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## **INFORMAL STAFF REPORT TO MAYOR AND CITY COUNCIL**

**SUBJECT:**

2023 Proposed Amendments to the Ethics Ordinance Background & Research

**BACKGROUND:**

Beginning June 2022, the Board of Ethics began discussing potential amendments to the City of Denton Code of Ordinance Chapter 2, Article XI – also known as the Ethics Ordinance. Over the course of seven meetings, the Board developed 11 proposals, nine of which will be presented to the City Council for consideration and direction on March 21, 2023 during Work Session. This informal staff report has been prepared to summarize research and background information used by the Board of Ethics to develop each of the 11 proposals.

**DISCUSSION:****Proposal 1: Clarification of the Gifts Prohibition**

This proposal was originally developed in August 2022 after staff was asked by a City Official if they were required to disclose the acceptance of a gift that they believed was an exception to the Ethics Ordinance. The City had created a form to allow City Officials to disclose the acceptance of a gift; however, staff did not believe that the Ethics Ordinance had a clear requirement for the disclosure. No research was conducted for this proposal.

**Proposal 2: Adjustment to the Subsequent Work on Prior Projects Prohibition**

This proposal was originally developed in June 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' disclosure and recusal procedures. In general, this research found the following:

- Nine of ten benchmark municipalities as well as Wechsler's Model Code require certain City Officials to formally recuse themselves from official actions (e.g. official discussions, deliberations, and votes) typically due to the City Official having an Economic or Substantial interest in the official action.
- Nine of the ten benchmark municipalities required the City Official to disclose their reason for recusal typically by filing a written affidavit or other standard form the nature of the Economic or Substantial interest causing them to recuse. The model code as well as Mesquite and San Marcos require that this disclosure (i.e. including that nature of the interest) be publicly disclosed to the applicable body at the beginning of the official action (i.e. before discussion or deliberation has occurred).
- Six of the ten benchmark municipalities as well as Wechsler's Model Code included prohibitions for City Officials for their behavior outside of their official capacity. These prohibited behaviors were more varied and generally more broadly defined such as: business, professional activities, or actions. These prohibitions generally focused on behaviors that would conflict with discharging official duties.

On March 6, 2023, the Board of Ethics voted to reject this proposal (7-0), meaning the Board has no plans to discuss this proposal in the future at this time.

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### Proposal 3: Adjustment of the Conflict of Interest Financial Thresholds

This proposal was originally developed in August 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' financial considerations and prohibitions. In general, this research found the following:

- Five of ten benchmark municipalities as well as the model code do not have specific financial thresholds defined for their conflict of interest prohibitions. Instead, they typically prohibit official action if the official's economic interest would be affected in a way that is distinguishable from the effect on the general public.
- The remaining five benchmark municipalities generally address four financial prohibitions including ownership through shares or stocks, income, ownership through real value, and ownership of real property.

On March 6, 2023, the Board of Ethics voted to postpone this proposal (7-0), meaning the Board plans to continue discussing and reviewing this section of the Ethics Ordinance to develop a future proposal.

### Proposal 4: Addition of a Recusal Requirement for Certain Aggregate Campaign Contributions

This proposal was originally developed in August 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' campaign contribution prohibitions. In general, this research found the following:

- One other municipality prohibit a City Official from taking official action when an official had received campaign contributions greater than \$300 from a person, business entity, or association. The model code prohibits official action if the official has received a campaign contribution of more than \$200 in aggregate during the past election cycle from a person or entity.

### Proposal 5: Addition of a Recusal Requirement for Recent Offers of Employment

This proposal was originally developed in October 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' personal considerations and prohibitions. In general, this research found the following:

- Three other municipalities prohibit a City Official from taking official action related to a person, Business Entity, or Non-Profit Organization with whom they, or their spouse, have solicited, received and not yet rejected, or accepted an offer of employment from in the last twelve months. The model code does not include this specific prohibition.

### Proposal 6: Addition of a Recusal Requirement for Recent Business Opportunity Negotiations

This proposal was originally developed in October 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' personal considerations and prohibitions. In general, this research found the following:

- Three other municipalities prohibit a City Official from taking official action related to a person, Business Entity, or Non-Profit Organization with whom they, or their spouse, have directly or indirectly engaged in negotiations pertaining to business opportunities, where such negotiations are pending or not terminated. The model code does not include this specific prohibition.

#### Proposal 7: Addition of a Recusal Requirement for Substantial Outside Client Relationships

This proposal was originally developed in August and October 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' personal considerations and prohibitions. In general, this research found the following:

- Two other municipalities prohibit a City Official from taking official action related to the Official's outside "client." The model code also includes this prohibition.
- The term "client" is defined differently in all three ethics codes.

In December 2022, some City Council members stated that they preferred San Antonio's definition of client relationship which is as follows: "The term client includes any business, financial or professional relationship to which a duty of care, confidence, trust or privilege applies."

#### Proposal 8: Addition of a Recusal Requirement for Substantial Debtor or Creditor Relationships

This proposal was originally developed in October 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' personal considerations and prohibitions. In general, this research found the following:

- Two other municipalities included a prohibition on taking official action related to a substantial debtor, creditor, or guarantor of the City Official or their spouse whereby substantial was defined to mean more than \$5,000. The model code had a similar prohibition, but only extended this to include debtors and creditors – not guarantors.

