

ARTICLE 1. - GENERAL PROVISIONS.

§ 2-7-1 - DECLARATION OF POLICY.

- (A) It is the policy of the City that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all City officials and employees is adopted.
- (B) This code has the following four purposes:
- (1) To encourage high ethical standards in official conduct by City officials and employees;
 - (2) To establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the City;
 - (3) To require disclosure by such of official and employees of private financial or other interests in matters affecting the City; and
 - (4) To serve as a basis for disciplining those who refuse to abide by its terms.
- (C) The provisions of this chapter shall not apply to political contributions, loans, expenditures, reports or regulation of political campaigns or the conduct of candidates in such campaigns.

Source: 1992 Code Section 2-3-1; Ord. 031204-9; Ord. 031211-11.

§ 2-7-2 - DEFINITIONS.

In this chapter:

- (1) **AFFECTED** means in the case of a person, entity or property, means reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question. For instance, a person or entity owning real property, entering into a contract with the City, or seeking a permit or franchise is "affected" by votes or decisions such as zoning of the property, approval of the contract, or granting of the permit. Affected does not include those persons or entities who are subject to an indirect or secondary effect from official action. Creditors, independent contractors, or guarantors of a person "affected" by a vote or decision are not also deemed to be "affected" by virtue of their relationship with the affected person. The vote or decision need not be the only producing cause of the economic effect or consequence reasonably likely to result. In determining whether a person, entity or property is or was "affected by" a vote or decision, it shall not be necessary to prove the actual existence or occurrence of an economic effect or consequence if such effect or consequence would be reasonably expected to exist or occur. Additionally, a vote or decision to place a matter on a ballot is deemed to affect a person, entity or property to the same extent that the results of the election would effect the person, entity or property.
- (2) **CITY EMPLOYEE** or **EMPLOYEE** means any person employed by the City but does not include independent contractors hired by the City.
- (3) **CITY OFFICIAL** or **OFFICIAL**, unless otherwise expressly defined, means the mayor, members of the city council, municipal court judges (including substitute judges), city manager, assistant city managers, city clerk, deputy city clerks, city attorney, deputy city attorneys, all department heads or deputy department heads, whether such person is salaried, hired or elected, and all other persons holding positions designated by the

City Charter, as it may be amended from time to time. City official, unless otherwise expressly defined, includes individuals appointed by the mayor and city council to all City commissions, committees, boards, task forces, or other City bodies unless specifically exempted from this chapter by the city council.

- (4) DECISION means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other City board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body. A decision of a City employee means any action in which the employee exercises discretionary authority, including but not limited to the issuance of permits, imposition or collection of fines or fees, authorizations for expenditures, and other non-ministerial acts.
- (5) DISCRETIONARY AUTHORITY means the power to exercise any judgment in a decision or action.
- (6) ENTITY means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted, but does not include a governmental body.
- (7) HARM means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected has an interest.
- (8) INCIDENTAL INTEREST means an interest in a person, entity or property which is not a substantial interest and which has insignificant value, or which would be affected only in a de minimis fashion by a decision. This chapter does not establish dollar limits on the terms "insignificant value" and "de minimis," which shall have their usual meanings and be subject to interpretation on a case by case basis.
- (9) LIMITED OR DE MINIMIS USE means use of City facilities, time, equipment or supplies that:
 - (a) does not interfere with or impede the job performance or productivity of the City official or employee;
 - (b) does not interfere with or impede the City's conduct of official business;
 - (c) is not used for a personal benefit, as defined in Section 2-3-5 (Powers and Duties);
 - (d) is too small, minor or insignificant to have an economic impact; and
 - (e) is used in accordance with the law, including the City Charter, Article XII, Section 2 prohibiting the use of City resources for election campaigning.
- (10) MINISTERIAL ACT means an act performed in a prescribed manner and not requiring the exercise of any judgment or discretion.
- (11) REMOTE INTEREST means an interest of a person or entity, including a City official or employee, who would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general City fees, City utility charges, or a comprehensive zoning ordinance or similar decisions is incidental to the extent that the councilmember would be affected in common with the general public.
- (12) SUBSTANTIAL INTEREST means an interest in another person or an entity if: the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less; the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council; or the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000 or more except that a home mortgage loan for the

person's homestead or a loan or lease of a personal automobile shall not be deemed a substantial interest in the creditor or guarantor if entered into at a market rate with a commercial lending institution before the previous 12 months.

- (13) SUBSTANTIAL INTEREST IN REAL PROPERTY means an interest in real property which is an equitable or legal ownership with a market value of \$5,000 or more.

Source: 1992 Code Section 2-3-2; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047; Ord. No. 20170209-005, Pt. 5, 2-20-17; Ord. No. 20181213-014, Pt. 1, 12-24-18.

ARTICLE 2. - ETHICS REVIEW COMMISSION.

§ 2-7-26 - FUNCTIONS.

