

ARTICLE VII: CODE OF ETHICS

Cross-reference:

Offenses and miscellaneous provisions, Ch. 23

DIVISION 1: GENERALLY

Editor's note:

Ord. 20548-12-2012, § 1, adopted December 18, 2012, amended this division in its entirety as set forth below. Prior to the passage of that ordinance, this division pertained to similar subject matter and derived from Ord. 10617, § 1(1), adopted June 26, 1990. Prior to the passage of that ordinance, this division pertained to similar subject matter and derived from 1964 Code, § 43-1(A) through (E); Ord. 7582, § 1, adopted July 26, 1977; Ord. 7704, § 1, adopted February 21, 1978; Ord. 7830, § 1, adopted October 17, 1978; Ord. 8041, § 1, adopted February 5, 1980 and Ord. 8778, § 1, adopted April 12, 1983.

§ 2-236 DECLARATION OF POLICY.

(a) It is hereby declared to be the policy of the city that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible only to the people of the city and that governmental decisions and policy should be made in the proper channels of the governmental structure. To implement such a policy, the city council deems it advisable to enact this Code of Ethics for all officers, employees and advisory board members, whether elected or appointed, paid or unpaid, to serve not only as a guide for official conduct of the city's public servants, but also as a basis for discipline for those who fail to abide by its terms. This Code of Ethics is cumulative of other ordinances, City Charter provisions and state statutes defining and prohibiting conflict of interest. This § 2-236 is intended to reflect the general intent behind this Code of Ethics and shall not be deemed to be a part of the Code of Ethics or serve as a basis for a violation of this Code of Ethics.

(b) This Code of Ethics has five primary purposes:

- (1) To encourage high ethical standards in official conduct by officers, employees and advisory board members;
- (2) To establish minimum standards of conduct for officers, employees and advisory board members;
- (3) To establish an ethics review commission;
- (4) To provide a process for the filing and resolution of complaints asserting violations of this article; and
- (5) To provide sanctions for violations of this Article.

(c) This Code of Ethics is not intended to be nor shall it be used as a political weapon to intimidate or embarrass any person covered herein.

(d) Task forces, as defined in § 2-237, shall conduct their meetings in accordance with the requirements imposed on a governmental body by the Texas Open Meetings Act, Tex. Government Code Chapter 551.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-237 DEFINITIONS.

For the purposes of this Code of Ethics, the following words and phrases shall have the meanings respectively ascribed to them by this section:

ADVISORY BOARD. A board, commission or committee that is intended to function only in an advisory or study capacity on a permanent basis, whether specified or implied.

ARTICLE.Chapter 2, Article VII, Code of Ethics of the Code of the City of Fort Worth Texas (1986), as amended.

BENEFIT. Anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any person in whom the beneficiary has a substantial interest, but does not include a political contribution as defined by Tex. Election Code Title 15.

BUSINESS ENTITY. A sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law.

CITY ATTORNEY. The city attorney and any assistant city attorney appointed pursuant to Chapter VI of the Charter of the City of Fort Worth, Texas.

CITY SECRETARY. The city secretary and any assistant city secretary appointed pursuant to Chapter III of the Charter of the City of Fort Worth, Texas.

DOMESTIC PARTNER. An individual of the same or opposite gender as the person referred to in this Article, who has lived in the same household as that person for at least six months and shares resources of life in a close, personal intimate relationship with that person, neither of whom is married or related by blood, if, under Texas law, the individual would not be prevented from marrying the person referred to in this Article on account of consanguinity or prior undissolved marriage to another.

EMPLOYEE. Any person employed by the city whether under civil service or not (except firefighters and police officers who are covered by state civil service laws), including those individuals on a part-time basis, but such term shall not be extended to apply to any independent contractor.

HEARING OFFICER. A resident attorney appointed by the city council pursuant to Division 3 of this article to hear appeals of determinations made by the ethics review commission.

INTENT or INTENTIONALLY. A person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.

KNOWINGLY. A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.

OFFICER. Any member of the city council and any person appointed by the mayor or city council to a board, commission or committee established by ordinance, Charter or state law, including hearing officers appointed pursuant to Division 3; provided, no member of an advisory board, task force or any other committee that functions only in an advisory or study capacity shall be deemed an officer.

RESIDENT. A person whose home and fixed place of habitation to which that person intends to return after any temporary absence is located within the corporate limits of the City of Fort Worth, as determined in accordance with Tex. Election Code § 1.015.

SUBSTANTIAL INTEREST.

(1) A person has a ***SUBSTANTIAL INTEREST*** in a business entity if:

a. The interest is ownership of 10% or more of the voting stock or shares of the business entity or ownership of either 10% or more or \$15,000 or more of the fair market value of the business entity; provided, however, that if any ownership interests specified in Tex. Local Government Code § 171.002(a)(1), or a successor statute conflict with any ownership interests specified herein, Tex. Local Government Code § 171.002(a)(1), or the successor statute shall control;

b. Funds received by the person from the business entity exceed 10% of the person's gross income for the previous year; provided, however, that if any ownership interests specified in Tex. Local Government Code §

171.002(a)(2), or a successor statute conflict with any ownership interests specified herein, Tex. Local Government Code § 171.002(a)(2), or the successor statute shall control;

- c. The person holds a position as a member of the board of directors or other governing board of the business entity;
- d. The person serves as an elected officer of the business entity;
- e. The person is an employee of the business entity;
- f. The person is a creditor, debtor or guarantor of any person, group or business entity in the amount of \$5,000 or more; or
- g. Property of the person has been pledged to a person, group or business entity or is subject to a lien in favor of the person, group or business entity in the amount of \$5,000 or more.

(2) A person does not have a ***SUBSTANTIAL INTEREST*** in a business entity if:

- a. The person holds a position as a member of the board of directors or other governing board of a business entity;
- b. The person has been designated by the city council to serve on such board;
- c. The person receives no remuneration, either directly or indirectly, for his or her service on such board; and
- d. The primary nature of the business entity is either charitable, nonprofit or governmental.

(3) A person has a ***SUBSTANTIAL INTEREST*** in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more; provided, however, that if the ownership interest specified in Tex. Local Government Code § 171.002(b), or a successor statute conflict with the ownership interest specified herein, Tex. Local Government Code § 171.002(b), or the successor statute shall control.

(4) A person has a ***SUBSTANTIAL INTEREST*** in a business entity or in real property if a person related to the person in the first degree by consanguinity or affinity or if the person's domestic partner has a substantial interest in a business entity or in real property under this article. A person is related in the first degree by consanguinity to his or her father, mother, son and daughter. A person is related in the first degree by affinity to his or her spouse, stepchild, father-in-law, mother-in-law, son-in-law and daughter-in-law.

TASK FORCE. A board, commission or committee that functions only in a study capacity in order to assist the city council in addressing a specific issue or issues on a temporary or short-term basis and to conclude its business within a limited amount of time, whether specified or implied, and that is not empowered to take any final action other than the delivery of written or verbal reports and recommendations to the city council, the city manager or another party designated by the city council.

WRITTEN OPINION OF THE CITY ATTORNEY. Any written or recorded communication of the city attorney, including, but not limited to, a formal written opinion, memorandum, report, handwritten notice, electronic mail communication, facsimile communication or a communication preserved by audio or video recording.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-238 STANDARDS OF CONDUCT.

