissions. For the purposes of this Study, we have focused on greenhouse gas emissions and utilized the United States (U.S.) Federal Government methodology referred to as the Social Cost of Carbon (SCC). The SCC is an estimate of the cost to society from a ton of carbon emissions, and it is used to evaluate program benefits that reduce carbon emissions. The SCC puts the effects of climate change into economic terms to help policymakers understand how emissions-related policies affect the economy.

Whereas Avoided Costs (Section 2) are based on actual costs avoided by the utility from solar DG, the Societal Benefits of reducing carbon emissions are theoretical cost savings. In the short term, the utility does not avoid any costs or reduce expenses beyond the Avoided Cost. In the long term, there are assumed cost savings due to increased societal and environmental health, which may or may not be recognized by a utility.

Policy Driven Incentives

Cities and their utilities may have policies aimed at incentivizing solar DG. Depending on the policies, the utility may consider a credit given to solar DG customers as an incentive to encourage the adoption of solar DG. By providing incentives, such as credits or financial benefits, utilities can help offset the initial investment costs for solar DG customers, making solar energy more financially attractive and accelerating the transition to renewable energy.

Section 4 reviews the City's and DME's policies and strategies regarding the promotion of solar DG and renewable energy adoption. For the City, programs such as the GreenSense Incentive Program and the City's Renewable Resource Plan play a role in fostering a transition to renewable energy sources.

Despite DME's achievement of 100% renewable energy, ongoing initiatives like the City's Climate Action Adaptation Plan (CAAP) underscore the importance of furthering sustainable energy goals, including specific targets for installed solar DG.

Report Organization

This Report provides a comprehensive analysis of the economic impacts of solar DG and is organized into six sections. Section 2 details the calculations for Avoided Costs. Section 3 describes broader Societal Benefits associated with solar DG deployment, encompassing theoretical environmental advantages. Section 4 examines the City's and DME's various policy driven incentives surrounding renewable energy goals. Section 5 compares other utilities' approaches to valuing solar DG. Finally, Section 6 concludes by offering recommendations on how best to compensate customers with solar DG.

Our Report contains six sections as follows:

- Section 1 – Executive summary
- Section 2 – Avoided Cost methodology and calculations
- Section 3 – Societal Benefits methodology and calculations
- Section 4 – DME's policy driven incentives
- Section 5 – Benchmarking other utilities' approaches
- Section 6 – Summary of conclusions and recommendations

Section 2

VALUE OF SOLAR: AVOIDED COST RATE

This section summarizes the methodology and assumptions used to develop the DME Avoided Cost rate for solar DG. Avoided Costs refer to the expenses that a utility or energy provider saves by not having to generate or procure electricity from traditional sources. This includes savings in energy production costs, such as fuel and operating expenses, and may include Avoided Costs related to building new capacity or procuring additional PPAs to meet power needs. Avoided expenses for ERCOT ancillary and transmission services are also considered in the calculation of DME's Avoided Cost rate. Additionally, avoided losses, such as transmission and distribution losses, further contribute to DME's cost savings for solar DG by reducing inefficiencies in the energy delivery process.

Background

The Avoided Cost reflects the minimum compensation that an electric utility must provide to an independent power producer as mandated by the Public Utility Regulatory Policies Act (PURPA) regulations of 1978.⁹ PURPA was enacted to promote energy conservation and encourage the use of renewable energy sources. It sought to diversify the country's energy supply and reduce dependence on fossil fuels by encouraging the development of alternative energy technologies. The generating units installed under this legislation are called Qualifying Facilities or QFs. For QFs, the compensation is equivalent to the expenses that the utility saves by not generating or procuring that power itself.

According to PURPA, electric utilities must purchase energy from QFs at their Avoided Cost rate. The Avoided Cost may include energy or energy and capacity. The calculation of the Avoided Cost rate varies from state to state and there are multiple ways to calculate the Avoided Cost. Common methods used to determine the Avoided Cost are listed below:

- **Proxy unit:** This method assumes that the utility is building a generating unit. The hypothetical cost of that unit is used to set the Avoided Cost. The energy Avoided Cost is based on the variable costs (fuel and operations and maintenance [O&M]) and the capacity Avoided Cost is based on the capital costs to build the generation facility.
- **Peaker unit methodology:** Similar to the Proxy unit method, the energy Avoided Cost is based on the forecast payments for a peaking generation unit; often a natural gas turbine is used as the type of peaking generation unit for this method.
- **Differential revenue requirement:** This method calculates the revenue requirement for the utility with and without the QF unit. The difference, or savings from the QF, is the Avoided Cost to be paid to the QF.
- **Integrated resource plan (IRP) based Avoided Cost:** This method uses the utility's or a state's IRP to determine what the next avoided generation unit will be. Similar to the above methods, the energy Avoided Cost is based on the variable costs (fuel and O&M) and the capacity Avoided Cost is based on the capital costs to build the facility.

⁹ <https://www.ferc.gov/media/public-utility-regulatory-policies-act-1978>

Section 2

- **Market-based pricing:** If the utility is in a wholesale competitive power market, the utility can use the market energy and/or market and capacity rates as the Avoided Cost. For DME, this would be the ERCOT Market.
- **Competitive bidding:** If the utility issues a request for proposals (RFP) for power, the winning bid can be considered the next avoided generating unit and used as the Avoided Cost. For DME, this would be their solar PPAs.

The Avoided Cost calculation should also account for the difference in system losses between centralized generation facilities (or ERCOT for DME) and solar DG facilities. Because the customer is generating and consuming power at the same location, the cost impacts associated with no transmission or distribution line losses are avoided.

Methodology

The Avoided Cost rate development considers the following cost categories: avoided energy-related costs (ERCOT purchased power, ERCOT ancillary services, and current solar PPA costs) and avoided capacity related costs (generation capacity, distribution capacity, and transmission capacity). As indicated above, for the purposes of this Study, avoided costs for market-based emission costs (such as for NO_x and SO_x) are assumed to be incorporated into the ERCOT purchased power and have not been separately calculated.

Three Avoided Cost rates were developed for this Study: two flat rates (rates that do not vary with season or time) and a representative time-of-use (TOU) rate (a rate that varies with the season and time). The TOU rate was developed to consider customers who have solar DG and on-site battery storage systems. Customers with solar DG paired with battery storage are becoming more prevalent in Texas due to a reduction in battery costs and increased customer acceptance. A customer with solar DG and battery storage can add more value to the utility by selling power back to the utility during peak periods or using their stored energy during the utility's peak operating hours, typically in the afternoon or early evening. However, solar DG with battery storage can also lead to decreases in fixed cost recovery under typical NEM rate structures. For the purposes of this Study, we have not addressed issues related to fixed cost recovery for solar DG paired with battery storage.

For DME, three Avoided Cost rates were developed based on the following criteria:

- **Based on ERCOT data:** A Flat Rate and a separate Time-of-Use Rate
 - Transmission Avoided: ERCOT data
 - Energy Avoided: ERCOT purchased power
 - Ancillary Services Avoided: ERCOT ancillary services
- **Based on DME Solar PPA data:** A Flat Rate
 - Transmission Avoided: ERCOT data
 - Energy Avoided: DME Solar PPAs
 - Ancillary Services Avoided: ERCOT ancillary services

Data Sources

For the purpose of this Study, the National Renewable Energy Laboratory (NREL) PVWatts calculator was utilized to depict average hourly and monthly generation output. PVWatts is a widely recognized tool within the electric utility industry and is used to estimate the hourly electricity production of localized solar systems in the form of solar production curves. Solar production curves serve to estimate the hourly value of solar energy utilizing ERCOT Settlement Point Prices, the reduction in a utility's contribution to the ERCOT 4-coincident peak (4CP) for estimating avoided transmission service, and the reduction in purchases of ancillary services from the ERCOT market, all of which are important factors for determining the Avoided Cost benefits of DME's system.

The PVWatts calculator incorporates Typical Metrological Year (TMY) daily weather data for a specified location to develop a comprehensive solar production curve. Additionally, PVWatts accounts for losses in the system that include the impacts of soiling, shading, snow cover, mismatch, wiring, connections, light induced degradation, nameplate rating, system age, system orientation, and operational availability.¹⁰

To calculate Avoided Costs for DME, we used historical ERCOT data for the period beginning October 2022 and ending September 2023 (DME's Fiscal Year 2023). This Avoided Costs methodology bases the value components on the past fiscal year as opposed to a forward-looking (marginal cost) methodology. As a result, the methodology reflects the actual, realized value of solar DG during the preceding year, which is a reasonable proxy for the Avoided Costs anticipated for the current year in which the rate is in effect.

In calculating the Avoided Cost rate, it is our opinion that utilities have the discretion to omit ERCOT market pricing data during "Energy Emergency Alert 3" events. These events are triggered when ERCOT operating reserves fall below 1,500 megawatts (MW) or when the grid's frequency level drops below 59.8 hertz (Hz) for any duration.¹¹ Winter Storm Uri in February 2021 is an example of such an event, in which power became scarce on the system, market prices hit the maximum price established by ERCOT, and several utilities were forced to curtail service. Notably, no similar events occurred during DME's Fiscal Year 2023; thus, for the purposes of this Study, no ERCOT market pricing data was excluded.

DME Avoided Cost Rate Data Sources

The ERCOT North Zone Nodal Price was based on the ERCOT Historical Real Time Market (RTM) Load Zone and Hub Prices obtained from ERCOT.¹² ERCOT also supplies the ancillary service prices and volumes as well as the times for the ERCOT coincident peaks. The ERCOT postage stamp rate was obtained from the relevant Public Utility Commission of Texas (PUCT) docket.¹³

All Avoided Cost components were adjusted for estimated line losses (currently assumed to be 5.1% for the DME secondary voltage system).

Generation Capacity Investment Avoided

The generation capacity investment avoided can be estimated three ways: a) avoided capital expenditures to build capacity, b) avoided capacity purchases in a capacity market, or c) avoided contract purchases that have capacity (resource adequacy). Any of these three generation capacity options may be delayed or avoided due to the energy generated by solar DG during periods of peak load.

¹⁰ PVWatts Version 5 Manual: <https://www.nrel.gov/docs/fy14osti/62641.pdf>

¹¹ https://www.ercot.com/files/docs/2023/06/20/2023_2024%20Energy-Emergency-Alert-Overview.docx

¹² <https://www.ercot.com/mp/data-products/data-product-details?id=NP4-180-ER>

¹³ Public Utility Commission of Texas Docket 54507.

Section 2

A review of DME's power supply documents, as well as discussions with DME's power procurement staff, suggests that DME has no plans to build or operate additional generators to meet capacity needs in the near future. Therefore, there are no capital costs avoided.

ERCOT operates an energy-only wholesale electricity market. This market design pays generators only for the energy they provide to the grid with very few exceptions. The energy-only wholesale electric market is unique in the U.S. as other competitive markets typically pay generators for having capacity available in their systems.¹⁴ Instead, this market focuses solely on incentivizing the production of electricity to meet demand in real-time. This means that while capacity remains a critical aspect of ensuring grid reliability within ERCOT, it is not directly compensated for in the same manner as capacity markets elsewhere. In ERCOT, the emphasis is placed on efficient energy production rather than capacity availability payments, making it a unique model in the U.S. energy landscape. Therefore, there are no capacity market purchases avoided.

DME's multi-year outlook focuses on procuring additional renewable PPAs across a broad geographic range. DME recently issued and is in the process of procuring new solar contracts that are within 150 miles of the Dallas-Fort Worth (DFW) area. These contracts are energy-only contracts and, therefore, there are no capacity costs avoided.

Due to the structure of ERCOT's energy-only market, the fact that DME does not plan to build/operate an additional fossil fuel resource, and as DME's ongoing procurement of new solar contracts do not contain capacity, it is our opinion that the generation capacity value component of the VOS credit should be set to zero (\$0.0000/kWh).

ERCOT Performance Credit Mechanism Proposal

As indicated above, ERCOT does not have a capacity market that pays generators to ensure there will be enough power to meet peak demand. After the devastation of Winter Storm Uri, Texas lawmakers directed regulators to ensure grid reliability and increase dispatchable generation (i.e., capacity). After investigation, stakeholder comment, studies, and analyses, the Performance Credit Mechanism (PCM) proposal was developed. The PCM's intent is to ensure that during time of highest demand and low supply, load serving entities, like DME, have sufficient dispatchable generating capacity to generate performance credits equal to their system demand. Performance credits will only be awarded to dispatchable generation assets that provide energy to the ERCOT grid during the ERCOT established compliance periods. Dispatchable generation resources will have the ability to forward commit to producing more energy during the compliance periods and will be able to sell performance credits to electricity retailers for additional income.

In 2023, the PUCT voted unanimously to adopt the PCM. However, the PUCT deferred implementation until Texas lawmakers had the opportunity to review the proposal and provide guidance. In the summer of 2023, SB 2627 and HB 1500 were enacted which adjusted the proposed PCM structure. HB1500 placed a variety of restrictions on the PUCT's proposed PCM, including limiting the cost of the PCM, and included a Dispatchable Reliability Reserve Service (DRRS) requirement. The DRRS defines which generators can participate based on how fast they can be dispatched and how long they can provide power. Under these terms, renewable energy is not qualified to be a generator.

As of the date of this report, the PUCT has not yet determined how it will implement the revised PCM proposal. However, if the PUCT implements the PCM as revised, renewable generation does not qualify

¹⁴ https://www.ercot.com/files/docs/2019/09/17/Market_Structure_OnePager_FINAL_Revised.pdf

for any type of generation capacity credit. Therefore, it is our opinion that the avoided generation capacity value for the Avoided Cost rate should be zero.

Distribution Capacity Investment Avoided

While it is common practice in the industry to value the cost savings from solar DG installations to generation and transmission expense, it is less common to value avoided capital investment costs on the distribution system.

Impacts to the distribution system from solar DG are specific to the local circuit where they exist. The presence of solar DG could potentially avoid/defer upgrade costs if the system is installed on a distribution circuit that exceeds or is near its maximum capacity rating. However, the installation of solar on a circuit with low usage could lead to reverse energy flow and ultimately to additional maintenance and/or capital expenses for the distribution system. Thus, the presence of solar installations on the system can result in avoided distribution costs or increased distribution costs.

Because DME does not dictate or encourage installation of solar based on the locational needs of their distribution system, it is difficult to determine if any incremental benefit or cost exists with the addition of customer-sited solar. Based on discussions with DME, the distribution system is relatively new and has plenty of capacity. Therefore, we recommend that no value (either positive or negative) be assigned or included for distribution impacts in DME's VOS credit.

While solar DG does contribute to local generation, it also introduces potential challenges to the distribution grid such as voltage fluctuations, reverse power flows, and increased operational complexity. These challenges may necessitate investments in grid upgrades and management solutions to ensure grid reliability and stability which can offset any benefits provided; therefore, distribution cost savings are not included in this analysis. For the purposes of this Study, we have not included a potential contribution to reductions in future (marginal) investments in transmission and distribution capacity as a result of solar DG.

Transmission Capacity Investment Avoided

DME incurs transmission expense based on their contribution to ERCOT's annual 4CP in the prior year. The actual expense incurred is DME's contribution to the ERCOT 4CP multiplied by the sum of the individual wholesale transmission service charges billed by each transmission service provider (informally referred to as the "ERCOT postage stamp rate"). For the VOS rate, the avoided transmission cost is the reduction in DME's contribution to the ERCOT 4CP due to energy produced at that time by solar DG multiplied by the ERCOT postage stamp rate. This value is based on historical solar production at the time of the ERCOT 4CP. Figure 2-1 compares characteristic summer daily generation profiles¹⁵ against the hours when the ERCOT 4CP has historically occurred.¹⁶

¹⁵ Generation profiles are provided by National Renewable Energy Laboratory PV Watts and assume a 1 kW fixed rooftop installation oriented at 180°.

¹⁶ Historic ERCOT 4CP hours from 2012 to 2023.

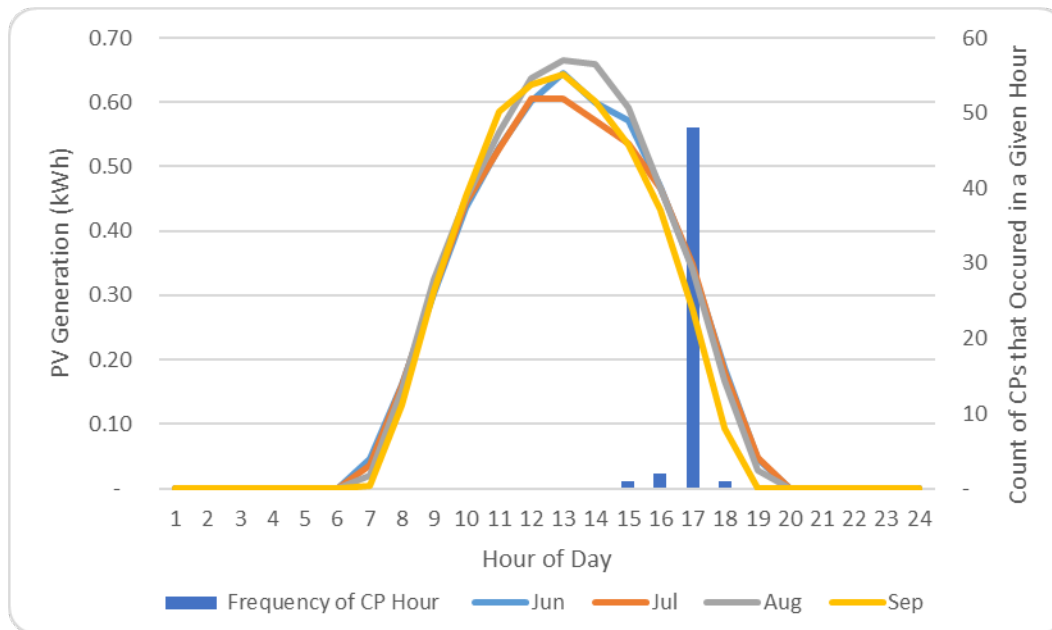


Figure 2-1. Comparison of Generation Profiles Against the Frequency of Occurrence of ERCOT 4CP Hours

As shown in Figure 2-1, the vast majority of ERCOT 4CPs occur during the summer at 5:00 p.m. when solar production is on the decline, which reduces the transmission capacity value in the Avoided Cost rate.

- **Transmission Savings** – This component is based on average solar DG during the ERCOT 4CP periods multiplied by the ERCOT postage stamp rate (the sum of the individual wholesale transmission service charges billed by each transmission service provider in ERCOT) divided by the total PV generation, as shown in this formula.

$$\text{Transmission Savings} = \frac{\text{Average Solar DG Generation During ERCOT 4 CP} * \text{ERCOT Postage Stamp TCOS rate}}{\text{Total Annual Solar DG Generation}}$$

Based on the formula above, the estimated Transmission Capacity Avoided Cost rate for DME’s Fiscal Year 2023 is \$0.0135/kWh, as shown in Table 2-1.

Table 2-1
Transmission Capacity Avoided Cost

Component	Avoided Cost Rate (\$/kWh) ⁽¹⁾
Transmission Savings	\$0.0135
Transmission Avoided Costs	\$0.0135

(1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

Energy-Related Costs Avoided: Solar DG and Flat Rate

Timing is an important consideration in the determination of the solar DG Avoided Costs. This is because the value of Avoided Costs can vary depending on factors such as peak demand periods (4CP) and fluctuating energy prices. For DME, analyzing these factors within the context of ERCOT market conditions is essential for accurately assessing the economic benefits of solar DG projects and optimizing their financial viability. Solar DG typically generates electricity during daylight hours with peak production occurring around midday when solar irradiance is highest, as shown in Figure 2-2. Factors such as weather conditions, cloud cover, and shading from nearby buildings or foliage can cause fluctuations in solar output, leading to reduced generation during periods of inclement weather or shading events. In comparison, the ERCOT market's usage pattern reflects the overall electricity demand in the Texas region, which tends to peak during hot summer afternoons due to increased air conditioning usage, as shown in Figure 2-2. While solar DG aligns with daytime electricity demand to some extent, it may not fully coincide with ERCOT's peak demand periods, particularly during late evening hours when solar generation is minimal or absent.

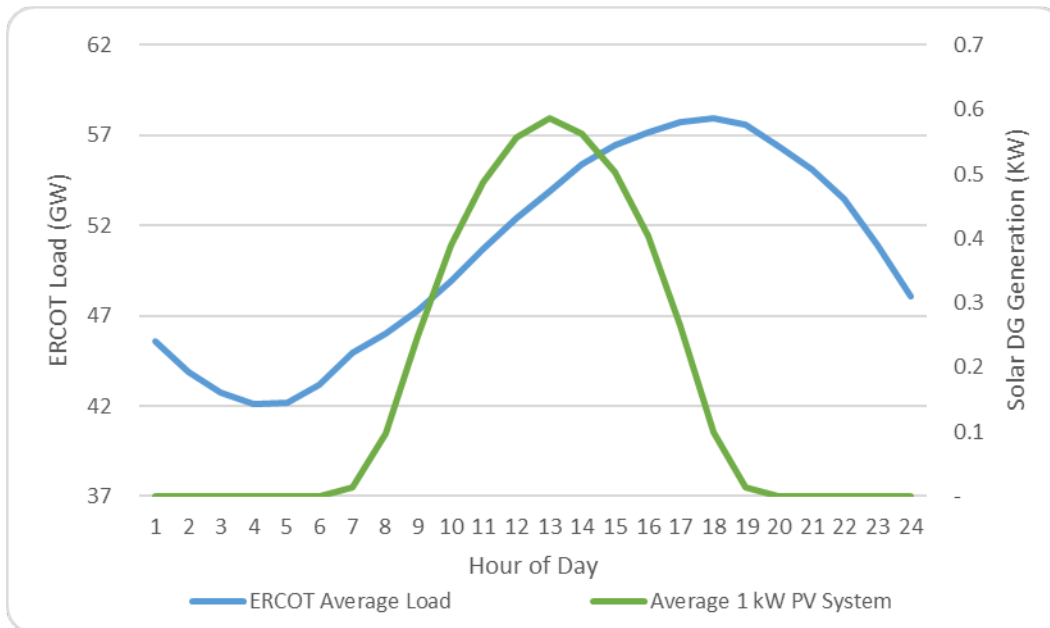


Figure 2-2. ERCOT Average Load Compared to Average Solar DG System¹⁷

Another consequence is that solar DG fails to alleviate the strain during periods of expensive energy. As depicted in Figure 2-3, energy prices in the ERCOT market peak in the evening when solar contribution is minimal or absent, exacerbating the cost burden on consumers. This discrepancy between solar generation and peak demand highlights the critical need for a diverse energy portfolio to uphold reliability and affordability, particularly during peak demand periods. Therefore, grid operators must balance solar DG output with other energy sources to ensure a stable and cost-effective electricity supply throughout the day, particularly during peak demand times.

For DME, the calculated Avoided Cost value comprises two key components:

¹⁷ ERCOT load is the hourly average load in ERCOT from Oct. 2022–Sept. 2023. Generation profiles were provided by National Renewable Energy Laboratory PV Watts and assume a 1 kW fixed rooftop installation oriented at 180°.

ERCOT Energy Savings

- **ERCOT Energy Savings** – This element is based on the weighted average price for energy at the time of PV generation and is calculated as the sum of the ERCOT North Node Day-ahead price for each hour during the previous fiscal year multiplied by the PV generation for that same hour divided by the total PV generation, as shown in this formula.

$$\text{ERCOT Energy Savings} = \frac{\text{ERCOT Hourly Settlement Point Price} * \text{Hourly Solar DG Generation}}{\text{Total Annual Solar DG Generation}}$$

ERCOT Ancillary Services Savings

- **Ancillary Service (AS) Savings** – This component is based on the weighted average price for AS at the time of PV generation. ERCOT currently has five ancillary service products that support the transmission of energy to loads and the reliable operation of the bulk electric system. These five products are Regulation Service – Up (REG UP), Regulation Service – Down (REG DOWN), Responsive Reserve Service (RRS), Non-spinning Reserve Service (NSRS) and ERCOT Contingency Reserve Service (ECSR). ECSR was introduced in June 2023 to support grid reliability¹⁸. Due to its partial availability during the study period, it was not included in the analysis. The Ancillary Service Savings is calculated as the sum of the Scaled AS Price (the sum of the four different ancillary service products available during the study period in each hour scaled to its relevant proportion with overall ERCOT energy load) for each hour multiplied by the PV generation for that same hour during the previous fiscal year divided by the total PV generation, as shown in this formula.

$$\text{Ancillary Service Savings} = \frac{\text{Sum of Hourly AS Prices} * \text{Hourly Solar DG Generation}}{\text{Total Annual Solar DG Generation}}$$

ERCOT Energy and Ancillary Services Avoided Cost Rate

Table 2-2 details the proposed Avoided Costs.

Table 2-2
ERCOT Energy and Ancillary Service (AS)
Avoided Cost

Component	Avoided Energy and AS Cost Rate (\$/kWh) ⁽¹⁾
ERCOT Energy Price Savings	\$0.0524
ERCOT Ancillary Service Savings	\$0.0044
ERCOT Energy Avoided Costs	\$0.0568

⁽¹⁾ Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

¹⁸ <https://www.ercot.com/news/release/2023-06-12-ercot-adds-new>

DME’s Avoided Costs for Customer with Solar DG

The calculated Avoided Cost rate for a DME customer with a solar DG system who is served at secondary voltage is summarized below in Table 2-3.

**Table 2-3
Avoided Cost for a DME Customer with Solar DG**

Component	Avoided Cost Rate (\$/kWh) ⁽¹⁾
Generation Capacity Savings	\$0.0000
Distribution Capacity Savings	\$0.0000
Transmission Capacity Savings	\$0.0135
ERCOT Energy Savings	\$0.0524
ERCOT Ancillary Service Savings	\$0.0044
DME Avoided Costs for Solar DG ⁽²⁾	\$0.0702

- (1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.
- (2) Rates are for generation facilities less than 1 MW. All resource entities with capacities of 1 MW or higher are required to register with ERCOT.¹⁹

Energy-Related Costs Avoided: Solar DG with Battery Storage – TOU Rate

Batteries store excess energy generated by solar panels during the day for use when customer usage exceeds solar generation. This technology enables solar DG customers users to maximize their self-consumption, reduce reliance on the grid, and potentially save money by avoiding peak electricity rates.

Despite its benefits, battery storage comes with some drawbacks. The upfront cost can be high, adding to the initial cost of a solar system, and battery storage has limited capacity, meaning it may not meet all energy needs during extended periods without sunlight. Additionally, battery systems incur efficiency losses during charging and discharging, have a limited lifespan requiring maintenance or replacement, and can have environmental impacts related to the manufacturing and disposal of the battery.

Battery Storage Benefits for Customers and the Utilities

When solar DG generates excess electricity during the day, customers feed it back into the grid, allowing a utility to either buy less from the market or sell excess energy into the market. However, this excess production often occurs when electricity demand is low, such as during the day when many people are at work and energy usage is minimal. Figure 2-2 shows the time at which solar DG generates power and the time at which the ERCOT market is experiencing the most demand. Figure 2-3 shows the time at which energy prices were the most expensive in the ERCOT market for calendar year 2023.

¹⁹ https://www.ercot.com/files/docs/2021/01/07/Resource_Interconnection_Handbook_v1.94_03012023.docx

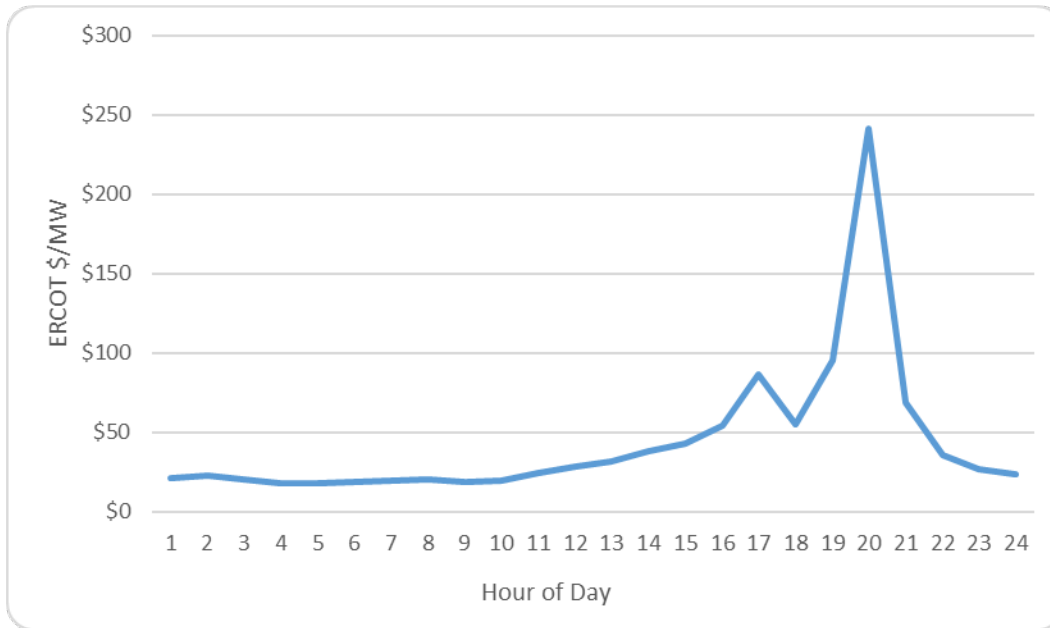


Figure 2-3. Average Hourly ERCOT Market Price

Battery storage offers a solution to this challenge by enabling solar customers to store excess energy during periods of high solar production and relatively low demand, and then discharge it during peak demand hours when electricity is more valuable.

