



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. **Adjournment.** Meetings of the Board may be adjourned by the Chairperson's initiative or upon vote of a majority of the members.
5. **Alternate Members.** Alternate members of the Board of Ethics shall attend meetings only upon request by the City Auditor's Office. The role of an alternate is to participate in meetings of the Board of Ethics as a replacement for a regular member who is absent or abstaining.
6. **Notice of Absence or Abstainment.** 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. The matter of determining which alternate shall be designated to attend a hearing shall be at the discretion of the Chairperson.

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 issuance of an Order to Show Cause ~~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.

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Directed to include on February 6, 2023.

ED. ORDER TO SHOW CAUSE PRELIMINARY ASSESSMENTS

1. **Issuance.** If the Board or a Panel dismisses an Ethics Complaint, the Board or Panel may, by simple majority, order a Complainant to show cause why the Board should not determine that the Complaint is a Frivolous Complaint. An Order to Show Cause must be issued in order to determine if a Complaint is Frivolous.
2. **Notice.** The City Auditor shall send a written notification of the Order to Show Cause to the Chairperson, Complainant, the Respondent, and the City Attorney within two (2) business days.
3. **Response.** The Complainant and the Respondent shall each have the opportunity to submit a written sworn response, together with such other information they believe is relevant, to the Order to Show Cause. Such responses must be submitted to the City Auditor within ten (10) calendar days after the date that the Complainant was given written notice of the Order to Show Cause. Copies of all information provided to the Ethics Board by the Complainant or the Respondent must be distributed to all parties to the Complaint within ten (10) calendar days after the Board receives the information.
4. **Hearing.** Hearings to determine frivolity shall be held within thirty (30) calendar days of the issuance of an Order to Show Cause. Frivolity Hearings shall follow procedures for Hearings laid out in Section F. Hearings

Code of Ethics §2-282(c).

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EE. 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-n Order to Show Cause as provided by City of Denton Code of Ordinances, Chapter 2, Article XI, Section 2-282(c) 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 dismissed 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

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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 or indicate if the Hearing was called due to an issued Order to Show Cause.

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7. Recusals

At any point prior to the commencement of deliberations, members of the Board can recuse themselves. It is preferred that recusals be communicated to the Chairperson prior to a hearing so that alternate members can be designated. 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.

If a Hearing is held due to the issuance of an Order to Show Cause, the respondent of the dismissed Complaint is not considered a Party to the Order to Show Cause.

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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.

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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 or an Order to Show Cause. 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 or Order to Show Cause. 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.

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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 or Order to Show Cause, 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.

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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.

For a Hearing held due to the issuance of an Order to Show Cause, the Respondent is prohibited from presenting evidence and argument.

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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, including written sworn responses to an issued Order to Show Cause, 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.

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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 or Order to Show Cause, 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.

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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 due to the issuance of an Order to Show Cause.~~ 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.

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