(a) No officer, employee or advisory board member shall knowingly:

(1) Accept or solicit, or knowingly allow his or her spouse or domestic partner to accept or solicit, any benefit from any person, group or business entity that might reasonably tend to influence the officer, employee or advisory board member in the discharge of his or her official duties;

(2) Grant in the discharge of his or her official duties any improper benefit to any person, group or business entity;

(3) Accept or solicit, or knowingly allow his or her spouse or domestic partner to accept or solicit, any benefit, including a promise of future employment, of sufficient economic value that it might reasonably tend to influence the officer, employee or advisory board member in the discharge of his or her official duties, from any person, group or business entity:

a. That is licensed or has a substantial interest in any business entity that is licensed by any city department, agency, commission or board on which the officer, employee or advisory board member serves; or

b. That has a financial interest in any proposed ordinance or decision upon which the officer, employee or advisory board member may or must act or make a recommendation; provided, however, that any officer, employee or advisory board member, and any spouse or domestic partner thereof, may accept travel and related expenses and attend ceremonial functions, provided that such acceptance and attendance have been approved by the city council prior to the occurrence of the ceremonial function.

(4) a. Disclose any confidential information gained by reason of the position of the officer, employee or advisory board member concerning the property, operations, policies or affairs of the city, or use such confidential information to advance any personal interest, financial or otherwise, of such officer, employee or advisory board member, or others.

b. This subsection (a)(4) shall not preclude disclosure of such confidential information in connection with any investigation or proceeding regarding whether there has been a violation of the standards of conduct set forth in this article.

(5) Use one's position or office of employment, or city facilities, personnel, equipment or supplies for the private gain of the officer, employee or advisory board member, or for the private gain of his or her spouse or domestic partner.

(6) Engage or knowingly allow his or her spouse or domestic partner to engage in any exchange, purchase or sale of property, goods or services with the city, except:

a. Rendering services to the city as an officer, employee or advisory board member;

b. The paying of taxes, fines, utility service or filing fees;

c. Subject to restrictions contained in the City Charter, executing and performing any community facilities contract or plat in compliance with laws and regulations applicable to any person; provided, however, that if any city ordinance, rule or regulation allows any discretion by the appropriate officers or employees in the interpretation or enforcement of such ordinance, rule or regulation any such discretion shall be exercised in favor of the city in connection with any such community facilities contract or plat; and

d. Members of advisory boards who are not otherwise officers or employees of the city, may engage in any exchange, purchase or sale of property, goods or services with the city, or enter into a contract with the city, provided, however, that the board of which they are a member has no advisory function or cognizance, direct or indirect, present or prospective, with respect to the transaction in which such advisory board member engages or proposes to engage.

(b) No salaried officer or employee shall knowingly represent, directly or indirectly, any person, group or business entity:

(1) Before the city council or any department agency, board or commission of the city;

(2) In any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, board or commission thereof is a party; or

(3) In any action or proceeding in the municipal courts of the city which was instituted by an officer or employee in the course of official duties, or a criminal proceeding in which any officer or employee is a material

witness for the prosecution.

(c) No member of a city board or commission, other than a task force, shall knowingly represent, directly or indirectly, any person, group or business entity:

(1) Before the board or commission of which he or she is a member;

(2) Before a board or commission which has appellate jurisdiction over the board or commission of which he or she is a member;

(3) Before the city council in a matter over which the board or commission of which he or she is a member has authority or an advisory function, direct or indirect, present or prospective, provided that a member of an advisory board who has been elected or appointed to serve as chair or acting chair may present a recommendation to the city council on a matter over which the advisory board has authority if a majority of the members of the advisory board have voted in favor of such recommendation;

(4) In any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, board or commission thereof is a party; or

(5) In any action or proceeding in the municipal courts of the city which was instituted by an officer or employee in the course of official duties, or a criminal proceeding in which any officer or employee is a material witness for the prosecution.

(d) No member of a task force shall knowingly represent, directly or indirectly, any person, group or business entity:

(1) Before a board or commission which has appellate jurisdiction over the task force of which he or she is a member; or

(2) Before the city council in a matter over which the task force of which he or she is a member has an advisory function, provided that a member of task force who has been elected or appointed to serve as chair or acting chair may present a recommendation to the city council on a matter over which the task force has authority if a majority of the members of the task force have voted in favor of such recommendation.

(e) The restrictions in this section do not prohibit the following:

(1) An employee or member of a city board or commission (other than city council), or his or her spouse or domestic partner, appearing before the city council or a city department, agency, board or commission to represent himself or herself in a matter affecting his or her property: provided, however, that no such person, or his or her spouse, shall appear before the board or commission of which he or she is a member;

(2) An employee or officer of an employee organization appearing before the city council or a city department, agency, board or commission to address employment matters;

(3) Otherwise eligible employees or their spouses or domestic partners from participating in federal or state-funded programs administered through the City of Fort Worth where the benefits of such programs are available to members of the general public and where the employee has no administrative, evaluative or decision-making authority concerning the program in which he or she wishes to participate;

(4) A partner, associate or relative of a member of the city council, or of a salaried officer or employee, from representing a person, group or business entity in an action or proceeding in the municipal courts of the city which was instituted by an officer or employee in the course of official duties, or in a criminal proceeding in which an officer or employee is a material witness for the prosecution; or

(5) A member of a task force from participating in or voting on any matter before the task force to which the member has been appointed, notwithstanding any other provision of this section.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-239 DISCLOSURE OF INTEREST.

(a) If any officer, employee or advisory board member has a substantial interest in any business entity or real property directly and particularly involved in any decision pending before such officer, employee, or advisory board member, or the body of which he or she is a member, such officer, employee or advisory board member shall disclose such interest as provided in subsection (c) below and shall not, except as provided in subsection (b) below, vote or otherwise participate in the consideration of the matter.

(b) If any of the following interests are directly and particularly involved in any decision pending before any officer, employee or advisory board member, or the body of which he or she is a member, such officer, employee or advisory board member must disclose such interest as provided in subsection (c) below, but he or she shall be permitted to vote on and participate in the consideration of such matter:

(1) A decision concerning a bank or other financial institution from which the officer, employee or advisory board member has a home mortgage, automobile loan or other installment loan, if the loan is not currently in default, was originally for a term of more than two years and cannot be accelerated except for failure to make payments according to the terms thereof;

(2) A decision concerning a bank or other financial institution in which the officer, employee or advisory board member holds a savings account, checking account or certificate of deposit and which is fully insured by the U.S. government or an agency thereof;

(3) A decision concerning a business entity with which the officer, employee or advisory board member has a retail or credit card account;

(4) A decision concerning the approval of substitution of collateral by a city depository bank;

(5) A decision concerning real property in which the officer, employee or advisory board member has a substantial interest if it is not reasonably foreseeable that such decision would have a special economic effect on the value of the property, distinguishable from the effect on the public (see Tex. Local Government Code § 171.004);

(6) A decision concerning the refund of property taxes to a business entity in which the officer, employee or advisory board member has a substantial interest, if such refund is required because of a double payment of taxes or a judicially or administratively determined reduction in the valuation of the taxed property;

(7) A decision concerning a business entity with which the officer, employee or advisory board member has a stock brokerage or securities account; and

(8) A decision concerning whether the city should accept a gift from a business entity in which the officer, employee or advisory board member has a substantial interest.

(c) A officer, employee or advisory board member shall disclose the existence of any substantial interest in any person, business entity or real property involved in any decision pending before such officer, employee or advisory board member, or the body of which he or she is a member. To comply with this subsection (c), an officer or advisory board member shall, prior to any discussion or determination of the matter, either file an affidavit of disclosure as required by Tex. Local Government Code § 171.004 or, if not so required, shall publicly disclose in the official records of the body or of the city secretary the nature of the interest. To comply with this subsection (c), an employee shall notify his or her superior in writing of the nature of any substantial interest he or she may have in a person, business entity or real property which would be affected by an exercise of discretionary authority by the employee and such superior shall assign the matter to another employee.