Figures 2-4, 2-5, and 2-6 show the progression of residential usage with solar DG and with battery storage. In Figure 2-6, by integrating battery storage, this customer could capture and store excess energy during periods of surplus generation rather than immediately receiving credit. Subsequently, they could discharge the battery during peak usage times, effectively managing their energy consumption or even feeding surplus energy back into the grid. This adaptive approach not only optimizes the customer's energy usage but also assists utilities in mitigating peak demand pressures.

Please note that Figures 2-4, 2-5, and 2-6 are based on a low energy usage customer with a large solar DG installed. The data does not represent a specific customer.

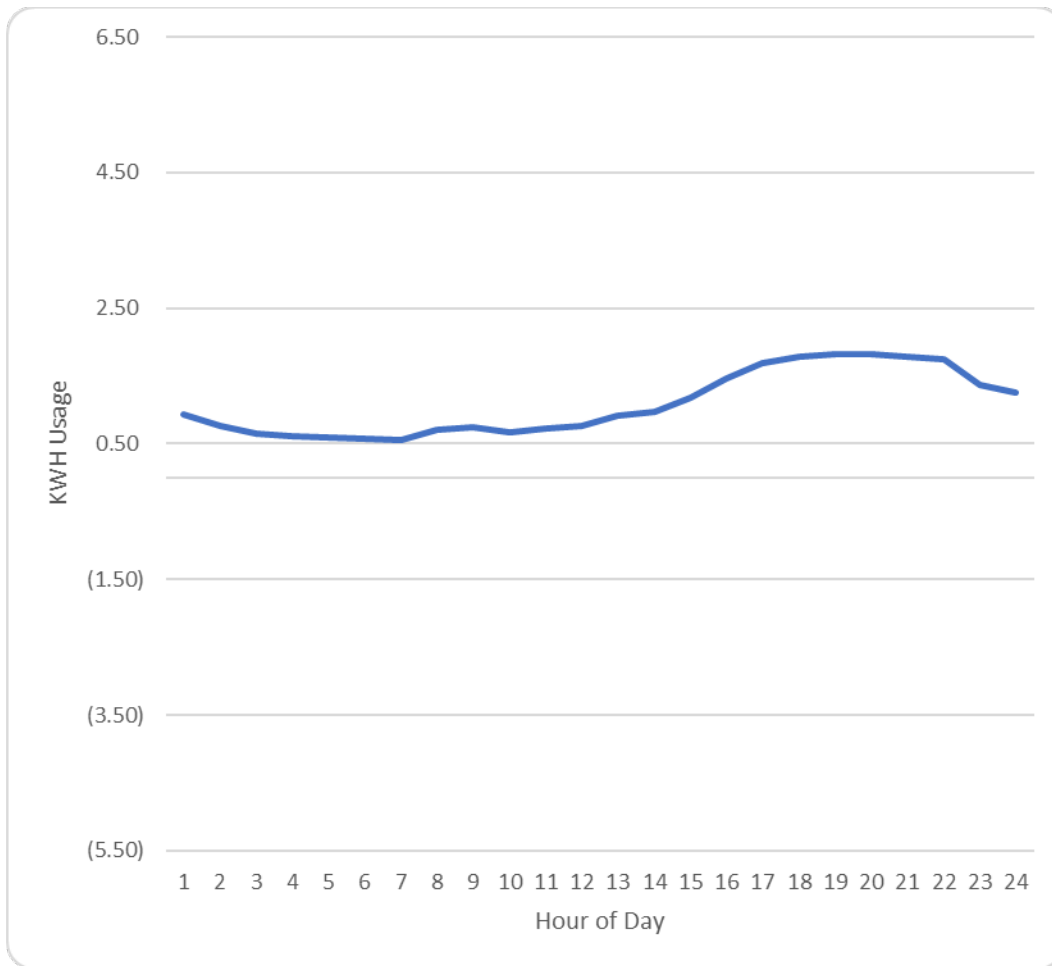


Figure 2-4. Representative Residential Usage

Figure 2-4 represents a residential customer with low energy usage. As seen in the graph, the customer uses the most energy in the late afternoon.

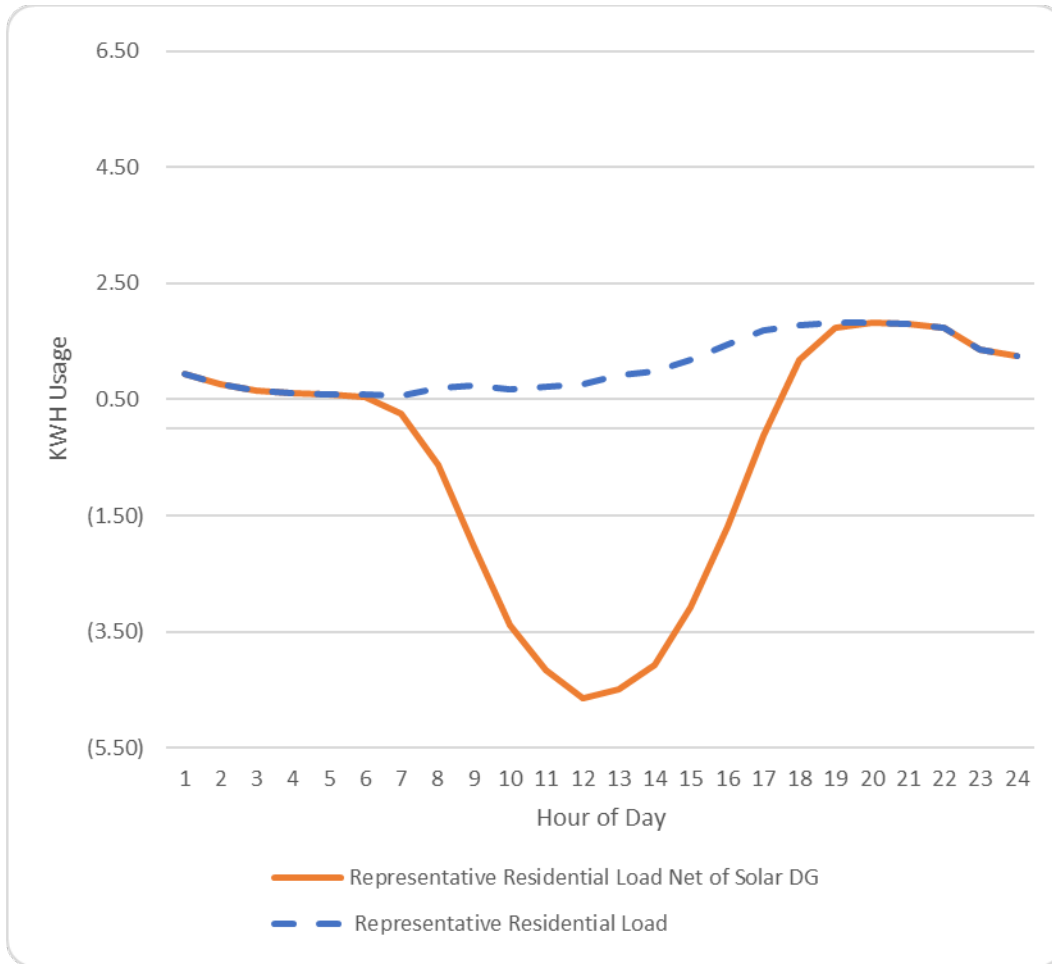


Figure 2-5. Representative Residential Usage with Solar DG

Figure 2-5, the blue dashed line represents the same residential customer in Figure 2-4. The solid orange line represents the residential load net of the solar DG generation. The solar DG is generating more power than the customer is using during midday.

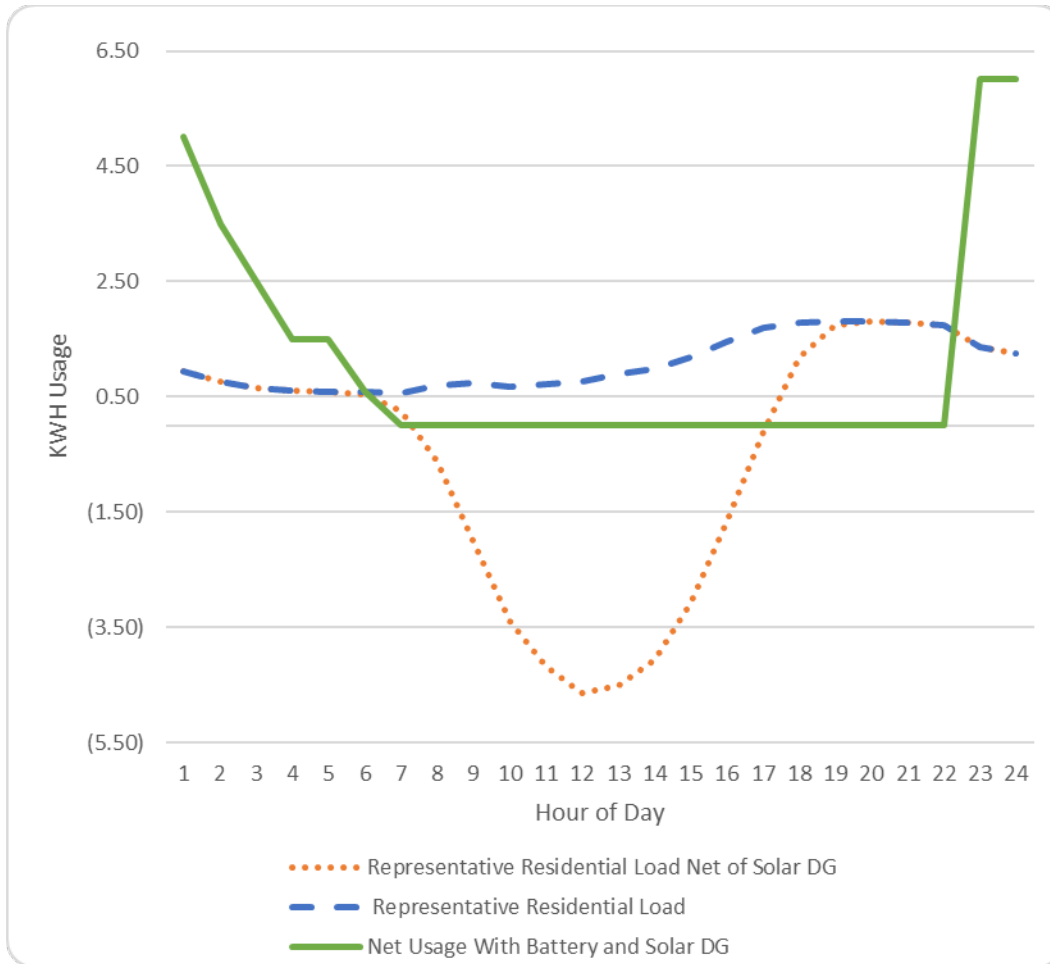


Figure 2-6. Representative Residential Usage with Solar DG and Battery Storage

Figure 2-6, the blue dashed line represents the same residential customer in Figure 2-4. The dotted orange line represents the residential load net of the solar DG generation. The green solid line represents the customer's load as viewed from the utility. The customer is storing their excess energy in the battery, and then using that energy during the late afternoon peak periods.

Figure 2-6 represents a customer that is storing energy, and then using their own energy when the solar DG is not generating. The customer could also store their excess energy, and then sell the energy back to the utility at peak periods. In this way, battery storage can be designed to help utilities manage their peak demand more efficiently and reduce strain on the grid during peak periods. Additionally, by encouraging the adoption of battery storage among solar customers, utilities can enhance grid stability, reliability, and resilience, ultimately benefiting both the utility and their customers. However, as noted before, solar DG paired with battery storage can exacerbate the issue of fixed cost recovery for a utility, depending on the utility's retail rate structures.

Rate Design Considerations

Time-of-Use

Some utilities offer TOU rates where electricity prices vary based on the time of day, the day of the week, and the season. TOU rates send pricing signals that it is more expensive to generate or procure power during peak times. Time-based rates offer customers the chance to manage their electricity consumption and lower their bill by using power in off-peak periods. For customers with solar DG and battery storage, time-based rates can save the customer money (by using power off-peak) and can benefit the customer monetarily (by selling power to the utility at peak periods).

In summary, a TOU rate can be used to incentivize off-peak consumption and on-peak generation, aligning customer behavior with grid needs, maximizing the value of solar generation, and supporting grid stability. By offering lower electricity prices during off-peak hours, TOU rates encourage solar DG customers to utilize their excess energy or charge their battery storage systems when demand on the grid is lower, thus reducing strain during peak periods. Additionally, charging higher rates during peak demand hours ensures fair compensation for excess energy fed back into the grid, maximizing financial benefits for solar customers while supporting grid stability through load shifting and optimization of renewable energy integration. For this Study, we have not included an analysis of DME's potential fixed cost recovery issues related to solar DG paired with battery storage.

Table 2-4 illustrates the same methodology employed in generating DME's Avoided Cost rate of \$0.0702/kWh, as seen in Table 2-3, but on a TOU and seasonal basis. Peak and Off-Peak Avoided Cost rates for both winter and summer periods were developed based on an average of hourly costs for DME. A detailed analysis of DME's seasonal and TOU cost basis was not conducted for this Study.

Incorporating TOU Avoided Cost rates alongside TOU retail rates could enhance the incentive for customers to strategically dispatch energy during peak hours. This approach would ensure that the utility accurately compensates solar DG customers based on the time when costs are avoided, aligning compensation with the actual value of the energy fed back into the grid.

Table 2-4
Representative Time-of-Use Avoided Cost Rate for Solar DG with Battery Storage

Component	Season/Period ⁽¹⁾	Summer Avoided Cost (\$/kWh) ⁽²⁾	Winter Avoided Cost (\$/kWh) ⁽²⁾
Generation Capacity Savings	Peak	\$0.0000	\$0.0000
Generation Capacity Savings	Off-Peak	\$0.0000	\$0.0000
Distribution Capacity Savings	Peak	\$0.0000	\$0.0000
Distribution Capacity Savings	Off-Peak	\$0.0000	\$0.0000
Transmission Capacity Savings	Peak	\$0.1631	\$0.0000
Transmission Capacity Savings	Off-Peak	\$0.0000	\$0.0000
ERCOT Energy Price Savings	Peak	\$0.2337	\$0.0307
ERCOT Energy Price Savings	Off-Peak	\$0.0483	\$0.0294
Ancillary Service Savings	Peak	\$0.0229	\$0.0034
Ancillary Service Savings	Off-Peak	\$0.0039	\$0.0025
Avoided Costs	Peak	\$0.4198	\$0.0340
Avoided Costs	Off-Peak	\$0.0522	\$0.0319

(1) Summer months are June–September, Winter months are all other months. Peak times are from 3 p.m.–7 p.m. every day. Off-Peak are all other times.

(2) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

Based on the simplified analysis provided in Table 2-4, a representative customer can be compensated at \$0.42/kWh for energy sold back to the utility during summer peak periods. This is nearly six times the annual average Avoided Cost of approximately \$0.07/kWh shown on Table 2-3. DME does not currently have TOU rates available for most customers (there is a TOU option for General Service Large customers). Due to this limitation, the analysis was simplified, and further investigation would be necessary if this approach were to be pursued.

Energy-Related Costs Avoided Based on Comparative PPAs

Under PURPA, Avoided Costs can be based on a utility’s solar PPA prices.²⁰ These Avoided Costs can serve as the basis for setting the rates at which utilities purchase energy from QFs, including solar DG. These PPAs outline the terms under which solar energy developers sell electricity to utilities, often at a predetermined rate over a specified period.

DME’s average solar PPA is \$0.0244/kWh which is less than the energy market rate of \$0.0524/kWh as shown in Table 2-3. This underscores the potential for cost savings linked to procuring solar energy compared to purchasing electricity directly from the market, emphasizing the potential discrepancy between awarding the full market rate and the actual cost of solar energy procurement.

If we used the current DME PPA price as the Energy Savings, DME’s Avoided Cost rate would be \$0.0379 per kWh, as indicated in Table 2-5.

²⁰ <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-K/part-292>

**Table 2-5
Avoided Cost Based on Recent DME Solar PPAs**

Component	Avoided Cost Rate (\$/kWh) ⁽¹⁾
Generation Capacity Savings	\$0.0000
Distribution Capacity Savings	\$0.0000
Transmission Capacity Savings	\$0.0135
Solar PPA Price Savings ⁽²⁾	\$0.0244
ERCOT Ancillary Service Savings ⁽³⁾	\$0.0000
Avoided Costs for Solar DG	\$0.0379

(1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

(2) DME PPAs are variable only and do not include any firm capacity.

(3) Ancillary Services were assumed to be included in the PPA price.

Regardless of which Avoided Cost the City Council and DME choose to use, the Avoided Cost rate should be recalculated annually.

Section 3

VALUE OF SOLAR: SOCIETAL BENEFITS

This section summarizes the potential Societal Benefits derived from renewable energy and the options for valuing them through solar DG. The Societal Benefits represent the benefits to society resulting from reduced greenhouse gas (GHG) emissions and slowing climate change related impacts. In this section we summarize current GHG valuation markets and metrics including the GHG trading market, carbon capture, and a broad Federal Government valuation of a metric ton of GHG emissions.

Including Societal Benefits in the Value of Solar rate is a policy decision for the City Council. The City Council may choose to include an environmental or societal value component to the VOS credit that is related to or supports their policy objectives. Please note that this societal benefit may not be monetarily realized by the City, unlike the monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a societal or non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Societal Benefits in their Value of Solar rate.

Greenhouse Gas Market

There is not a GHG federal market or a GHG state market in Texas. However, there is an organized GHG market in the Northeast called the Regional Greenhouse Gas Initiative (RGGI).²¹ RGGI is a cooperative among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont to cap and reduce carbon dioxide (CO₂) emissions from the power sector. RGGI is the first cap-and-invest regional initiative implemented in the U.S. As a reference point, the December 2023 auction for CO₂ allowances settled at \$14.88 per allowance. A CO₂ allowance represents a limited authorization to emit one short ton of CO₂.

U.S. Federal Government Tax Credits for Carbon Capture

Section 45Q of the U.S. Internal Revenue Code provides a tax credit for every metric ton of CO₂ that is captured and stored. Section 45Q was first introduced in 2008, and the amount paid for captured CO₂ increased after the passage of the Inflation Reduction Act in August 2022. How much carbon is worth depends on what is done with the carbon. It can vary from \$60 per ton if used for enhanced oil recovery to \$180 per ton if it is pulled from the atmosphere and stored in the ground.²²

California Public Utility Commission Avoided Cost Calculator

The CPUC uses an Avoided Cost Calculator to determine the value of on-site solar and other DG resources. The avoided costs of electricity are modeled based on the following components: generation energy, generation capacity, ancillary services, transmission and distribution capacity, greenhouse gases, and high

²¹ <https://www.rggi.org/>

²² <https://climate.mit.edu/ask-mit/how-much-captured-co2-worth>

global warming potential gases.²³ The annual Total GHG Value in the CPUC model is \$29.31 per ton in 2023 and is growing by 7.5% per year.²⁴

U.S. Federal Government Social Cost of Carbon

The U.S. Federal Government uses the Social Cost of Carbon (SCC) to measure Societal Benefits. The SCC is an estimate of the cost of the damage done by a ton of carbon emissions.²⁵ The SCC is also used as an estimate of the benefit of any action taken to reduce a ton of carbon emissions. The SCC puts the effects of climate change into economic terms to help federal and state policymakers understand how emissions-related policies affect the economy. As previously indicated, the value of the reduction in non-carbon, regulated emissions (NO_x and SO_x) is assumed to be captured in the ERCOT market prices for power discussed in Section 2.

Background

The SCC was first estimated by the U.S. federal government to quantify the impacts from emitting one extra ton of carbon emissions. The federal government uses the SCC in their cost-benefit analyses when evaluating whether a policy to reduce emissions is justified. A cost-benefit analysis compares the total economic benefits of a proposed policy to its total economic costs.

The basis for the SCC is the estimated cost that is imposed on society as a byproduct of fossil-fueled power production. According to certain federal agencies, the harm to society from greenhouse gas emissions (which include but are not limited to CO₂):

*. . . includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.*²⁶

In 2009, the federal government set up the Interagency Working Group (IWG), a group of several federal departments that includes the U.S. Department of Energy and the U.S. Environmental Protection Agency (EPA), to determine the methodology and standards to be used to calculate the SCC. The SCC has varied significantly over the years depending on the administration in charge. The Obama administration set the SCC at \$43/ton.²⁷ The Trump administration set the SCC between \$3 and \$5/ton. The Biden administration set the SCC at \$51/ton in 2021. In 2022, the EPA issued an estimate of \$190/ton.²⁸

²³ <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/der-cost-effectiveness>

²⁴ <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/der-cost-effectiveness>

²⁵ https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf

²⁶ U.S. Department of Energy's and the U.S. Environmental Protection Agency's [Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990](#) at 2.

²⁷ <https://www.brookings.edu/articles/what-is-the-social-cost-of-carbon/>

²⁸ https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf

Data Sources

IWG published the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Report in February 2021 under Executive Order 13990.²⁹ This report provided the SCC on a per ton (\$/ton) basis as shown in Table 3-1. To convert the cost per ton to a cost per kWh, we used the pounds of CO₂ per megawatt hour (MWh) generated (lbs./MWh). For Texas, we used the U.S. Energy Information Administration’s (EIA) Texas Electricity Profile report (EIA Texas Report) for CO₂ emitted in Texas.³⁰

Methodology

The Societal Benefit is calculated by multiplying the emission year dollar per metric ton of CO₂ (from Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990) by the prevailing CO₂ metric tons per kWh (from the U.S. EIA’s Texas specific State Electric Profiles report, using the CO₂ lbs./MWh emissions statistic). This equation is shown below.

$$\text{Societal Benefit} = \text{Emission Year } \$/\text{Metric ton CO}_2 * \text{Prevailing Metric ton CO}_2/\text{kWh}$$

Based on the IWG report, the value per metric ton of CO₂ for Emissions Year 2024 is \$55. The metric ton of CO₂/kWh is 0.41 (894 lbs./MWh).³¹ This calculation results in a Societal Benefit value of \$0.0223/kWh for 2024 as shown in Table 3-1. Using the EPA’s most recent report, this calculation results in a value of \$0.0849 per kWh.

**Table 3-1
Social Cost of Carbon**

Emissions Year	\$/Metric Ton of CO ₂ ⁽¹⁾	Metric Ton of CO ₂ /MWh ⁽²⁾	SCC \$/kWh
IWG 2020	\$51.00	0.41	\$0.0207
IWG 2021	\$52.00	0.41	\$0.0211
IWG 2022	\$53.00	0.41	\$0.0215
IWG 2023	\$54.00	0.41	\$0.0219
IWG 2024	\$55.00	0.41	\$0.0223
IWG 2025	\$56.00	0.41	\$0.0227
EPA 2023	\$190.00	0.41	\$0.0849

(1) Table values are derived from Table A-1 in Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990.

(2) Texas specific State Electric Profiles report.

Whereas Avoided Costs (Section 2) are actual costs avoided by the utility from solar generation, the Societal Benefits of reducing carbon emissions are theoretical cost savings, since utilities in Texas do not

²⁹ https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf

³⁰ <https://www.eia.gov/electricity/state/texas/>

³¹ Based on 2022 EIA data released Nov. 2, 2023.

pay for carbon emissions. In the short term, the utility does not avoid any costs or reduce expenses beyond its Avoided Cost. In the long term, there are potential societal cost savings due to increased societal and environmental health.

Societal Benefits Specific to DME

From a Societal Benefit point of view, the benefit of generating power with renewable energy is avoiding the emissions that would have been created from generating with fossil fuels.

Currently, carbon emissions are not regulated in Texas and there is no market value for carbon allowances in Texas. Additionally, because of DME's 100% renewable energy portfolio, DME neutralizes any carbon emissions associated with serving their customers by leveraging their renewable PPAs and RECs. DME has already "avoided" the emissions associated with providing electricity to their customers.

As a result, the Societal Costs outlined in this section are already being mitigated through this power supply strategy, and solar DG does not offer any additional value in this context. Therefore, we recommend that the Societal Benefit for solar DG for DME be set at zero (\$0.00/kWh).

Other Considerations

Benefit of Local Generation

While DME currently meets 100% of their energy needs through renewable PPAs, there are arguments in favor of supporting local renewable generation in the form of solar DG. One program in support of local renewable generation devised by the North Central Texas Council of Governments and local stakeholders is the Dallas-Fort Worth Air Quality Improvement Plan.³² While the specifics of its implementation and potential restrictions remain uncertain, it could entail constraints on local fossil fuel generation capacity and create greater demand for transmitting renewable energy to the region. No valuation associated with the Dallas-Fort Worth Air Quality Improvement Plan was included in the Avoided Cost analysis for this Study.

Cost of Integrating Renewables

While local solar generation can reduce transmission and distribution losses, it also raises concerns about land use, reliability, upfront costs, grid integration, and equity. In certain situations, these factors may offset the potential upside. We did not incorporate any costs associated with these items in the analysis.

Production and Disposal of Solar Panels

Solar panel fabrication requires chemicals, water, and electricity. Minerals and metals used in the production of solar panels are mined, which also requires consumables and electricity. Our analysis does not address any secondary environmental effects related to the production and fabrication of solar panels.

Solar panel disposal includes recycling any recyclable materials (glass, aluminum, copper) while the remaining materials are generally sent to a landfill. Toxic metals like lead and cadmium may also be present in solar panels. Our analysis does not include the recycling and disposal costs of the solar arrays at the end of their life.

³² <https://www.publicinput.com/dfwAQIP>

While it is important to consider the social and ethical implications of solar array production and disposal, attempting to assign a monetary value in the context of solar panel manufacturing or mining is challenging and may vary significantly depending on the methodology used. Therefore, we did not incorporate any offsets associated with these items in the analysis.

Section 4

VALUE OF SOLAR: POLICY DRIVEN INCENTIVES

The third component considered in the value of solar is the City's and DME's policies. The City or DME may consider increasing the credit given to solar DG customers through policy as an incentive to encourage the adoption of rooftop solar systems. By providing additional incentives such as credits or financial benefits, utilities can help offset the initial investment costs for customers, making solar energy more financially attractive and accelerating the transition to renewable energy.

Similar to the Societal Benefits, including policy driven incentives in the VOS rate is a policy decision for the City Council. The City Council may choose to include a value component to the VOS credit that is related to or supports their policy objectives. Please note that this benefit may not be monetarily realized by the City, unlike monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Policy Driven Incentives in their Value of Solar rate.

The City currently has several policies, goals, programs, and plans in place to reach carbon neutral emissions by 2050 as a community, not just for electricity use. This section summarizes these goals and discusses the role that solar DG can play in these policies.

City of Denton and DME Renewable Energy Policies

The policies and plans created by the City and DME define the metrics to guide current and future energy strategies. The City's and DME's existing policies as related to renewable energy and carbon emissions are as follows:

Renewable Resource Plan (12/2017)

The Renewable Resource Plan, initiated in December 2017, aimed to assess the viability of achieving either a 70% or 100% renewable energy target while also establishing a reasonable timeline. Emphasizing diversification, the plan analyzed the impacts and risks associated with different renewable resource production methods across various locations, including the integration of DME's DEC resource. Following thorough deliberation, the PUB and the City Council endorsed the adoption of 100% renewable energy through wind and solar PPAs.

DME action: DME had to begin procuring renewable energy.

Requirement for local solar generation: None required.

Resolution No. 18-085 (2/2018)

With direction from the Renewable Resource Plan, the City Council passed and approved Resolution No. 18-085 on February 6, 2018, directing DME to meet the goal of providing their electric customers with 100% renewable energy. This goal was achieved in 2021 through solar and wind PPAs and RECs.

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DME action: DME had to purchase 100% renewable energy.

Requirement for local solar generation: None required.

Simply Sustainable, A Framework for Denton's Future (2/2012 & 6/2020)

Originally adopted in February 2012, this document was updated in June 2020. The primary objective was to enhance efficiency and reduce energy consumption across municipal departments while also promoting energy efficiency among residents and local businesses. Strategy 3 of the plan focuses on enhancing the energy efficiency of existing homes and buildings. This includes exploring potential programs geared toward promoting electric vehicle (EV)/solar readiness. Designed as a dynamic framework, the document aimed to continuously evolve, with periodic reviews and updates of its goals and strategies every five to seven years.

DME action: None required.

Requirement for local solar generation: None required.

GreenSense Incentive Program (2010)

In 2010, DME began offering economic incentives to residential and commercial customers to develop rooftop solar DG facilities in addition to other energy efficient rebates through the GreenSense program.

DME action: Provide rebates for solar DG.

Requirement for local solar generation: None required.

DME Report to Sustainability Framework Advisory Committee Regarding the GreenSense Incentive Program (8/2022)

In August 2022, the DME staff submitted a comprehensive report to the Sustainability Framework Advisory Committee focusing on rooftop solar programs. The report included recommendations for the GreenSense incentives program. Specifically, the DME staff advocated for the removal of the solar rebate component within the GreenSense program. DME staff's rationale stemmed from the achievement of DME's goal of providing 100% renewable energy. Instead, DME proposed reallocating the budgeted funds toward other energy efficiency rebates within the GreenSense program, ensuring a more holistic approach to sustainable energy initiatives.

