

known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code or the Municipal Campaign Finance Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. 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. A complaint that is not sworn as required shall not be forwarded by the City Clerk to the Compliance Auditor as provided in subsection (d), but shall be returned to the complainant.

The complaint must state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the Board.

(d) Review by the Compliance Auditor and notification to the Ethics Review Board and respondents.

- (1) A copy of a complaint shall be promptly forwarded by the City Clerk to the Chair and Vice Chair of ERB, Compliance Auditor and City Attorney's Office who shall each independently review the complaint for compliance with the filing requirements of subsection (c) within five (5) business days of receipt from the City Clerk. The City Clerk shall notify the respondent(s) of a complaint filed. This notification is for information purposes only and does not trigger subsection (e) until a decision has been made to accept the complaint and forward to the full ERB for consideration.
- (2) If the complaint alleges a violation of section 2-306 or section 2-307 of the Municipal Campaign Finance Code, the complaint shall be forwarded by the City Clerk to the respondent within five (5) business days of receipt by the Compliance Auditor. As set out in subsection 2-82(b)(2), the timely filing of the campaign bank account statement or the amended report, as verified by the City Clerk, shall not be considered a violation. The City Clerk shall notify the complainant of the filing of the statement or the amended report by first class mail.
- (3) If the complaint alleges a violation of the Ethics Code, and substantially complies with the filing requirements, the complaint shall be forwarded by the City Clerk to the members of the Ethics Review Board and the respondents within ten (10) business days after receipt of the complaint from City Clerk. If the complaint does not substantially comply with the filing requirements, the Compliance Auditor shall return the complaint to the complainant with a letter explaining the defects in the complaint.
- (4) The City Clerk shall notify the respondent(s) of the resolution of a complaint.

(e) The respondent(s) shall also be provided with a copy of the Ethics Code and shall be informed:

- (1) That, within ten (10) business days of receipt of the complaint, he or she may file a sworn response with the City Clerk;
- (2) That failure to file a response does not preclude the Ethics Review Board from adjudicating the complaint;
- (3) That a copy of any response filed by the respondent(s) will be provided by the City Clerk to the complainant, who may, within five (5) business days of receipt, respond by sworn writing filed with the City Clerk, a copy of which shall be provided by the City Clerk to the respondent(s);
- (4) That the complainant(s) or respondent(s) may request a hearing; and;
- (5) That City officials and employees have a duty to cooperate with the Ethics Review Board.

Upon receipt, the City Clerk shall forward the response to the Compliance Auditor, City Attorney's Office, and the Ethics Review Board.

(f) **Frivolous complaint.**

- (1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

- (2) By a vote of at least two-thirds (2/3) of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.
 - (3) In deciding if a complaint is frivolous, the Board will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:
 - 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 sworn complaint was filed with the Board;
 - c. The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - d. If 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) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:
 - a. An explanation of why the complaint against a respondent appears to be frivolous; and
 - b. The date, time, and place of the hearing to be held under this section.
 - (5) Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the Board shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.
 - (6) By a record vote of at least two-thirds (2/3) of those present after the hearing under subsection (5) of this section, the Board may determine that a complainant filed a frivolous complaint against a respondent and may recommend sanctions against that complainant.
- (g) **Sanctions for filing frivolous complaints.**
- (1) Before imposing a sanction for filing a frivolous complaint, the Board shall consider the following factors:
 - a. The seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;
 - b. The sanction necessary to deter future violations; and
 - c. Any other matters that justice may require.
 - (2) The Board may impose the following sanctions:
 - a. A civil penalty of not more than five hundred dollars (\$500.00).
 - b. Imposition of attorneys' fees incurred by the respondent of the frivolous complaint;
 - c. Any other sanction permitted by law.
 - (3) The Board may notify the appropriate regulatory or supervisory agency for their appropriate action. This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.

- (h) Confidentiality. Ex parte communications by members of the Ethics Review Board are prohibited by subsection 2-85(e) (Ex parte communications).
 - (1) The Board and its staff shall not communicate any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.
 - (2) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or Ethics Review Board proceeding.
 - (3) Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.

(Ord. No. 2013-05-09-0317, § 2(Att. B), 5-9-13; Ord. No. 2018-06-21-0491, § 1(Att. A), 6-21-18)

Sec. 2-84. Compliance Auditor and City Attorney's Office.

- (a) Compliance Auditor. The Compliance Auditor shall be selected by the Ethics Review Board and appointed by the City Internal Auditor. The Compliance Auditor may be removed from office for cause by the City Internal Auditor only after consultation with the Ethics Review Board.
- (b) The Compliance Auditor shall perform the following duties:
 - (1) Receive complaints and responses filed with the City Clerk as set forth in section 2-83;
 - (2) Investigate, marshal, and present to the Ethics Review Board the evidence bearing upon a complaint;
 - (3) In consultation with City Council, the City Manager, the Ethics Review Board, Human Resources Department, and the City Attorney's Office, develop and implement a comprehensive training program for the officials and employees of the City on the provisions of this Code of Ethics, Section 141 of the City Charter, and V.T.C.A., Local Government Code ch. 171;
 - (4) Review complaints for sufficiency;
 - (5) Recommend acceptance or rejection of complaint made to the Ethics Review Board;
 - (6) Request additional information from complainant as needed; and
 - (7) Support the reasonable requests of the ERB.
- (c) City Attorney's Office. The City Attorney's Office shall perform the following duties:
 - (1) Act as legal counsel to the Compliance Auditor and the Ethics Review Board;
 - (2) Upon request by the Compliance Auditor, review complaints for legal sufficiency; and
 - (3) Issue advisory opinions to City officials and employees about the requirements imposed by the ethics laws.
- (d) Independent Compliance Auditor and Independent Counsel.
 - (1) An independent attorney, who does not otherwise represent the City, shall be appointed to serve as the independent Compliance Auditor and Counsel when a complaint is filed relating to an alleged violation of the ethics laws by the Mayor, a member of the City Council, or a candidate for City Council.
 - (2) When a complaint is filed relating to an alleged violation of the ethics laws by a City employee who is a department head or of higher rank, the Compliance Auditor may recommend the appointment of an independent compliance auditor to serve as Compliance Auditor for that matter. The City Attorney may also recommend the appointment of an independent Counsel for that matter.