(d) The provisions of subsections (a), (b) and (c) above shall not apply in the following circumstances:

(1) When an officer, employee or advisory board member, or the body of which he or she is a member, is involved in a decision concerning the levy of a special improvement district assessment against real property which is owned by a person, group or business entity in which the officer, employee or advisory board member has a substantial interest if:

a. Assessments are levied at a uniform rate throughout the district; and

b. Such rate is applied to the value of the real property as shown on current Tarrant appraisal district appraisal rolls.

(2) When a task force member is involved in any matter or decision before the task force to which the member has been appointed.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-239.1 EFFECT OF WRITTEN OPINION OF CITY ATTORNEY.

Notwithstanding anything to the contrary in this article, a person does not violate any provision of this division for conduct undertaken in reasonable reliance, either directly or indirectly, upon a written opinion of the city attorney that was either provided prior to the conduct complained against or requested prior to the conduct complained against and provided not later than 15 business days following the date of such request.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

DIVISION 2: ETHICS REVIEW COMMISSION

Editor's note:

Ord. 20548-12-2012, § 1, adopted December 18, 2012, amended this division in its entirety as set forth below. Prior to the passage of that ordinance, this division pertained to the Ethics Review Committee and derived from Ord. 10617, § 1(3), adopted June 26, 1990.

§ 2-240 CREATION AND ORGANIZATION.

(a) *Creation.* There is hereby created an Ethics Review Commission ("ERC"). The ERC shall be composed of five persons, one of whom shall be an attorney appointed in accordance with subsection (b). The remaining four persons shall be selected by random draw method from certain existing city boards and commissions in accordance with subsection (c).

(b) *Attorney appointee to the ERC.* The city council shall appoint by majority vote an attorney who is in good standing with the State Bar of Texas and has been licensed to practice law in the State of Texas for at least five consecutive years. The attorney shall not be appointed for a definite fixed time and may be removed by the city council at any time and for any reason by majority vote. The attorney appointed pursuant to this subsection (b) may not be a member of another city board, commission or committee if the ERC has jurisdiction under this article to review the conduct of that person as a member of such other board, commission or committee. This provision does not prohibit other persons selected pursuant to subsection (c) and who are also licensed attorneys from serving on the ERC.

(c) *Other appointees to the ERC.*

(1) The remaining four persons shall be selected to serve on the ERC in accordance with the process outlined in this subsection (c) in the following circumstances:

a. A sworn complaint is filed with the city secretary's office alleging that a violation of Division I of this article has occurred, and the city secretary acknowledges in accordance with § 2-247(c) that the complaint substantially complies with the requirements of § 2-247; or

b. The city council by majority vote or the city manager of his or her own volition requests the city secretary to convene the ERC for purposes of exercising any other of its delegated powers under § 2-241.

(2) Upon the occurrence of one of the qualifying events set forth in subsection (c)(1), the city secretary shall compile the names of all then-current members of the zoning commission, the plan commission, and the boards of adjustment and then use a random draw method to select four persons on those boards to serve as members of the ERC. Each of the four persons selected must be Residents of different city council districts. If the city secretary draws the name of a person who resides in the same city council district as a person whose

name already has been drawn, the city secretary shall discard that name and proceed to draw another name until four persons who are residents of different city council districts have been selected. The city secretary promptly shall notify in writing the four persons selected to serve on the ERC for that complaint and shall also provide written notice of those selections to the city council, the city manager, and the city attorney.

(3) If the ERC is being convened to hear an ethics complaint, the four persons selected to serve on the ERC pursuant to this subsection (c) shall serve until that complaint has been fully adjudicated by the ERC pursuant to and in accordance with § 2-251 and, if applicable, § 2-252. If the ERC is being convened to exercise any other of its delegated powers under § 2-241, the four persons selected to serve on the ERC pursuant to this subsection (c) shall serve until the ERC has fulfilled the stated purpose for its assembly. There is no limit to the number of times a person may serve on the ERC pursuant to the selection process outlined in this subsection (c).

(4) If the ERC is being convened to hear an ethics complaint, and the person who filed the complaint or the person complained against is a member of the zoning commission, the plan commission, or the boards of adjustment, the persons selected to serve on the ERC pursuant to this subsection (c) may not be members of those boards.

(5) If the ERC is being convened to hear an ethics complaint, and the person who filed the complaint or the person complained against is a member of the city council, the persons selected to serve on the ERC pursuant to this subsection (c) may not be residents of the city council district represented by the city council member who is involved in the complaint.

(6) If a person selected to serve on the ERC pursuant to this subsection (c) cannot fulfill his or her duties as a member of the ERC due to illness, travel, or another bona fide reason, or otherwise refuses to serve on the ERC, that person shall be requested to confirm that fact with the city secretary in writing within 15 calendar days of receipt of the service notification. In this event, the city secretary shall repeat the process outlined in subsection (c)(2) until a substitute has been selected.

(d) *Qualifications.* All members shall be residents of the city who are at least 18 years of age. Additionally, no member of the ERC may be:

- (1) A member of the city council or the spouse or domestic partner of a member of the city council;
- (2) An employee or the spouse or domestic partner of an employee;
- (3) An elected public official; or
- (4) A candidate for elected public office.

(e) Chairperson; quorum; number of members necessary to act. Once the ERC is convened, it shall at its first meeting thereafter elect a chairperson and a vice-chairperson to serve in that capacity until the ERC has concluded its business. The vice-chairperson shall act as chairperson in the absence of the chairperson. Three or more members of the ERC shall constitute a quorum. No action of the ERC shall be of any force or effect unless it is adopted by the favorable votes of three or more of the members.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012; Ord. 23992-12-2019, § 1, passed 12-17-2019)

§ 2-241 JURISDICTION AND POWERS; MEETINGS.

(a) *Jurisdiction.* The ERC shall have jurisdiction to review and make findings and conclusions concerning an alleged violation of Division 1 of this article and, if a violation of Division 1 of this article is determined to have occurred pursuant to the process outlined herein, to levy sanctions in accordance with Division 4.

(b) *Powers.* Once the ERC is convened in accordance with and subject to the purposes set forth in § 2-240(c), the ERC shall have the following powers:

- (1) To establish rules and procedures governing its own internal organization and operations, consistent with this article and the city's Charter and ordinances;

- (2) To prescribe forms for reports, statements, notices and other documents required by this article;
- (3) To cause sufficient copies of this ordinance, and other ordinances, City Charter provisions and state statutes defining and prohibiting conflicts of interest, to be prepared and published and see that the same are made available to officers, employees, advisory board members, elected officials and the general public;
- (4) To provide or assist in providing orientations to officers, employees and advisory board members concerning the provisions of this article;
- (5) To review all statements and reports filed with the ERC in order to obtain compliance with this article;
- (6) To direct the city secretary to preserve statements and reports filed with the ERC for a period of five years from the date of receipt;
- (7) To review this article when deemed necessary and make appropriate recommendations to the city council;
- (8) To request the city attorney's interpretation of or opinion on any provision of this article except in cases involving a complaint filed in accordance with this article, in which case § 2-248 shall apply;
- (9) In accordance with this article, to review, conduct hearings and make determinations regarding all sworn complaints alleging violations of Division 1 of this article by persons other than members of the city council;
- (10) In any hearing conducted pursuant to this article, to administer oaths and affirmations, take evidence, request and issue subpoenas for witnesses to attend and testify, and request and, subject to § 2-255, issue subpoenas for the production of books, papers, records, or other evidence needed for the performance of the ERC's duties or the exercise of its powers;
- (11) To request the city council and city manager to provide such assistance as the ERC may require in the discharge of its duties;
- (12) On the ERC's own motion or at the request of the city council, to report to the city council when deemed necessary concerning the activities of the ERC; and
- (13) To exercise such other powers and duties as may be established by this article.