The report also recommended that a) DME should recover the appropriate fixed costs from each solar DG customer; and b) to the extent that a solar DG customer's credit exceeds the amount due to DME in any month, the credit should not offset other City of Denton billed utilities and should instead provide credits to the solar DG customer no higher than the Energy Cost Adjustment (ECA) rate. The ECA is a pass-through rate mechanism that is designed to fully recover fuel and purchased power costs. These "pass-through" rate mechanisms are a widely adopted industry practice.

City of Denton Climate Action Adaption Plan (Currently Under Consideration)

The City developed a comprehensive plan to better outline the essential steps toward achieving net-zero emissions by 2050. This initiative involved engaging with the public and the City Council through meetings to gather valuable insights into the pivotal opportunities and challenges pertaining to Denton's transition toward a low-carbon future. The plan is holistic in nature, addressing a wide array of factors beyond

electric generation and encompassing transportation, businesses, and community involvement as integral components.

The City has not yet adopted the CAAP. If the City adopts the CAAP, the renewable energy goals include specific capacity goals for installed solar including solar DG. According to the CAAP, the current solar DG capacity is approximately 9 MW and the local solar DG goal is 53 MW by 2030 and 192 MW by 2048. Local solar can be solar DG or DME-owned solar that is near Denton. For Denton to achieve the aggressive goals outlined in the CAAP, the solar DG systems will likely have to be incentivized to meet the targets.

DME action: Not applicable yet.

Requirement for local solar generation: Not applicable yet.

This is relevant to the VOS rate discussion because the ability to achieve the customer-sited policy objectives is dependent on customers installing solar DG as a result of their own economic or social decisions. Currently DME's 100% renewable power supply objective does not rely upon customer sited solar DG installations. However, incremental solar DG installations could be considered energy efficiency improvements as increasing DME's portfolio of renewable resources could be mitigated by these sources of renewable energy. The VOS credit may impact customers' decision to install future solar DG or participate in future community solar projects.

City Policies Specific to DME

Of the policies and plans listed above, none of the policies require DME to provide an incentive to promote the installation of solar DG. Since DME has already achieved its goal of 100% renewable energy, it may be unnecessary to incentivize solar DG for several reasons. First, with renewable energy sources already comprising the entirety of their energy portfolio, DME has sufficient clean energy available for consumption, rendering additional solar generation redundant. Additionally, the cost-effectiveness of incentivizing rooftop solar diminishes when renewable energy sources already fulfill the energy demand without the need for supplementary generation. Redirecting funds from solar rebates toward other energy efficiency initiatives can further optimize resource allocation, addressing broader sustainability goals such as promoting energy conservation practices among consumers and catering to a wider range of consumers, and addressing varied energy needs within the community.

For Denton to achieve the aggressive goals outlined in the CAAP, the solar DG systems will likely have to be incentivized to meet the targets. DME could incentivize solar DG a variety of ways:

- Through the VOS rate.
 - The customers could be compensated at a rate above Avoided Cost for their personal investment. The amount of the credit may not be cost based and could be subjective. Depending on the policy, the customer may be paid this incentive indefinitely.
- Waive application or interconnection fees.
 - Waiving the application and connections fees will save the customer money at the time of installation. However, there is a cost for DME to provide these services. If the solar DG customer is not paying the fees, then the remaining customers will have to cover the costs.
- Streamline application or interconnection permits and inspections.
 - Streamlining the process will save the customer time and allow them to install their system faster.
- Grants or rebates for customers that install solar DG.

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- Providing grants or rebates upfront will save the customer money at the time of installation. However, there is a cost for DME to provide these grants or rebates. If the solar DG customer is not paying the full cost of their solar DG, then the remaining customers will have to cover the costs.
- Low-cost loans.
 - Low interest rate loans will save solar DG customers money during the life of the loan. However, if DME offers loans at interest rates lower than what DME pays, then there is a potential subsidy from DME to the customer.

We recommend that the City Council and DME discuss the above options to make decisions that support the community's goals.

Federal Policies Supporting Solar DG

The federal government has offered a variety of programs over the years to support and incentivize solar DG. The Inflation Reduction Act extended the Federal Solar Tax Credit until 2035.³³ The credit is a tax credit that can be claimed on federal income taxes for a percentage of the cost of a solar DG system paid for by the taxpayer. For years 2022–2032, a tax credit can be claimed for 30% of installation costs for the following items:

- Solar electric panels
- Solar water heaters
- Wind turbines
- Geothermal heat pumps
- Fuel cells
- Battery storage technology

State Policies Supporting Solar DG

The state of Texas offers one incentive for customers who install solar DG:

- Texans who install solar can exempt the value the solar panels add to their properties when determining their property tax.³⁴

³³ <https://www.energy.gov/eere/solar/homeowners-guide-federal-tax-credit-solar-photovoltaics>

³⁴ <https://comptroller.texas.gov/> See the Texas Property Tax Exemptions data February 2024.

Section 5

INDUSTRY BENCHMARKING

As part of this Study, we reviewed other Texas utilities' approaches to metering and billing for customers with solar DG.

Austin Energy

Austin Energy (AE) is a municipally owned electric utility serving the city of Austin, Texas. With over 480,000 customers, AE is one of the largest public power utilities in Texas and the U.S. AE currently has an energy portfolio made up of 60% renewable energy and 40% non-renewable energy.³⁵

AE employs a VOS rate system to compensate solar customers for energy generated by their on-site systems, incorporating three key components: Avoided Cost, Societal Benefits, and Policy Driven Incentives. AE utilizes the same approach outlined in this Report to calculate the three components of the VOS. Currently set at \$0.0991/kWh, AE's VOS rate applies to all energy generated by solar DG and facilitated by dual metering, which enables separate tracking of energy generation and consumption. This arrangement allows AE to credit all solar generation at the VOS rate and bill consumption at the retail rate, a model known as Buy-All Sell-All.

DME currently does not have two meters, limiting them to measuring energy flow in a single direction at one time. Consequently, when a customer consumes more energy than they generate, the meter records a positive read, and vice versa. These limitations restrict DME's capacity to implement a Buy-All Sell-All approach.

Pedernales Electric Cooperative

Pedernales Electric Cooperative (PEC) is a member-owned cooperative (co-op) electric utility serving Central Texas. With over 400,000 customers, PEC is the largest co-op electric provider in Texas and one of the biggest in the U.S. PEC uses a similar approach to AE to develop their Sustainable Power Credit (VOS rate equivalent). However, PEC utilizes only the Avoided Cost portion and does not include any Societal Benefits or Policy Driven Incentives as part of their credit. Their reasoning is that since they are not actual and direct costs incurred by PEC, they would result in subsidies paid by non-solar DG members.³⁶

As they operate under a NEM billing structure, PEC ensures members receive full retail credit for their generated electricity, with surplus energy fed back into the grid credited at a rate of \$0.069554/kWh under the Sustainable Power Credit.³⁷

³⁵ <https://austinenergy.com/about/environment/renewable-power-generation>

³⁶ <https://www.pec.coop/wp-content/uploads/2023/11/Interconnected-Generation-Value-of-Solar-Study-Report.pdf>

³⁷ <https://www.pec.coop/dg-interconnection-rates/#:~:text=The%20Sustainable%20Power%20Credit%20has,PEC%20from%20direct%20avoided%20costs.>

CPS Energy

CPS Energy (CPS) is the largest municipally owned electric utility in Texas and the U.S., serving over 800,000 customers in the city of San Antonio, Texas and surrounding areas. CPS currently has an energy portfolio made up of 10% renewable energy, 25% nuclear energy, and 65% non-renewable energy.³⁸

CPS utilizes a NEM billing approach, giving customers full retail credit up to the amount they consume and providing an Avoided Cost rate for excess generation. Credits can be carried forward to subsequent bills. CPS has rooftop solar incentives to support the adoption of solar for small businesses, schools, and non-profit organizations that is based on a dollar per AC Watt of capacity installed.³⁹

CoServ

CoServ is a member-owned electric cooperative serving North Texas with over 470,000 combined electric and gas meters. CoServ utilizes bidirectional meters and credits all kWh in excess of customer usage at \$0.0821/kWh⁴⁰. Credits can be used toward the non-generation portions of a customer's bill and if additional credits still exist, they can be applied to subsequent months' bills.

Garland Power and Light

Garland Power and Light (GP&L) is a municipally owned utility providing electric service to over 70,000 customers in the city of Garland, Texas. GP&L utilizes bidirectional meters and credits all kWh in excess of customer usage at \$0.0669/kWh.⁴¹

Bryan Texas Utilities

Bryan Texas Utilities (BTU) is a municipally owned utility serving the city of Bryan, Texas and providing electric services to over 60,000 residents and businesses. BTU currently has an energy portfolio of 8% renewable, 15% market purchases, and 77% non-renewables.⁴²

BTU compensates customers for the energy generated by their DG systems, crediting the value against their utility bills based on metered kWh input at BTU's applicable Power Supply Adjustment charge. Any surplus credit remaining after offsetting energy consumption can be requested as a check payment from BTU, with a request limit of twice annually.⁴³

New Braunfels Utilities

New Braunfels Utilities (NBU) is a municipally owned utility serving the city of New Braunfels, Texas and providing electric service to over 50,000 residential and commercial customers. NBU gives full retail credit for any power generated by the customer which can be used to offset the amount of power purchased from NBU. However, NBU does not purchase excess generation.⁴⁴ Additionally, NBU's solar DG customers

³⁸ <https://www.cpsenergy.com/en/about-us/programs-services/energy-generation.html>

³⁹ <https://www.cpsenergy.com/content/dam/corporate/en/Documents/CPSE%20Solar%20Program%20Manual.pdf>

⁴⁰ <https://www.coserv.com/help/how-is-dg-with-buyback-bill-calculated/>

⁴¹ <https://www.gpltx.org/residential/solar-installation-requirements>

⁴² <https://www.btutilities.com/wp-content/uploads/2023/04/2022-BTU-Annual-Report-WEB.pdf>

⁴³ [https://www.boarddocs.com/tx/cobtx/Board.nsf/files/BZVJBK4C4688/\\$file/Electric%20Rates%202021%20Final.pdf](https://www.boarddocs.com/tx/cobtx/Board.nsf/files/BZVJBK4C4688/$file/Electric%20Rates%202021%20Final.pdf)

⁴⁴ <https://www.nbutexas.com/wp-content/uploads/2023/04/FY-2024-Electric-Rates.pdf>

are assessed a surcharge of \$1.58 per kW of system size.⁴⁵ NBU’s solar DG customers are required to have two meters. NBU offers rebates on a \$/watt of capacity installed.⁴⁶

Georgetown Electric Utility

The City of Georgetown provides electric services to its citizens and is in the process of updating its existing NEM rate program. One recent change made was to adopt an avoided cost process for compensating excess energy from solar DG customers. The avoided cost is based on a historic analysis of ERCOT market pricing (including avoided AS costs) as well as avoided transmission costs, similar to the manner proposed for the DME Avoided Cost herein. The City of Georgetown recently reviewed a proposal from staff to move to a “Buy-All Sell-All” model for new solar DG, as well as to incorporate a fixed cost recovery fee for solar DG paired with battery storage.

DME

DME gives full retail credit for any power generated by the customer up to the amount of energy the customers uses. Customers who generate more solar power than they consume—referred to as net generators—receive a Renewable Cost Adjustment (RCA) for the surplus energy they produce on a \$/kWh basis. DME’s RCA rate utilizes the following formula to establish the RCA rates.⁴⁷

$$\text{Renewable Cost Adjustment} = \frac{\text{Nodal Market Price} * \text{Renewables Hourly Output}}{\text{Total Annual Renewables Production}}$$

The current RCA rate accounts for the ERCOT Energy Price component in Table 2-3. DME’s RCA tariff permits rate adjustments on a quarterly basis. However, DME has not exercised the adjustment in several years. The current RCA rate is \$0.0381/kWh.

Summary of Texas Solar DG Metering and Billing

As shown in Table 5-1 below, nearly all Texas utilities listed use net metering with full retail credit up to their customers’ use (monthly netting) and then pay those customers an Avoided Cost rate for any excess generation. Only Austin Energy currently pays a VOS rate and has a Buy-All Sell-All metering and billing setup; however, the City of Georgetown has proposed a Buy-All Sell-All program.

⁴⁵ <https://www.nbutexas.com/wp-content/uploads/2022/09/2022-Solar-Facts-and-FAQs.pdf>

⁴⁶ https://www.nbutexas.com/wp-content/uploads/2024/01/23-20223_ResidentialSolarRebateApplicationGuidelines-02.pdf

⁴⁷ City of Denton Ordinance 20-1553.

**Table 5-1
Review of NEM Programs for Selected Texas Electric Utilities**

Utility	Billing Method	Metering Method	Credit Type: Up to Customers' Usage	Credit Type: Excess Generation (\$/kWh)
Austin Energy	Buy-All Sell-All	2 meters	Value of Solar	VOS = \$0.0991
Pedernales	Net Metering	1 meter	Retail Credit	AC = \$0.0696
CPS	Net Metering	1 meter	Retail Credit	AC = \$0.0600
CoServ	Net Metering	1 meter	Retail Credit	AC = \$0.0791
Garland Power and Light	Net Metering	1–2 meters	Retail Credit	AC = \$0.0669
Bryan Texas Utilities	Net Metering	1 meter	Retail Credit	Retail
New Braunfels Utilities	Net Metering	2 meters	Retail Credit	\$0.0000
Georgetown ⁽¹⁾	Net Billing	1 meter	Retail Credit	AC = \$0.04531
DME	Net Billing	1 meter	Retail Credit	RCA = \$0.0381

(1) Georgetown recently proposed moving to a Buy-All Sell-All program for new solar DG customers, along with a fixed charge rate for solar DG plus battery storage customers.

Section 6

SUMMARY AND RECOMMENDATIONS

Value of Solar Rate

The Value of Solar rate includes three components: the Avoided Cost rate, the Societal Benefits, and the Policy Driven Incentives. We recommend a VOS rate be used in conjunction with the Buy-All Sell-All billing and metering.

Avoided Costs

The Avoided Cost rate can be calculated in a variety of ways as explained in Section 2. The DME Avoided Cost rate based on the ERCOT market is \$0.0702/kWh. The Avoided Cost Rate based on a representative DME PPA is \$0.0379/kWh. Therefore, for the Avoided Cost we recommend a flat rate between \$0.0379 and \$0.0702/kWh.

If properly managed, the installation of battery storage can increase the value of the generation provided by the customer. Therefore, for a customer with solar DG and battery storage, we recommend a time-based Avoided Cost rate as shown in Table 2-5. However, we recommend DME evaluate fixed cost recovery concerns with solar DG paired with battery storage prior to initiating a TOU Avoided Cost rate.

Regardless of which Avoided Cost the City Council and DME choose to use, the Avoided Cost rate should be recalculated annually.

We recommend that the Avoided Cost rate be set between \$0.0379 and \$0.0702/kWh.

Societal Benefits

Including Societal Benefits in the Value of Solar rate is a policy decision for the City Council. The City Council may choose to include an environmental or societal value component to the VOS credit that is related to or supports their policy objectives. Please note that this societal benefit may not be monetarily realized by the City, unlike the monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a societal or non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Societal Benefits in their Value of Solar rate.

From a Societal Benefit point of view, the benefit of generating power with renewable energy is avoiding the emissions that would have been created from generating with fossil fuels.

Currently, carbon emissions are not regulated in Texas, and there is no federal or state market value for carbon allowances in Texas. Additionally, DME neutralizes any carbon emissions associated with serving their customers by leveraging their renewable PPAs and RECs. DME has already “avoided” the emissions associated with providing electricity to their customers.

As a result, the Societal Costs are already mitigated through this power supply strategy, and solar DG does not offer any additional value in this context.

Including Societal Benefits in a Value of Solar Rate is a policy decision for the City Council. We recommend that the Societal Benefit for solar generation for DME be set to \$0.00/kWh unless the City Council believes that including the incentive has value for the community.

Policy Driven Incentives

Similar to the Societal Benefits, including policy driven incentives in the VOS rate is a policy decision for the City Council. The City Council may choose to include a value component in the VOS credit that is related to or supports their policy objectives. Please note that this benefit may not be monetarily realized by the City, unlike monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Policy Driven Incentives in their Value of Solar rate.

None of the various City policies require DME to provide an incentive to promote the installation of solar DG. For Denton to achieve the aggressive goals outlined in the CAAP, the solar DG systems will likely have to be incentivized to meet the targets.

Including Policy Driven Incentives in a Value of Solar Rate is a policy decision for the City Council. We recommend that the Policy Driven Incentive rate for solar DG for DME be set to \$0.00/kWh unless the City Council believes that including the incentive has value for the community.

Recommended Rate to Compensate Customer Generation

Depending on whether the recent solar PPAs or the ERCOT market is used, the Avoided Cost rate varies from \$0.0379 to \$0.0702.

With DME's current Net Billing tariff, we recommend that DME pay the customers selling excess generation to the utility an Avoided Cost rate between \$0.0379 and \$0.0702/kWh.

Appendix A Tables

Table A-1
Average Monthly Bill Comparisons – Net Consumer ⁽¹⁾

Line No.	Type	Formula	Current DME Rates	Current DME Rates	VOS Rate			PPA Rate		
			Non-Solar	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing
1	Usage Charge – \$/kWh		\$0.0684 ⁽²⁾		\$0.0684	\$0.0684		\$0.0684	\$0.0684	
2	Gross Cust Usage				\$0.0702 ⁽³⁾	\$0.0702		\$0.0379 ⁽⁴⁾	\$0.0379	
3	Gross Cust Generation			\$0.0684			\$0.0684			\$0.0684
4	Bidirectional Net Energy Used			\$0.0684			\$0.0702			\$0.0379
5	Bidirectional Net Energy Sold									
6	Usage/ (Generation) – kWh									
7	Gross Cust Usage		1,200		1,200	1,200		1,200	1,200	
8	Gross Cust Generation				(800)	(800)		(800)	(800)	
9	Bidirectional Net Energy Used			694			694			694
10	Bidirectional Net Energy Sold			(294)			(294)			(294)
11	Net Usage/ (Generation)		1,200	400	400	400	400	400	400	400
12	Usage Billed									
13	Gross Cust Usage	= Line 1 * Line 5 OR Line 9	\$82.08		\$27.36 ⁽⁵⁾	\$82.08		\$27.36	\$82.08	
14	Gross Cust Generation	= Line 2 * Line 6 OR Line 9			\$0.00 ⁽⁶⁾	(\$56.16)		\$0.00	(\$30.32)	
15	Bidirectional Net Energy Used	= Line 3 * Line 7		\$47.49			\$47.49			\$47.49
16	Bidirectional Net Energy Sold	= Line 4 * Line 8		(\$20.13)			(\$20.66)			(\$11.15)
17	Total Usage Charge		\$82.08	\$27.36	\$27.36	\$25.92	\$26.83	\$27.36	\$51.76	\$36.34
18	ECA Charge – \$/kWh		\$0.0447 ⁽⁷⁾	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447
19	ECA Billed	= Line 5, Line 7 OR Line 9 * Line 15 ⁽⁸⁾	\$53.64	\$31.04	\$17.88	\$53.64	\$31.04	\$17.88	\$53.64	\$31.04
20	RCA Charge – \$/kWh			\$0.0381 ⁽⁹⁾						
21	RCA Billed	= Line 8 * Line 17		(\$11.21)						
22	TCRF Charge - \$/kWh		\$0.0135 ⁽⁷⁾	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135
23	TCRF Billed	= Line 5, Line 7 OR Line 9 * Line 19	\$16.20	\$9.37	\$5.40	\$16.20	\$9.37	\$5.40	\$16.20	\$9.37
24	Facility Charge – \$/month		\$8.67 ⁽¹⁰⁾	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67
25	Average Monthly Bill	= Lines 14 + 16 + 18 + 20 + 21	\$160.59	\$65.23	\$59.31	\$104.43	\$75.91	\$59.31	\$130.27	\$85.42
26	Difference From Current Net Billing				-9%	60%	16%	-9%	100%	31%

- (1) Average monthly bill based on summer usage in Table A-2.
(2) DME residential summer usage charge as of 10/01/2020.
(3) ERCOT VOS rate per Table 2-3.
(4) ERCOT VOS rate per Table 2-5.
(5) Line 1 (retail rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.
(6) Line 2 (VOS or PPA rate) is only applied to solar DG that exceeds the customer usage for NEM.
(7) DME energy cost adjustment charge and transmission cost recovery factor as of 04/01/2024.
(8) Line 15 (ECA rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.
(9) DME renewable cost adjustment charge as of 10/01/2020.
(10) DME residential facility charge as of 10/01/2020.



Table A-2
Hourly Summer Load Profiles – Net Consumer ⁽¹⁾

Hour	Buy All Sell All		NEM Billing	Net Billing	
	Monthly Usage	Monthly Generation	Net Billed/ (Credit)	Customer Buys from DME	Customer Sells to DME
1	47	0	47	47	0
2	42	0	42	42	0
3	38	0	38	38	0
4	35	0	35	35	0
5	32	0	32	32	0
6	30	(0)	30	30	0
7	29	(4)	25	25	0
8	29	(25)	5	5	0
9	31	(51)	(20)	0	(20)
10	34	(73)	(39)	0	(39)
11	39	(90)	(51)	0	(51)
12	46	(101)	(55)	0	(55)
13	53	(105)	(52)	0	(52)
14	59	(100)	(41)	0	(41)
15	63	(91)	(28)	0	(28)
16	67	(75)	(8)	0	(8)
17	70	(54)	16	16	0
18	72	(26)	46	46	0
19	72	(5)	67	67	0
20	69	(0)	69	69	0
21	65	0	65	65	0
22	64	0	64	64	0
23	60	0	60	60	0
24	54	0	54	54	0
	1,200	(800)	400	694	(294)

(1) Usage and generation based on representative customer for illustrative purposes. A net consumer customer is a customer that consumes more energy than their solar DG generates.

Table A-3
Average Monthly Bill Comparisons – Net Generator ⁽¹⁾

Line No.	Type	Formula	Current DME Rates		VOS Rate			PPA Rate		
			Non-Solar	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing
	Usage Charge – \$/kWh									
1	Gross Cust Usage		\$0.0684 ⁽²⁾		\$0.0684	\$0.0684		\$0.0684	\$0.0684	
2	Gross Cust Generation				\$0.0702 ⁽³⁾	\$0.0702		\$0.0379 ⁽⁴⁾	\$0.0379	
3	Bidirectional Net Energy Used			\$0.0684			\$0.0684			\$0.0684
4	Bidirectional Net Energy Sold			\$0.0684			\$0.0702			\$0.0379
	Usage/ (Generation) – kWh									
5	Gross Cust Usage		1,200		1,200	1,200		1,200	1,200	
6	Gross Cust Generation				(1,600)	(1,600)		(1,600)	(1,600)	
7	Bidirectional Net Energy Used			638			638			638
8	Bidirectional Net Energy Sold			(1,038)			(1,038)			(1,038)
9	Net Usage/ (Generation) Usage Billed		1,200	(400)	(400)	(400)	(400)	(400)	(400)	(400)
10	Gross Cust Usage	= Line 1 * Line 5 OR Line 9	\$82.08		\$0.00 ⁽⁵⁾	\$82.08		\$0.00	\$82.08	
11	Gross Cust Generation	= Line 2 * Line 6 OR Line 9			(\$28.08) ⁽⁶⁾	(\$112.32)		(\$15.16)	(\$60.64)	
12	Bidirectional Net Energy Used	= Line 3 * Line 7		\$43.65			\$43.65			\$43.65
13	Bidirectional Net Energy Sold	= Line 4 * Line 8		(\$43.65)			(\$72.88)			(\$39.35)
14	Total Usage Charge		\$82.08	\$0.00	(\$28.08)	(\$30.24)	(\$29.23)	(\$15.16)	\$21.44	\$4.30
15	ECA Charge – \$/kWh		\$0.0447 ⁽⁷⁾	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447
16	ECA Billed	= Line 5, Line 7 OR Line 9 * Line 15 ⁽⁸⁾	\$53.64	\$28.52	\$0.00	\$53.64	\$28.52	\$0.00	\$53.64	\$28.52
17	RCA Charge – \$/kWh			\$0.0381 ⁽⁹⁾						
18	RCA Billed	= Line 8 * Line 17		(\$39.55)						
19	TCRF Charge - \$/kWh		\$0.0135 ⁽⁷⁾	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135
20	TCRF Billed	= Line 5, Line 7 OR Line 9 * Line 19	\$16.20	\$8.61	\$0.00	\$16.20	\$8.61	\$0.00	\$16.20	\$8.61
21	Facility Charge – \$/month		\$8.67 ⁽¹⁰⁾	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67
22	Average Monthly Bill	= Lines 14 + 16 + 18 + 20 + 21	\$160.59	\$6.26	(\$19.41)	\$48.27	\$16.58	(\$6.49)	\$99.95	\$50.11
23	Difference From Current Net Billing				-410%	672%	165%	-204%	1498%	701%

(1) Average monthly bill based on summer usage in Table A-4.
(2) DME residential summer usage charge as of 10/01/2020.
(3) ERCOT VOS rate per Table 2-3.
(4) ERCOT VOS rate per Table 2-5.
(5) Line 1 (retail rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.
(6) Line 2 (VOS or PPA rate) is only applied to solar DG that exceeds the customer usage for NEM.
(7) DME energy cost adjustment charge and transmission cost recovery factor as of 04/01/2024.
(8) Line 15 (ECA rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.
(9) DME renewable cost adjustment charge as of 10/01/2020.
(10) DME residential facility charge as of 10/01/2020.

Table A-4
Hourly Summer Load Profiles – Net Generator ⁽¹⁾

Hour	Buy All Sell All		NEM Billing	Net Billing	
	Monthly Usage	Monthly Generation	Net Billed/(Credit)	Customer Buys from DME	Customer Sells to DME
1	47	0	47	47	0
2	42	0	42	42	0
3	38	0	38	38	0
4	35	0	35	35	0
5	32	0	32	32	0
6	30	(0)	30	30	0
7	29	(9)	21	21	0
8	29	(49)	(20)	0	(20)
9	31	(102)	(71)	0	(71)
10	34	(146)	(112)	0	(112)
11	39	(180)	(141)	0	(141)
12	46	(203)	(157)	0	(157)
13	53	(210)	(157)	0	(157)
14	59	(199)	(141)	0	(141)
15	63	(183)	(119)	0	(119)
16	67	(150)	(83)	0	(83)
17	70	(108)	(37)	0	(37)
18	72	(52)	20	20	0
19	72	(10)	62	62	0
20	69	(0)	69	69	0
21	65	0	65	65	0
22	64	0	64	64	0
23	60	0	60	60	0
24	54	0	54	54	0
	1,200	(1,600)	(400)	638	(1,038)

(1) Usage and generation based on representative customer for illustrative purposes. A net generator customer is a customer that generates more energy from their solar DG than they consume.

NewGen Strategies & Solutions



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www.newgenstrategies.net

City of Denton



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Denton, Texas
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AGENDA INFORMATION SHEET

DEPARTMENT: City Auditor’s Office

CITY AUDITOR: Madison Rorschach

DATE: September 11, 2024

SUBJECT

Request for Advisory Opinion No. 24-002, received August 30, 2024, from Mayor Hudspeth concerning potential conflict of interest and improper use of influence applicability and recusal recommendation.

BACKGROUND

On August 30, 2024, the City Auditor received an Advisory Opinion request from Mayor Gerard Hudspeth regarding a potential conflict of interest and improper use of influence regarding an upcoming City Council Deliberation regarding a “Value of Solar Study.” According to the received request, Mayor Hudspeth has solar panel that generate energy for his residence and so receives credit or payment from the City for the generated energy. Mayor Hudspeth would like a recusal recommendation regarding the discussion of solar program rates, since he would receive a benefit from the

According to Denton Municipal Electric leadership, almost 1,300 of DME’s 67,000 customers participate in the solar program. Information about the City of Denton’s Solar Program is included in Exhibit 3.

Section 2-278 of the City of Denton’s Code of Ordinances allows any City Official to request an Advisory Opinion on a question of compliance with the Ethics Ordinance. A Panel of the Board of Ethics is required to issue Advisory Opinions upon request within thirty (30) days of receipt.

DISCUSSION

Based on the received request, the Board of Ethics has generally been requested to answer the following three questions:

1. Does Mayor Hudspeth’s participation in the City of Denton’s solar program create a Conflict of Interest, per the Ethics Ordinance?
2. Would Mayor Hudspeth participating in Deliberations on an item involving the City of Denton’s solar program be considered improper use of influence, per the Ethics Ordinance?

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

None.

EXHIBITS

1. Agenda Information Sheet
2. Received Request
3. Solar Program Frequently Asked Questions

Respectfully submitted:

Madison Rorschach, 940-349-7228
City Auditor

**PART I
CHARTER¹**

ARTICLE I. INCORPORATION, FORM OF GOVERNMENT AND POWERS

Sec. 1.01. Incorporation.

The inhabitants of the City of Denton, in Denton County, Texas, within the corporate limits as now established or as hereafter established in the manner prescribed by this charter, shall be and continue to be municipal corporation and the inhabitants thereof shall be a body politic and corporate in perpetuity under the name of the "City of Denton," possessing all power, property and interests which it possessed immediately prior to the time this charter takes effect or may hereafter acquire, and having the duties, obligations and liabilities now incumbent upon or hereafter incurred by the city as a municipal corporation.