The Ethics Review Commission has jurisdiction over this chapter, Section 2-1-24 (Conflict of Interest and Recusal), Chapter 2-2 (Campaign Finance), Chapter 4-8 (Regulation of Lobbyists), and Article III, Section 8, of the City Charter (*Limits on Campaign Contributions and Expenditures*). The commission shall hear and rule on sworn complaints alleging violations of the provisions within the commission's jurisdiction. The city manager shall provide funding for all necessary and reasonable functions of the commission in fulfilling the commission's duties.

Source: 1992 Code Section 2-3-26; Ord. 031204-9; Ord. 031211-11; Ord. 20080214-012; Ord. 20120426-084; Ord. No. 20170209-005, Pt. 6, 2-20-17.

§ 2-7-27 - LIMIT ON THE COMMISSION'S JURISDICTION.

Notwithstanding any other provision of the City Code, the Ethics Review Commission may not hear or initiate a sworn complaint alleging a violation of Article 4 (*Code of Ethics*) against an employee described in Section 2-3-5(L)(2), including a member of the City's classified municipal civil service system or a member of a state civil service system.

Source: Ord. No. 20150129-021, Pt. 1, 2-9-15; Ord. No. 20190328-037, Pt. 2, 4-8-19.

§ 2-7-28 - (RESERVED)

§ 2-7-29 - REPORTS.

On an annual basis, the city manager shall provide a report to the commission of training regarding this chapter that is provided to newly appointed board and commission members and to newly employed City employees.

Source: Ord. No. 20170209-005, Pt. 7, 2-20-17.

Editor's note— Ord. No. 20170209-005, Pt. 7, adopted February 20, 2017, repealed the former § 2-7-29, and enacted a new § 2-27-29 as set out herein. The former § 2-7-29 pertained to reports; opinions. See Code Comparative Table for complete derivation.

§ 2-7-30 - DUTIES.

- (A) The Ethics Review Commission shall, in addition to its other duties:

- (1) prescribe forms for reports, statements, notices, and other documents required by the provisions within the commission's jurisdiction;

- (2) prepare and publish materials explaining the duties of individuals subject to the provisions within the commission's jurisdiction;
 - (3) accept and file any information voluntarily supplied that exceeds the requirements of the provisions within the commission's jurisdiction;
 - (4) preserve statements and reports filed with the commission for a period of five years from the date of receipt;
 - (5) review the provisions within the commission's jurisdiction and make appropriate recommendations to the city council concerning the provisions within the commission's jurisdiction, and perform an annual review and evaluation of the dollar limits established in Chapter 2-2 (Campaign Finance) and make recommendations to the city council as to those limits;
 - (6) conduct hearings in accordance with the provisions of this chapter and the commission's rules on sworn complaints alleging violations of the provisions within the commission's jurisdiction; and
 - (7) schedule and oversee the forums among candidates in City elections provided for in Chapter 2-2 (Campaign Finance).
- (B) The commission may:
- (1) prepare reports and studies to advance the purposes of the provisions within the commission's jurisdiction;
 - (2) request the city council and city manager to provide such assistance as it may require in the discharge of its duties; and
 - (3) review statements and reports filed under provisions within the commission's jurisdiction in order to obtain compliance with the provisions.

Source: 1992 Code Section 2-3-30; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084; Ord. No. 20170209-005, Pt. 8, 2-20-17.

§ 2-7-31 - STAFFING.

- (A) The Ethics Review Commission shall be assigned staff by the city attorney to assist in its duties.
- (B) When complaints are filed related to the mayor, city councilmembers, city manager, city attorney, department heads and deputies, independent legal counsel shall be utilized to advise the commission and participate in hearings.
- (C)
 - (1) A City official or employee may request, and the city attorney shall thereupon promptly issue, a confidential written opinion concerning the meaning or effect of a section, word, or requirement of this chapter as it affects the official or employee, except that the city attorney will not issue a written opinion regarding a matter related to a complaint currently pending before the commission.
 - (2) If a complaint is subsequently filed with the commission about any specific action, omission, or alleged conflict of interest which has been the subject, whole or in part, of a city attorney's opinion, the independent legal counsel shall act as commission attorney on said complaints.
- (D) The city clerk shall make the reporting and complaint forms and information developed by the Commission available to the public and shall assist citizens in complying with filing procedures.

Source: 1992 Code Section 2-3-31; Ord. 031204-9; Ord. 031211-11; Ord. 20060209-003; Ord. No. 20170209-005, Pt. 9, 2-20-17.

§ 2-7-32 - RULES.

The Ethics Review Commission may adopt, amend, and rescind rules of procedure to carry out the provisions of this chapter. Such rules shall be consistent with this chapter and other applicable law.

Source: 1992 Code Section 2-3-32; Ord. 031204-9; Ord. 031211-11.

ARTICLE 3. - VIOLATIONS; COMPLAINT AND HEARING PROCEDURES.

§ 2-7-41 - COMPLAINTS.

(A) In this article:

- (1) COMPLAINANT means a person filing a sworn complaint.
- (2) RESPONDENT means a person who is alleged in a sworn complaint to have violated a provision within the jurisdiction of the Ethics Review Commission:
- (3) IDENTIFIED PERSON means a person, other than the respondent, who is identified by name in a sworn complaint as being involved in the alleged inappropriate conduct.