(c) *Meetings*. The ERC shall meet as necessary to fulfill its responsibilities. The city secretary, the chairperson, or any three members of the ERC may call a meeting provided that notice is given to each member and written notice is posted in accordance with provisions of the Texas Open Meetings Act, Tex. Government Code Chapter 551.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012; Ord. 23992-12-2019, § 2, passed 12-17-2019)

§ 2-242 STAFFING.

The city attorney shall provide such assistance to the ERC as the ERC shall request except in cases involving a complaint filed in accordance with this article.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-243 RESERVED.

DIVISION 3: HEARING OFFICERS

Editor's note:

Ord. 20548-12-2012, § 1, adopted December 18, 2012, enacted this division and amended and renumbered former Division 3, "Disposition of Alleged Violations; Hearings," as current Division 4, as set forth below.

§ 2-244 APPOINTMENTS.

(a) *Purpose.* The city council will appoint one or more hearing officers each year to hear appeals of determinations made by the ERC in the disposition of complaints alleging a violation of Division 1 of this article and to make recommendations to the city council regarding those appeals.

(b) *Qualifications.* A hearing officer shall be a resident who is an attorney in good standing with the state bar of Texas and has been licensed to practice in the State of Texas for at least ten consecutive years. No hearing officer may be:

- (1) A member of the city council or the spouse or domestic partner of a member of the city council;
- (2) An employee or the spouse or domestic partner of an employee;
- (3) An elected public official;
- (4) A candidate for elected public office; or

(5) A member of another city board, commission or committee if the ERC has jurisdiction under this article to review the conduct of that person as a member of such other board, commission or committee.

(c) *Terms.* The city council will appoint hearing officers each at its first meeting in January of each year or as soon thereafter as practicable. The city council shall set the prescribed compensation, if any, that hearing officers are to receive during their terms of service. A hearing officer shall serve a term of one year or until his or her successor is duly appointed, and may be reappointed at the pleasure of the city council. A hearing officer may be removed at any time and for any reason by majority vote of the city council, except that a hearing officer that has initiated the hearing of an appeal of a determination made by the ERC in the disposition of a complaint shall continue to serve until final disposition of the matter before him or her.

(d) *Selection of hearing officer to hear complaint or appeal.* If the city council appoints more than one hearing officer to serve during a particular year, the city secretary shall maintain a list of such hearing officers in order of appointment. In the event that the service of a hearing officer is required under this article to hear the appeal of a determination made by the ERC in the disposition of a complaint, the city secretary shall designate a hearing officer from such list on a rotation basis.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-245 JURISDICTION AND POWERS.

(a) *Jurisdiction.* Hearing officers shall have jurisdiction to review and make findings and recommendations to the city council concerning an alleged violation of Division 1 of this article.

(b) *Powers.* Hearing officers shall have the following powers:

(1) In accordance with this article, to hear appeals of determinations made by the ERC complaints alleging violations of Division 1 of this article, to hear arguments from and pose questions to the person filing the appeal as well as the person responding to the appeal if those persons have elected to make a statement at the hearing, and to make findings, determinations and recommendations to the city council as to the disposition of such appeals in accordance with the standards of review set forth herein;

(2) In any de novo hearing conducted pursuant to § 2-253, to administer oaths and affirmations, take evidence, request and issue subpoenas for witnesses to attend and testify, and request and, subject to § 2-255, issue subpoenas for the production of books, papers, records or other evidence needed for the performance of the ERC's duties or the exercise of its powers; and

(3) To exercise such other powers and duties as may be established by this article.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-246 RESERVED.

DIVISION 4: DISPOSITION OF ALLEGED VIOLATIONS; HEARINGS

Editor's note:

This division was formerly codified as Division 3 of this article and derived from Ord. 10617, § 1(3). It was renumbered as this Division 4 and amended in its entirety by Ord. 20548-12-2012, § 1, adopted December 18, 2012. That ordinance also renumbered former Division 4, "Financial Disclosure by Officers and Candidates," as current Division 5 of this article.

§ 2-247 COMPLAINTS.

(a) *Filing.* Any resident or nonresident owner of taxable real property within the corporate limits of the city who believes that there has been a violation of Division 1 of this article may file a sworn complaint with the city secretary's office. The complaint must be filed within two years after the alleged violation occurred. For purposes of this provision, a complaint shall be considered filed when it has been accepted by the city secretary as complete as to form in accordance with subsection (c) below. If a complaint is dismissed by the ERC but permitted to be re-filed in accordance with this Division, the re-filed complaint shall be deemed to have been filed on the date that the initial complaint was accepted by the city secretary. A complaint must be in writing and contain the following information:

(1) The name, street or mailing address and telephone number of the complainant;

(2) The name and position or title of the person complained about;

(3) The date and nature of the alleged violation and the specific provision of Division 1 of this article alleged to have been violated;

(4) A statement of the facts on which the complaint is based and the date(s) on which the violation occurred;

(5) The sources of evidence or information that are relevant to the complaint, including, if possible, copies of all relevant documents or materials that are available to the complainant.

(b) *Sworn nature.* A complaint must be accompanied by an affidavit stating that the complaint is true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of Division 1 of this article. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(c) *Acceptance by the city secretary.* If a complaint does not substantially comply with the filing requirements set forth in subsection (a) above or does not comply with the requirements of subsection (b) above, the city secretary shall by certified mail, return receipt requested, return the complaint to the complainant with a letter stating the defects in the complaint. If a complaint substantially complies with the filing requirements set forth in subsection (a) above and complies with the requirements of subsection (b) above, the city secretary shall acknowledge to the complainant that the complaint is complete as to form and provide a copy of the complaint to the city attorney, ERC and the person complained against.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-248 LEGAL COUNSEL.

(a) *Counsel for the person complained against.* If requested by the person complained against, the city council shall provide legal counsel selected by the person complained against to represent the person complained against, provided that fee arrangements with any such independent outside legal counsel must first be approved by the city council.

(b) *Counsel for the ERC.* If requested by the ERC, the city council shall provide outside legal counsel selected by the ERC to represent the ERC, provided that fee arrangements with any such independent outside legal counsel must be first be approved by the city council.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-249 RESERVED.

§ 2-250 STANDARDS OF CONDUCT.

(a) *Objectivity.* Members of the ERC are subject to this article. Members of the ERC shall maintain objectivity in discharging their duties. If any member of the ERC has any reason to believe that he or she cannot be impartial and intellectually honest in the discharge of the duties of the ERC, such member shall disclose the facts and circumstances of that belief and shall not vote or otherwise participate in consideration of the matter.

(b) *Prohibition of ex parte communications.* After a complaint has been filed and during the pendency of a complaint before the ERC, a member of the ERC may not communicate directly or indirectly with any party or person about any issue of law or fact regarding the complaint except at a meeting of the ERC. However, nothing in this section shall prohibit communications between members of the ERC and the ERC's attorney, or between members of the ERC concerning whether to call a hearing.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-251 HEARINGS.

(a) *Scheduling.* Not later than 15 business days after both acceptance of a complaint and assembly of the ERC selected to hear the complaint, the city secretary shall notify in writing the ERC, the complainant and the person complained against of the date, time and location of a hearing on the complaint. Such written notice shall be sent to the complainant and the person complained against by certified mail, return receipt requested. If the hearing is not held within 45 business days after receipt of the complaint, the city secretary shall notify both the complainant and the person complained against of the reasons for the delay.