Sec. 1.02. Boundaries.

The boundaries and limits of the City of Denton until changed in the manner herein provided, shall be the same as have heretofore been established and as exist on the date of the adoption of this charter, which boundaries are more fully set out and described by metes and bounds in a book entitled "Official Corporate Limits of the City of Denton, Texas," which is now, and shall hereafter be, on file in the office of the city secretary of the City of Denton.

Sec. 1.03. Extension of city limits.

The city council, by a vote of not less than four-fifths (4/5) of its membership, shall have the power by ordinance to provide for the alteration and extension of said boundary limits, and the annexation of territory lying adjacent to the City, with or without the consent of the inhabitants of the territory annexed. Upon the introduction of any such ordinance to the City Council, such ordinance shall be published one time in the official newspaper of the City of Denton. Amendments may later be incorporated into the proposed ordinance by a vote of not less than four-fifths (4/5) of the membership of the City Council and publication one time in the official newspaper of the City of Denton. The proposed ordinance, or any amendment thereof shall not thereafter be finally acted upon until at least thirty (30) days after the publication thereof; and upon the final passage of any such ordinance, or any amendment thereto, the boundary limits of the City shall thereafter be as fixed thereby. When any additional territory has been so annexed, same shall be a part of the City of Denton, and the property situated therein shall be subject to and shall bear its pro rata part of the taxes levied by the city, and the inhabitants thereof shall be entitled to and shall possess all the rights and privileges of the citizens of the City of Denton, and shall be under obligations as such citizens.

¹Editor's note(s)—Published herein is the city's Home Rule Charter which was adopted by the voters at an election held on February 24, 1959. The original arrangement and section numbers have been retained. Subsequent amendments to the Charter are denoted by a history note at the end of the affected section and/or by a note explaining the effect of the amendment. Obviously misspelled words have been corrected without notation. Words added for clarity are enclosed in brackets.

Sec. 1.04. Form of government.

The municipal government provided by this charter shall be known as the "council-manager government." Pursuant to its provisions and subject only to the limitations imposed by the state Constitution and by this charter, all powers of the City shall be vested in an elective council, hereinafter referred to as "the council," which shall enact local legislation, adopt budgets, determine policies and appoint the city manager, who shall execute the laws and administer the government of the city. All powers of the city shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

Sec. 1.05. Powers of the city.

The City of Denton shall have and may exercise all the powers granted to cities by the Constitution or laws of Texas including specifically those powers made available to cities of more than five thousand (5,000) inhabitants by what is known as the Home Rule Amendment to the Constitution of Texas (Article XI, Section 5 and the Home Rule Enabling Act (Vernon's Texas Codes Annotated, Texas Local Government Code Section 5.004, Chapter 9, Chapter 26, and Subchapter E of Chapter 51), as these laws now read or may hereafter be amended. The city may acquire property within or without its corporate limits for any municipal purpose; may cooperate with the government of Texas or any agency thereof, or with the federal government or any agency thereof, or with the government of any county, city, or political subdivision to accomplish any lawful purpose for the advancement of the health, morals, safety, convenience, or welfare of the city or its inhabitants; may sell, lease, mortgage, hold, manage, and control such property as its interest may require; provided the city shall not sell, convey, lease, mortgage, or otherwise alienate the entire assets of any public utility system or any portion thereof essential to continued effective utility service without the prior approval by a majority of the qualified voters of the city who vote at an election held for this purpose; and may exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or the Constitution or laws of Texas. The enumeration of particular powers in this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the Constitution and general laws of this state it would be competent for this Charter to specifically enumerate.

(Ord. No. 99-057, Amend. No. 2, 2-16-99, ratified 5-1-99)

Sec. 1.06. Liabilities, exemptions and limitations.

- (a) No property belonging to the city shall be subject to any execution of any kind or nature.
- (b) No fund belonging to the city shall be subject to garnishment, attachment or sequestration, and the city shall never be required to answer in any garnishment proceedings.
- (c) No assignment of wages or other compensation earned, or to be earned, by any employee of the city shall be valid and the city shall never be required to recognize any such assignment or to answer in any proceeding thereon.
- (d) The City of Denton shall never be liable for death or personal injury of a person or for property damages of any kind unless within ninety (90) days after the occurrence causing the damage, death, injury, or destruction a notice in writing by or on behalf of the person injured or claiming damages, if living, or the person's representative, if dead, or the owners of the property injured or destroyed is delivered to the city manager stating specifically and accurately in complete detail when, where, and how the exact death, injury, destruction, or damages occurred, the full extent of the injury, the basis of the claim, and the amount of damages claimed or asserted. This notice shall also include the residence of the claimant by street number on the date the claim is presented, the residence of the claimant for six (6) months immediately preceding

the occurrence of the death, injury, or destruction, and the names and addresses of all witnesses that are known at the time upon who it is relied to establish the claim for damages; provided, however, nothing in this subsection shall be construed to affect or repeal the provision in subsection (e) of this section relating to the liability of the city for damages on account of injuries received on the public streets, highways, alleys, grounds, public works, and public places of the city.

- (e) The City of Denton shall never be liable for personal injury or property damages resulting from any defect in any public street, highway, alley, grounds or public work of the city unless the specific defect causing the injury or damage shall have been known to the city manager from personal inspection or written notice thereof for a period of at least twenty-four (24) hours prior to the occurrence of the injury or damage and proper diligence shall not have been used to rectify the defect after such inspection or notice. Such notice shall be required whether the defect arose from any act or omission of the city itself through its agent or employee, or otherwise.
- (f) No provision of this section shall ever be so construed to expand the liability of the city.

(Ord. No. 99-057, Amend. No. 3, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 2, 8-28-06, ratified 11-7-06)

Sec. 1.07. Gender neutral.

Whenever used in this Charter, a word importing the masculine gender only shall extend and be applied to include females, and, where applicable, to firms, partnerships, and corporations, as well as males.

(Ord. No. 99-057, Amend. No. 4, 2-16-99, ratified 5-1-99)

ARTICLE II. THE COUNCIL

Sec. 2.01. Number, selection and term.

- (a) The city council shall have seven (7) members, six (6) councilpersons and a mayor. The manner of their election is prescribed herein. Each councilperson shall be elected to and occupy a place on the council, such places being numbered one (1), two (2), three (3), four (4), five (5) and six (6). The mayor's position on the council shall be place seven (7).
- (b) Four (4) members of the council whose positions shall be places one (1), two (2), three (3) and four (4), shall be residents of and elected by the qualified voters of single-member geographical districts of the city, known as districts one (1), two (2), three (3) and four (4), as such districts may from time to time be determined by the city council in accordance with Section 2.01(d), and created and described by ordinance. Two (2) members of the council and the mayor shall be elected by the qualified voters of the entire city, commonly known as at large. One (1) at large member, place five (5), shall be a resident of district one (1) or two (2), and one (1) at large member, place six (6), shall be a resident of district three (3) or four (4).
- (c) (1) Each member of the council including the mayor shall hold a place on the city council, and shall be elected to such place for a two-year term. No member of the council or the mayor, who has been elected to three (3) consecutive full terms in a place, shall be eligible to file for election for that same place, whether elected before or after the effective date of this provision, without having first been off the council for at least one annual council election cycle. Nothing herein shall be deemed to prohibit the council members or the mayor from being elected to other places on the council or as mayor, so long as otherwise eligible, except that no council member or the mayor shall be elected to or serve for more than twelve (12) consecutive years.

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- (2) A person who has become ineligible to serve pursuant to Section 2.01(c)(1) shall not be eligible to be elected to a place on the council or as mayor without having first been off the council for at least one annual council election cycle, after which such person shall regain eligibility for office, if otherwise eligible under this Charter.
- (d) The council shall from time to time create and describe by ordinance election districts known as districts one (1), two (2), three (3) and four (4). Such districts shall be created so that each will contain, as nearly as possible, a population equivalent to the others, according to the latest available census data.
- (Ord. No. 76-12, Amend. No. 1, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2009-199, Amend. No. 1, 9-1-09, ratified 11-3-09)

Sec. 2.02. Qualifications.

- (a) Each member of the council, in addition to having the other qualifications prescribed by law:
- (1) Shall be registered to vote in the city;
 - (2) Shall have domiciled for at least one year next preceding his or her election within the corporate limits of Denton and, if running within a single member geographic district, or at large place five (5) requiring a domicile in district one (1) or two (2), or at large place six (6) requiring a domicile in district three (3) or four (4), as set forth in Section 2.01, for at least one year preceding his or her election in the district in which elected; further, shall continuously be domiciled within the corporate limits of Denton and, if elected within a single member geographic district, or at large place five (5) requiring a domicile in district one (1) or two (2), or at large place six (6) requiring a domicile in district three (3) or four (4), in the district in which elected throughout his or her term of office.
 - (3) Shall not hold any other public office of emolument;
 - (4) Shall have and maintain the eligibility requirements for municipal officers set forth in Section 141.001 of the Texas Election Code, Vernon's Texas Civil Statutes Annotated hereinafter referred to as "Election Code" as it may now read or hereafter be amended.
- (b) If a member of the council shall, after being elected, cease to possess any of these qualifications or eligibility requirements, or shall hold another office of emolument, or enter a plea of guilty to a felony, or be convicted of a felony he or she shall immediately forfeit his or her office.
- (c) City Councilmember Stipend. Each member of the City Council shall receive compensation in the form of a monthly stipend as set forth in this section. The initial monthly stipend shall be seven hundred fifty dollars (\$750.00) for each member of the City Council elected from a district or at large position, and one thousand dollars (\$1,000.00) for the Mayor elected at large. These initial amounts shall become effective on ratification of this charter provision.

City Council may, by a separate ordinance, approve an adjustment in the stipend no more frequently than once per fiscal year, but no increase in such compensation shall take effect until commencement of the terms of the Mayor and/or Council Members elected at the next regular election. Any increase in the amount of the stipend shall not exceed three (3) percent of the then-current stipend amount unless approved by a two-thirds ($\frac{2}{3}$) vote of the Council. The stipend shall be reported in the annual city budget as a separate line item.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 5, 2-16-99, ratified 5-1-99; Ord. No. 2009-199, Amend. No. 2, 9-1-09, ratified 11-3-09; Ord. No. 2017-237, § 1(Amend. A, E), 8-15-17, ratified 11-7-17; Ord. No. 2017-373, § 2(Props. A, E), 11-20-17)

Sec. 2.03. Presiding officer: Mayor and mayor pro tem.

The mayor shall preside at the meetings of the council and shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of martial law, but shall not interfere with the managerial duties and responsibilities of the city manager. The mayor shall have all the same powers and privileges as any other councilmember, including entitlement to vote upon all matters considered by the council, but shall have no veto power. The council shall, as soon as possible after the annual election, elect from its membership a mayor pro tem. The mayor pro tem shall act as mayor during the absence or disability of the mayor. (Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2009-199, Amend. No. 3, 9-1-08, ratified 11-3-09)

Sec. 2.04. Vacancies in council.

Where a vacancy in any place on the council, including that of mayor, shall occur, the vacant place shall be filled by a special election, and, where necessary, by a runoff election, in the same manner as provided in this Charter for the regular election of the councilperson. Such special election shall be held on the first authorized uniform election date following the creation of the vacancy occurring on or after the thirtieth day after the date the election is ordered. The runoff election, where necessary, shall be held in accordance with the requirements of the Election Code and all other applicable laws; provided, however, that where a vacancy shall occur within one hundred and twenty (120) days of a regular election, no special election to fill the vacancy shall be called, unless more than one vacancy occurs.

(Ord. No. 76-12, Amend. No. 2, 4-5-76; Ord. No. 99-057, Amend. No. 6, 2-16-99, ratified 5-1-99; Ord. No. 2009-199, Amend. No. 3, 9-1-09, ratified 11-3-09)

Sec. 2.05. Meetings of the council.

- (a) As soon as practicable after each city council election and in accordance with state law, the council shall meet at the city hall and the newly-elected members shall qualify and assume the duties of office. Thereafter, the council shall meet regularly at city hall at such times as may be prescribed by its rules but not less frequently than once each calendar month. Special called meetings may be held from time to time at city hall or other locations accessible to the public.
- (b) Special meetings shall be called by the city secretary upon request of the mayor, city manager, or a majority of the members of the council.
- (c) The city manager shall attend all meetings of the council and may take part in the discussion of all matters coming before the council but shall have no vote.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 3, 8-28-06, ratified 11-7-06)

Sec. 2.06. Quorum, voting.

- (a) A majority of the members of the council shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of the council shall be necessary to repeal any ordinance or take any official action in the name of the city, except as otherwise provided in this Charter or by the general laws of the State of Texas.
- (b) The ayes and noes shall be taken upon the passage of all ordinances or resolutions and the vote of each member shall be recorded in the minutes.

(Ord. No. 76-12, Amend. No. 3, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 2.07. Rules of procedure, minutes.

The council shall determine its own rules of procedure and order of business. Except as may otherwise be provided by state law, such as certain executive sessions under the Texas Open Meetings Act, being Chapter 551 of the Texas Government Code, minutes of all meetings of the council shall be taken and preserved as a permanent record open to the public for inspection.

(Ord. No. 2006-232, Amend. No. 4, 8-28-06, ratified 11-7-06)

Sec. 2.08. Powers of the council.

Except as otherwise provided by this charter all powers of the city and the determination of all matters of policy shall be vested in the council. Without limitation of the powers granted or delegated to the city by the Constitution, statutes, or this Charter, the council shall have power to:

- (a) Appoint and remove the city manager.
- (b) Appoint and remove the city attorney, the city auditor, and the municipal court judge.
- (c) Approve members of all boards, commissions and committees serving the city.
- (d) Adopt the budget of the city.
- (e) Fix the salary of the city manager, city auditor, city attorney, and the municipal court judge.
- (f) Authorize by ordinance the issuance of bonds, assignments of revenue or warrants.
- (g) Approve plats.
- (h) Adopt and modify the official map of the city.
- (i) Adopt and modify the zoning plan, including any and all zoning and land use regulations to the fullest extent allowed by law.
- (j) Provide for the establishment and designation of fire limits and prescribe the kind and character of buildings, structures, or improvements which may be erected therein, and provide for the condemnation of dangerous or dilapidated buildings or structures which increase the fire hazard and the manner of their removal or destruction.
- (k) Adopt and modify the building code.
- (l) After receiving a recommendation from the planning commission adopt, modify and carry out plans proposed by the planning commission for the clearance of slum districts and rehabilitation of blighted areas, and for the replanning, improvement and redevelopment of any area or district which may have been destroyed in whole or in part by disaster.
- (m) Regulate, license and fix the charges or fares made by any person, firm or corporation owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets or alleys of the city.
- (n) Provide by ordinance for the exercise of the police powers of the city.
- (o) Establish and maintain a free public library and to cooperate for such purposes with any person, firm, association or political subdivision in the manner prescribed by ordinance.
- (p) Provide by ordinance for the exercise by this city of any and all powers of local self-government not made self-enacting by this charter or by statute.

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- (q) Inquire into the conduct of any office, department or agency of the city and make investigations of municipal affairs.
 - (r) Provide for an independent audit.
 - (s) Perform the districting and redistricting function.

(Ord. No. 76-12, Amend. No. 4, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 5, 8-28-06, ratified 11-7-06)

Sec. 2.09. Ordinances.

- (a) In addition to such acts of the council as are required by statutes or by this charter to be by ordinance, every act of the council establishing a fine or other penalty or providing for the expenditure of funds or for the contracting of indebtedness, shall be by ordinance. The enacting clause of all ordinances shall be: "The Council of the City of Denton hereby ordains:"
- (b) Every ordinance shall be introduced in written, printed, or electronic form and passed in compliance with section 2.06 of this Article, authenticated by the signatures of the mayor (or mayor pro tem) and the city secretary and systematically recorded in an ordinance book in a manner approved by the council. It shall be necessary to record only the caption or title of each ordinance in the minutes of the council.
- (c) A full text of every penal ordinance, or in lieu thereof a descriptive caption or title stating in summary the purpose of the ordinance and the penalty for violation thereof, shall be published at least twice in the official newspaper of the City of Denton within ten (10) days after the passage of such ordinance; provided that any penal ordinance shall become effective not less than fourteen (14) days from the date of its passage. All other ordinances, except those specifically required by this charter to be published, are not required to be published in either the official newspaper of the city or in any other publication, and such ordinances shall become effective upon passage or on the date specified therein.
- (d) The council shall have power to cause the ordinances of the city to be corrected, amended, revised, codified and printed in code form as often as the council deems necessary and advisable, and such printed code, when adopted by the council, shall be in full force and effect without the necessity of publishing the same or any part thereof in the official newspaper except that the ordinance adopting the same shall be published one time in the official newspaper of the city. Such printed code shall be admitted in evidence in all courts and places without further proof.

(Ord. No. 2006-232, Amend. No. 6, 8-28-06, ratified 11-7-06)

Sec. 2.10. Council not to interfere in appointments or removals.

Neither the council nor any of its members shall direct or request the appointment of any person to, or his or her removal from, office by any officer appointed by the city council under Section 2.08 of this Charter or by any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the officers appointed by the city council and neither the council nor any member thereof shall give orders to any subordinates of the officers appointed by the city council, either publicly or privately.

(Ord. No. 2009-199, Amend. No. 4, 9-1-09, ratified 11-3-09)

Sec. 2.11. Employee bonds.

The council shall require bonds of all municipal officers and employees who receive or pay out any monies of the city. The amount of such bonds shall be determined by the council and the cost thereof shall be borne by the city.

Sec. 2.12. City secretary.

The city secretary shall be appointed by the city manager subject to the approval of the council. He shall serve as clerk of the council, give notice of its meetings, keep the journal of its proceedings, authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions, and perform such other duties as this charter may provide or as the city manager may assign him.

Sec. 2.13. Independent annual audit.

- (a) Prior to the end of each fiscal year, the council shall designate a certified public accountant who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the city government and shall submit his report to the council and to the city manager. Such accountant shall have no personal interest, direct or indirect, in the fiscal affairs of the city government or of any of its officers. He shall not maintain any accounts or records of the city business, but within specifications approved by the council, shall post-audit the books and documents kept by the department of finance and any separate or subordinate accounts kept by any other office, department or agency of the city government.
- (b) A copy of such audit shall be kept in the office of the city secretary subject to inspection by any citizen during regular office hours.

ARTICLE III. NOMINATIONS AND ELECTIONS

Sec. 3.01. Municipal elections.

- (a) The regular election for the choice of members of the City Council as provided in Article II shall be held each year on the uniform election day for municipal elections in May established by the Election Code. The Council may by resolution or ordinance order special elections which shall be held as nearly as practicable according to the provisions for a regular election. The hours and places for holding all City elections shall be determined by the City Council. All elections shall be conducted in accordance with the Election Code and all other applicable laws as they now read or may hereafter be amended.
- (b) On the first Saturday in April immediately following adoption of Section 2.01, and the drawing of election district boundaries by the council, the voters shall elect:
 - (1) The mayor, place seven (7), for a term of two (2) years.
 - (2) Two (2) councilmembers, places five (5) and six (6), for terms of two (2) years each.
 - (3) One (1) councilmember for an interim term of one (1) year. This position shall be denominated for such interim term as place four (4) and such councilmember shall be elected from the city at large and may be a resident of any district.

At the next following regular annual municipal election after the one referred to above in this section, the district and at large system provided in Section 2.01 shall take full effect.

- (c) Councilmembers holding office at the time the charter amendments to Section 2.01 are adopted (places one (1), two (2) and three (3)) shall serve the remainder of their unexpired terms as at large members of the council.
- (d) If any councilmember whose term would not otherwise expire at the time of the canvass of the results of the election specified in Section 3.01(b) shall enter said election, such councilmember's term shall be deemed to have been vacated at the time of the canvass of said election results, whether the candidacy of said councilmember is successful or not.
- (e) Neither the mayor nor any member of the council shall become a candidate for election to any position on the council, other than for reelection to the same seat, unless such candidate shall first submit to the city secretary his written resignation from the council to be effective at the time of the canvass of the results of the next regularly scheduled election. If such candidate's unexpired term would otherwise extend beyond the date of such canvass, the city secretary shall notify the council and an election shall be held on the date of the next regularly scheduled election to fill the unexpired term of said resigning councilmember.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 7, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 7, 8-28-06, ratified 11-7-06)

Sec. 3.02. Nominations.

- (a) Any qualified person may have his or her name placed on the ballot as a candidate for councilmember by filing with the city secretary not more than ninety (90) days nor less than thirty (30) days prior to the date of election an application in substantially the following form:

I, _____, do hereby declare that I am a candidate for the Council of the City of Denton and request that my name be printed upon the official Ballot for that office in the next city election. I am aware of the nepotism law, chapter 573 of the Government Code. I am qualified to serve on the council with respect to the qualifications set forth in the Charter. I reside at _____, Denton, Texas.

	Signed
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The foregoing petition was filed with the City Secretary on the ____ day of _____, 19__.

	City Secretary
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- (b) As an alternative method, any qualified person may be nominated for councilmember by a written petition signed by the greater twenty five (25) qualified voters of the city or one-half of one percent of the total votes received by all candidates for mayor in the most recent mayoral general election, provided the candidate signs the petition certifying his or her acceptance. One such petition shall be circulated and signed for each nominee or candidate. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify it. Nominating petitions shall be filed with the city secretary not more than ninety (90) days nor less than thirty (30) days before the election day, and shall be in substantially the following form:

We, the undersigned electors of the City of Denton, hereby nominate _____ whose residence address is _____ as a candidate for councilmember of the City of Denton, to be voted for at the election to be held on the ____ day of _____, 19__; and we individually certify that we are qualified to vote for a candidate for the council.

Name	Address	Date of Signing
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(Spaces for the greater twenty five (25) or one-half of one percent of the total votes received for candidates for Mayor signatures and required data)

Acceptance of Nomination

I am qualified to serve on the council of the City of Denton with respect to the qualifications set forth in this Charter. I hereby accept the nomination for councilmember and agree to serve if elected.

	Signature of Candidate
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Statement of Circulator

The undersigned is the circulator of the foregoing petition containing signatures. Each signature was appended thereto in my presence and is the genuine signature of the person whose name it purports to be.

	Signature of Circulator
	Address of Circulator

The foregoing petition was filed with the City Secretary on the ____ day of _____, 19__.

	City Secretary
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(Ord. No. 99-057, Amend. No. 8, 2-16-99, ratified 5-1-99)

Sec. 3.03. Official ballot.

The city secretary shall make up the official ballot from the names presented to him. The order in which the names of the candidates for each place shall appear on the ballot shall be determined by lot in a drawing held under the supervision of the city secretary, at which drawing each candidate or his designated representative shall have a right to be present. All official ballots shall be printed at least twenty (20) days prior to the date of any general or special election, and absentee voting shall be governed by the general laws of the State of Texas.

Sec. 3.04. Canvass: Election returns, results.

- (a) Immediately after counting the votes, the presiding judge shall deliver the official returns of the election to the city secretary. Not earlier than the third day or later than the sixth day after the election or as otherwise required by the Election Code and all other applicable laws, the city council shall canvass the returns and declare the results. The returns of every municipal election shall be recorded in the minutes of the council.
- (b) The candidates receiving the majority of the votes cast for each place shall be declared elected. If no candidate receives a majority, or if there is a tie for any one place, the council shall order a runoff election which shall be held not earlier than the twentieth or later than the thirtieth day after the date the final canvass of the regular election is completed or as otherwise required by the Election Code and all other applicable laws. Only the names of the candidates who tie for the highest number of votes cast for that

place, or the two (2) candidates who receive the highest number of votes with neither having a majority of votes cast for that place, shall be printed on the ballot for each election. In the event of a tie vote at the runoff election, the candidates who tie shall cast lots in the presence of the City Secretary to determine which one shall be declared elected, and said lots shall be cast within five (5) days of the runoff election in accordance with Section 2.028 of the Election Code and all other applicable laws.

- (c) Immediately after the election results have been declared the mayor shall deliver certificates of election to the successful candidates. Each councilman shall take the oath of office as soon thereafter as practicable at which time his term of office shall begin.

(Ord. No. 76-12, Amend. No. 1, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 9, 2-16-99, ratified 5-1-99)

Sec. 3.05. Regulation of elections.

Except as otherwise provided by this charter, all city elections shall be governed by the applicable provisions of the Election Code of the State of Texas, as now or hereafter amended. The council shall have the power to make such additional regulations as may be necessary.

State law reference(s)—Elections, V.T.C.A., Election Code § 1.005 et seq.

ARTICLE IV. INITIATIVE, REFERENDUM AND RECALL

Sec. 4.01. Power of initiative.

The electors shall have power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the proposed ordinance at the polls, such power being known as the initiative. Any initiative ordinance may be submitted to the council by a petition signed by qualified voters of the city equal in number to at least twenty-five percent of the number of votes cast at the last regular municipal election.

Sec. 4.02. Power of referendum.

The electors shall have power to approve or reject at the polls any ordinance passed by the council or submitted by the council to a vote of the electors, except an ordinance appropriating money, issuing bonds or authorizing the levying of taxes, such power being known as the referendum. Within twenty (20) days after the enactment by the council of any ordinance which is subject to a referendum, a petition signed by qualified voters of the city equal in number to at least twenty-five percent (25%) of the number of votes cast at the last preceding regular municipal election may be filed with the city secretary requesting that any such ordinance be either repealed or submitted to a vote of the electors.

Sec. 4.03. Form of petition, committee of petitioners.

Initiative petition papers shall contain the full text of the proposed ordinance. Referendum petition papers shall contain the full text of the ordinance which they propose to repeal. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer shall sign his name in ink or indelible pencil and shall give after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition the names and addresses of the same five (5) electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition.

Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that it bears a stated number of signatures, that all the signatures were appended thereto in his presence and that he believes them to be the genuine signatures of the persons whose names they purport to be.

Sec. 4.04. Filing, examination and certification of petitions.

All papers comprising an initiative or referendum petition shall be assembled and filed with the city secretary as one instrument. Within twenty (20) days after a petition is filed, the city secretary shall determine whether each paper of the petition bears the required affidavit of the circulator and whether the petition is signed by a sufficient number of qualified voters. After completing his examination of the petition, the city secretary shall certify the result thereof to the council at its next regular meeting. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

Sec. 4.05. Amendment of petitions.

An initiative or referendum petition may be amended at any time within ten (10) days after the notification of insufficiency has been sent by the city secretary, by filing a supplementary petition upon additional papers signed and filed as provided in the case of an original petition. The city secretary shall within five (5) days after such an amendment is filed, examine the amended petition and, if the petition is still insufficient, he shall file his certificate to that effect in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The findings of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

Sec. 4.06. Effect of certification of referendum petition.

When a referendum petition, or amended petition as defined in section 4.05 of this article, has been certified as sufficient by the city secretary, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the electors as hereinafter provided.

Sec. 4.07. Consideration by council.

Whenever the council receives a certified initiative or referendum petition from the city secretary, it shall proceed at once to consider such petition. A proposed initiative ordinance shall be read and provision shall be made for a public hearing upon the proposed ordinance. The council shall take final action on the ordinance within sixty (60) days after the date on which such ordinance was certified to the council by the city secretary. A referred ordinance shall be reconsidered by the council and its final vote upon such reconsideration shall be upon the question, "Shall the ordinance specified in the referendum petition be repealed?"

Sec. 4.08. Submission of electors.

If the council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor, or if the council shall fail to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors not less than thirty (30) days nor more than sixty (60) days from the date the council takes its final vote thereon. If no regular election is to be held within such period the council shall provide for a special election.

Sec. 4.09. Form of ballot for initiated and referred ordinances.

Ordinances submitted to a vote of the electors in accordance with the initiative and referendum provisions of this charter shall be submitted by ballot title, which shall be prepared in all cases by the city attorney. The ballot title may be different from the legal title of any such initiated or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance. If a paper ballot is used it shall have below the ballot title the following propositions, one above the other, in the order indicated: "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE." Any number of ordinances may be voted on at the same election and may be submitted on the same ballot, but any paper ballot used for voting thereon shall be for that purpose only. If voting machines are used, the ballot title shall have below it the same two (2) propositions, one above the other or one preceding the other in the order indicated, and the elector shall be given an opportunity to vote for or against the ordinance.

Sec. 4.10. Results of election, publication.

- (a) If a majority of the electors voting on a proposed initiative ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the city. A referred ordinance which is not approved by a majority of the electors voting thereon shall thereupon be deemed repealed.
- (b) Initiative ordinances adopted and referendum ordinances approved by the electors shall be published, and may be amended or repealed by the council in the same manner as other ordinances.

Sec. 4.11. Recall of councilmen.

Any member of the city council may be removed from office by a recall election.

Sec. 4.12. Recall petition, committee of petitioners.

Recall petition papers shall contain the name of the councilman (or names of the councilmen) whose removal is sought, and a clear and concise statement of the grounds for his (or their) removal. There shall appear at the head of each petition the names and addresses of five electors, who, as a committee of the petitioners shall be regarded as responsible for the circulation and filing of the petition. Each signer of any petition paper shall sign his name in ink or indelible pencil and give after his name his place of residence by street and number, or other description sufficient to identify the place, and the date his signature was affixed. No signature to such petition shall remain effective or be counted which was placed thereon more than forty-five (45) days prior to the filing of such petition with the city secretary. The signatures to a recall petition need not all be appended to one paper, but to each separate petition there shall be attached an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that it bears a stated number of signatures, that all signatures were appended thereto in his presence and that he believes them to be the genuine signatures of the persons whose names they purport to be.