- (B) A complaint alleging a violation of a provision within the jurisdiction of the Ethics Review Commission shall specify each code section or charter provision alleged to have been violated. A complaint must state that the facts alleged are true and factual to the best knowledge of the person filing the complaint and be sworn to before a person authorized by law to administer an oath.
- (C) A complaint alleging a violation within the jurisdiction of the commission must be filed with the city clerk not later than the second anniversary of the date of the action alleged as a violation, and may not be filed afterward.
- (D) On the sworn complaint of any person filed with the city clerk's office or on the commission's own initiative, the commission shall consider possible violations of a provision within the jurisdiction of the commission by City officials and employees, former City officials and employees, candidates for election to City offices, and other persons subject to the provisions set forth in Section 2-7-26 (Functions). The commission may not consider complaints against its own members.
- (E) A complainant must disclose in the complaint filed with the commission evidence actually known to the complainant tending to negate guilt or mitigate the seriousness of the offense. Further, the complainant must disclose to the commission and the respondent any additional evidence discovered during the complaint process that negates guilt or mitigates the seriousness of the offense until the commission has taken final action on the complaint.
- (F) A city official or employee may not reveal information relating to the filing or processing of a complaint, except as required for the performance of the official's or employee's official duties, or as required by law. All papers and communications relating to a complaint must be treated as confidential unless required to be made public under the Public Information Act (Chapter 552 of the *Texas Government Code*) or other applicable law. Investigations conducted by the Office of the City Auditor or any other City department must be conducted in a confidential manner and records of any such investigations are confidential to the extent permitted by law.
- (G) Not later than the fifth working day after the city clerk receives a sworn complaint, the city clerk shall acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the city attorney, the chair of the commission, and the respondent. The city clerk shall also send a copy of the complaint to any identified person whose contact information is listed on the complaint form.
- (H) Not later than the fifth working day after receipt of a complaint from the city clerk, the chair of the commission

shall make an initial determination as to whether the complaint is within the commission's jurisdiction.

- (1) If the chair determines that a complaint is within the commission's jurisdiction, the chair shall set the complaint for a preliminary hearing not later than the 60th day after the chair's initial determination, unless agreed to by the parties or by a vote of the commission. The commission may overturn the chair's initial jurisdictional determination at the preliminary hearing.
 - (a) Not later than the 10th working day prior to the meeting, the chair shall cause a written notice of the date of the preliminary hearing to be sent to the complainant, the respondent, and any identified person whose contact information is listed on the complaint form or is reasonably ascertainable.
 - (b) For good cause, the chair may postpone a scheduled preliminary hearing on the request of the complainant, the respondent, or an identified person.
- (2) If the chair determines that a complaint is not within the commission's jurisdiction, the commission shall review the chair's determination and may overturn the chair's determination.
 - (a) Not later than the fifth working day after the chair determines that a complaint is not within the commission's jurisdiction, the chair shall cause a written notification of the initial determination to be sent to the complainant, the respondent, and any identified person whose contact information is listed on the complaint form or is reasonably ascertainable.
 - (b) If the commission determines that a complaint is not within its jurisdiction, not later than the 10th working day after the commission's determination, the chair shall cause a written notification of the commission's final jurisdictional determination to be sent to the complainant, the respondent, and any identified person whose contact information is listed on the complaint form or is reasonably ascertainable.
 - (i) If the commission determines that a complaint is not within the commission's jurisdiction, the commission may refer the complaint to the city auditor for possible investigation.
 - (ii) If the commission refers a complaint to the city auditor under this subsection, the written notification required under subsection (F)(2)(b) shall state that the commission has referred the complaint to the city auditor for possible investigation.
 - (c) If the commission overturns the chair's initial determination and determines that a complaint is within the commission's jurisdiction, the chair shall set the complaint for a preliminary hearing not later than the 60th day after the commission's determination, unless agreed to by the parties or by a vote of the commission. Subsection (F)(1)(a) and (b) shall govern the sending of notices and granting of postponements.
- (l) The commission may consider a possible violation of a provision within the jurisdiction of the commission on the commission's own initiative. Not later than the 10th working day after the commission's decision to consider a possible violation, the commission shall draft a written complaint specifying each code section or charter provision alleged to have been violated, shall file a copy of the complaint with the city clerk, and shall provide a copy of the complaint to the city attorney, the respondent, and any identified person whose contact information is obtained by the commission. A complaint initiated by the commission need not be sworn.
 - (1) The chair shall set the complaint for preliminary hearing not later than the 60th day after the complaint is filed with the city clerk, unless agreed to by the respondent or by a vote of the commission.
 - (2) Not later than the 10th working day prior to the meeting, the chair shall cause a written notice of the date of the preliminary hearing to be sent to the respondent and to any identified person whose contact information has been obtained by the commission.

(3) For good cause, the chair may postpone a scheduled preliminary hearing under this subsection on the request of a respondent or an identified person.