(b) *Hearing rules.* All hearings shall be conducted in accordance with the Texas Open Meetings Act, Tex. Government Code Chapter 551. The ERC shall have the right to establish time limits and other rules of procedure for a hearing and relating to the participation of any person in the hearing, subject to subsections (c) and (d) below. All proceedings of the hearing shall be reduced to writing by a court reporter, who shall file the transcript of the hearing with the city secretary within such time as is specified by the ERC.

(c) *Rights of the person complained against.* The person complained against has the right to attend the hearing, the right to make a statement, the right to present witnesses and the right to be represented by legal counsel or another advisor.

(d) *Rights of the complainant.* The complainant has the right to attend the hearing, the right to make a statement, the right to present witnesses and the right to be represented by legal counsel or another advisor.

(e) *Order of business.*

(1) Once a quorum of the ERC convenes the hearing, the order of business shall be as follows:

- a. To ascertain whether the complainant and the person complained against are present;
- b. To determine whether the complaint alleges conduct which, based on substantially the same facts asserted in the complaint, the ERC has already determined is not a violation of Division 1 of this article;
- c. To determine whether the conduct complained against occurred within two years of the date on which the complaint was filed;
- d. To determine whether the complaint alleges conduct which would be a violation of Division 1 of this article;

e. To determine whether conduct complained against was in reasonable reliance upon an opinion of the city attorney, whether verbal or written;

f. To hear evidence and statements as to whether the person complained against violated a provision of Division 1 of this article as alleged in the complaint;

g. To deliberate and determine whether the person complained against violated Division 1 of this article as alleged in the complaint; and

h. To deliberate and determine a sanction to be imposed.

(2) In the ERC's sole discretion and as permitted by the Texas Open Meetings Act, Tex. Government Code Chapter 551, the ERC shall have the right to recess and continue the hearing one or more times. However, any member of the ERC who is not present at a hearing or continued hearing on a particular complaint may not participate in any discussion, voting or disposition of that complaint in any further continued hearing on that complaint.

(f) *Ascertaining presence of the parties.*

(1) If the complainant fails to appear at the hearing, the ERC shall dismiss the complaint and adjourn the hearing. Within ten business days, the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's dismissal. The ERC's dismissal of a complaint for failure to appear at the hearing is final and may not be appealed. If the ERC dismisses a complaint for failure of the complainant to appear at the hearing, the complainant may not file another complaint alleging a violation of Division 1 of this article for substantially the same conduct unless the complainant files a written request for a rehearing within 30 calendar days of the date of the hearing explaining why the complainant did not appear at the hearing and the ERC determines, on the basis of such written request, that there was good cause for the complainant not to appear at the hearing.

(2) If the complainant appears at the hearing but the person complained against does not, the ERC may proceed with the hearing in that person's absence, provided that the city secretary has a certified mail receipt that the person complained against received notice of the date, time and location of the hearing.

(g) *Preliminary testimony by the complainant.* In order to address the preliminary procedures set forth in subsections (h), (i), (j) and (k) below, the ERC shall hear preliminary testimony of the complainant, who shall state the alleged violation and describe in narrative form the testimony and other evidence that he or she is prepared to present to prove the alleged violation as stated in the complaint. Such testimony shall be under oath.

(h) *Determining whether the complaint alleges conduct which, based on substantially the same facts asserted in the complaint, the ERC has already determined is not a violation of Division 1 of this article.* If the ERC finds that the complaint alleges conduct which, based on substantially the same facts asserted in the complaint, the ERC has already determined is not a violation of Division 1 of this article and such previous determination was not reversed on appeal pursuant to this article, the ERC shall dismiss the complaint and adjourn the hearing. Within ten business days, the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's determination, which shall include the reasons for such decision. The ERC's dismissal of a complaint on such grounds is final and may not be appealed.

(i) *Determining whether the conduct occurred within two years of the complaint.* If the ERC determines that the conduct which the complainant alleges to be a violation of Division 1 of this article occurred more than two years prior to the date on which the complaint was filed, the ERC shall dismiss the complaint. Within ten business days, the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's determination, which shall include the reasons for such decision. The ERC's dismissal of a complaint on such grounds is final and may not be appealed.

(j) *Determining whether a complaint is insufficient.*

(1) In order to determine whether a complaint sufficiently alleges conduct which would be a violation of Division 1 of this article, the ERC shall hear the testimony of the complainant, who shall state the alleged

violation and describe in narrative form the testimony and other evidence that the complainant is prepared to present. Such testimony shall be under oath, but the ERC shall not permit testimony by other witnesses, cross-examination or any findings of fact. Members of the ERC may question the complainant. The person complained against shall have the opportunity, but is not required, to describe in narrative form the testimony and other evidence that he or she is prepared to present in order to dispute or rebut the alleged violation.

(2) If the ERC determines that there are no reasonable grounds to believe that a violation of Division 1 of this article has occurred, the ERC shall dismiss the complaint and adjourn the hearing. Within ten business days, the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's determination, which shall include the reasons for such decision. The ERC's dismissal of a complaint on such grounds shall be final unless appealed in accordance with § 2-253.

(k) *To consider whether conduct complained against was in reasonable reliance on a city attorney opinion.* The ERC shall give the person complained against the opportunity to testify if the person complained against asserts that the conduct alleged in the complaint was undertaken in reasonable reliance upon an opinion of the city attorney, provided that the person complained against first waives the attorney-client privilege with respect to the opinion. Such testimony shall be under oath, and any such testimony shall constitute a waiver of the attorney-client privilege with respect to the opinion. Any testimony that the conduct of the person complained against was undertaken in reasonable reliance upon a written opinion of the city attorney, or upon a verbal opinion of the city attorney that was followed by a written opinion of the city attorney within 15 business days following the date such written opinion was requested, shall constitute prima facie evidence that the conduct of the person complained against did not violate a provision of Division 1 of this article. The ERC shall then determine the extent to which the conduct of the person complained against was undertaken in reasonable reliance upon an opinion of the city attorney.

(1) If the ERC determines that all of the conduct of the person complained against was undertaken in reasonable reliance, either directly or indirectly, upon a written opinion of the city attorney that was either provided prior to the conduct complained against or requested prior to the conduct complained against and provided not later than 15 business days following the date of such request, the ERC shall dismiss the complaint and adjourn the hearing. Within ten business days, the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's determination, which shall include the reasons for such decision. The ERC's dismissal of a complaint on such grounds shall be final unless appealed in accordance with § 2-253. Notwithstanding the foregoing, if the ERC believes that the city attorney's opinion may be incorrect or no longer valid, the ERC may include in such written notice of dismissal a request that the city attorney reconsider the opinion, but the ERC shall not have the right to overrule the opinion or substitute its own opinion.

(2) If the ERC determines that some, but not all, of the conduct of the person complained against was undertaken in reasonable reliance, either directly or indirectly, upon a written opinion of the city attorney that was either provided prior to the conduct complained against or requested prior to the conduct complained against and provided not later than 15 business days following the date of such request, the ERC shall dismiss complaint and adjourn the hearing. Within ten business days, the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's determination, which shall include the reasons for such decision. In this event, the complainant shall be permitted one opportunity to amend and resubmit the complaint within ten calendar days citing only that portion of the conduct that the person complained against undertook without reasonable reliance upon a written opinion of the city attorney that was either provided prior to the conduct complained against or requested prior to the conduct complained against and provided not later than 15 business days following the date of such request. Otherwise, the ERC's dismissal of a complaint on such grounds shall be final unless appealed in accordance with § 2-253. Notwithstanding the foregoing, if the ERC believes that the city attorney's opinion may be incorrect or no longer valid, the ERC may include in such written notice of dismissal a request that the city attorney reconsider the opinion, but the ERC shall not have the right to overrule the opinion or substitute its own opinion.