Sec. 4.13. Filing and certification of petitions, recall election.

- (a) All papers comprising a recall petition shall be assembled and filed with the city secretary as one instrument. Within seven (7) days after a petition is filed, the city secretary shall determine whether each paper bears the names of five (5) electors who constitute a committee of the petitioners, and the required affidavit of the circulator thereof, and whether the petition is signed by qualified voters of the constituency of the councilmember whose removal is sought equal in number to at least twenty-five (25) percent of the number of the votes cast for that councilmember and all of his opponents in the last preceding general municipal election in which he was a candidate. As used herein "constituency" shall mean the qualified voters eligible

to vote for the councilmember whose removal is sought, either by geographical district or at large, as the case may be.

- (b) If the city secretary finds the petition insufficient he shall return it to the committee of the petitioners, without prejudice, however, to the filing of a new petition based upon new and different grounds, but not upon the same grounds. If the city secretary finds the petition sufficient and in compliance with the provisions of this Article of the Charter he shall submit the petition and his certificate of its sufficiency to the council at its next regular meeting and immediately notify the councilman whose removal is sought of such action.
- (c) If the councilman whose removal is sought does not resign within seven (7) days after such notice the city council shall thereupon order and fix a date for holding a recall election not less than thirty (30) nor more than sixty (60) days after the petition has been presented to the council. If no general election is to be held within this time the council shall provide for a special election.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 4.14. Recall election ballots.

Ballots used at recall elections shall conform to the following requirements:

- (a) With respect to each person whose removal is sought the question shall be submitted: "SHALL (name of person) BE REMOVED FROM THE CITY COUNCIL BY RECALL?"
- (b) Immediately below each such question shall be printed the two following propositions, one above the other, in the order indicated:

"YES"

"NO"

Sec. 4.15. Results of recall election.

If a majority of the votes cast at a recall election shall be against the recall of the councilman named on the ballot, he shall continue in office. If a majority of the votes cast at a recall election be for the recall of the councilman named on the ballot, he shall be deemed removed from office and the vacancy shall be filled in the manner prescribed in Article II, section 2.04 of this charter.

Sec. 4.16. Limitations on recalls.

No petition shall be filed against a councilmember within six (6) months after he takes office nor against a councilmember who has been subjected to a recall election and not removed thereby until at least six (6) months after such election. Should a regular election occur during the time when a recall petition is current and should the person(s) being recalled be reelected, the recall petition shall be null and void.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 4.17. District judge may order election.

Should the city council fail or refuse to order any recall election when all of the requirements for such election have been complied with by the petitioning electors in conformity with this Article of the charter, then it shall be the duty of the District Judge of Denton County, upon proper application therefor, to order such election and effectuate the provisions of this Article of the charter.

ARTICLE V. THE CITY MANAGER

Sec. 5.01. The city manager: Qualifications.

The city manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in or his knowledge of accepted practice in respect to the duties of his office, as hereinafter set forth, provided that any person who is appointed city manager must have had at least two (2) years of experience as a city manager or assistant city manager, or the equivalent thereof. At the time of his appointment he need not be a resident of the city or state but during his tenure of office he shall reside within the city.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 5.02. The city manager: Term and salary.

- (a) The council shall appoint the city manager for an indefinite term and may remove him by a majority vote of its members. At least thirty (30) days before such removal shall become effective, the council shall by a majority vote of its members adopt a preliminary resolution stating the reasons for his removal. The city manager may reply in writing and may request a hearing at a public meeting of the council, which shall be held not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request. Pending such hearing the council may suspend the city manager from duty but may not suspend or reduce his salary. After such public hearing, if one be requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal.
- (b) The city manager's salary shall be fixed by the council.

Sec. 5.03. The city manager: Powers and duties.

The city manager shall be the chief executive officer and the head of the administrative branch of the city government. He shall be responsible to the council for the proper administration of all affairs of the city placed under his control by this Charter or by ordinance or resolution of the council, and to that end he shall:

- (a) Appoint and remove any employee of the city, except as otherwise provided by this Charter and except as he, or she may authorize the head of a department to appoint and remove subordinates in such department.
- (b) Prepare the annual budget and submit it to the council and be responsible for its administration after adoption.
- (c) Prepare and submit to the council at the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding year.
- (d) Attend all meetings of the council, with the right to take part in the discussion, but having no vote.
- (e) Keep the council advised of the financial condition and future needs of the city and make such recommendations as may seem to him desirable.
- (f) Appoint, subject to the approval of the council, the city secretary.
- (g) Perform such other duties as may be prescribed by this Charter or required of him by the council not inconsistent with this Charter.

(Ord. No. 2006-232, Amend. No. 8, 8-28-06, ratified 11-7-06)

Sec. 5.04. Absence of city manager.

To perform his duties during his temporary absence or disability, the [city] manager shall designate by letter filed with the city secretary a qualified administrative officer of the city. The administrative officer thus designated shall perform the duties of the [city] manager until he shall return or his disability shall cease or until the council by resolution designates another officer of the city to perform such duties.

Sec. 5.05. Administrative departments.

The city manager is hereby authorized to organize the employees of the city into various departments and divisions with the concurrence of the city council.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Secs. 5.06, 5.07. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former sections 5.06 and 5.07 which pertained to directors of departments and departmental divisions and were derived unamended from the Charter adopted Feb. 24, 1959.

ARTICLE VI. CITY ATTORNEY, MUNICIPAL COURT AND CITY AUDITOR

Sec. 6.01. City attorney: appointment.

The city attorney, who shall be head of the legal department, shall be a qualified attorney-at-law licensed to practice in the State of Texas. He, or she shall be appointed by the council, and serve at the pleasure of the city council. He, or she shall receive such compensation as may be fixed by the council.

(Ord. No. 2006-232, Amend. No. 9, 8-28-06, ratified 11-7-06)

Sec. 6.02. City attorney: powers and duties.

- (a) The city attorney shall represent the city in all litigation and controversies and shall prosecute all cases brought before the municipal court. He, or she shall draft, approve or file his, or her written opinion on the legality of every proposed ordinance before it is acted upon by the council, and shall pass upon all documents, contracts and other legal instruments in which the city may have an interest.
- (b) He, or she shall be the legal advisor of the city manager, city council, and of all boards, commissions, agencies, officers and employees with respect to any legal question involving their official powers or duties. He, or she shall perform such other duties as may be required by statute, by this Charter or by ordinance.
- (c) The council may authorize the appointment of such assistant city attorneys as may be needed to perform the duties of this department. The city attorney may designate an assistant city attorney to act as city attorney in case of his or her temporary absence of not more than three weeks. The council may authorize the appointment of a temporary city attorney to act for the city attorney in the case of a longer temporary absence or disability.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 9, 8-28-06, ratified 11-7-06)

Sec. 6.03. Municipal court.

- (a) There is hereby established a court which shall be known as the "Municipal Court No. 1 of the City of Denton." Municipal Court No. 1 shall have the jurisdiction and be conducted as a municipal court of record in accordance with Vernon's Texas Codes Annotated Texas Government Code subchapter FF, chapter 30, §§ 30.1211 through 30.01233 inclusive and applicable state law as these laws may now read or hereafter be amended. All costs and fines imposed by the municipal court shall be paid into the city treasury for the use and benefit of the city. The city council may, by ordinance, create additional municipal courts or municipal courts of record if so authorized under the provisions of applicable law.
- (b) The municipal judge shall preside over the municipal court. The municipal judge shall be a qualified attorney-at-law licensed to practice in the State of Texas in good standing and shall have such other qualifications as required by subchapter FF of chapter 30 of the Texas Government Code and other applicable laws as these laws may now read or hereafter be amended. He or she shall be appointed by, and shall serve at the pleasure of the council. The municipal judge shall receive such compensation as may be fixed by the council. The municipal judge shall have all the powers and duties assigned to a municipal judge by the Charter, other city ordinances, subchapter FF of chapter 30 of the Texas Government Code, or other applicable state laws.
- (c) There shall be one regularly scheduled session of the court each week and as many other sessions as, in the discretion of the municipal judge, may be necessary for the timely transaction of the business of the court.
- (d) The council may appoint such assistant municipal judges or additional municipal judges as may be necessary to perform the duties of the municipal court or a temporary municipal judge to act for the municipal judge in the case of his or her temporary absence or disability, and such assistant, additional, or temporary municipal judge shall receive such compensation as may be set by the council. All such assistant, additional, or temporary municipal judges, when appointed, shall have all of the other powers and duties assigned to the municipal judge herein.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 10, 2-16-99, ratified 5-1-99)

Sec. 6.04. City Internal Auditor.

The City Internal Auditor shall be appointed by the City Council, shall serve at the pleasure of the City Council, and shall perform such auditing duties herein described or as may be assigned by the Council. The position of the City Internal Auditor is to be held on a continuous, fulltime basis. On an interim basis, the City Council may engage external independent auditing resources to accomplish the Internal Audit function.

The City Internal Auditor is responsible for providing (a) an independent appraisal of City operations to ensure policies and procedures are in place and complied with, inclusive of purchasing and contracting; (b) information that is accurate and reliable; (c) that assets are properly recorded and safeguarded; (d) that risks are identified and minimized; and (e) that resources are used economically and efficiently, and that the City's objectives are being achieved.

The City Internal Auditor is responsible for directing all internal audit functions for the City of Denton to eliminate waste, fraud, and abuse.

(Ord. No. 2006-232, Amend. No. 9, 8-28-06, ratified 11-7-06; Ord. No. 2017-237, § 1(Amend. C), 8-15-17, ratified 11-7-17; Ord. No. 2017-373, § 2(Prop. C), 11-20-17)

ARTICLE VII. REVENUE AND TAXATION²

Sec. 7.01. Property subject to tax.

The city council is authorized to levy and collect taxes, to seize and sell property for delinquent taxes, to create tax liens, and to exercise all other powers and authority pursuant to the Tax Code, Vernon's Texas Codes Annotated and all other applicable laws as they now read or may hereafter be amended.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 11, 2-16-99, ratified 5-1-99)

Sec. 7.02. Reserved.

Editor's note(s)—Ord. No. 99-057, Amend. No. 1, adopted February 16, 1999, ratified May 1, 1999, repealed § 7.02, which pertained to payment, delinquencies, and penalties, and derived from Ord. No. 79-86, § 2, adopted Dec. 11, 1979, ratified Jan. 19, 1980.

Sec. 7.03. Reserved.

Editor's note(s)—Ord. No. 99-057, Amend. No. 11, adopted February 16, 1999, ratified May 1, 1999, repealed § 7.02, which pertained to seizure and sale of property for delinquent taxes, and derived from Ord. No. 79-86, § 2, adopted Dec. 11, 1979, ratified Jan. 19, 1980.

Sec. 7.04. Reserved.

Editor's note(s)—Ord. No. 99-057, Amend. No. 11, adopted February 16, 1999, ratified May 1, 1999, repealed § 7.02, which pertained to tax liens, and derived from Ord. No. 79-86, § 2, adopted Dec. 11, 1979, ratified Jan. 19, 1980.

Sec. 7.05. Ratification.

All taxes heretofore assessed by the City of Denton are ratified and all ordinances relating to taxes now in force shall continue until amendment or repeal by the council.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

²Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former sections 7.01—7.15 and 7.17—7.23 which pertained to the director of finance; procedures relative to accounting, payment of claims, purchasing, disbursement of funds, payment of claims and audits; the treasurer; the tax assessor-collector; the board of equalization and procedures relative to taxation and were derived from the Charter adopted Feb. 24, 1959, as amended by Ord. No. 76-12, Amend. No. 5, adopted April 5, 1976. Section 2 of Ord. No. 79-86 also renumbered former sections 7.16 and 7.24—7.29 as sections 7.01—7.07.

Sec. 7.06. General powers.

In addition to the powers herein conferred with reference to the assessment and collection of taxes, the City of Denton shall have and may exercise all powers and authority now conferred or that may hereafter be conferred upon cities having a population of more than five thousand (5,000) inhabitants by the general laws of the State of Texas.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 7.07. Borrowing in anticipation of property taxes.

In any budget year, in anticipation of the collection of the property tax for such year, whether levied or to be levied in such year, the council may by resolution authorize the borrowing of money by the issuance of negotiable notes of the city, each of which shall be designated "Tax Anticipation Note for the Year 19____" (stating the budget year). Such notes shall not be renewable but shall mature and be paid not later than the end of the fiscal year in which the original notes have been issued.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

ARTICLE VIII. BUDGET

Sec. 8.01. Fiscal year.

The fiscal year of the city government which began on June 1, 1958, shall end on May 31, 1959. The next succeeding fiscal year shall begin on June 1, 1959, and end on September 30, 1959, and shall constitute an interim fiscal period. After September 30, 1959, the fiscal year of the city shall begin on the first day of October and end on the last day of September of each calendar year. The fiscal year established by this charter shall also constitute the budget and accounting year.

Sec. 8.02. Interim budget.

The city manager shall submit to the council an interim budget which shall be prepared, as nearly as practicable in accordance with the requirements for the budget document herein prescribed, for the interim fiscal period hereinabove established. Following the approval of such interim budget, the council shall enact such appropriation or other ordinances as may be necessary for the effectuation of the interim budget.

Sec. 8.03. Preparation and submission of budget.

Within the time period required by law, the city manager shall submit to the council a proposed budget for the ensuing fiscal year. The budget shall provide a complete financial plan for the fiscal year, and the budget shall be prepared on the basis of policy priorities defined by the council for the city manager at least one hundred twenty (120) days before the end of the fiscal year.

(Ord. No. 76-12, Amend. No. 6, 4-5-76; Ord. No. 2006-232, Amend. No. 10, 8-28-06, ratified 11-7-06)

Sec. 8.04. Public hearing on budget.

The council shall hold a public hearing on the proposed budget.. Any taxpayer of the municipality may attend and may participate in the hearing, which shall be set for a date after the fifteenth day after the date the proposed budget is filed with the city secretary but before the date the city council makes its tax levy. The council shall provide for public notice of the date, time, and location of the hearing. In addition to this notice, the city council shall publish notice before the public hearing related to the budget in at least one newspaper of general circulation in Denton County. This notice shall be published not earlier than the thirtieth or later than the tenth day before the date of the public hearing. The city council shall provide such other notice as may be required by state and all other applicable law. The city council may make such changes in the budget that it considers warranted by the law or by the best interests of the municipal taxpayers and may increase or decrease the items of the budget provided the total proposed expenditures shall not exceed the total anticipated revenue.

(Ord. No. 99-057, Amend. No. 12, 2-16-99, ratified 5-1-99)

Sec. 8.05. Adoption of budget.

The budget shall be finally adopted by the favorable votes of at least a majority of all members of the council after the conclusion of the public hearing. Should the council take no final action at the conclusion of the public hearing and before the end of the fiscal year, the budget as submitted by the city manager shall be deemed to have been finally adopted by the council.

(Ord. No. 99-057, Amend. No. 13, 2-16-99, ratified 5-1-99)

Sec. 8.06. Budget establishes appropriations and tax levy.

Upon final adoption, the budget shall be in effect for the budget year. Final adoption of the budget by the council shall constitute the official appropriation of the several amounts stated therein as proposed expenditures for the budget year. A copy of the budget as finally adopted shall be filed with the city secretary, the county clerk of Denton County and the state comptroller of public accounts in Austin. All appropriations that have not been expended or lawfully encumbered shall lapse at the end of the budget year.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 8.07. Transfer of appropriations.

At any time during the fiscal year, the city manager may transfer any part of the unencumbered appropriation balance or the entire balance thereof between programs or general classifications of expenditures within an office, department, agency, or organizational unit. At any time during the fiscal year, at the request of the city manager the council may by resolution transfer any part of the unencumbered appropriation balance or the entire balance thereof from one office, department, agency, or organizational unit to another.

(Ord. No. 99-057, Amend. No. 14, 2-16-99, ratified 5-1-99)

Sec. 8.08. Amending the budget.

The budget may be amended for municipal purposes by the affirmative vote of at least five (5) members of the council, in accordance with applicable law.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 11, 8-28-06, ratified 11-7-06)

Sec. 8.09. Budget a public record.

The budget, budget message and all supporting schedules shall be a public record in the office of the city secretary open to public inspection. The city manager shall cause sufficient copies of the budget and budget message to be prepared for distribution to interested persons.

ARTICLE IX. BORROWING FOR PERMANENT IMPROVEMENTS**Sec. 9.01. Power to issue bonds.**

- (a) The City of Denton shall have the right and power to issue general obligation bonds to finance any capital project which it may lawfully construct or acquire or for any other legitimate public purpose. The general obligation bonded debt of the city shall only be increased by the consent of the majority of the qualified voters of the city voting at an election held for that purpose. A bond election shall be ordered and notice given by ordinance, consistent with the requirements for holding elections set forth in Article III of this Charter and in accordance with the applicable laws of the State of Texas as they now read or may hereafter be amended.
- (b) The city shall have the power to issue revenue bonds against the anticipated revenues of any municipally-owned utility or other self-liquidating municipal function to pay the debt incurred on account of such utility or function. In no event shall revenue bonds be considered an indebtedness of the city nor be repaid from bonds secured by taxation.
- (c) No bonds or warrants shall be issued to fund any overdraft or indebtedness incurred for current expenses of the city government.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 15, 2-16-99, ratified 5-1-99)

Sec. 9.02. Bond ordinance and election.

- (a) After approval by a majority of the qualified voters voting at a general obligation bond election called for the purpose of authorizing the issuance of general obligation bonded debt, the city shall authorize the issuance of such bonds by a bond ordinance passed by an affirmative vote of a majority of all members of the council. The city council may approve the issuance of revenue bonds without an election by authorizing the issuance of such bonds by bond ordinance passed by an affirmative vote of the majority of all members of the council.
- (b) Before any bond ordinance is passed by the council an attorney or attorneys specializing in municipal bonds shall be retained by the city to advise with the council in all matters pertaining to the proposed bond ordinance, and no action shall be taken until a written instrument has been prepared by the bond attorneys certifying the legality of the proposal. The bond attorneys shall assist the city attorney and the council in preparing all ordinances and other legal instruments required in the execution and sale of any bonds issued.
- (c) The election ordinance on a bond proposal shall provide for proper notice, the calling of the election and the propositions to be submitted. It shall distinctly specify:
 - (1) The purpose for which the bonds are to be issued, and where possible, the probable period of usefulness of the improvements for which the bond funds are to be expended.
 - (2) The amount thereof.
 - (3) The rate of interest, if known.
 - (4) The levy of taxes sufficient to pay interest and sinking fund.

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- (5) That the bonds to be issued shall mature serially within a given number of years.
 - (6) A determination of the net debt of the city after issuance of the bonds thereby authorized, together with a declaration that the bonds thereby authorized will be within all debt and other limitations prescribed by the Constitution and laws of the State of Texas.

(Ord. No. 99-057, Amend. No. 16, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 12, 8-28-06, ratified 11-7-06)

Sec. 9.03. Execution of bonds.

All bonds shall be signed by the mayor, countersigned by the city secretary, and imprinted with the seal of the city, and shall be payable at such time as may be fixed, not more than forty (40) years from their date.

Sec. 9.04. Sale of bonds.

All bonds shall be sold in accordance with applicable law.

(Ord. No. 2006-232, Amend. No. 13, 8-28-06, ratified 11-7-06)

Sec. 9.05. Sinking fund for general obligation bonds.

It shall be the duty of the council each year to levy a tax sufficient to pay the interest and provide the necessary sinking fund required by law on all general obligation bonds outstanding, and if a deficiency appears at any time in such fund the council shall, for the next succeeding year, levy an additional tax sufficient to discharge such deficiency.

Sec. 9.06. Bond register.

The director of finance shall prepare, maintain and cause to be filed in the office of the city secretary a complete bond register, showing all bonds, the date and amount thereof, the rate of interest, a schedule of maturity dates, and a record of all bonds and all other transactions of the council having reference to the refunding of any indebtedness of the city. When bonds or their coupons are paid, their payment or cancellation shall be noted in the register.

Sec. 9.07. Misapplication of bond funds.

Any officer or employee of the city who shall wilfully or knowingly, direct or use any funds arising from the issuance of any bond or sinking fund for any other purpose than that for which the fund is created or is herein otherwise authorized, shall be subject to prosecution as provided by the laws of the state on the diversion and conversion of funds belonging to any of the municipalities of the state.

Sec. 9.08. Assessments for improvements.

All of the terms, powers and applicable provisions of Chapter 9, Title 28, of the Revised Civil Statutes of the State of Texas, as now or hereafter amended, relating to assessments for street improvements are hereby adopted as a part of this charter and hereby constitute an alternative authority and method which the City of Denton may use in improving streets, alleys, and public places and levying assessments therefor; provided, the city shall have the power in all cases to make such improvements with its own forces if, in the opinion of the council, the work can be done more expeditiously or economically.

ARTICLE X. PLANNING AND ZONING

Sec. 10.01. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 10.01 which pertained to the director of planning and was derived unamended from the Charter adopted Feb. 24, 1959.

Sec. 10.02. Planning and zoning commission.

- (a) There shall be a planning and zoning commission which shall consist of seven (7) members, who, during their respective terms of office and for at least one year prior to beginning thereof, shall be residents of the City of Denton. They shall be appointed by the council for a term of two (2) years, provided four (4) members shall be appointed each odd-numbered year and three (3) members each even-numbered year.
- (b) None of the appointed members shall hold any other public office or position in the city while serving on the planning and zoning commission. The planning and zoning commission shall elect its chairman from among its members. Seven (7) members shall serve without pay and shall adopt such rules and regulations as they deem best governing their actions, proceedings, deliberations, and the times and places of meetings, subject to council review.
- (c) If a vacancy occurs in the city planning and zoning commission the council shall appoint a commissioner to fill such vacancy for the unexpired term.

(Ord. No. 76-12, Amend. No. 7, 4-5-76; Ord. No. 2006-232, Amend. No. 14, 8-28-06, ratified 11-7-06)

Sec. 10.03. Planning and zoning commission: Powers and duties.

- (a) In addition to the powers and duties set forth in this charter, the planning and zoning commission shall have the powers and duties of a planning and zoning commission under state law, including without limitation those under Chapters 211 and 212 of the Texas Local Government Code, as may be amended from time to time, and shall perform such other powers and duties as may be assigned by the council. The planning and zoning commission may:
 - (1) Make, amend, extend and add to the master plan for the physical development of the city.
 - (2) Recommend to the council regulations governing the platting or subdividing of land within the city. (The applicable provisions of Chapter 212 of the Texas Local Government Code as now or hereafter amended, are hereby adopted and made a part of this charter, and shall be controlling on the planning and zoning commission.)
 - (3) Make recommendations to the council regarding proposed changes to the official map of the city and keep such map up-to-date so as to reflect any changes in the boundary or the zoning plan of the city.
 - (4) Make and recommend plans for the clearance and rebuilding of any slum districts or blighted areas within the city.
 - (5) Make recommendations to the council regarding proposed changes in the zoning plan and ordinance of this city and have all the power, duty and authority of a zoning commission as provided in Chapter 211

of the Texas Local Government Code, as now or as hereinafter amended, all of which are hereby adopted as a part of this charter.

- (6) Submit annually to the City Manager prior to the beginning of the budget year, a list of recommended general obligation capital improvements which in the opinion of the Commission ought to be constructed during the forthcoming five (5) year period. (Such list shall be arranged in order of preference, with recommendations as to which projects should be constructed in which year, and the City Manager shall forthwith furnish a copy of such recommendations to each member of the Council.)
 - (7) Promote public interest in and understanding of the master plan and of planning, zoning, clearance of blighted areas and development of the city.
 - (8) Meet not less than once each month and keep a public record of its resolutions, findings and determinations.
 - (9) Hold such public hearings as it may deem desirable in the public interest and advise the council upon such matters as the council may request its advice.
- (b) For the accomplishment of the foregoing purposes the planning and zoning commission is hereby empowered to:
- (1) Require information which shall be furnished within a reasonable time from the other departments of the city government in relation to its work.
 - (2) Request additional assistance for special survey work of the city manager, who may at his discretion assign to the planning and zoning commission, employees of any administrative department or direct such department to make special studies requested by the commission.
 - (3) In the performance of its functions, enter upon any land and make examinations and surveys.
 - (4) Make and recommend plans for the replanning, improvement and redevelopment of neighborhoods or of any area or district which may be destroyed in whole or in part or seriously damaged by fire, earthquake, flood or disaster.

(Ord. No. 99-057, Amend. No. 17, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 15, 8-28-06, ratified 11-7-06)

Sec. 10.04. The master plan.

The master plan for the physical development of the city, with the accompanying maps, plats, charts, descriptive and explanatory matter, shall show the commission's recommendations for the development of city territory, and may include, among other things:

- (a) The general location, character and extent of streets, bridges, parks, waterways and other public ways, grounds and spaces.
- (b) The general location of public buildings and other public property.
- (c) The general location and extent of public utilities, whether publicly or privately owned.
- (d) The removal, relocation, widening, extension, narrowing, vacation, abandonment or change of use of such existing or future public ways, grounds, spaces, buildings, property or utilities.
- (e) The general extent and location of public housing projects and slum-clearance projects.

Sec. 10.05. Legal effect of master plan.

Except in circumstances where plat approval is not required or the public improvement is so small as not to appear on the master plan, no street, park, or other public way, ground or space, no public building or structure and no public utility whether publicly or privately owned, shall be constructed or authorized in the City until and unless the location and extent thereof shall have been submitted to and approved by the Planning and Zoning Commission; provided that, in case of disapproval, the Commission shall within thirty (30) days communicate its reasons to the Council, which shall have the power to overrule such disapproval, and, upon such overruling, the Council or the appropriate office, department, or agency shall have the power to proceed.

(Ord. No. 99-057, Amend. No. 18, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 16, 8-28-06, ratified 11-7-06)

Sec. 10.06. Zoning.

- (a) For the purpose of promoting health, safety, morals or the general welfare of the community, the council may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such ordinance shall provide that the board of adjustment may, in appropriate cases and subject to appropriate principles, standards, rules, conditions and safeguards set forth in the ordinance, authorize variances from and make special exceptions to the zoning regulations in harmony with their general purpose and intent.
- (b) For any or all of said purposes the council may divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each district, but the regulations in one district may differ from those in other districts.
- (c) Such regulations shall be made in accordance with a comprehensive plan and be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health or the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, public convenience and other public requirements. Such regulations shall be made with reasonable consideration of the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

Sec. 10.07. Board of adjustment.

The city council shall by ordinance establish a board of adjustment which shall consist of at least seven (7) members who shall have the qualifications, powers, and duties and serve for the terms provided by the city council in an ordinance creating the board. All current members of the board of adjustment and the board shall continue to serve under the current provisions of the City Charter until such ordinance creating the board is enacted and effective.

(Ord. No. 99-057, Amend. No. 19, 2-16-99, ratified 5-1-99)

Sec. 10.08. Platting or subdivision control.

The planning and zoning commission shall recommend to the council the adoption of regulations governing the platting or subdividing within the city or within the area under the extraterritorial jurisdiction of the city, and the owner of every such subdivision shall comply with all of the provisions of Article 974a and 6626, Vernon's Texas Civil Statutes, 1948, [V.T.C.A., Local Government Code § 212.002 et seq. and V.T.C.A., Property Code § 12.001 et seq.] as now or hereafter amended. Such regulation may provide for the harmonious development of the city within the subdivided land with other existing or planned streets and ways or for conformance with the master plan or official map, for adequate open spaces, spaces for traffic, utilities, recreation, light and air and for the avoidance of congestion of population. Such regulations may include requirements as to the extent to which and the manner in which streets and other ways shall be graded and improved and water, sewer and other utility mains, piping, connections or other facilities shall be installed as a condition precedent to the approval of a subdivision.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 17, 8-28-06, ratified 11-7-06)

Sec. 10.09. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 10.09 which pertained to the tentative approval of plats and was derived unamended from the Charter adopted Feb. 24, 1959.

Sec. 10.10. Building permits, use and occupancy certificates.

- (a) The city shall have the power to prohibit the erection, construction or use of any building or structure of any kind within the city without a permit having first been issued, by the city, for the construction or erection of such building or structure, and without a use and occupancy certificate having been issued for the use actually made of such premises and structure and may authorize a fee to be charged for such permit. In pursuance of this authority the council may authorize the inspection of all buildings and structures during the progress of their construction or thereafter and may require new construction, renovation, or reconstruction to comply with all building regulations.
- (b) For the purpose of preserving property values, protecting the public health, preventing the blighting of areas within the city, promoting safety and the public welfare the council may fix a minimum standard for the construction and use of housing accommodations and other structures within this city and prohibit the construction, erection and use of substandard housing and other substandard structures.

(Ord. No. 2006-232, Amend. No. 18, 8-28-06, ratified 11-7-06)

Sec. 10.11. Official map.

The council may by ordinance establish an official map of the city, on which shall be shown and indicated all public streets existing and established by law at the time of the establishment of the official map.

Sec. 10.12. Slum clearance and rehabilitation of blighted areas.