(j) A member of the commission may not take any part in a deliberation, vote, or decision regarding a sworn complaint alleging a violation by the council member that nominated the commission member.

Source: 1992 Code Section 2-3-41; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084; Ord. No. 20160922-005, Pt. 2, 6-1-17; Ord. No. 20170209-005, Pt. 10, 2-20-17; Ord. No. 20170209-005, Pt. 11, 6-1-17; Ord. No. 20180510-014, Pt. 1, 5-21-18.

§ 2-7-42 - DEFENSE OF OFFICIAL OR EMPLOYEE BY CITY ATTORNEY.

In the event a complaint is filed with the Ethics Review Commission against any official or employee of the City, alleging a violation of Article 4 (*Code of Ethics*), if the official or employee reasonably believed the conduct charged was not prohibited by Article 4 (*Code of Ethics*) and acted in reasonable reliance upon a public opinion rendered by the city attorney, the city attorney shall be authorized to represent the official or employee before the commission, or to employ and pay private counsel to represent the official or employee before the commission.

Source: 1992 Code Section 2-3-42; Ord. 031204-9; Ord. 031211-11.

§ 2-7-43 - PROHIBITION OF EX PARTE COMMUNICATIONS.

After a complaint has been filed and during the pendency of a complaint before the Ethics Review Commission, a member of the commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the commission. This prohibition does not prohibit a communication by a city employee with the commission in the performance of the city employee's official duties.

Source: 1992 Code Section 2-3-43; Ord. 031204-9; Ord. 031211-11; Ord. No. 20180510-014, Pt. 2, 5-21-18.

§ 2-7-44 - PRELIMINARY HEARING.

- (A) The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of a provision within the jurisdiction of the Ethics Review Commission has occurred. The complainant, or the legal counsel for the Ethics Review Commission in cases considered on the commission's own initiative, shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation as stated in the written complaint. Statements at a preliminary hearing shall be under oath, but there shall be no cross-examination or requests for persons or evidence issued for the hearing. Members of the commission may question the complainant, legal counsel for the commission, or the respondent.
- (B) The respondent shall have the opportunity to respond but is not required to attend or make any statement. The respondent may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation. If the respondent agrees that a violation has occurred, the respondent may so state and the commission may consider the appropriate sanction or prosecution.
- (C) The complainant and the respondent shall have the right of representation by counsel.
- (D) At the conclusion of the preliminary hearing, the commission shall decide whether a final hearing should be held. If the commission determines that there are reasonable grounds to believe that a violation within the jurisdiction of the commission has occurred, the commission shall schedule a final hearing. If the commission does not determine that there are reasonable grounds to believe that a violation has occurred, the complaint is dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.

- (E) The commission, at any time during the preliminary hearing, may also dismiss a complaint if the complaint does not conduct which would be a violation of a provision within the jurisdiction of the commission. Before a complaint is dismissed for failure to allege a violation, the complainant or the legal counsel for the commission shall be permitted opportunity, within a period to be specified, to revise and resubmit the complaint.
- (F) The complainant, legal counsel for the commission, and the respondent may ask the commission at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.

Source: 1992 Code Section 2-3-44; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084; Ord. No. 20170209-005, Pt. 12, 2-20-17.

§ 2-7-45 - FINAL HEARING.

- (A) Unless otherwise agreed to by the parties or by a vote of the commission, the final hearing shall be held not later than the 60th day after the determination by the commission that there are reasonable grounds to believe that a violation within the jurisdiction of the commission has occurred.
- (B) For good cause, the chair may postpone a scheduled final hearing on the request of the complainant, the respondent, or an identified person.
- (C) The complainant and respondent must attend a final hearing. If the respondent fails to attend, the commission may proceed with the final hearing at the commission's discretion.
- (D) The issue at a final hearing shall be whether a violation within the jurisdiction of the commission has occurred. The commission shall make its determination based on the preponderance of the credible evidence in the record. All parties and witnesses shall make their statements under oath.
- (E) If the commission determines that a violation has occurred, the commission shall state the commission's findings in writing, shall identify each code section or charter provision that has been violated, and, not later than the 10th working day after the final hearing, the chair shall cause a copy of the commission's findings to be sent to the complainant, if any, to the respondent, to any identified person whose contact information is listed on the complaint form or is reasonably ascertainable, and to the city clerk.

Source: 1992 Code Section 2-3-45; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084; Ord. No. 20170209-005, Pt. 13, 2-20-17.

§ 2-7-46 - OATHS AND REQUESTS FOR INFORMATION.

- (A) Subject to the limitations in this section, if a complaint proceeds to a final hearing, the commission may subpoena or request witnesses to attend and testify, administer oaths and affirmations, take evidence, and subpoena or request the production of books, papers, records, or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.
- (B) Before the commission may issue a subpoena, the commission shall submit a written request for a person to appear before them, for the production of documents, or for any other evidence. All city officials and employees will cooperate with the commission to assist it in carrying out its charge, and must supply requested testimony and documents if the documents are public records as set forth in the Public Information Act (Chapter 552 of the *Texas Government Code*) or other applicable law. Identifying information about any informant or witness in documents provided to the commission must be redacted.
- (C) The commission may issue a subpoena on its own or upon request of a complainant or respondent. If requested by a party to the complaint, the party must make a sworn request and state that the party in good faith believes that such item or testimony exists. The party must provide a detailed description of any requested items or

testimony sufficient to be able to identify the items or information; must state that the party has attempted to obtain such items or information otherwise; and, that the party in good faith believes that the person or entity whose name and address is specified in the sworn request does possess or control the requested item or information.