(3) If the ERC determines that some or all of the conduct of the person complained against was undertaken in reasonable reliance upon a verbal opinion of the city attorney but that the person complained against requested that the city attorney supplement that opinion with a written opinion, and such request was made 15 or

fewer business days prior to the date of the hearing, the ERC shall recess the hearing and reconvene on a date after the expiration of at least 15 business days following the date the written opinion was requested.

(4) If the ERC determines that none of the conduct of the person complained against was undertaken in reasonable reliance upon an opinion of the city attorney, or that some or all of the conduct complained against was undertaken in reasonable reliance only upon a verbal opinion of the city attorney that was not followed by a written opinion provided in accordance with § 2-239.1, the ERC shall proceed with the hearing.

(l) *Evidentiary proceeding.* Unless the ERC dismisses the complaint in accordance with § 2-251 (f), (h), (i), (j) or (k), the ERC shall determine whether a violation of Division 1 of this Article, as alleged in the complaint, has occurred. All statements and testimony of the complainant, the person complained against, and any witnesses shall be under oath. After hearing any statements of the complainants and the person complained against and any other evidence presented in accordance with this Article, the ERC shall make its determination based on the preponderance of the evidence (the greater weight and degree of the credible evidence and testimony). At the conclusion of the hearing, the ERC shall announce its determination and, if the ERC determines that a violation of Division 1 of this Article has occurred, identify the particular provision or provisions that were violated and announce any sanction to be imposed or recommended in accordance with § 2-252. Within ten business days the ERC shall deliver to the complainant, the person complained against and the city secretary a written notice of the ERC's determination. The ERC's determination and sanction (if applicable) shall be final unless appealed in accordance with § 2-253. In lieu of such evidentiary proceeding, the person complained against may acknowledge that he or she has committed a violation of Division 1 of this article, in which case the ERC shall consider the sanction to be imposed or recommended in accordance with § 2-252.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012; Ord. 23992-12-2019, § 3, passed 12-17-2019)

§ 2-252 SANCTIONS TO BE IMPOSED OR RECOMMENDED.

If the ERC determines that a violation of Division 1 of this article has occurred, it shall proceed directly to determination of the appropriate sanctions. The ERC may receive additional testimony or statements before considering sanctions but is not required to do so.

(a) *Sanctions.* If the ERC determines that a violation of Division 1 of this article has occurred, it may impose the following sanctions:

(1) a. A letter of notification shall be the appropriate sanction when:

1. The violation is clearly unintentional;

2. The conduct of the person complained against was done in reliance upon an opinion of the city attorney that was not in writing; or

3. The violation may have been unintentional but the ERC does not consider the level of offense to be severe.

b. A letter of notification shall advise the person to whom it is directed of any steps to be taken to avoid future violations.

(2) A letter of admonition shall be the appropriate sanction in those cases in which the ERC finds that the violation:

a. May have been unintentional; or

b. The violation was clearly unintentional but the ERC considers the level of offense to be severe.

(3) A letter of reprimand shall be the appropriate sanction when the ERC finds that a violation has been committed intentionally or through reckless disregard of Division 1 of this article. A letter of reprimand directed to an employee shall also be sent to the city manager and included in the employee's personnel file.

(b) *Recommendations.* In addition to the sanctions that may be imposed pursuant to subsection (a) above, the ERC may make the following recommendations:

(1) *Disciplinary action against persons other than the mayor or members of the city council.* If the ERC finds that the person complained against (other than the mayor or a member of the city council) committed a serious or repeated violation of Division 1 of this article intentionally or through culpable disregard of Division 1 of this article, the ERC may issue a written recommendation for disciplinary action. If the person who committed the violation is an employee (other than an employee appointed by the city council), the ERC may issue a recommendation to the city manager that the city manager suspend or terminate the employee. If the person who committed the violation is an employee appointed by the city council, the ERC may issue a recommendation to the city council that the city council suspend or terminate the employee. If the person who committed the violation is an officer (other than a member of the city council) or member of an advisory board or task force, the ERC may issue a recommendation to the city council that the officer, advisory board or task force member be removed from his or her position.

(2) *Censure of mayor or members of the city council.* If the person complained against is the mayor or a member of the city council, and the ERC finds that such person committed a serious or repeated violation of Division 1 of this article intentionally or through culpable disregard of Division 1 of this article, the ERC may issue a letter of censure. The letter of censure may include a recommendation of recall or a recommendation to institute proceedings for removal from office. A letter of censure, and any recommendation of recall or to institute proceedings for removal from office, shall be transmitted to the city secretary and to the mayor and city council. Any recall proceedings shall be subject to the procedures specified in the City Charter. Any proceedings for removal from office shall be in compliance with provisions of the City Charter and state law.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-253 APPEAL OF CERTAIN DETERMINATIONS.

(a) *Determinations that may be appealed.* The following determinations of the ERC may be appealed in accordance with this § 2-253:

(1) The dismissal of a complaint for failure to allege conduct which would be a violation of Division 1 of this article, pursuant to § 2-251(j);

(2) The dismissal of all or any portion of a complaint on grounds that the conduct alleged was undertaken in reasonable reliance upon a written opinion of the city attorney, pursuant to § 2-251(k); or

(3) The determination as to whether a violation of Division 1 of this article occurred, as alleged in a complaint heard by the ERC, pursuant to § 2-251(l).

(b) *Eligibility requirements and filing deadline.* Only a party against whom a determination of the ERC described in § 2-253(a) was made may file an appeal. The appeal must be in writing and filed with the city secretary within ten calendar days after the ERC's determination.

(c) *Filing requirement.* The appeal must state sufficient facts to show that the ERC committed a material error in its deliberations.

(d) *Sworn nature.* An appeal must be accompanied by an affidavit stating that the person filing the appeal has good reason to believe and does believe that the facts alleged in the appeal are true and correct. The appellant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(e) *Acceptance by the city secretary.* If an appeal does not comply with all of the eligibility requirements and filing deadline requirements of subsection (b) above or the requirements of subsection (d) above, or does not substantially comply with the requirements of subsection (c) above, the city secretary shall, by certified mail, return receipt requested, return the appeal to the person filing the appeal with a letter stating the defects in the appeal. If an appeal complies with all of the eligibility requirements and filing deadline requirements of subsections (b) and (d) above and substantially complies with the requirements of subsection (c) above, the city

secretary shall acknowledge to the person filing the appeal that the appeal is complete as to form and provide a copy of the appeal to the city council, the city attorney and the person complained against.

(f) *Designation of hearing officer and scheduling of evidentiary hearing.* Not later than 15 business days after acceptance of an appeal, the city secretary shall designate the hearing officer in accordance with § 2-244(d) and notify in writing the hearing officer, the person filing the appeal and the person responding to the appeal of the hearing's date, time and location. Such written notice shall be sent to the person filing the appeal and the person responding to the appeal by certified mail, return receipt requested. If the hearing is not held within 30 business days after designation of the hearing officer, the city secretary shall notify both the person filing the appeal and the person responding to the appeal of the reasons for the delay.

(g) *Hearing rules.* The hearing shall be based solely on the record of the ERC's hearing. The hearing shall be conducted in accordance with the Texas Open Meetings Act, Tex. Government Code Chapter 551. The hearing officer shall have the right to establish time limits and other rules of procedure for the hearing and relating to the participation of any person in the hearing, subject to subsections (h) and (i) below. All proceedings of the hearing shall be reduced to writing by a court reporter, who shall file the transcript of the hearing with the city secretary within such time as is specified by the hearing officer. All costs of preparing and filing such transcript shall be borne by the appellant.

(h) *Rights of appellee.* The person responding to the appeal has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be represented by legal counsel or another advisor.

