

**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; 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 (3<sup>rd</sup>) 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) *Definition of Conflict of Interest:* A conflict of interest is a situation in which personal and/or financial considerations actually have influenced or compromised, or are reasonably certain to influence or compromise, the judgment or actions of a City Official when acting in their official capacity. Conflicts of interest arise when City Officials, in their official capacity, act or fail to act in ways that they know, or should know, are likely to impact the personal or financial interests of the following in a way that is not shared with a substantial segment of the City's population:

- (A) A Business Entity in which the City Official owns five percent (5%) or more voting shares or stock;
- (B) A Business Entity from which the City Official receives 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) A Business Entity in which the City Official owns more than six-hundred dollars (\$600.00) of the fair market value;
- (D) Real property in which the City Official owns more than six-hundred dollars (\$600.00) of the fair market value;
- (E) A Business Entity for which the City Official serves as an officer, director, or policy maker unless the City Official was appointed to that position by the City Council;
- (F) A nonprofit corporation or unincorporated association for which the City Official serves on a board or committee unless the City Official was appointed to that position by the City Council;
- (G) A person or Business Entity with whom the City Official solicited, received, or accepted an offer of employment or business opportunity within the past twelve (12) months.
- (H) A City Official is considered to have a Conflict of Interest if the City Official's Relative has a Conflict of Interest.

The term Conflict of 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.

- (2) *Deliberation Prohibited.* It shall be a violation of this Code for a City Official to knowingly participate in Deliberations involving a current Conflict of Interest. City Officials with a current Conflict of Interest 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 for the same Conflict of Interest.
- (3) *Disclosure Required.* If a City Official recuses from Deliberations due to a Conflict of Interest, the City Official shall disclose the nature of the Conflict of Interest by filing a sworn statement with the City Auditor. Disclosures under this subsection must be made within thirty (30) calendar days of the date on which the City Official became aware of or reasonably should have been aware of the Conflict of Interest arising and shall remain valid for the period covering one year (12 months) from the date of disclosure or until the Conflict of Interest is resolved, whichever occurs first.

Nothing in this section should be construed as conflicting with State law or the requirements of Texas Local Government Code, Title 5, Subtitle C, Chapter 171.

(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 (3<sup>rd</sup>) 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.
- (l) **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) *Responsibility to Establish Evidence:* The Complainant shall present sufficient evidence to establish that it is reasonably certain that a violation of this Article has occurred; a Complainant's failure to establish to a reasonable certainty that a violation of this Article has occurred shall be grounds for dismissal of a Complaint. 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 the hearing is held to determine if an Accepted Complaint is frivolous. A Complainant's failure to testify at a hearing, other than a hearing held 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). *A Complainant who submitted a Frivolous Complaint shall be barred from submitting a new Complaint for a period of one (1) year from the date the Frivolous determination is made.*

Upon a vote of two-thirds (2/3) of its Members that a Complaint was frivolous, the Board may impose attorneys' fees incurred by the respondent of the Frivolous Complaint upon the Complainant.

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

~~(3)~~(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.

~~(4)~~(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 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.

#### **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 (3<sup>rd</sup>) 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*]**