- (D) Any subpoena issued by the commission is subject to the following requirements:
- (1) the subpoena may only be served within the Austin-Round Rock Metropolitan Statistical Area defined as Travis, Williamson, Bastrop, Hays, Burnet, and Caldwell;
 - (2) may not be served on a current City employee;
 - (3) may not be served on current or former staff in the Law Department or outside legal counsel retained by the City; and,
 - (4) may not include a request for documentation which the city could withhold under the Public Information Act (Chapter 552 of the *Texas Government Code*).
- (E) Objection to subpoena. If a subpoena is issued upon the request of a party to the complaint, a person may object to a subpoena within seven working days after receiving the subpoena. Objections to subpoenas must be in writing and submitted to the city clerk. Not later than the fifth working day after the city clerk receives the objection, the city clerk shall acknowledge the receipt of the objection to the subpoena and provide a copy of the objection to the city attorney, the chair of the commission, the complainant and the respondent. If the commission issued the subpoena upon request of the complainant or respondent, the complainant or respondent shall within three working days after receipt of the objection provide a written response to the city clerk. The city clerk shall provide notice of receipt of a response to the objection in the same manner as receipt of an objection as set forth in this subsection. The commission shall rule on the objection. If a person to whom the subpoena is properly issued fails to object to a subpoena within the time specified in this section, the person waives any objection to the subpoena.
- (F) Appeal. A person that is a party to the complaint or subject of a subpoena may appeal the commission's decision on an objection to a subpoena to the Audit and Finance Committee of the City Council by filing an appeal with the City Clerk's office no later than ten days after the commission's decision. The request for an appeal must include a concise statement detailing the reasons the person believes the commission's decision should be overruled. The City Clerk will distribute the request for an appeal in the same manner described in subsection (E) above. The staff assigned to the commission will place the appeal on the next available committee agenda in accordance with the council's committee meeting procedures. The committee may vote to adopt, reject or modify the decision of the commission. A member of the Council may not take any part in a deliberation, vote, or decision regarding a subpoena issued to the council member or is issued in a complaint alleging a violation by the council member or a member of their staff.
- (G) The commission may request assistance from the city auditor with the investigation of allegations in a complaint.
- (H) The commission may consider the city auditor's investigation at a final hearing on a complaint.

Source: 1992 Code Section 2-3-46; Ord. 031204-9; Ord. 031211-11; Ord. No. 20170209-005, Pt. 14, 2-20-17; Ord. No. 20180510-014, Pt. 3, 5-21-18.

§ 2-7-47 - PROSECUTION.

If the Ethics Review Commission determines that a violation of a provision subject to a criminal penalty has occurred, the commission shall deliver a copy of the commission's findings to the complainant, if any, the respondent, and the city attorney and may recommend prosecution or set forth requirements to be complied with in order that voluntary

compliance may be had and final determination obtained.

Source: 1992 Code Section 2-3-47; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084; Ord. No. 20170209-005, Pt. 15, 2-20-17.

§ 2-7-48 - SANCTIONS.

- (A) This section applies only to violations other than violations of Chapter 2-2 (*Campaign Finance*) and Article III, Section 8, of the City Charter (*Limits on Campaign Contributions and Expenditures*).
- (B) If the Ethics Review Commission determines that a violation of Sections 2-7-62 (*Standards of Conduct*), 2-7-63 (*Prohibition on Conflict of Interest*), 2-7-64 (*Disclosure of Conflict of Interest*), and 2-7-65 (*Substantial Interest of Relative*) occurred, it shall proceed directly to determination of the appropriate sanction(s). A violation of Sections 2-7-62 (*Standards of Conduct*), 2-7-63 (*Prohibition on Conflict of Interest*), 2-7-64 (*Disclosure of Conflict of Interest*), 2-7-65 (*Substantial Interest of Relative*), 2-7-46 (*Oaths and Requests for Information*), and subsection (D) of Section 2-7-41 (*Complaints*) shall not be subject to criminal penalties under the City Code. The commission may receive additional testimony or statements before considering sanctions but is not required to do so. If the respondent acted in reliance upon a public written opinion of the city attorney, the commission shall consider that fact.
- (C) If the commission determines that a violation has occurred, the commission may impose or recommend the following sanctions:
 - (1) A letter of notification is the appropriate sanction when the violation is clearly unintentional, or when the respondent's conduct complained of was made in reliance on a public written opinion of the city attorney. A letter of notification must advise the respondent of any steps to be taken to avoid future violations. The commission may direct a letter of notification to any official or employee covered by this chapter.
 - (2) A letter of admonition is the appropriate sanction if the commission finds that the violation is minor or may have been unintentional, but calls for a more substantial response than a letter of notification. The commission may admonish any official or employee covered by this chapter.
 - (3) A reprimand is the appropriate sanction when the commission finds that a violation has been committed intentionally or through disregard of this chapter. The commission may reprimand any official or employee covered by this chapter. A reprimand directed to a City official shall also be sent to the city council. A reprimand directed to an employee shall be sent to the city manager and included in said employee's personnel file.
 - (4) A recommendation of removal from office or a recommendation of suspension from office, including a recommendation for the length of a suspension, is the appropriate sanction when the commission finds that a serious or repeated violation of this chapter has been committed intentionally or through culpable disregard of this chapter. A recommendation regarding an unsalaried City official or a salaried official appointed by the city council shall be transmitted by the commission to the city council. The final authority to carry out a recommendation regarding an unsalaried City official or of a salaried official appointed by the city council is the city council. A recommendation regarding a City employee shall be directed by the commission to the city manager. The final authority to carry out a recommendation regarding a city employee is the city manager.
 - (5) A letter of censure or a recommendation of recall is the appropriate sanction when the commission finds that a serious or repeated violation of this chapter has been committed intentionally or through culpable disregard of this chapter by an elected City official. A letter of censure or a recommendation of recall directed