(i) *Rights of appellant.* The person filing the appeal has the right to attend the hearing, the right to make a statement, the right to present witnesses and the right to be represented by legal counsel or another advisor.

(j) *Order of business.* The order of business before the hearing officer shall be as follows:

- (1) To ascertain whether the person filing the appeal and the person responding to the appeal are present;
- (2) To determine whether the appeal is based on a determination of the ERC described in § 2-253(a);

(3) To review the record, hear statements from both the person filing the appeal and the person responding to the appeal as to whether the record shows that the ERC materially erred in its determination as to the issue on appeal, and, based on the particular standard of review set forth below, to determine whether the ERC materially erred in such determination;

(4) To make a recommendation to the city council as to whether the person originally complained against violated Division 1 of this article as alleged in the complaint originally filed; and

(5) If the recommendation to the city council is to find that the person complained against did violate Division 1 of this article as alleged in the complaint, also to recommend a sanction for the city council to impose in accordance with § 2-252.

(k) *Ascertaining presence of the parties.*

(1) If the person filing the appeal fails to appear at the hearing, the hearing officer shall dismiss the appeal and adjourn the hearing. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal, the ERC, and the city secretary a written notice of the hearing officer's dismissal. The hearing officer's dismissal of an appeal for failure to appear at the hearing is final unless the person filing the appeal petitions the hearing officer in writing within 30 calendar days following delivery of the dismissal to reconsider on grounds that the person had good cause to not appear and the hearing officer grants such request. Any petition for reconsideration filed by the appellant must include a statement that explains in detail why the person filing the appeal did not appear.

(2) If the person filing the appeal appears at the hearing but the person responding to the appeal does not, the hearing officer may proceed with the hearing in that person's absence provided that the city secretary has a certified mail receipt that the respondent received notice of the date, time and location of the hearing.

(l) *Determining whether there is a sufficient basis for the appeal.* If the hearing officer finds that the appeal is not based on a determination of the ERC described in § 2-253(a), the hearing officer shall deny the appeal in its entirety. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal and the city secretary a written notice of the hearing officer's determination, which shall include the reasons for such decision. The hearing officer's denial of an appeal on such grounds is final and will not be considered by the city council pursuant to subsection (q) below.

(m) *Determining whether the appeal is sufficient.* If the hearing officer finds that the appeal does not state sufficient facts to satisfy any of the requirements of § 2-253(b), the hearing officer shall deny the appeal in its entirety. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal and the city secretary a written notice of the hearing officer's determination, which shall include the reasons for such decision. The hearing officer's denial of an appeal on such grounds is final and will not be considered by the city council pursuant to subsection (q) below.

(n) *Review of determination that complaint does not allege conduct which would be a violation of Division 1.* If the appeal is based on the ERC's dismissal of a complaint for failure to allege conduct which would be a violation of Division 1 of this article, pursuant to § 2-251(j), the hearing officer shall review the record and determine whether the ERC materially erred in its determination that the complaint did not allege conduct which would be a violation of Division 1. The hearing officer's determination as to whether the ERC materially erred in its determination that the complaint did not allege conduct which would be in violation of Division 1 shall be based on a de novo review of the record. If, based on such standard of review, the hearing officer determines that the ERC did err materially in its determination that the complaint did not allege conduct which would be a violation of Division 1, the hearing officer shall remand the complaint to the ERC, and the ERC shall proceed to consider the complaint in accordance with the remaining order of business set forth in § 2-251. If the hearing officer determines that the ERC did not err materially, the hearing officer shall deny the appeal and adjourn the hearing. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal and the city secretary a written notice of the hearing officer's determination, which shall include the reasons for such decision. The hearing officer's denial of an appeal on such grounds is final and will not be considered by the city council pursuant to subsection (q) below.

(o) *Review of determination that conduct alleged was undertaken in reasonable reliance upon a written opinion of the city attorney.* If the appeal is based on the ERC's dismissal of a complaint on grounds that the conduct alleged was undertaken in reasonable reliance upon a written opinion of the city attorney, pursuant to § 2-251(k), the hearing officer shall review the record and determine whether the record shows that the ERC materially erred in its determination that the conduct alleged in the complaint was undertaken in reasonable reliance upon a written opinion of the city attorney. The hearing officer's determination as to whether the ERC materially erred in its determination that the conduct alleged in the complaint was undertaken in reasonable reliance upon a written opinion of the city attorney shall be based on the substantial evidence standard of review of the record. If, based on such standard of review, the hearing officer determines that the ERC did err materially in its determination that the conduct alleged in the complaint was undertaken in reasonable reliance upon a written opinion of the city attorney, the hearing officer shall remand the complaint to the ERC, and the ERC shall proceed to consider the complaint in accordance with the remaining order of business set forth in § 2-251. If the hearing officer determines that the ERC did not err materially in its determination, the hearing officer shall deny the appeal and adjourn the hearing. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal and the city secretary a written notice of the hearing officer's determination, which shall include the reasons for such decision. The hearing officer's denial of an appeal on such grounds is final and will not be considered by the city council pursuant to subsection (q) below.

(p) *Review of ERC's determination based on the evidentiary proceeding.* If the appeal is based on the ERC's determination at the conclusion of its evidentiary proceeding conducted pursuant to § 2-251(l) as to whether a violation of Division 1 of this article occurred, the hearing officer shall review the record and determine whether the ERC materially erred in its determination as to whether a violation of Division 1 of this article occurred. The hearing officer's determination as to whether the ERC materially erred in its determination shall be based on the substantial evidence standard of review of the record. The hearing officer's determination shall proceed as follows:

(1) If the ERC found that a violation of Division 1 of this article did not occur, and the hearing officer determines that the ERC did not err materially in such determination, the hearing officer shall deny the appeal and adjourn the hearing. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal, the city secretary and each member of the city council a written copy of the hearing officer's determination, which shall include the reasons for such decision. The hearing officer's determination in this regard shall be final and will not be considered by the city council pursuant to subsection (q) below.

(2) If the ERC found that a violation of Division 1 of this article did occur, and the hearing officer determines that the ERC materially erred in such determination, the hearing officer shall uphold the appeal. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal, and the city secretary a written copy of the hearing officer's determination, which shall include the reasons for such decision and recommend that the city council accept the hearing officer's determination that a violation of Division 1 of this article did not occur and that no sanction should be imposed upon the person complained against.

(3) If the ERC found that a violation of Division 1 of this article did occur, and the hearing officer determines that the ERC did not err materially in such determination, the hearing officer shall deny the appeal and adjourn the hearing. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal, and the city secretary a written copy of the hearing officer's determination, which shall include the reasons for such decision and recommend that the city council accept the ERC's determination that a violation of Division 1 of this article occurred and the sanction to be imposed or recommended in accordance with § 2-252.

(4) If the ERC found that a violation of Division 1 of this article did not occur, and the hearing officer determines that the ERC materially erred in such determination, the hearing officer shall uphold the appeal and, based on a de novo standard of review of the record, announce any sanction to be imposed or recommended in accordance with § 2-252. Within ten business days, the hearing officer shall deliver to the person filing the appeal, the person responding to the appeal, and the city secretary a written copy of the hearing officer's determination, which shall include the reasons for such decision and recommend that the city council accept the hearing officer's determination that a violation of Division 1 of this article occurred and the sanction to be imposed or recommended in accordance with § 2-252.