The council may, after receiving a recommendation from the planning and zoning commission adopt, modify and carry out plans for the clearance of slum districts and blighted areas within the city and, for the accomplishment of this purpose, may acquire by purchase or condemnation all privately owned lands, buildings and other real property interests within the district; may establish, locate, relocate, build and improve the streets

and other public open spaces provided for in the plan; may maintain, operate, lease or sell said buildings or any of them; may sell the land or any part thereof designated for buildings and private open spaces upon such terms and conditions and subject to such restrictions as to building uses and open spaces as will substantially carry out and effect the plan.

(Ord. No. 2006-232, Amend. No. 19, 8-28-06, ratified 11-7-06)

ARTICLE XI. PARKS AND RECREATION

Sec. 11.01. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 11.01 which pertained to the director of parks and recreation and was derived unamended from the Charter adopted Feb. 24, 1959.

Sec. 11.02. Park and recreation board.

The city council shall by ordinance establish a board which shall advise the council on parks and recreation and which shall consist of at least seven (7) residents of the city who shall have the qualifications, duties, and powers and serve for the terms provided by the city council in the ordinance creating the board. All current members of the parks and recreation board and the board shall continue to serve under the current provisions of the City Charter until the ordinance creating the board is enacted and effective.

(Ord. No. 99-057, Amend. No. 20, 2-16-99, ratified 5-1-99)

ARTICLE XII. PUBLIC UTILITIES

Sec. 12.01. General powers respecting utilities.

- (a) The City of Denton may license, regulate, fix the rates, control and supervise public utilities of all kinds.
- (b) In addition to such public utilities as it may now own, the City of Denton may own, acquire, construct, maintain, and operate any other public utility that may be approved by a majority of the qualified voters of the City voting therefor at an election held for such purpose; and shall have power for the purpose of operating and maintaining any such utility, and for distributing such service throughout the city or any portion thereof, but in such condemnation proceedings no allowance shall be made for the value of any franchise and only the actual physical assets shall be purchased by the City.

Sec. 12.02. Rates.

The city shall have the power, subject to limitations imposed by state law and this Charter, to fix and, from time to time, revise such rates and charges as it may deem advisable for supplying such utility services as the city may provide. The utilities shall provide no free services; the rates and charges for services to city departments and other public agencies shall be the same as the regular rates and charges fixed for similar services to consumers generally. The rates and charges for services to consumers outside the corporate limits of the city may be greater but shall not be less than the rates and charges for similar service to consumers within the corporate limits of the city.

Sec. 12.03. Excess revenues of utility systems.

- (a) Any money remaining in the "System Fund" after all necessary expenses of operation and maintenance of the utility systems, including salaries, labor and materials, have been paid, upon proper approval, and after all payments have been made into the several funds required and provided to be made by the ordinance or ordinances authorizing the issuance of any revenue bonds of the city, now outstanding or hereafter authorized and issued which may be payable from and secured by a pledge of the net earnings of the light, water or sewer systems, shall be deemed "Excess Revenues" for the purposes of this section. "System Fund" as used herein shall mean the fund (or funds as may be required by outstanding bond issues) into which are deposited the gross incomes derived from the operation of the above named utility systems.
- (b) Excess Revenues shall be utilized at the times and for the purposes as follows:
 - (1) After all of the requirements of the various funds have been met, there shall be computed a return on the net investment in the utility system. The "Net Investment" figure used in these computations shall be taken from the independent audit of the utility systems for the last fiscal period. The city shall be entitled to receive annually on the net investment from excess revenues, if any, not more than six (6) percent of the net investment.
 - (2) Any remaining excess revenues shall be used for the redemption and retirement of utility revenue bonds, as they become available at not more than fair market value. If utility revenue bonds are not available, these funds shall immediately be invested in short-term United States Government securities or at the option of the city, placed on time deposit in the city depository to draw interest. As utility revenue bonds become available, sufficient United States Government securities shall be sold or time deposits withdrawn to purchase the longest maturities available on the market.

Sec. 12.04. Disposal of utility properties.

No sale, conveyance, lease, or other alienation of the entire assets of any utility system or any part thereof essential to continued effective utility service, shall ever be made unless such sale, lease, or disposal is approved by a majority vote of all the qualified voters voting in an election held for that purpose in the City of Denton.

(Ord. No. 99-057, Amend. No. 22, 2-16-99, ratified 5-1-99)

Sec. 12.05. Cooperation of other city departments.

The [public utilities] board shall have the right to request the services of any officer or department of the city government; provided, however, that the utility system shall pay out of its revenues a proportionate part of the expenses of the department used in an amount agreed upon by the city manager and the board. If they fail to agree, the final decision on any such expenses shall be made by the city council.

Sec. 12.06. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 12.06 which pertained to the director of utilities and was derived unamended from the Charter adopted Feb. 24, 1959.

Sec. 12.07. The public utilities board.

- (a) There is hereby created a public utilities board to be composed of seven (7) members, or as many members as there are councilmembers, whichever is greater, appointed by the council for four-year terms and until

their respective successors have been appointed and qualified. Members of the board may be removed by the council only for cause and only after charges have been filed and published and the member has been given a reasonable opportunity to defend himself in an open public hearing before the council. Vacancies shall be filled for any unexpired term in the same manner as provided for regular appointments.

- (b) The city manager and director of utilities shall be ex officio members of the board. They shall attend all meetings of the board and shall have the right to discuss any matter that is under consideration by the board but shall have no vote.
- (c) Members of the public utilities board shall have the same qualifications as are required by membership on the city council.
- (d) At its organizational meeting, and annually thereafter as soon as the newly appointed member (or members) has qualified; the board shall select from its own membership a chairman, vice-chairman, and secretary. A majority of the regularly appointed members shall constitute a quorum. The board shall determine its own rules and order of business. The board shall meet at least once each month; all meetings shall be conducted in accordance with the Texas Open Meetings Act, chapter 551 of the Texas Government Code, as it may now read or hereafter be amended and all other applicable laws and a permanent record of proceedings shall be maintained, except as otherwise provided by law.

(Ord. No. 76-12, Amend. No. 8, 4-5-76; Ord. No. 99-057, Amend. No. 23, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 20, 8-28-06, ratified 11-7-06)

Sec. 12.08. Powers and duties of the public utilities board.

- (a) The board shall serve the department of utilities and city council as a consulting, and advisory board.
- (b) The annual budget for the department of utilities shall be prepared by the director and submitted to the board in the form required by the city manager. The board shall review the budget, make such changes therein as they deem appropriate, then return it to the director who shall deliver it to the city manager for incorporation without any changes, in the proposed general budget of the city and transmission to the council.
- (c) The public utilities board is hereby authorized to expend such funds for information and advertising as shall be budgeted for this purpose.
- (d) All actions recommending expansion of the system and the making of additions and betterments thereto or extensions thereof, the incurring of indebtedness, the issuance of bonds, and the fixing of rates and charges for utility services shall be submitted to the board for review and approval; provided, that in case of disapproval, the board shall within thirty (30) days communicate the reasons for its disapproval to the council, which shall have the power to overrule such disapproval, and, upon such overruling, the council or the appropriate department shall have power to proceed; and provided further that all rates and charges for utility services shall be reviewed by the board and revised or reenacted by the council at intervals not exceeding five (5) years and beginning with the year 1960.
- (e) The board shall submit annually to the planning and zoning commission (for incorporation in its report), prior to the beginning of the budget year, a list of recommended capital improvements, which in the opinion of the board ought to be constructed during the forthcoming five (5) year period. Such list shall be arranged in order of preference, with recommendations as to which projects should be constructed in which year.
- (f) It shall be the duty of the board to act in an advisory capacity to the council, with authority to hold public hearings and to study and recommend policies relating to the operation, promotion, enlargement, future planning and such other matters involving city-owned utilities as may be referred to it by the council. At intervals not exceeding ten (10) years the council shall at the expense of the utilities involved, cause a

general management survey to be made of all utilities under the jurisdiction of the board by a competent management consulting or industrial engineering firm, the report and recommendations of which shall be made public; provided, that the first such survey shall be made within three (3) years of the effective date of this Charter.

(Ord. No. 2006-232, Amend. No. 21, 8-28-06, ratified 11-7-06)

ARTICLE XIII. FRANCHISES

Sec. 13.01. Franchises: public utilities.

- (a) The city council may by ordinance grant, renew and extend all franchises of all public utilities operating within the city, and, with the consent of the franchise holder, amend such franchise. No franchise shall ever be granted for a longer term than twenty (20) years. No franchise for a term of twenty (20) years shall be granted except upon the condition that the City of Denton shall have the right, at any time after the expiration of eighteen (18) years, to purchase the property of such franchise holder, or cause a purchaser to buy such property and thereby terminate or transfer the franchise and all privileges enjoyed thereunder, provided that the purchase when made by the city shall not in the case of a fixed term franchise take effect until the expiration of twenty (20) years from the time such franchise was granted.
- (b) The city shall have the power to provide and fix in any franchise the amount or amounts (or the basis for determining the same), to be paid in case it shall buy or cause a purchaser to buy any such property.
- (c) Every ordinance granting, amending, renewing or extending a public utility franchise shall be passed by a majority vote of the entire city council at three (3) regular meetings of the council; no such ordinance shall take effect until thirty (30) days after its final passage; pending such time the full text of the ordinance shall be published once each week for three (3) consecutive weeks in the official newspaper published in the City of Denton, and the expense of such publication shall be borne by the grantee of the franchise; and such ordinance shall be subject to referendum as provided in Article IV of this Charter. No public utility franchise shall be transferable except with the approval of the council expressed by ordinance.
- (d) After due notice and hearing, the council may by ordinance cancel or repeal a public utility franchise for failure of the grantee to comply with the terms of the franchise.

Sec. 13.02. Franchises: use of streets.

The city may by ordinance grant franchises or permits for the use and occupancy of streets, avenues, alleys or other public grounds belonging to or under the control of the city. Before such ordinance can become effective it shall be passed by a majority vote of the entire city council at two (2) regular meetings of the council; no such ordinance shall take effect until twenty-one (21) days after its final passage; pending such time the full text of the ordinance shall be published once each week for two (2) consecutive weeks in the official newspaper of the City of Denton, and the expense of such publication shall be borne by the grantee of the franchise and such ordinance shall be subject to referendum as provided in Article IV of this Charter.

Sec. 13.03. Franchise fee.

The holder or grantee of any franchise or license to use public streets, alleys, highways, or other public property may be required, as compensation for the right or privilege enjoyed, to pay to the City of Denton each year such reasonable sum (not less than two (2) percent of the gross receipts of the business pursued by the holder of the franchise earned for service rendered in the City of Denton), or to pay compensation, rent, or any other fee or charge authorized by law, including, without limitation, specific charges per service line, access line

fees, and all other legally permissible charges for the use of its streets, alleys, highways, and other public property, as the council may determine by ordinance or by contract with any such utility, which compensation shall be in addition to all ad valorem and corporation taxes paid by the utility.

(Ord. No. 99-057, Amend. No. 24, 2-16-99, ratified 5-1-99)

Sec. 13.04. Regulation of utilities.

The city council shall have the power and the duty to:

- (a) Determine, fix and regulate the charges, fares or rates of all public utilities operating within the city, provided the council shall not prescribe any rate of compensation which will yield more than a fair return upon the fair value of the physical property used and useful in rendering service to the public.
- (b) Require such franchise holders who request an increase in rates, charges or fares to reimburse the city for reasonable expenses incurred in employing independent rate consultants to conduct investigations, present evidence and advise the council on such requested increase.
- (c) Prescribe reasonable standards of service and quality of products to be furnished by each utility and prevent unjust discrimination.
- (d) Require such extensions of plant and service and such maintenance of plant and fixtures as may be necessary to provide adequate and efficient service.
- (e) Collect from every public utility operating in the city its fair and just proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling such portions of the alleys, bridges, culverts, viaducts and other public places and ways of the city as may be occupied or used in whole or in part by such utilities; or compel such public utility to perform, at its own expense, its just share of such excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling.
- (f) Prescribe the form of accounts which shall be kept by each utility; provided, that if the utility shall keep its accounts in accordance with the uniform system of accounts for said utility as prescribed by the National Association of Railroad and Public Utility Commissioners, the Federal Power Commission, the Federal Communications Commission, the Railroad Commission of Texas, or their respective successors, this shall be deemed sufficient compliance with this paragraph.
- (g) Examine or cause to be examined at any time the accounts and other records of any utility operating within the city for the purpose of ascertaining any fact relating to the business done by such utility and pertinent to the council's power of regulation.
- (h) The council shall provide means and prescribe regulations for independent testing of all gas, water, light and other public utility meters on complaint of any person who may be dissatisfied with the readings of the employees of those utilities, whether owned by private corporations or by the City of Denton.
- (i) Enact and enforce such reasonable regulations and restrictions as may be deemed desirable or conducive to the safety, welfare and accommodation of the public.
- (j) The City of Denton shall have power to prohibit the use of any street, alley, highway, boulevard or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, gas company or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance, and upon paying such compensation as may be prescribed and upon such conditions as may be provided for by such ordinances, and the City of Denton shall have the

power to require all telegraph, telephone and electric light companies to place their wires underground.

- (k) Require each utility operating in the city to file with the city such reports and other information pertaining to its operations that are required by its franchise agreement with the city, this Charter, city code, other applicable laws, or that may be required from time to time by the council.
- (l) Fix appropriate penalties to enforce compliance with all rules and regulations enacted by the council.
- (m) Give due notice and a fair hearing to persons or corporations to be affected by such rules and regulations before they shall be adopted.

(Ord. No. 2006-232, Amend. No. 22, 8-28-06, ratified 11-7-06; Ord. No. 2006-297, § 2, 10-3-06, ratified 11-7-06)

Sec. 13.05. Other conditions.

All franchises heretofore granted are recognized as contracts between the City of Denton and the grantee, and the contractual right as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City of Denton to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved, and except the general power of the city heretofore existing and herein provided for to regulate the rates and services of a grantee which shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency. Every public utility franchise hereafter granted shall be held subject to all of the terms and conditions contained in the various sections of this Article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the council or the electors of the city in imposing such terms and conditions as may be reasonable in connection with any franchise grant.

Sec. 13.06. Franchise records.

The city secretary shall compile and maintain a public record of all franchises heretofore or hereafter granted by the City of Denton.

ARTICLE XIV. GENERAL PROVISIONS

Sec. 14.01. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 14.01 which pertained to the health officer and was derived unamended from the Charter adopted Feb. 24, 1959.

Sec. 14.02. Publicity of records.

All public records collected, assembled, or maintained by the city in accordance with the transaction of official business shall be available to the public during normal business hours, subject to the exceptions and regulations authorized by applicable state law.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

Sec. 14.03. Official newspaper.

The city council shall annually select and designate by resolution the official newspaper of the city in which all ordinances and official notices that are required to be published shall be published.

Sec. 14.04. Ethics Ordinance Requirement.

The City Council shall adopt an ethics ordinance. The ethics ordinance shall prohibit the use of public office for private gain and shall incorporate the conflict of interest standards that appear in V.T.C.A., Local Government Code, Ch. 171 and all state law as presently exist or may be hereafter amended or adopted. The Council may adopt more stringent standards than those that appear in state law, but the ethics ordinance shall at a minimum include the following components:

- (1) Definition of a prohibited improper economic interest and personal gain;
- (2) Definition of recusal and improper participation when a potential conflict of interest is present;
- (3) Avoidance of appearance of conflict of interest; and
- (4) Administration and enforcement of ethics ordinance, including the power to subpoena witnesses and documents, coupled with strong and meaningful remedies for infraction.

(Ord. No. 2017-237, § 1(Amend. D), 8-15-17, ratified 11-7-17; Ord. No. 2017-373, § 2(Prop. D), 11-20-17)

Ord. No. 2017-237, § 1(Amend. D), adopted August 15, 2017, ratified 11-7-17 repealed the former §§ 14.04, 14.05 and enacted a new § 14.04 as set out herein. The former §§ 14.04, 14.05 pertained to personal interest and nepotism and derived from Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 25, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 23, 8-28-06, ratified 11-7-06.

Sec. 14.05. Reserved.

Editor's note(s)—See Editor's Note for § 14.04.

Sec. 14.06. Oath of office.

Every officer of the city shall before entering upon the duties of his office take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city secretary:

"I, _____, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of _____ of the City of Denton, Texas, and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States and of this State and the Charter and ordinances of this City; and I furthermore solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. (or if the office is one of appointment, "to secure my appointment.") So Help Me God."

Sec. 14.07. Continuation of present offices.

All persons holding administrative office either by election or appointment at the time this Charter becomes effective shall continue in office and in the performance of their duties until provision shall have been made in accordance therewith for the performance of such duties or the discontinuance of such office. The powers conferred and the duties imposed upon any office, department or agency of the city by the laws of the state shall,

if such office, department or agency be abolished by this Charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the council unless otherwise provided herein.

Secs. 14.08, 14.09. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former sections 14.08 and 14.09 which pertained to the commissioners and mayor holding office when the present Charter was adopted and which were derived unamended from said Charter adopted on Feb. 24, 1959.

Sec. 14.10. Continuance of contracts and public improvements.

All contracts entered into by the city, or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws or charter provisions existing at the time this Charter takes effect may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws and charter provisions.

Sec. 14.11. Effect of charter on existing law.

All ordinances, resolutions, rules and regulations now in force under the city government and not in conflict with any provisions of this Charter shall remain in force under this Charter until altered, amended or repealed by the council after this Charter takes effect.

Sec. 14.12. Severable provisions.

If any section, subsection, sentence, clause or phrase of this Charter, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provisions or applications of this Charter which can be given effect without the invalid provision or application, and to this end the provisions of this Charter are declared severable.

Sec. 14.13. Amending the charter.

Amendments to this Charter may be framed and submitted to the voters of the city in the manner provided by Vernon's Texas Codes Annotated, Texas Local Government Code Chapter 9 and all other applicable laws, as they now read or may hereafter be amended.

(Ord. No. 99-057, Amend. No. 26, 2-16-99, ratified 5-1-99)

Sec. 14.14. Submission of charter to electors.

The Charter Commission in preparing this Charter finds and decides that it is impracticable to segregate each subject so as to permit a vote of "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function it is necessary that it should be adopted in its entirety. For these reasons the Charter Committee directs that this Charter be voted upon as a whole and that it shall be submitted to the qualified voters of the City of Denton at an election to be held for that purpose on the 24th day of February, 1959.

Sec. 14.15. When provisions take effect.

If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter the present city commission, after canvassing the returns, shall enter an official order upon the records of the city

declaring the same adopted and this Charter shall be in full force and effect on and after the date of official adoption.

We, the undersigned members of the Denton Charter Commission, heretofore duly elected to prepare a Charter for the City of Denton, Texas, do hereby certify that this publication constitutes a true copy of the proposed Charter for the City of Denton, Texas, as unanimously adopted by the members thereof.

SAM B. McALISTER, Chairman

STANLEY A. MUNSON, Vice Chairman

ETHELYN DAVIS, Secretary

Tom Harpool	Walter B. McClurkan
Don Robinson	H. W. Kamp
Roland Laney	James R. Reed
M. G. Ramey	David Mulkey
W. D. Barrow	Mrs. W. F. "Pat" Hamilton
Lee E. Johnson	Paul P. Young

Sec. 14.16. Boards and commissions.

Members of boards and commissions of the City of Denton shall serve at the pleasure of the council. Members of such boards and commissions may be removed by the council only for cause and only after being given notice by the council.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

CHARTER COMPARATIVE TABLE ORDINANCES

This table shows the location of the sections of the basic Charter and any amendments thereto.

Ordinance Number	Date	Election Date	Section	Section this Code
	2-24-59		1.01—14.16	1.01—14.16
76-12	4- 5-76		Amend. No. 1	2.01
				3.04
			Amend. No. 2	2.04
			Amend. No. 3	2.06
			Amend. No. 4	2.08
			Amend. No. 6	8.03
			Amend. No. 7	10.02
			Amend. No. 8	12.07
79-86	12-11-79	1-19-80	2	2.01—2.03
				2.05, 2.06
				2.08
				3.01
				3.04
				4.13
				4.16

PART I - CHARTER
CHARTER COMPARATIVE TABLE ORDINANCES

				5.01
				5.05
				6.02, 6.03
				7.01—7.07
				8.06
				8.08
				9.01
				10.08
				14.02
				14.04
				14.16
99-057	2-16-99	5- 1-99	Amend. No. 2	1.05
			Amend. No. 3	1.06
			Amend. No. 4	1.07
			Amend. No. 5	2.02
			Amend. No. 6	2.04
			Amend. No. 7	3.01
			Amend. No. 8	3.02
			Amend. No. 9	3.04
			Amend. No. 10	6.03
			Amend. No. 11	7.01
			Rpld	7.02, 7.03, 7.04
			Amend. No. 12	8.04
			Amend. No. 13	8.05
			Amend. No. 14	8.07
			Amend. No. 15	9.01(a)
			Dltd	9.01(d)
			Amend. No. 16	9.02(a)
			Amend. No. 17	10.03(a)(6)
			Amend. No. 18	10.05
			Amend. No. 19	10.07
			Amend. No. 20	11.02
			Amend. No. 22	12.04
			Amend. No. 23	12.07(a), (d)
			Amend. No. 24	13.03
			Amend. No. 25	14.04
			Amend. No. 26	14.13
2006-232	8-28-06	11- 7-06	Amend. No. 2	1.06(f)
			Amend. No. 3	2.05(a)
			Amend. No. 4	2.07
			Amend. No. 5	2.08
			Amend. No. 6	2.09(b)
			Amend. No. 7	3.01(a)
			Amend. No. 8	5.03
			Amend. No. 9	6.01

PART I - CHARTER
CHARTER COMPARATIVE TABLE ORDINANCES

				6.02
				6.04
			Amend. No. 10	8.03
			Amend. No. 11	8.08
			Amend. No. 12	9.02(a)
			Amend. No. 13	9.04
			Amend. No. 14	10.02
			Amend. No. 15	10.03
			Amend. No. 16	10.05
			Amend. No. 17	10.08
			Amend. No. 18	10.10(a)
			Amend. No. 19	10.12
			Amend. No. 20	12.07(d)
			Amend. No. 21	12.08(a)
				12.08(e)
			Amend. No. 22	13.04
			Amend. No. 23	14.05
2006-297	10- 3-06	11- 7-06	2	13.04
2009-199	9- 1-09	11- 3-09	Amend. No. 1	2.01(a)
			Amend. No. 2	2.02(a)(2)
			Amend. No. 3	2.03
				2.04
			Amend. No. 4	2.10
2017-237	8-15-17	11- 7-17	Amend. A	2.02(a)
			Amend. C	6.04
			Amend. D Rpld	14.04, 14.05
			Added	14.04
			Amend. E Added	2.02(c)
2017-373	11-20-17	11- 7-17	Prop. A	2.02(a)
			Prop. C	6.04
			Prop. D Rpld	14.04, 14.05
			Added	14.04
			Prop. E Added	2.02(c)

Ethics Hearing Brief re Councilman Brian Beck's Participation in Solar Deliberation

- Prepared by Peter K. Mungiguerra, Jr., retained counsel for Councilman Dr. Brian Beck

I. Introduction and Background

- A. Councilman Beck has been a dedicated member of the Denton City Council, focused on serving the community and advancing initiatives for the public good, especially with regards to the protection of the environment. Mayor Hudspeth's complaint, alleging improper influence in rate-setting deliberations, stems from Councilman Beck's participation in discussions regarding the city's solar net-metering program.

II. Political Motivation and Misleading Actions of the Complaint

A. Complaint Filed in Bad Faith:

1. Mayor Hudspeth lied to the Ethics Board by misrepresenting his own status regarding solar panel ownership.
2. Ethics Ordinance, Section 2-266: This section explicitly discourages using the Ethics Ordinance to pursue personal or political grudges. Mayor Hudspeth has publicly voiced discontent with Councilman Beck, and this complaint appears to serve as a political attack rather than a concern for Denton ratepayers.

B. Pattern of Abusing Resources:

1. Mayor Hudspeth has a history of using city resources for political aims, including recent instances of illegal electioneering from the council dais.
2. This complaint is part of a larger, concerning pattern targeting Councilman Beck and other sitting councilmen.

III. No Violation of Ethics Ordinance: Legal and Procedural Justification

- A. Councilman Beck's actions do not apply to the Improper Influence section of the Ethics Ordinance (I have provided the ordinance below for reference).

1. (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; or
 - (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).

2. The section on improper influence does not apply to Councilman Beck for several key reasons. Each subsection outlines specific conduct that constitutes "improper influence," but none of these fit his actions in this case.
 - a) Subsection (1): Securing Special Privileges or Benefits: Councilman Beck's participation in the net-metering program is mandatory for any Denton resident who installs solar panels. His participation in rate deliberations does not grant him any special privilege or benefit beyond what is available to all Denton residents with solar panels, or residents who are considering enrolling in the solar program. The program, rate structure, and resulting credits are applied uniformly, meaning Councilman Beck neither requested nor received any unique treatment.
 - b) Subsection (2): Granting Special Consideration or Advantage: Councilman Beck did not advocate for or support any measures that would grant him, or any specific group, advantages beyond what other citizens are eligible to receive under the net-metering program. His actions in deliberating and voting are consistent with the duties of a council member to establish policies that broadly serve the public. Therefore, his involvement doesn't meet the definition of granting special consideration or a unique advantage.
 - c) Subsection (3): Advancing or Harming Private Interests by Asserting Official Prestige: Councilman Beck's participation in discussions does not appear to have been aimed at advancing or harming any private interests, including his own. Rather, his role is to ensure fair and effective municipal rate-setting, in line with council duties under state law. The Texas Constitution allows city councils to set utility rates, even if those rates may indirectly impact council members, as long as they serve the broader community's interests. Therefore, his participation doesn't meet the criteria for advancing private interests improperly.
 - d) Subsection (4): Implied Influence Beyond the Merits: Councilman Beck's role in the discussion was based solely on his position as a council member and not any influence beyond his voting and deliberative rights. His participation adheres to the council's responsibility to set policy on a wide range of issues affecting all

ratepayers, and his contributions were based on policy considerations relevant to all citizens.

e) Subsection (5): Unauthorized Representation on Behalf of the City: Councilman Beck has not represented himself to outside agencies as an official spokesperson for the City or City Council on this matter without council authorization. His involvement remains within the scope of a council member's duties, deliberating with peers on city policy.

3. Under this section, "improper influence" would require an action in which Councilman Beck used his role to gain an exclusive benefit, advantage, or special treatment beyond standard municipal procedures. His participation in rate deliberations is a constitutional and statutory function of his council duties and does not appear to secure any unique privilege, alter program benefits, advance private interests, or imply inappropriate influence. The ordinance section on improper influence is therefore inapplicable to his conduct in this situation.

B. Compulsory Nature of Program Participation:

1. Councilman Beck, like many Denton homeowners, is required to participate in the city's solar net-metering program as a condition of his solar panel permit. There is no circumstance under which Councilman Beck could have panels on his roof and not be in this program, just like he cannot own a home in Denton without paying property taxes.
2. This involvement is as obligatory as paying property taxes or using municipal services and does not reflect any personal bias or conflict.

C. All Residents Benefit From Solar Program

1. Because DME has all of the money going back to the ratepayers, **all** residential customers benefit under the program. Under the proposal being considered during this deliberation, DME would be lowering its rate payment to solar producers, which would lower costs for all DME ratepayers.
2. If we follow the logic that any beneficiary of this program is exerting improper influence, then all council members would need to recuse themselves because they all benefit from the program. According to the Ethics Ordinance, if all council members have to recuse, then none of them have to recuse.

D. Texas Constitutional Support for Council's Role in Rate Setting:

1. Home-Rule City Powers: Under Article 8, Section 1 of the Texas Constitution, home-rule cities like Denton possess the authority to set tax and utility rates. The council, as the city's governing body, is entrusted to make these decisions.

2. Local Government Code, Section 552.002(c): Denton has the right to establish utility rates through its governing body, and these decisions apply to all council members without implying a conflict.
 3. Given that utility rate-setting is specifically a constitutional and state-sanctioned power of city councils, any ordinance or complaint alleging an ethical breach for council participation in these discussions lacks a legal basis.
 4. Council members, including Councilman Beck, have a state-supported role in rate-setting discussions. Attempts to limit this participation, as seen in Mayor Hudspeth's complaint, would not only contravene local governance principles but could undermine the Texas Constitution's and Texas Legislature's intended scope of municipal authority.
- E. Precedent for Rate-Setting Participation Among Council Members:
1. Council members frequently participate in discussions on rates that may personally impact them, as demonstrated by other city programs.
 - a) Homestead exemptions are only available to homeowners and not renters.
 - b) Senior citizen discounts benefit eligible council members but are still considered fair and ethical.
 2. Councilman Beck's participation is consistent with established practices and does not violate the ethics ordinance.

IV. Conclusion

- A. Summary: This complaint is politically motivated, without any legitimate ethical concerns.
- B. Councilman Beck's Compliance: His involvement in the net-metering program is mandatory, legally justified, and aligns with the council's responsibility to set policies for the broader benefit of Denton residents.

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

DIVISION 1. GENERAL

Sec. 2-265. Authority

This Article is enacted pursuant to the authority granted to the City under Section 14.04 of the Charter.

Sec. 2-266. 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 Respondent.

Sec. 2-267. Prospective

This Article shall apply prospectively, and shall not sustain any Complaints based on acts or omissions alleged to have taken place prior to May 15, 2018.