to an elected City official shall be transmitted by the commission to the city clerk, published by the city clerk in a local newspaper of the largest general circulation, and shall be sent by the commission to the city council.

Source: 1992 Code Section 2-3-48; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084; Ord. No. 20180510-014, Pt. 4, 5-21-18.

§ 2-7-49 - CAMPAIGN VIOLATIONS.

- (A) This section applies to violations of Chapter 2-2 (*Campaign Finance*) and Article III, Section 8, of the City Charter (*Limits on Campaign Contributions and Expenditures*).
- (B) If the Ethics Review Commission determines that a violation of a provision to which this section applies has probably occurred:
 - (1) the commission may recommend that the city attorney prosecute the violation;
 - (2) request the appointment of a special prosecutor in cases where it finds this action necessary, with funding provided by the City; or
 - (3) if the commission finds that the violation is minor, clerical, or may have been unintentional, the commission may recommend that the violation not be prosecuted or be prosecuted only if the violation is not corrected.
- (C) The commission may consider a violation's severity, frequency, or intentional nature.
- (D) If a respondent is an entity, the commission may find that an individual has violated a provision subject to the section.
- (E) This section does not require the commission to make a recommendation with respect to a complaint.
- (F) The commission may draft and publish a letter of notification, a letter of admonition, a reprimand, or a letter of censure to a respondent found to have violated a provision subject to this section. The Commission shall apply the criteria in Section 2-7-48 (*Sanctions*) to determine the appropriate sanction to impose.
- (G) This section does not limit the prosecutorial discretion of the city attorney.

Source: Ord. 20120426-084; Ord. No. 20160922-005, § 3, 6-1-17; Ord. No. 20170209-005, Pt. 16, 2-20-17.

Editor's note— Ordinance No. 20160922-005 takes effect on June 1, 2017. Ord. No. 20170209-005, Pt. 16 which amended subsection (F) takes effect February 20, 2017.

§ 2-7-50 - LOBBYING VIOLATIONS.

- (A) This section applies to violations of Chapter 4-8 (*Regulation of Lobbyists*).
- (B) For an allegation in a complaint relating to a violation of Chapter 4-8, the commission shall hold only a preliminary hearing, and shall not hold a final hearing.
- (C) The commission shall refer an allegation for which the commission finds a reasonable basis to believe that there may be a violation to the city attorney for prosecution.
- (D) This section does not limit the prosecutorial discretion of the city attorney.

Source: Ord. No. 20160922-005, Pt. 4, 6-1-17.

Editor's note— Ordinance No. 20160922-005 takes effect on June 1, 2017.

ARTICLE 4. - CODE OF ETHICS.

§ 2-7-61 - CONDUCTING BUSINESS THROUGH PARTNERSHIPS, PROFESSIONAL CORPORATIONS, AND OTHER ENTITIES.

If a City official or employee is a member of a partnership or professional corporation, or conducts business through another entity, a substantial interest of the partnership, professional corporation, or entity shall be deemed to be a substantial interest of the City official or employee if:

- (A) the partnership or professional corporation has fewer than 20 partners or shareholders;
- (B) regardless of the number of partners or shareholders, the official or employee has an equity interest, share, or draw equal to or greater than five percent of the capital or revenues of the partnership, professional corporation, or other entity; or
- (C) with regard to the partnership, professional corporation, or other entity's substantial interest in a client, the official has personally acted within the preceding 24 months in a professional or fiduciary capacity for that client.

Source: 1992 Code Section 2-3-61; Ord. 031204-9; Ord. 031211-11.

§ 2-7-62 - STANDARDS OF CONDUCT.