#### Proposal 9: Revision of the Affiliated or Partner Business Entity Disclosure Requirement to Recusal

This proposal was originally developed in October 2022 as part of a comprehensive discussion that the Board of Ethics held over three meetings in 2022. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' personal considerations and prohibitions. In general, this research found the following:

- Two other municipalities prohibit a City Official from taking official action related to a Business Entity that the City official knows is an affiliated business or partner of a business entity in which that person, or their relative, holds an economic interest. The model code does not include this specific prohibition.
- Denton has a similar consideration but did not require recusal from official action – only disclosure.

#### Proposal 10: Creation of Specific Sanctions for Frivolous Complaints

This proposal was originally developed in August 2022 as part of discussions initiated by lessons learned from processing Ethics Complaint 22-001, which was the first Ethics Complaint found

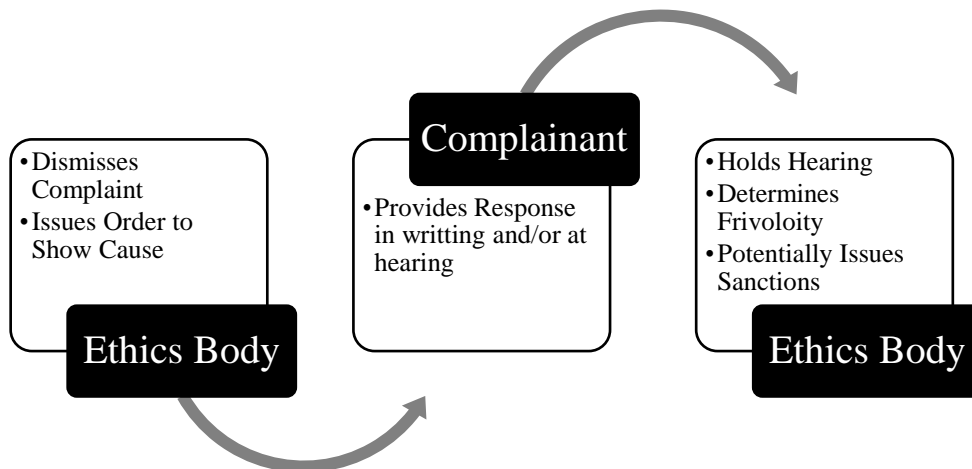
frivolous since the Ethics Ordinance was initially adopted. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' sanctions for frivolous complaints. In general, this research found the following:

- Two other municipalities had a process for considering if a submitted ethics complaint was frivolous. The model code does not include a process for considering frivolous complaints.
- Sanctions for frivolous complaints by other municipalities included prohibiting a complainant from filing another complaint for certain periods of time or imposing a civil penalty.

#### Proposal 11: Creation of an Order to Show Cause Process

This proposal was originally developed in October and November 2022 as part of discussions initiated by lessons learned from processing Ethics Complaint 22-001, which was the first Ethics Complaint found frivolous since the Ethics Ordinance was initially adopted. During this meeting, the Board discussed research conducted by staff on other ethics ordinances' sanctions for frivolous complaints. A general illustration of an Order to Show Cause process is shown in Figure 1.

**Figure 1:** General Order to Show Cause Process



In general, this research found the following:

- Two other municipalities had a process for considering if a submitted ethics complaint was frivolous. Both of these municipalities process potentially frivolous Ethics Complaints through an “order to show cause” process whereby the ethics body holds an evidentiary hearing to determine whether the complaint is a frivolous complaint.
- One of the municipalities allowed the Respondent to an Ethics Complaint (i.e. the individual the complaint was submitted against) to terminate the order to show cause process.
- Both municipalities provide the Respondent with a copy of the order to show cause. Under one the Respondent may provide a written response and present evidence at the hearing while the other stops the Respondent from further involvement.

**ATTACHMENTS:**

1. Benchmark Municipality Research Summary

**STAFF CONTACT:**

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**REQUESTOR:**

Staff Initiated

**PARTICIPATING DEPARTMENTS:**

Board of Ethics

**STAFF TIME TO COMPLETE REPORT:**

49 Hours

## Attachment 1: Benchmark Municipality Research Summary

Specific Personal & Financial Ethics Code Prohibitions												
	Denton	Houston	San Antonio	Dallas	Austin	Fort Worth	McAllen	Mesquite	Odessa	Richardson	San Marcos	Model Code
Ownership in shares/stock of a Business Entity	5%		10%	10%	5%	10%				10%		
Income from a Business Entity	\$600		Not de Minimis	10%	\$5,000	10%				10%		
Ownership in value of a Business Entity	\$600		\$15,000	\$15,000	\$5,000	\$15,000				\$15,000		
Ownership of real property	\$600		Not de Minimis	\$2,500	\$5,000	\$2,500				\$2,500		
Creditor/Debtor/guarantor of other person/entity				\$5,000	\$5,000							Substantial
Board/Officer of Business Entity	Recuse		Recuse	Recuse	Recuse	Recuse					Recuse	
Board/Officer of Non Profit	Recuse		Recuse							Recuse	Recuse	Recuse
Offer of Employment		Recuse	Recuse	Recuse								
Business Opportunity Negotiations		Recuse	Recuse	Recuse								
Affiliated Business Entity/Partner	Disclose		Recuse	Recuse								
Outside Client			Recuse	Recuse								Recuse
Peronsal Banking/Financial Institution						Disclose						