Sec. 2-268. Applicability

This Article applies to the following persons:

- (a) City Officials;
- (b) Former City Officials whose separation from city service occurred less than one (1) year 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 (§2-273(d)(2)); or
 - (3) of the prohibition of subsequent work on prior projects (§2-273(h));
- (c) Vendors; and
- (d) Complainant(s), who must comply with this Article’s procedures and the prohibition on Frivolous Complaints.

Sec. 2-269. Definitions

The following words, terms, and phrases, when used in this 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.

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: this Chapter 2, Article XI of the Code of Ordinances 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.

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.

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 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, Department Heads, or member of the Board of Ethics, Planning and Zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board.

City Secretary: the person appointed to serve in the capacity provided for by Section 2.12 of the City Charter, or their designee and clerical staff acting in the City Secretary's absence.

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.

Deliberations: discussions at the dais; voting as a Member of the Board or Commission; or presentations as a member of the audience before any City Board or Commission; conversing 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 or polling places.

Department Heads: the employees appointed by the City Council, those being the City Manager, City Auditor, City Attorney, and Municipal Court Judge.

Former City Official: a City Official whose separation from city service occurred less than one (1) year 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 Article 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,

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.

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

Relative: a family member related to a City Official within the third (3rd) degree of affinity (marriage) or consanguinity (blood or adoption) in accordance with Texas Government Code, Title 5, Subtitle B, Chapter 573.

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

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, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Sec. 2-270. 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 not be construed as foreclosing or precluding other enforcement options provided by other law.

DIVISION 2. RULES OF CONDUCT

Sec. 2-271. 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 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 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. 2-272. Mandates

- (a) **Duty to Report.** City Officials shall report any conduct that the person knows to be a violation of this Article. Failure to report a violation of this 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.
- (c) **Business Disclosures.** When a Pending Matter is before the City Official, and the City Official has knowledge of being a partner with one of the owners of the Business Interest with the Pending Matter, all City Officials shall file with the City Auditor a report listing the known names of human individuals with whom the City Official or the City Official's spouse is named partner in the following types of businesses: General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or

Professional Corporation. Annual reports shall be submitted within ninety (90) days of taking office. Failure to submit a report shall not serve as a basis for a Complaint unless the City Official fails to submit a report within thirty (30) days of being provided written notification of the omission. Neither the existence of a business relationship as described in this Section, nor the submission of a report required by this Section shall prevent a City Official from participating in Deliberations on matters pending before the City absent a Conflicting Interest.

- (d) **Disclosure Process.** Disclosures mandated by this section shall be filed with the City Auditor and City Secretary at least one business day prior to deliberation of the Pending Matter. Disclosures received shall be distributed by City staff to the relevant body prior to the Pending Matter being deliberated.

Sec. 2-273. 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 currently has a Conflicting Interest. City Officials with a current 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, Board of Ethics, Historic Landmark Commission, Public Utilities Board, or Board of Adjustment; where a majority of the 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 Conflicting Interest in a Pending Matter, the City Official shall disclose the nature of the Conflicting Interest 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) *Definition of Conflicting Interest.* For purposes of this Article, the term is defined as follows:

Conflicting Interest: a stake, share, equitable interest, or involvement in an undertaking in the form of any one (1) or more of the following:

- (A) ownership of five percent (5%) or more voting shares or stock in a Business Entity;

- (B) receipt of more than six-hundred dollars (\$600.00) in gross annual income from a Business Entity, as evidenced by a W-2, 1099, K-1, or similar tax form;
- (C) ownership of more than six-hundred dollars (\$600.00) of the fair market value of a Business Entity;
- (D) ownership of an interest in real property with a fair market value of more than six-hundred dollars (\$600.00);
- (E) 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;
- (F) serves on the Board of Directors (i.e., governing body) 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; and/or
- (G) direct or indirect solicitation of an offer of employment for which the application is still pending, receipt of an offer of employment that has not been rejected, or acceptance of an offer of employment from or to a person or Business Entity within the past twelve (12) months;

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.

(b) **Gifts.**

- (1) *General.* It shall be a violation of this Article for a City Official or a City Official's Relative 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). It shall be a violation of this Article for a City Official to accept multiple Gifts for which the cumulative fair market value exceeds two hundred dollars (\$200.00) in a single fiscal year. It shall be a violation of this Article for a Vendor to offer or give a Gift to a City Official or a City Official's Relative exceeding fifty dollars (\$50.00) per Gift, or multiple Gifts cumulatively valued at more than two hundred dollars (\$200.00) in a single fiscal year.

- (3) *Definition of Gift.* Anything of monetary value, including but not limited to cash, personal property, real property, services, meals, entertainment, and travel expenses, except those provided in 2-273(b)(3) below.
 - (4) *Exceptions.* For the purposes of this Article, the term Gift does not include any of the following:
 - (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, nonprofit functions, or charity functions, or community events, if furnished by the sponsor of such events (who is in attendance);
 - (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 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; and
 - (H) complimentary attendance at political, nonprofit, or charitable fund raising events.
 - (5) *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.
 - (6) *Reimbursement.* It is not a violation under this Article for a City Official to accept a Gift prohibited by this Article and promptly reimburse the Person the actual cost or fair market value of the Gift.
 - (7) *Disclosure Required.* If a City Official chooses to accept a Gift, the City Official shall disclose the value of the Gift and the nature of the Gift's acceptance by filing an affidavit with the City Auditor.
- (c) **Outside Employment.**
- (1) *Applicability of Section.* This subsection applies to Department Heads.

- (2) *Prohibition.* It is a violation of this Article for a Department Head 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 a Department Head 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 a board or commission of 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 Council or a board, commission, or staff of the City for a period of one (1) year after termination of official duties. This prohibition applies to representation in the form of advocacy or lobbying regarding discretionary approvals of the City, not routine, ministerial actions. 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 affiliated Persons. This subsection does not apply to Former City Officials who represent others for compensation in the course of applying for non-discretionary, ministerial permits and routine approvals. It shall be an exception to this Article when the Former City Official is employed by or owns a small business which existed before the Former City Official commenced service as a City Official and is the sole source of specialized knowledge or expertise necessary within that small business, and that knowledge or expertise is necessary to transact business with the City.

(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; or
 - (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 to use any confidential information to which the City Official had access by virtue of 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 the City Official'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 Officials for official City purposes.
- (h) **Abuse of Position.** It shall be a violation of this Article for any City Official to engage in the following:
- (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 one (1) year 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. This Section does not apply to a City Official whose involvement with a contract or arrangement was limited to Deliberations

as a member of the City Council, Planning and Zoning Commission, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board.

DIVISION 3. IMPLEMENTATION

Sec. 2-274. 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. Furthermore, this Article shall not be construed as requiring the City Auditor to investigate allegations of violations of this Article submitted via the Fraud, Waste, or Abuse hotline.
- (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.
- (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. 2-275. Legal Counsel

- (a) **City Attorney.** The City Attorney shall provide legal support to the City Auditor and the Board of Ethics in the administration of this Article. Nothing herein shall be construed to limit the authority of the City Attorney to render legal guidance in accordance with the City Attorney's professional obligations and standards.
- (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 City Auditor and 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;
 - (2) when the City Council deems Special Counsel is necessary; or
 - (3) when action is being taken by the Board of Ethics regarding any council member.

Sec. 2-276. 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 their 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. 2-277. 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 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) consecutive terms. A member may be reappointed no sooner than one (1) year after expiration of a previous term.
- (e) **Eligibility.** Membership on the Board of Ethics is limited to residents of the City of Denton.
- (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 to a City Official within the third (3rd) degree of affinity (marriage) or 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) **Scope of Authority.** The Board of Ethic's jurisdiction shall be limited to implementation and enforcement of this Article, and shall include the authority to administer oaths and affirmations, issue and enforce limited subpoenas to compel the attendance of witnesses and the production of testimony, evidence, and/or documents as is reasonably relevant to the Actionable Complaint, as provided by the City Charter. The issuance and enforcement of subpoenas shall be only upon a majority vote of the Board of Ethics, in accordance with the Rules of Procedure, and enforcement shall be through any of the Sanction options listed herein.

- (h) **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.
- (i) **Officers.** At the first meeting of each fiscal year the Board of Ethics shall select from among its members a Chairperson and Vice-Chairperson.
- (j) **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.
- (k) **Removal:** The City Council may, by a vote of two-thirds (2/3), remove a member of the Board of Ethics for cause. Justifications warranting removal for cause shall include neglect of duty, incompetence, gross ignorance, inability or unfitness for duty, or disregard of the Code of Ordinances.

Sec. 2-278. 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 or Special Counsel.
- (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. This time limitation is tolled and shall not run until the Board of Ethics is empaneled and its Rules of Procedure are confirmed by the City Council.
- (c) **Reliance.** It shall be an affirmative defense to a Complaint that the Respondent relied 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 Respondent 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. 2-279. Complaints

- (a) **Complainants.** Any person who has first-hand knowledge that there has been a violation of Sections 2-272 and/or 2-273 of this Article may allege such violations by submitting a Complaint. The persons who may submit Complaints includes (but is not limited to) 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, under oath, must set forth in simple, concise, direct statements, and 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 Respondent of violating this Article;
 - (4) the position or title of each person Respondent of violating this Article;
 - (5) the nature of the alleged violation, including 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. Notwithstanding the foregoing, nothing in this subsection shall be construed to extend the one (1) year limitation of activity applicable to Former City Officials. The time for filing a Complaint regarding an alleged violation of this Article where the alleged violation occurred after the Effective Date but before the Board of Ethics is empaneled shall be tolled and not begin to run until such time as the Board of Ethics is empaneled and its Rules of Procedure are confirmed by the City Council.
- (g) **Filing.** Complaints shall be submitted to the City Auditor. Submission of Complaints may be made by hand delivery, 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 Respondent.

- (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 and timely, the City Auditor shall send a written notification of acceptance and a copy of the complaint to the Complainant, the Respondent, 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 Respondent, 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.

- (1) **Retaliation Prohibited.** After a Complaint has been filed, and during or after the pendency before the Board of Ethics, it shall be a violation of this Article:
 - (1) For a City Official, Former City Official, or Vendor to directly or indirectly discriminate against, harass, threaten, harm, damage, penalize, or otherwise retaliate against any person who:
 - (A) Files a complaint regarding an alleged violation of this Article, or
 - (B) Testifies, assists, or participates in any manner in a proceeding or hearing under this Article.
 - (2) The outcome of the original ethics complaint shall not be deemed relevant to the complaint of retaliation itself.

Sec. 2-280. 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. Board members who have previously submitted an Ethics Complaint against the Respondent in a Preliminary Assessment shall not be assigned to the Panel unless a majority of the Board members have previously submitted an Ethics Complaint against the Respondent. 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 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 to be held within thirty (30) calendar days of a Panel's Actionable determination. Baseless Complaints shall be dismissed. Written notification of the Panel's determination shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Written notifications of dismissal shall include notice of the right to appeal.

- (d) **Recommendation to Determine Frivolity.** Before filing notification of its determination, the Panel may consider recommending a hearing first be held to determine

if an Accepted Complaint is frivolous. Written notification of the Panel's recommendation to hold a hearing to determine frivolity shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Hearings to determine frivolity shall be held within thirty (30) calendar days of a Panel's recommendation.

- (e) **Appeals.** A Panel's preliminary assessment under this Section 2-280 may be appealed to the Board of Ethics by either the Complainant or the Respondent, 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. 2-281. 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;
 - (B) an Appeal challenging a Panel's dismissal of a Complaint as Baseless; or
 - (C) a Panel recommendation that a hearing be held to determine if an Accepted Complaint is Frivolous.
 - (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) *Sworn Testimony:* All witness testimony provided to the Board of Ethics shall be under oath.
 - (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 unless it is held to determine if an Accepted Complaint is frivolous. A Complainant's failure to testify at a hearing,

other than a hearing to determine frivolity, shall be grounds for dismissal of a Complaint.

- (5) *Representation*: The Respondent shall have a right to present a defense. Both the Complainant and the Respondent 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) *Board*: Proceedings may be postponed upon majority vote by the members of the Board of Ethics.
 - (2) *Parties*: The Complainant and the Respondent 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.
 - (3) *Criminal Proceedings*: 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. 2-282. 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 Respondent reasonably relied in good faith upon an Advisory Opinion, as provided in this Article; or
 - (4) the Complainant failed to testify at the hearing.
- (b) **Sanctions**. If the Board of Ethics determines by simple majority vote of those present and voting 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 Advisory opinion, a letter of notification shall advise the Respondent 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 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 Commission, Zoning Board of Adjustment, Board of Ethics, Public Utilities Board, Historic Landmark Commission, or a Department Head, and it:
 - (A) was serious and 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.

- (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 Respondent, 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) *Hearing.* A hearing shall be scheduled on frivolity if the Preliminary Panel recommends an Accepted Complaint first be considered for frivolity. The Complainant is not required to testify at a hearing to determine if their submitted Complaint is frivolous.
- (3) *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 2-282(b).

Upon finding that a Complaint is Frivolous, the Complaint is dismissed.

- (4) *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 Respondent 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 Respondent and the Complainant before the Complaint was filed;
 - (D) if the Respondent is a Candidate for Election to Office, the existence and nature of any relationship between the Complainant and any Candidate or group opposing the Respondent;
 - (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.
- (5) *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. 2-283. Reconsideration

The Complainant or Respondent 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 Respondent). 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 notice to the Parties.

Sec. 2-284. Nepotism

- (a) **City Council.** No Person shall be employed by the City who is a relative of any member of the City Council within the third (3rd) degree of affinity or consanguinity.
- (b) **Preexisting Employment.** The prohibitions of this Section do not apply to a Person who was employed by the City more than six (6) months prior.

Sec. 2-285. 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.** Under this Article, a deadline for any response or request for appeal is met when the date the response or request for appeal is mailed falls within the timeline requirements of this Article. The posted date of any mailing will control whether it meets the timeline requirements of this Article.

Sec. 2-286. Lobbyists [*reserved*]

FILE REFERENCE FORM

23-2251

- Additional File Exists
- Additional File Contains Records Not Public, According to the Public Records Act
- Other

FILE(S)	Date	Initials
20-1035		
22-056		
22-1245		
23-1165		

ORDINANCE NO. 23-2251

AN ORDINANCE OF THE CITY OF DENTON AMENDING THE CODE OF ORDINANCES, RELATED TO CHAPTER 2, TITLED "ADMINISTRATION," ARTICLE XI, TITLED "ETHICS," TO ELIMINATE THE ALTERNATE MEMBER POSITIONS; PROVIDING FOR FINDINGS OF FACT; PROVIDING SEVERABILITY; PROVIDING A REPEALER CLAUSE, PROVIDING CODIFICATION; CONFIRMING PROPER NOTICE AND MEETING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 1, 2018, the City Council of the City of Denton enacted a new Code of Ethics, codified in Chapter 2, Article XI of the City of Denton Code of Ordinances, to foster a culture of integrity for those who serve the municipality and our citizenry (the "Code"); and

WHEREAS, the Code represented the consensus of preferences expressed by the City Council over a period of eight (8) public work sessions, and four (4) public hearings, which were broadcasted. Altogether, the work sessions exceeded twenty (20) hours of deliberations; and

WHEREAS, this Code of Ethics applies to the Mayor, City Council, Planning and Zoning, Zoning Board of Adjustment, Historic Landmark Commission, Board of Ethics, Public Utilities Board, Department Heads appointed by the City Council, and Vendors; and

WHEREAS, on June 2, 2020, by Ordinance No. 20-1035, the City Council repealed the previously adopted Chapter 2, Article XI, entitled "Ethics," in its entirety and replaced it with an amended Code; and

WHEREAS, on January 25, 2022, by Ordinance No. 22-056, the City Council passed an amendment removing preference qualifications for Members of the Board of Ethics; and

WHEREAS, on July 19, 2022, by Ordinance No. 22-1245, the City Council passed an amendment updating the composition requirements of a panel, clarifying what is included in the contents of an accepted ethics complaint, and clarifying the process for recommending a frivolity hearing; and

WHEREAS, on July 18, 2023, by Ordinance No. 23-1165, the City Council passed an amendment clarifying gift disclosure requirements, adding to the definition of conflict of interest recent offers of employment, clarifying the process to submit business disclosures, and requiring the City Auditor to provide a copy of an Accepted Complaint to the Complainant; and

WHEREAS, in order to enhance governmental efficiency and facilitate expedient appointment of future board member vacancies, the City Council deems it in the public interest to amend Chapter 2 Article, XI, Section 2-277 and eliminate the Board alternate member positions; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are

found to be true and are incorporated herein by reference as if fully set forth in the body of this ordinance.

SECTION 2. Chapter 2, Article XI of the Code of Ordinances of the City of Denton is hereby amended by striking Section 2-277 in its entirety and replacing it with the following:

“Sec. 2-277. – 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 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) consecutive terms. A member may be reappointed no sooner than one (1) year after expiration of a previous term.
- (e) *Eligibility.* Membership on the Board of Ethics is limited to residents of the City of Denton.
- (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 to a City Official within the third (3rd) degree of affinity (marriage) or 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) *Scope of Authority.* The Board of Ethic’s jurisdiction shall be limited to implementation and enforcement of this Article, and shall include the authority to administer oaths and affirmations, issue and enforce limited subpoenas to compel the attendance of witnesses and the production of testimony, evidence, and/or documents as is reasonably relevant to the Actionable Complaint, as provided by the City Charter. The issuance and enforcement of subpoenas shall be only upon a majority vote of the Board of Ethics, in accordance with the Rules of Procedure, and enforcement shall be through any of the Sanction options listed herein.

- (h) *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.
- (i) *Officers.* At the first meeting of each fiscal year the Board of Ethics shall select from among its members a Chairperson and Vice-Chairperson.
- (j) *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.
- (k) *Removal:* The City Council may, by a vote of two-thirds (2/3), remove a member of the Board of Ethics for cause. Justifications warranting removal for cause shall include neglect of duty, incompetence, gross ignorance, inability or unfitness for duty, or disregard of the Code of Ordinances.”

SECTION 3. All prior ordinances, resolutions, amendments, policies, or guidelines that conflict with this amendment are hereby rescinded and repealed in whole or in part to the extent necessary to give full effect to his amendment.

SECTION 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this ordinance, or its application thereof to any person or circumstance is determined to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, as the remaining portions are enacted in spite of any such invalidity.

SECTION 5. Save and except as amended hereby, all portions of the Code of Ordinances shall remain in effect.

SECTION 6. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

SECTION 7. Upon the effective date of this ordinance, the City Secretary shall cause the codification of the provisions contained herein into the City of Denton Code of Ordinances.

SECTION 8. This ordinance shall become effective immediately upon its passage and approval.

[Rest of page intentionally left blank. Signatures to appear on following page.]

The motion to approve this ordinance was made by Gerard Hudspeth and seconded by Brandon Chase McGee, the ordinance was passed and approved by the following vote [6 - 0]:


	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>✓</u>	_____	_____	_____
Brian Beck, District 2:	<u>✓</u>	_____	_____	_____
Paul Meltzer, District 3:	<u>✓</u>	_____	_____	_____
Joe Holland, District 4:	<u>✓</u>	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	<u>✓</u>

PASSED AND APPROVED this the 12th day of December, 2023.




 GERARD HUDSPETH, MAYOR

ATTEST:
 JESUS SALAZAR, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY

BY:  Scott Bray
 2023.11.27
 10:41:03 -06'00'



Rules of Procedure for Conducting Meetings & Hearings

City of Denton, Texas
Board of Ethics

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**CITY OF DENTON
BOARD OF ETHICS**

**RULES OF PROCEDURE FOR
MEETINGS & HEARINGS**

A. GENERAL

1. CONFIDENTIALITY

The City of Denton shall strive to maintain a level of confidentiality during the preliminary phases of processing Complaints in order to avoid unduly tarnishing of peoples' reputations while striving to provide due process. Confidentiality shall be limited by law, including the Texas Public Information Act.

Under the Code of Ethics, a Complaint submitted to the City is confidential until it is either dismissed or placed on an agenda subject to Code of Ethics Section 2-279(i).

The Board of Ethics shall maintain the confidentiality of any document it receives that is categorized as being subject to common law privacy as defined by Section 552.101 of the Texas Government Code; trade secrets, audit working papers, certain commercial or financial information as defined by Section 552.110 of the Texas Government Code; confidentiality of certain private communications of elected officers as defined by Section 552.109 of the Texas Government Code; and all other information considered confidential and protected under the Texas Public Information Act or other law, as applies to Section 552.022 of the Government Code.

Code of Ethics §2-279(j),(i).

2. EX PARTE

The Complainant and the Respondent are prohibited by the Code of Ethics from communicating (directly or indirectly) about the subject matter or merits of the Complaint, or any issue of law or fact about a Complaint, with the Board, any of its members, or witnesses identified in the Complaint (or filed supplements). Similarly, the Board is prohibited from communicating about the subject matter or merits of a Complaint, or any issue of law or fact about a Complaint with the parties or other persons (except for members of the Board, the City Auditor's Office, City Attorney's Office, or Special Counsel).

3. AMENDMENTS

The Board of Ethics may recommend amendments to City of Denton Code of Ordinances, Chapter 2, Article XI, or to its own Rules of Procedure to the City Council by a simple majority vote.

Code of Ethics §2-279(k).

B. MEETINGS

1. **Calling Meetings.** Board meetings shall be called by the Chairperson, or upon request of three (3) board members, or the City Auditor, at least annually.
2. **Call to Order.** The Chairperson shall call the hearing to order, announce the time the hearing is called to order, and state whether a quorum of the board is present. The quorum is four (4) board members, which can include the Chairperson.
3. **Open Meetings.** Board meetings shall be conducted in compliance with the Texas Open Meetings Act.
4. **Participation.** Public comment may be provided at regular meetings of the Board of Ethics on any matter of concern to the Board of Ethics during the public comment period designated on the meeting agenda. Up to five (5) speakers are permitted to provide public comment at each meeting, and each speaker shall speak for no more than three (3) minutes. Additionally, during a regular meeting of the Board of Ethics, any citizen or interested person may comment on a specific item posted on the agenda for final action. Each speaker on a specific agenda item shall speak for no more than three (3) minutes per item. Individuals may sign up to provide public comment or to comment on a specific agenda item by filling out the sign-up sheet at the location of the meeting immediately before the meeting begins.
5. **Adjournment.** Meetings of the Board may be adjourned by the Chairperson's initiative or upon vote of a majority of the members.
6. **Notice of Absence or Abstention.** Upon receipt of an agenda for meeting or hearing, each member of the Board shall immediately (within twenty-four (24) hours) inform the City Auditor if the member is planning to: (a) not attend; or (b) abstain from participation.

Code of Ethics §2-281, §2-277(g).

C. ADVISORY OPINION

1. **Assignment.** The City Auditor shall refer requests to either a Panel or to Special Counsel as follows:
 - (a) If a request is received more than ten (10) business days before deliberation of the Pending Matter, the City Auditor shall assign it to a Panel;
 - (b) If a request is received more than five (5) business days before deliberation of the Pending Matter, the City Auditor shall assign it to a Panel or Special Counsel if a Panel cannot be formed at least five (5) business days before deliberation of the Pending Matter;
 - (c) If a request is received less than five (5) business days before deliberation of the Pending Matter, the City Auditor shall inform the City Official that the Advisory Opinion cannot be issued prior to deliberation and at which point the City Official may choose to

withdraw the Advisory Opinion request. If a request is withdrawn the City Auditor shall provide information about the prohibitions of Sec. 2-273 and report the withdrawal to the Board of Ethics at the next regular meeting.

Panels shall be designated by the Chairperson consisting of three (3) board members on a rotating basis. Three (3) board members must be in attendance.

2. **Calling Meetings.** Panel meetings shall be called by the City Auditor.
3. **Open Meetings.** Panel meetings shall be conducted in compliance with the Texas Open Meetings Act.
4. **Notice.** The City Auditor shall send a written notification of the Panel meeting to the requesting City Official at least five (5) calendar days prior.
5. **Participation.** While the requesting City Official and other persons may attend the meeting, no testimony or public comments will be accepted.
6. **Scope.** When assembled, Panels shall respond to a request for an Advisory Opinion by issuing written guidance regarding how the Code of Ethics applies (if at all) to a particular situation or behavior. The opinion may contain conclusions and / or recommendations.
7. **Basis of Opinion.** A Panel's opinion shall be limited to the facts presented in writing by the requestor. No additional material will be considered. The opinion shall reflect the majority position of the Panel.
8. **Deadline.** A Panel must issue its Advisory Opinion within thirty (30) days of the City Auditor's receipt of the request.

Code of Ethics §2-278.

D. PRELIMINARY ASSESSMENTS

1. **Assignment.** The Chairperson shall designate panels consisting of three (3) board members on a rotating basis. Board members who have previously submitted an Ethics Complaint against the Respondent in a Preliminary Assessment shall not be assigned to the Panel unless a majority of the Board members have previously submitted an Ethics Complaint against the Respondent.
2. **Calling Meetings.** Panel meetings shall be called by the Chairperson.
3. **Open Meetings.** Panel meetings shall be conducted in compliance with the Texas Open Meetings Act.
4. **Notice.** The City Auditor shall send a written notification of the Panel meeting to the Complainant, the Respondent, and the City Attorney at least five (5) calendar days prior.

5. **Participation.** While the Complainant, the Respondent, and other persons may attend the meeting, no testimony or public comments will be accepted.
6. **Scope.** When assembled, Panels shall determine if a Complaint is Actionable or Baseless, as defined by the Code of Ethics.
7. **Basis.** A Panel’s review is limited to the contents of the Complaint which includes all additional documents, hyperlinks, video, and audio submitted along with the original Ethics Complaint Form. The Panel may consider whether the action(s) alleged within the contents of the Complaint are a violation of any provision of the Ethics Ordinance, regardless of a provision specified by the Complainant. No extraneous information may be considered, unless the Panel wishes to review information as part of a consideration of the accuracy of the statements made in the Complaint in conjunction with the making of a recommendation that a hearing be first held on an accepted Complaint to determine if it may be frivolous.

Code of Ethics §2-280.

E. HEARINGS

1. Preliminary Hearing

If a Complaint proceeds to a hearing, the Board of Ethics may conduct a preliminary hearing to:

- (a) issue a subpoena requesting the production of data or other evidence from a City Official needed for the performance of the board’s duties and including the board’s exercise of its powers of investigation., subject to Section E(11) of these Rules.
- (b) rule on any procedural requests from the parties, such as Motions for Continuance.

2. Evidentiary Hearing

If a Complaint proceeds to a hearing, the Board of Ethics may:

- (a) allow witnesses to attend and testify;
- (b) admit evidence; and
- (c) make determinations.

3. Scheduling / Calling

Hearings shall be scheduled by the City Auditor upon the filing of:

- (a) a Panel determination that a Complaint is Actionable;
- (b) an Appeal challenging a Panel’s dismissal of a Complaint as Baseless; or
- (c) a Panel recommendation that a hearing be held to determine if an Accepted Complaint is Frivolous.

The City Auditor shall send a written notification of the hearing to the Complainant, the Respondent, and the City Attorney at least seven (7) calendar days prior.

Code of Ethics §2-281(c).

4. Purpose

The purpose of evidentiary hearing(s) shall be solely to determine whether:

- (a) a violation of the Code of Ethics 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.

5. Authority of Chair

The Chair will control discussion at all times so that only one (1) person speaks at a time. The Chair will enforce these rules through the following measures:

- (a) by calling a person to order, advising them of the rules and requesting compliance;
- (b) by ending a person’s opportunity to speak on an agenda item; and/or
- (c) by ordering a person to leave a meeting and barring the person’s presence during the remainder of the meeting.

The Chair may reasonably extend time limits provided under these rules, either at their own discretion or by a simple majority vote of the Board. At the expiration of a party’s time, the chair shall ask the party if they feel they have had a full and fair hearing, and if they feel they have had an opportunity to present all of the relevant evidence and testimony in their hearing.

6. Call to Order

The Chairperson shall call the hearing to order, announce the time the hearing is called to order, and state whether a quorum of the board is present. The chair shall identify the Complaint being considered by the board.

7. Recusals

At any point prior to the commencement of deliberations, members of the Board can recuse themselves. Grounds for recusal shall include prohibitions listed in City of Denton Code of Ordinances, Chapter 2, Article XI, Section 2-273(a) (Conflicts of Interest), or any other ethical basis deemed compelling by the recusing member. Board members shall recuse themselves if the City Council member who nominated them is a party to a Complaint pending before the Board member.

8. Enter Appearance of the Parties

The Chairperson shall call the parties to announce if they are present. If the Complainant is not present, the Chairperson shall dismiss the Complaint, close the hearing, and issue a Letter of Dismissal unless the hearing is being held to determine if an Accepted Complaint is frivolous.

9. Procedural Request

All procedural motions that the Complainant or person charged in the complaint wishes the board to consider at the evidentiary hearing must be filed with the City Auditor’s Office at least four (4) calendar days prior to the evidentiary hearing. The board shall determine whether to grant requests that had not been submitted in time for the Preliminary Hearing.

Within one (1) business day after receipt, the City Auditor’s Office will promptly forward the procedural motions to the board members, the city attorney’s office, and the opposing party.

In addition to other procedural matters, the board may consider a request for a reset or continuance of a hearing. The board may also, on its own motion, reset or continue a hearing. At the beginning of the hearing, the board will consider and rule upon any such request and procedural motions.