- (A) No City official or employee shall transact any business in his official capacity with any entity in which he has a substantial interest.
- (B) No City official or employee shall formally appear before the body of which the official or employee is a member while acting as an advocate for himself or any other person, group, or entity.
- (C) No salaried City official or employee shall represent, for compensation, any other person, group or entity before any department, commission, board or committee of the City.
- (D) No salaried City official or employee shall represent, directly or indirectly, any other person, group or entity in any action or proceeding against the interests of the City, or in any litigation in which the City or any department, commission, or board or committee thereof is a party; provided, however, that nothing herein shall limit the authority of the city attorney and his staff to represent the City, its boards, commissions, committees and officers and particularly the Human Rights Commission in the discharge of their duties, including equal employment opportunity cases.
- (E) No salaried City official or employee shall represent, directly or indirectly, any person, group or entity in any action or proceeding in the municipal courts of the City which was instituted by a City official or employee in the course of official duties.
- (F) No City official shall represent any person, group or entity in any action or proceeding in the municipal courts of the City which was instituted by or arising from a decision of a board, commission, committee, task force or other body on which the official serves.
- (G) (1) General Rule. No City official or employee shall accept or solicit the following:
 - (a) Any gift or favor, that might reasonably tend to improperly influence that individual in the discharge of official duties or that the official or employee knows or should know has been offered with the intent to improperly influence or improperly reward official conduct; or
 - (b) Any gift or favor of which the known or apparent value exceeds \$50 or any gift of cash or a negotiable instrument.
- (2) Special Applications. The general rule does not apply to the following:
 - (a) Attendance to a convention, conference, symposium, training program or similar event, provided there is

- a City-related business purpose for the official or employee to attend or participate in an official capacity, and the attendance or participation is appropriate for the performance of that individual's official duties.
- (b) Admission to an event or discounted admission, if there is a City-related business purpose for the official or employee to attend or participate in an official capacity, and the attendance or participation is appropriate for the performance of that individual's official duties.
- (c) A voluntary gift or favor given by a City official or employee to another City official or employee, including food and drink to be shared among employees; except a supervisor may not accept a gift or favor from an employee under the supervisor's supervision unless the gift is given voluntarily by the employee on an occasion of personal significance, or at a time when gifts are traditionally given or exchanged, and the value of the gift is fairly appropriate for the occasion.
- (H) (1) No City official or employee shall solicit or accept other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.
- (2) If a City official or employee accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official or employee might reasonably be expected to act, investigate, advise, or make a recommendation, the official or employee shall disclose that fact to the board or commission on which he serves or to his supervisor and shall take no further action on matters regarding the potential future employer.
- (I) A salaried City official or employee may not use the official's or the employee's official position to secure a special privilege or exemption for the official or the employee, to secure a special privilege or exemption for another person, to harm another person, or to secure confidential information for a purpose other than official responsibilities.
- (J) No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public, or to the extent that facilities, equipment or supplies are allowed to be used in a limited or de minimis manner in accordance with City policy.
- (K) No City official or employee shall accept remuneration, directly or indirectly, for campaign work relating to an item placed on the ballot if that individual served on the body which exercised discretionary authority in the development of the ballot item and participated in the discussion or voted on the item.
- (L) No salaried City official and certain City employees to include the mayor, councilmembers, the city manager, assistant city managers, the city clerk, deputy city clerks, council aides, municipal court clerk, deputy municipal court clerks, municipal judges (including substitute judges), the city auditor, assistants to the city auditor, the city attorney, deputy city attorneys, assistant city attorneys, purchasing agents and those employees with the authority to purchase or contract for the City, all department heads, deputy department heads, and the spouse of each of the above, shall solicit nor propose on a contract, enter into a contract or receive any pecuniary benefit from any contract with the City. This prohibition does not include any employment contract which may be authorized for the official, a contract of sale for real property or a contract for services which are available to all citizens.
- (M) For a period of two years after leaving office, a former mayor or councilmember may not solicit or propose on a contract with the City or enter into a contract with the City for the sale to the City of any goods or services other than real estate. This subsection does not apply to a former mayor or councilmember who had a business relationship with the City in the six months immediately preceding taking the office of mayor or councilmember if the solicitation or proposal is on behalf of the same business.

- (N) For a period of two years after leaving office, a former mayor or councilmember, members of their family, or anyone on their behalf, may not sell or lease any real estate to the City unless the city council has designated the property for acquisition and would otherwise have to acquire the property through its power of eminent domain.
- (O) A City official or employee may not engage in fraud or abuse, as defined in City Code Chapter 2-3 (*City Auditor*).

Source: 1992 Code Section 2-3-62; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047; Ord. No. 20170209-005, Pts. 17, 18, 2-20-17; Ord. No. 20181213-014, Pt. 2, 12-24-18.

§ 2-7-63 - PROHIBITION ON CONFLICT OF INTEREST.