10. Evidence & Witnesses

No later than by seven (7) calendar days prior to the hearing, the Board of Ethics shall in writing request the parties to submit to it the identities of their witnesses, briefly describing the matter each will be expected to testify about, and any sworn statements and documentary evidence they desire to be considered. The parties shall submit their aforementioned evidence to the City Auditor within the time specified in the notice (that being no less than four (4) calendar days prior to the hearing), who shall forward to the parties, Board members and the City Attorney no less than three (3) calendar days prior to the hearing.

11. Subpoena

Periodically, the need for additional information may be needed when considering a Complaint. The Board of Ethics has the authority under the Code of Ethics to issue subpoenas for witnesses and/or records in furtherance of its investigatory and enforcement power under the Code. When deemed necessary by simple majority, the Board may issue subpoenas to City Officials compelling their attendance and/or their production of data or other evidence deemed relevant to the pending Complaint. The scope of the Board’s authority to subpoena records is limited to those under the direct control and in possession of City Officials. Subpoenas will not be issued for persons who would serve as character witnesses. The subpoena shall be on a form provided by the City Auditor’s Office. Service of subpoenas shall be by the City Auditor’s Office.

The Board may consider a party’s failure to comply with a subpoena in its deliberations and/or exclude evidence related to the subject matter of the subpoena offered by the party which fails to comply.

A record subpoenaed and produced under the Code of Ethics (as provided by the City Charter) that is otherwise privileged or confidential by law remains privileged or confidential and shall not be released to the public unless release is ordered by the Attorney General's office in a ruling issued pursuant to Section 552.306 of the Texas Government Code or a court of competent jurisdiction.

At the conclusion of all proceedings regarding a Complaint, records subpoenaed and produced that are otherwise privileged or confidential by law shall be returned to the producing source and all copies shall be destroyed in accordance with the City's Records Retention Schedule.

Code of Ethics §2-277(h).

12. Exhibits

All exhibits submitted by the parties shall be numbered sequentially. Complainant's exhibits shall be pre-marked with the letter "C" followed by a dash, followed by a number; for example, "C-1". The Respondent's exhibits shall be pre-marked with the letter "A," followed by a dash, followed by a number, for example "A-1".

13. Decorum

Speakers must confine their remarks to the subject under discussion. Personal attacks and remarks are prohibited.

14. Sworn Testimony

Each witness before testifying at the final hearing shall be duly sworn by the Chair or Presiding Member.

Code of Ethics §2-281(c)(3).

15. Order of Presentations

Complainant shall open the presentation of the evidence and argument. Respondent may then elect to present evidence and argument in response to the evidence presented to support its defense but will not be required to do so. Complainant shall be permitted to present rebuttal evidence on any defense raised in Respondent's case presentation.

16. Opening Statement

Before presenting any evidence, each party shall present their positions with an initial statement in a narrative form including a summary of documents and witness testimony to be presented. Initial statements shall not exceed three (3) minutes.

17. Presentation of Evidence

The parties may offer such evidence as is relevant and material to the complaint or any defense. All exhibits submitted in advance of the final hearing shall be admitted at the start of final hearing except those that the Board finds, after objection by a party, to be inadmissible as hearsay or speculative. Parties are restricted to evidence submitted in the board packet except if good cause is shown and granted by the majority of the Board members present.

18. Witness Testimony

Parties may proffer testimony of their witnesses if the witness is present and available for further examination, if needed. Testimony of witnesses at hearing shall be in question and answer format. Opposing parties shall be permitted to cross-examine the witnesses. Members of the Board may question witnesses, subject to reasonable time limits imposed by the Chair. Questioning by the Board shall not count against a party's allotted time.

19. Representation

The parties may be accompanied or represented by legal counsel or another representative. A party's representative may present evidence and conduct examination of witnesses. A party's representative may not testify on behalf of a party. If a party designates a representative to present evidence on the party's behalf, then only the representative may present evidence at the hearing (i.e., the party cannot also present evidence) (e.g., A witness offered by the Complainant can be questioned by the Complainant, or the Complainant's representative, but not both). Nothing herein relieves the Complainant of the obligation to testify.

Code of Ethics §2-281(c)(5).

20. Time Limitations

The parties shall be permitted thirty (30) minutes per side to present all their witness testimony, cross-examine opposing witnesses, and present documentary evidence unless otherwise modified by the Board.

21. Closing Statements

Each party shall be permitted five (5) minutes to make a closing statement summarizing what they believe the evidence at the final hearing proved or failed to prove. Complainant shall go first. Of the five (5) minutes allotted for closing, the Complainant may reserve a portion of that time to provide a rebuttal.

22. Closing of Hearing

Upon expiration of the timelines allotted and being satisfied that the record is complete, the Chairperson shall declare the hearing closed. If additional evidence is required, the Chairperson may seek to continue the hearing.

23. Executive Session

The Board can go into executive session (i.e., conduct a closed-door meeting) at any point during a meeting or hearing in accordance with the Texas Open Meetings Act, pursuant to Texas Government Code § 551.071 (Consultation with Attorney), and/or § 551.074 (Personnel Matters). However, all decisions must be made in open session.

24. Deliberations

Upon the closing of a public hearing, the Board shall conduct deliberations. During deliberations, the Board may discuss the Complaint, any evidence and testimony that was submitted, and the opinions of the Board members about the credibility of the information before the Board, and the applicability of the Code of Ethics. Deliberations may be in open or closed session, but all decisions must be made in open session.

25. Reliability of Evidence

The Board shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The amount of weight given to any evidence or testimony shall solely be at the discretion of the Board.

26. Burden of Proof

Because the burden of showing that a violation of the Code of Ethics 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 unless it is held to determine if an Accepted Complaint is frivolous. A Complainant's failure to testify at a hearing, other than a hearing to determine frivolity, shall be grounds for dismissal of a Complaint.

Code of Ethics §2-281(c)(4).

27. Determinations

Upon conclusion of deliberations, the Chairperson shall call for a motion. All votes will be voice vote, with the option for any member to request a roll call vote at any time.

If at any point during any proceeding or hearing of the Board, the Board determines that the complaint was erroneously accepted because it was filed more than two (2) years after the date of the act or omission (unless tolled pursuant to the ordinance), the Board shall dismiss the complaint and the Chairperson shall issue a Letter of Dismissal.

The Board is obligated to render its decision (i.e., imposing or recommending a sanction) within ten (10) business days after the conclusion of a hearing at which the Board determined that a violation occurred.

The dismissal of a Complaint for any other reason must be communicated by the Chairperson in a Letter of Dismissal which sets forth the reasons for the dismissal.

Code of Ethics § 2-282(b).

28. Reconsideration

Requests for reconsideration shall follow the procedure established in City of Denton Code of Ordinances, Chapter 2, Article XI, Section 2-283.

ORDINANCE NO. 23-2324

AN ORDINANCE OF THE CITY OF DENTON AMENDING THE BOARD OF ETHICS' RULES OF PROCEDURE AS REQUIRED BY THE CODE OF ORDINANCES, CHAPTER 2, ARTICLE XI, SECTION 2-277(k) TO REMOVE REFERENCES TO ALTERNATE MEMBERS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 1, 2018, the City Council of the City of Denton passed Ordinance Number 18-757 creating a new Article XI to Chapter 2 of the Code of Ordinances (the "Ethics Ordinance"); and

WHEREAS, Section 2-277(k) of the Ethics Ordinance obligates the Board of Ethics to adopt rules of procedure governing how to conduct meetings and hearings, and such rules are subject to confirmation or modification by the City Council; and

WHEREAS, the City Council adopted the attached procedural rules for the Board of Ethics on July 18, 2023, finding them to be reasonable, prudent, and necessary for the Board of Ethics to conduct efficient, effective, and fair meetings and hearings; and

WHEREAS, prior to December 12, 2023, pursuant to the Ethics Ordinance, the Board of Ethics was comprised of seven (7) regular members and three (3) alternate members; and

WHEREAS, on December 12, 2023, the City Council adopted Ordinance No. 23-2251, amending the Ethics Ordinance to eliminate the alternate member positions from the Board of Ethics; and

WHEREAS, the City Council seeks to amend the Board of Ethics Rules of Procedure to reflect the elimination of the alternate member positions from the Board of Ethics; and

WHEREAS, the City Council finds the attached amendments to be reasonable, prudent, and necessary to conduct efficient, effective, and fair meetings and hearings; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. The City Council hereby adopts the amendments to the Rules of Procedure for the Board of Ethics, pursuant to the Code of Ordinances, Chapter 2, Article XI, Section 2-277(k), as shown in Attachment A, attached hereto and incorporated into this Ordinance.

SECTION 3. Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 4. This ordinance shall be effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Gerard Hudspeth and seconded by Brandon Chase McGee, the ordinance was passed and approved by the following vote [6 - 0]:

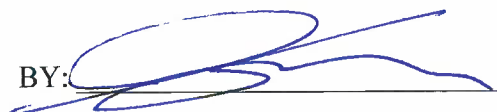
	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joe Holland, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brandon Chase McGee, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Watts, At Large Place 6:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

PASSED AND APPROVED this the 12th day of December, 2023.



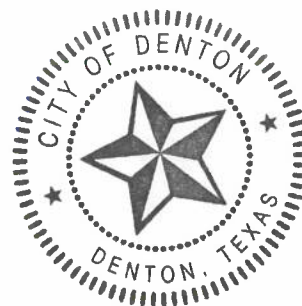
 GERARD HUDSPETH, MAYOR

ATTEST:
 JESUS SALAZAR, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY

 Scott Bray
 2023.11.27
 10:49:39 -06'00'
 BY: _____





ETHICS COMPLAINT PROCESS NARRATIVE

The following document details the Ethics Complaint Process in a step-by-step narrative and corresponding flowchart. This document is intended to assist members of the public in understanding the City of Denton's Ethics Complaint process; however, the Board of Ethics highly encourages any individuals who wish to submit an Ethics Complaint to refer to the full Code of Ethics, which is publicly posted at CityofDenton.com/en-us/Ethics Ordinance.

Ethics Complaint Process: Preliminary Assessment

1. A Complainant must submit a **Complaint** on the proper Ethics Complaint Form to the City Auditor. A Complaint must be delivered by hand, via US mail, or to an email address publicly listed by the City Auditor.
2. The City Auditor has five (5) business days to determine if the Complaint is administratively complete and timely. If the Complaint is administratively complete and timely, proceed to step 5. If it is not, proceed to step 3.
3. If the Complaint is not administratively complete, the City Auditor must send a written deficiency notice identifying the required information to the Complainant within the same five (5) business day timeframe.
4. The Complainant has ten (10) business days to provide the required information once requested, or the Complaint is automatically deemed abandoned. If the Complainant provides the required information within ten (10) business days proceed to step 5. If the Complainant does not provide the information, proceed to step 10.
5. If the Complaint is **Accepted**, a Preliminary Assessment of the Complaint is conducted by a three-member Panel of the Board of Ethics. The City Auditor must provide notification that the Complaint was accepted to the Complainant, the Respondent, the City Attorney, and the Board of Ethics Chairperson within five (5) business days of acceptance. The Chairperson must designate the Panel members and assign the Complaint within five (5) business days of receiving the notification of acceptance. Preliminary Assessment meetings must be scheduled within ten (10) business days of the Complaints assignment by the City Auditor.
6. The Panel must determine if the Complaint, on its face, is **Actionable** – the allegations and evidence contained in the Complaint, if true, would constitute a violation of the Ethics Ordinance; the Panel's review is limited to the contents of the Complaint including all evidence submitted concurrently. Written notification of the Panel's determination must be filed with the City Auditor and forwarded to the Chairperson, Complainant, Respondent, and City Attorney within two (2) business days. If the Complaint is Actionable, proceed to step 14. If not, proceed to step 7.
7. If a Complaint is not Actionable, the Panel may consider recommending that a Hearing be first held on an accepted Complaint to determine if it may be **Frivolous**. The Panel may consider information not concurrently submitted as evidence as part of a consideration of the accuracy of statements made in the Complaint in order to make this recommendation. If the Panel recommends holding a Frivolity Hearing, proceed to step 14. If not, proceed to step 8.
8. If the Panel determines the Complaint is not Actionable and does not recommend a frivolity Hearing, the Complaint is **Baseless** – the allegations and evidence contained in the Complaint, if true, would not constitute a violation of the Ethics Ordinance – and is dismissed. Written notification of the Panel's determination must be filed with the City Auditor and forwarded to the Chairperson, Complainant, Respondent, and City Attorney within two (2) business days; written notification must include notice of right to Appeal.
9. The Complainant may Appeal the Panel's Baseless determination by filing a written notice of appeal with the City Auditor within ten (10) business days of the date of written notification. If the Complainant does not appeal the Panel's determination proceed to step 10. If the Panel's determination is appealed, proceed to step 11.
10. The Ethics Complaint is closed. If the Ethics Complaint was abandoned (refer to step 4), the City Auditor must send written notification that the Complaint was abandoned to the Complainant and Respondent.
11. Hearings should be scheduled by the City Auditor within thirty (30) business days of receiving the written notice of appeal.

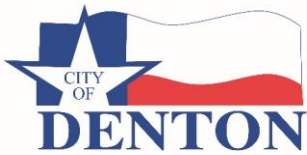


12. If the Panel's Baseless determination is appealed, a Hearing is conducted by the full Board of Ethics to determine if the Complaint, on its face, is **Actionable** – the allegations and evidence contained in the Complaint, if true, would constitute a violation of the Ethics Ordinance; the Board's review is limited to the contents of the Complaint including all evidence submitted concurrently. The Board's final opinion from the Preliminary Assessment Hearing must be filed with the City Auditor and transmitted to the Complainant, Respondent, and City Attorney within ten (10) business days. If the Board determines the Complaint to be Actionable, proceed to step 14. If the Board upholds the Panel's Baseless determination, proceed to step 13.
13. The Complainant may request the Board reconsider its decision from the Hearing by filing a reconsideration request in writing with the City Auditor within five (5) business days of receiving the Board's final opinion. The **Reconsideration Request** must be sent to the Chairperson and Respondent. If the Chairperson, in their sole discretion, finds that the request includes new evidence that was not submitted at the Hearing and the new evidence bears directly on the Board's determination, the Chairperson must coordinate with the City Auditor to schedule a Hearing within thirty (30) business days after filing with the City Auditor. If new, relevant evidence is received, proceed to step 14. Absent new evidence return to step 10.

Ethics Complaint Process: Evidentiary Hearing

14. Evidentiary Hearings should be scheduled by the City Auditor within thirty (30) business days of receiving a Panel's determination that a Complaint is Actionable.
15. Before a Hearing occurs, the Board of Ethics may conduct a preliminary hearing to issue a subpoena for data or other evidence needed for the performance of the Board's duties, or to rule on any procedural requests from the parties. The Complainant and Respondent may submit additional evidence as desired, including the names of witnesses, sworn statements, and documentation; however, this must be submitted to the City Auditor no less than four (4) calendar days prior to the Hearing.
16. After calling the Hearing to order, the Complainant must announce that they are present. If the Complainant is not present, the Complaint is dismissed, the Hearing is closed, and a Letter of Dismissal is issued. If the Complainant is present at the Hearing, proceed to step 17.
17. An Evidentiary Hearing is conducted solely to determine whether:
 - a. A violation of the Code of Ethics occurred – proceed to step 18;
 - b. An Accepted Complaint was erroneously dismissed as Baseless by a Panel; and/or
 - c. An Accepted Complaint is Frivolous – proceed to step 19.
18. If the Board determines by simple majority vote that a **violation of the Code of Ethics has occurred**, it may within ten (10) business days impose or recommend sanctions on the Respondent. The Board is not required to impose sanctions even if it determines a violation of the Code of Ethics has occurred. The following sanctions may be imposed or recommended:
 - a. Letter of Notification;
 - b. Letter of Admonition;
 - c. Letter of Reprimand;
 - d. Suspension; or
 - e. Ineligibility.

The Board's decision regarding imposing or recommending sanctions must be rendered within ten (10) after conclusion of the Hearing at which the Board determined a violation occurred. Notice of all sanctions imposed or recommended by the Board shall be transmitted to the Respondent, Complainant, City Auditor, City Attorney, and City Council. If sanctions are imposed or recommended, proceed to step 21. If sanctions are not imposed, proceed to step 20.



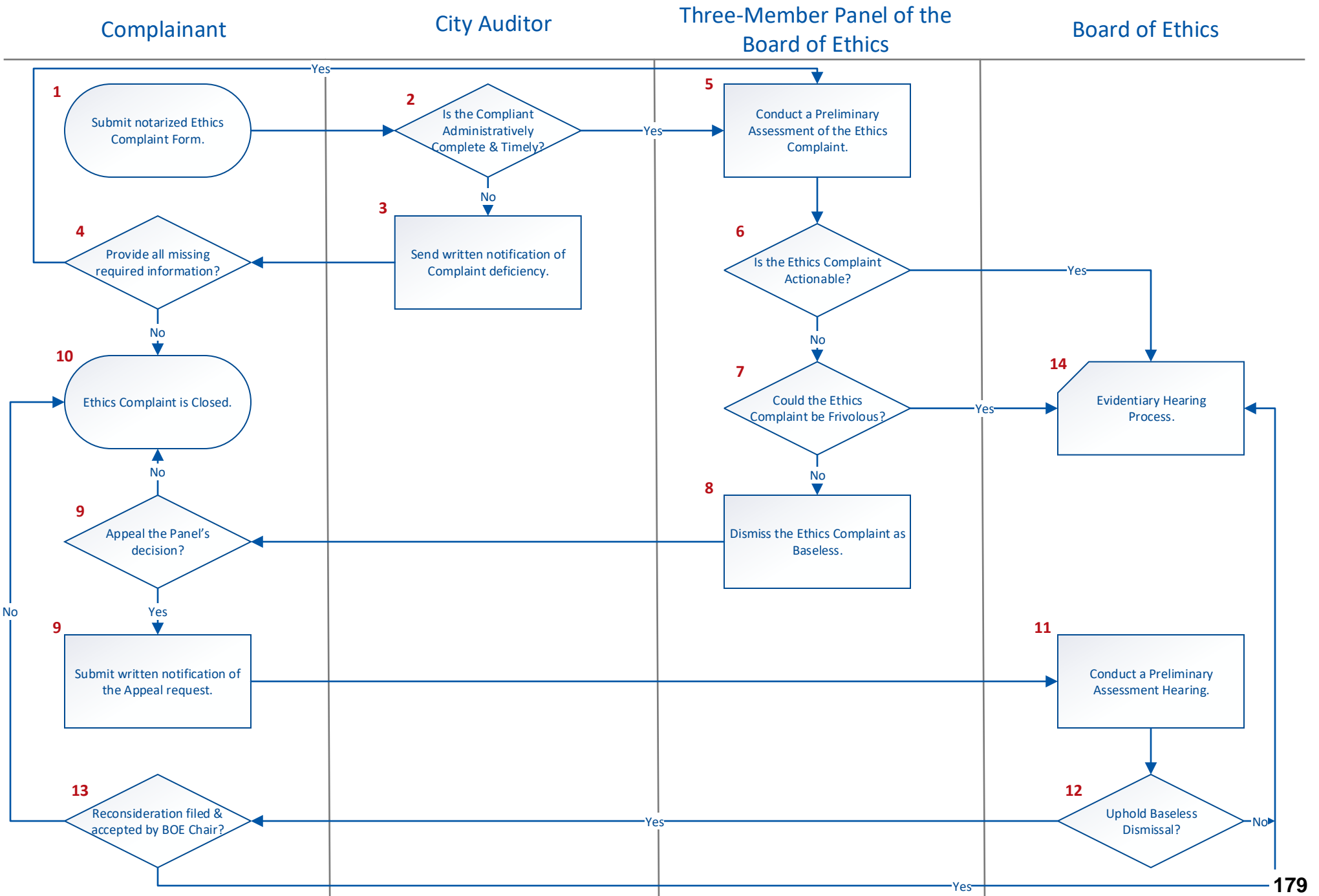
19. If the Board determines by a vote of two-thirds (2/3) of its members that a **Complaint was Frivolous**, the Board may impose or recommend sanctions as discussed in step 18 on the Complainant. Notice of all sanctions imposed or recommended by the Board shall be transmitted to the Respondent, Complainant, City Auditor, City Attorney, and City Council. If sanctions are imposed or recommended, proceed to step 21. If sanctions are not imposed, proceed to step 20.
20. The Board may **dismiss an Ethics Complaint** during an Evidentiary Hearing if it determines that:
- The Complaint is Baseless;
 - The alleged violation did not occur;
 - The Accused relied on an Advisory Opinion; or
 - The Complainant failed to testify as the Hearing (refer to step 16).

If the Complaint is dismissed, a Letter of Dismissal should be issued to the Respondent, Complainant, City Auditor, and City Attorney within ten (10) business days after the conclusion of a hearing.

21. Based on the Board's determination, the Complainant or Respondent may request the Board reconsider its decision from the Hearing by filing a **Reconsideration Request** in writing with the City Auditor within five (5) business days of receiving the Board's final opinion. The reconsideration request must be sent to the Chairperson and Respondent. If the Chairperson, in their sole discretion, finds that the request includes new evidence that was not submitted at the Hearing and the new evidence bears directly on the Board's determination, the Chairperson must coordinate with the City Auditor to schedule a Hearing within thirty (30) business days after filing with the City Auditor. If new, relevant evidence is received, return to step 16. Absent new evidence proceed to step 22.
22. The Ethics Complaint is Closed.

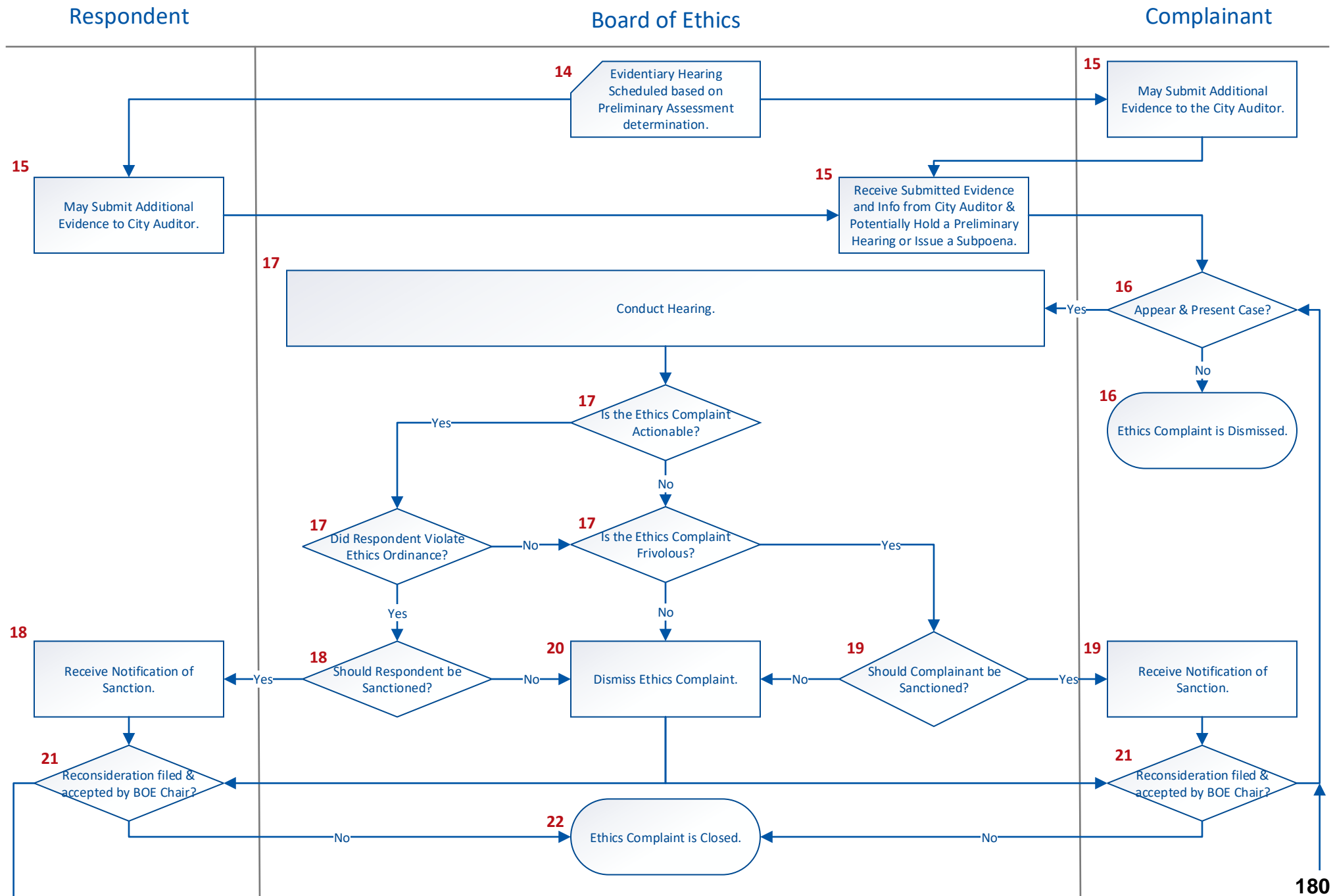
City of Denton: Ethics Complaint Process

Preliminary Assessment



City of Denton: Ethics Complaint Process

Evidentiary Hearing





ETHICS COMPLAINT PROCESS TIMELINES

The following timelines are associated with each phase in the Ethics Complaint process. Each step generally occurs chronologically and must be completed within the number of days listed to the right.

<u>Submitted Ethics Complaint</u>		
Complainant	Submit Ethics Complaint.	NA
City Auditor	Is Ethics Complaint administratively complete & timely? Yes: Ethics Complaint Accepted – proceed to Accepted Ethics Complaint . No: Notify Complainant of deficiency and request missing information.	5 Business Days
Complainant	Provide required missing information – proceed to Accepted Ethics Complaint ; or Do not provide required missing information – Complaint Abandoned.	10 Business Days
City Auditor	Notify Complainant, Respondent, & City Attorney of Abandoned Ethics Complaint.	5 Business Days

<u>Accepted Ethics Complaint</u>		
City Auditor	Notify Complainant and Respondent of Accepted Ethics Complaint. Provide Respondent with copy of the Accepted Ethics Complaint. Refer Accepted Ethics Complaint to Board of Ethics Chair.	5 Business Days
BOE Chair	Assign Accepted Ethics Complaint to three-member Board of Ethics Panel for Preliminary Assessment. Is Accepted Ethics Complaint Actionable? Yes: Actionable Ethics Complaint – proceed to Actionable Ethics Complaint .	5 Business Days
BOE Panel	No: Baseless Ethics Complaint – proceed to Baseless Ethics Complaint . File written Notification of Determination with City Auditor.	10 Business Days
City Auditor	Provide written Notification of Determination to Complainant, Respondent, City Attorney, & Chair.	2 Business Days

<u>Actionable Ethics Complaint</u>		
Respondent	Appeal Panel’s Actionable determination? No: Ethics Complaint Hearing – Proceed to Evidentiary Hearing . Yes: Submit Appeal to City Auditor in writing.	10 Business Days
Board of Ethics	Is Appealed Ethics Complaint Actionable? Yes: Actionable Ethics Complaint – proceed to Evidentiary Hearing . No: Baseless Complaint is Dismissed – End. File written Notification of Determination with City Auditor.	30 Calendar Days
City Auditor	Provide written Notification of Determination to Complainant & Respondent.	2 Business Days

<u>Baseless Ethics Complaint</u>		
Complainant	Appeal Panel’s Baseless determination? No: Baseless Complaint is Dismissed – End. Yes: Submit Appeal to City Auditor in writing.	10 Business Days
Board of Ethics	Is Appealed Ethics Complaint Actionable? Yes: Actionable Ethics Complaint – proceed to Evidentiary Hearing . No: Baseless Complaint is Dismissed – End. File written Notification of Determination with City Auditor.	30 Calendar Days
City Auditor	Provide written Notification of Determination to Complainant & Respondent.	2 Business Days



Evidentiary Hearing

Board of Ethics	Did a violation of the Ethics Ordinance occur?	30 Calendar Days
	Yes: Determine appropriate Sanctions – Proceed to Imposing or Recommending Sanctions. No: Ethics Complaint is Dismissed – Proceed to Dismissed Ethics Complaint.	

Imposing or Recommending Sanctions

Board of Ethics	Render determination of appropriate Sanctions. Notify Respondent, Complainant, City Auditor, City Attorney, & City Council.	10 Business Days
Respondent	File Reconsideration Request?	5 Business Days
	Yes: Proceed to Reconsideration Request. No: Sanctions are imposed – Process End.	

Dismissed Ethics Complaint

BOE Chair	Issue Letter of Dismissal and notify Respondent, Complainant, City Auditor, & City Attorney.	10 Business Days
Complainant	File Reconsideration Request?	5 Business Days
	Yes: Proceed to Reconsideration Request. No: Ethics Complaint Dismissed – Process End	

Reconsideration Request

City Auditor	Forward Reconsideration request to BOE Chair and Respondent.	30 Business Days
BOE Chair	Does the Reconsideration Request include new evidence that bears directly on the Board of Ethics' previous determination?	
	Yes: Schedule Ethics Complaint Hearing – Return to Step 4. No: Unilaterally dismiss the Request for Reconsideration and provide notice to the City Auditor, Complainant, & Respondent – Process End.	

If you have any questions about the process or timelines outlined in this document, you may contact the City Auditor through one of the following methods:

**City Auditor
 215 E. McKinney St.
 Denton, Texas 76201**

(940) 349-7228

InternalAudit@CityofDenton.com
www.cityofdenton.com