- (A) A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.
- (B) A City official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity. This subsection does not apply to a City official or employee who:
 - (1) serves as a corporate officer or member of the board of directors of a nonprofit entity that is owned by the City or created by the city council; or
 - (2) as a duty of office or as a job assignment, serves as a corporate officer or member of the board of directors of a nonprofit entity as a representative of the City.
- (C) Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.
- (D) Nothing in this chapter shall prohibit the city council from participating in a vote or decision relating to salaries, terms of office or travel budgets of city councilmembers.
- (E) If a member of the city council participates in a vote or decision on a contract for the purchase by the City of any goods or services from a person or entity in which the member has a substantial interest, the contract is voidable by the City.
- (F) A document prepared by the City that solicits bids or proposals from vendors, service providers, or other persons shall provide notice of the provisions of this section.

Source: 1992 Code Section 2-3-63; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-64 - DISCLOSURE OF CONFLICT OF INTEREST.

- (A) A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.
- (B) To comply with this section, a councilmember or unsalaried City official, prior to the vote or decision, either shall file an affidavit as required by Chapter 171 (*Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments*) of the Local Government Code or, if not so required, shall publicly disclose in the official records of the body the nature and extent of such interest.
- (C) To comply with this section, a City employee shall notify in writing his supervisor of any substantial interest he may have in a natural person, entity or property which would be affected by an exercise of discretionary

authority by the City employee and a supervisor shall reassign the matter.

Source: 1992 Code Section 2-3-64; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-65 - SUBSTANTIAL INTEREST OF RELATIVE.

- (A) A substantial interest of a spouse of a City official or employee shall be deemed to apply to that official or employee for the purposes of Sections 2-7-63 (*Prohibition on Conflict of Interest*) and 2-7-64 (*Disclosure of Conflict of Interest*) concerning disclosure and recusal or reassignment.
- (B) If the spouse of a City official or employee does business through a partnership or other entity, the substantial interests of that partnership or entity shall not be deemed under Section 2-7-61 (*Conducting Business Through Partnerships, Professional Corporations, and Other Entities*) to apply to the City official or employee.
- (C) A City official or a City employee may not participate in a vote or decision affecting a substantial interest of a person to whom the official or employee is related in the first or second degree of consanguinity or affinity. This subsection does not apply to a substantial interest of a relative based on the relative's employment by a governmental body.
- (D) For the purposes of Subsection (C): A relative other than a spouse has a substantial interest if:
 - (1) the person owns 10 percent or more of the voting stock or shares of the entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the entity; or
 - (2) funds received by the person from the entity exceed 10 percent of the person's gross income for the previous year; or
 - (3) the person has a substantial interest in real property if the interest is an equitable or legal ownership in real property with a fair market value of \$2,500 or more.

Source: 1992 Code Section 2-3-65; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-66 - MISUSE OF OFFICIAL INFORMATION.

No former City official or former employee shall use any confidential information to which he had access by virtue of his official capacity and which has not been made public concerning the property, operations, policies, or affairs of the City, to advance any personal financial interest.

Source: 1992 Code Section 2-3-66; Ord. 031204-9; Ord. 031211-11.

§ 2-7-67 - RESTRICTIONS ON PROVIDING REPRESENTATION OF OTHERS.

- (A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
 - (1) BEFORE THE CITY means before the city council, a board or commission, or a City official or employee.
 - (2) CASE, PROJECT OR MATTER means to refer to specific cases, projects or regulatory matters, rather than generic policies, procedures or legislation of general application. For instance, the zoning process or site plan review process is not a "case, project or matter" within the meaning of this section; however, a specific zoning case or site plan would constitute a "case, project or matter" subject to the restrictions imposed in this section. It is not the intent of this chapter, and this chapter shall not be construed, to proscribe the practice of any profession or occupation by former City officials and employees.
 - (3) REPRESENT means all communications with and appearances before the City in which the City is asked to

make a decision, as that term is defined in this chapter. The term represent does not include communications and appearances involving only ministerial action on the part of the City.

- (B) A City employee in a position which involves significant decision-making, advisory, or supervisory responsibility, or a City official who leaves the service or employment of the City shall not, within 12 months after leaving that employment or service, represent any other person or entity in any formal or informal appearance, if the City official or employee has received or shall receive remuneration from the person, entity or members of the entity being represented:
 - (1) before the City concerning a case, project or matter over which the person exercised discretionary authority as a City employee or official; or
 - (2) before any other agency on a case, project or matter over which the person exercised discretionary authority as a City employee or official.
- (C) A former City employee or official who is subject to the requirements of Subsection (B) shall, during the 24 months after leaving the service or employment of the City, disclose his previous position and responsibilities with the City and the work performed, if any, as a City employee or official regarding the matter for which he is appearing before the City whenever he represents any other person or entity in any formal or informal appearance before the City.
- (D) In any formal or informal appearance before the City, a person representing a person or entity which employs a former City official or employee who had discretionary authority over the project or matter for which the person or entity is appearing before the City shall disclose any former involvement of such former City official or employee in the project or matter. This disclosure requirement shall be in effect for 24 months after the former City official or City employee leaves City service or employment.
- (E) This section shall become effective from and after February 1, 1987. This section shall not apply to persons who left the service or employment of the City prior to February 1, 1987.

Source: 1992 Code Section 2-3-67; Ord. 031204-9; Ord. 031211-11.