(q) *City council hearing.* Within 45 calendar days following the date on which the hearing officer provides the city secretary with a copy of any recommendations of the hearing officer pursuant to subsection (p)(2), (p)(3) or (p)(4) above, or as soon thereafter as is practicable, the city secretary shall deliver to the city council a written copy of the hearing officer's determination and recommendations, as well as the transcripts of the hearings of both the ERC and the hearing officer, and shall schedule a hearing before the city council to consider such recommendations. The written determination and recommendations of the hearing officer, as well as the transcripts of the proceedings before the ERC and the hearing officer, shall form the sole evidentiary basis for the city council hearing. No other evidence or testimony shall be presented at the hearing before the city council. However, the person filing the appeal and the person responding to the appeal shall each be entitled to make a statement to the city council as to whether the city council should adopt, reject or modify the recommendations of the hearing officer. Each statement shall be subject to any time limitation imposed by the presiding officer of the city council. No rebuttal statements may be made. Following any such statements and a review by the city council of the transcript of the testimony and evidence presented to the hearing officer as well as the hearing officer's determination and recommendations, the city council shall, by majority vote, adopt, reject or modify the determination and any recommendations of the hearing officer. If any adopted determination includes a recommended sanction against an employee, the city manager will be solely responsible for considering, imposing and carrying out such sanction in accordance with the city manager's authority under Chapter V of the Charter of the City of Fort Worth, Texas. If any adopted determination includes a recommended sanction against an officer other than a member of the city council, the city council, by majority vote, will be responsible for considering, imposing and carrying out such sanction. Within ten business days, the city secretary shall deliver to the person filing the appeal and the person responding to the appeal a written copy of the city council's determination.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-254 CRIMINAL PENALTIES.

Except where otherwise provided by state law or in § 2-255, it is not the intention of the city council in adopting this article that violations thereof be subject to criminal penalties.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-255 SUBPOENAS.

(a) The ERC or hearing officer, at their discretion, may issue one or more subpoenas for the attendance of witnesses, the production of books, papers, records or other evidence needed for the performance of their duties or exercise of their powers. The subpoena shall be issued on the sworn application (of either the complaining party or the person complained against) stating that the applicant in good faith believes that such item exists, and stating in detail a description of any such items, sufficient to be able to identify such item, that the party requesting the subpoena has not been able to obtain such item otherwise, and that the applicant in good faith believes that the item is in the possession or control of a person or entity whose name and address is specified in the sworn application.

(b) The ERC or hearing officer may issue any such subpoena upon terms and conditions that they deem applicable.

(c) The party requesting the subpoena, or the party to the proceeding opposing it, and the person or business entity against whom the subpoena is sought each has the right to appeal to the city council any decision by the ERC or hearing officer concerning the request for subpoena. Such appeal shall be made in writing within ten calendar days after the ERC or hearing officer's decision (which must be in writing) by filing such appeal with the city secretary. All proceedings before the ERC or hearing officer shall be stayed until after the city council acts on the appeal.

(d) If the city council denies such an appeal or the time for an appeal has expired, any person who is subpoenaed by the ERC or hearing officer to give testimony or to produce books, papers, records or other evidence needed for the performance of the ERC or hearing officer's duties or the exercise of their powers, willfully makes default or refuses to answer any question pertinent to the proceedings before the ERC or hearing officer, or refuses to obey any subpoena or fails to produce books, papers and other evidence required by the ERC or hearing officer, shall be deemed guilty of a misdemeanor and may be fined not more than \$500 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-256 EVIDENCE OF CRIMINAL CONDUCT.

During the performance of their duties under the provisions of this article, if the ERC, hearing officer, city manager or city council receives evidence of criminal conduct, the ERC, hearing officer, city manager or council may provide such evidence to the prosecuting attorney having jurisdiction of such matter for appropriate action.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§ 2-257 POSTPONEMENT OF HEARINGS IN CERTAIN CASES.

If a complaint alleges facts concerning a possible violation of Division 1 of this article and such facts are involved in a criminal investigation or a criminal proceeding before a grand jury or the courts, the ERC, hearing officer, city manager or city council may, when they deem appropriate, postpone any hearing or any appeal concerning such complaint until after the criminal investigation or criminal proceedings are terminated.

(Ord. 20548-12-2012, § 1, passed 12-18-2012, eff. 12-22-2012)

§§ 2-258—2-260 RESERVED.

DIVISION 5: FINANCIAL DISCLOSURE BY OFFICERS AND CANDIDATES

Editor's note:

This division, formerly codified as Division 2 of this article, derived from 1964 Code, §§ 43-5 through 43-9, Ord. 7650, § 1, adopted October 25, 1977 and Ord. 7784, § 1, adopted August 15, 1978. This division was renumbered as Division 4 of this article by Ord. 10617, § 1(2), adopted June 26, 1990, and as this Division 5 by Ord. 20548-12-2012, § 2, adopted December 18, 2012.

This division was amended and reorganized by § 1 of Ord. 21845-08-2015, adopted August 25, 2015, which repealed § 2-265. See also Code Comparative Table.

§ 2-261 DEFINITIONS.

As used in this division, the following words and phrases shall have the meanings ascribed in this section.

CANDIDATE. Every person who declares for or files for any office of the city to be filled by election.

OFFICER. The mayor, a member of the city council, the city manager, the city attorney, the city secretary, the city internal auditor, the chief financial officer and the judges of the municipal court.

(1964 Code, § 43-5) (Ord. 7650, § 1, passed 10-25-1977; Ord. 7784, § 1, passed 8-15-1978; Ord. 10617, § 1 (2), passed 6-26-1990; Ord. 20837-08-2013, § 1, passed 8-6-2013; Ord. 21845-08-2015, § 1, passed 8-25-2015)

Cross-reference:

Definitions and rules of construction generally, see § 1-2

§ 2-262 PERSONAL FINANCIAL STATEMENT.

(a) Every officer shall file a verified personal financial statement with the city secretary in the same form as required by Chapter 145 of the Texas Local Government Code, except that a newly appointed officer shall file the verified personal financial statement with the city secretary within 30 days from the date he or she is sworn into office.

(b) The reporting period for the personal financial disclosure for newly appointed officers is 12 months preceding the date the officer is sworn into office.

(c) Every candidate shall file a verified personal financial statement with the city secretary in the same form as that required by Chapter 145 of the Texas Local Government Code not later than the earlier of:

- (1) The 20th day after the deadline for filing an application for a place on the ballot in the election; or
- (2) The fifth day before the date of the election.

(d) The reporting period for a statement required under this subsection shall be the 12 months preceding January 1 of the year in which the election is held.

(1964 Code, § 43-6) (Ord. 7650, § 1, passed 10-25-1977; Ord. 10617, § 1 (2), passed 6-26-1990; Ord. 16265, § 1, passed 1-18-2005; Ord. 21845-08-2015, § 2, passed 8-25-2015)

§ 2-263 FORMS FOR STATEMENTS.

(a) Persons filing financial disclosure statements shall use the form designed by the Texas Ethics Commission as required by Chapter 572, Texas Government Code.

(b) The city secretary shall provide copies of the forms required by this division to:

- (1) Officers and candidates as required by state law; and

(2) Newly appointed officers upon their swearing in and no later than the tenth day before the deadline.

(1964 Code, § 43-7) (Ord. 7650, § 1, passed 10-25-1977; Ord. 10617, § 1 (2), passed 6-26-1990; Ord. 21845-08-2015, § 2, passed 8-25-2015)

§ 2-264 PUBLIC RECORDS; INSPECTION.

(a) The city secretary shall maintain all statements required to be filed with the city secretary under this division as public records and retain them for a period of three years after which time he or she shall return them to the person filing them or destroy them.

(b) The financial disclosure statement file maintained by the city secretary under this section shall be kept in alphabetical order for each year in which statements are filed. Such files shall be open to public inspection during normal business hours. The city secretary shall maintain a list of all persons requesting to inspect such files identifying the file or files inspected.

(1964 Code, § 43-8) (Ord. 7650, § 1, passed 10-25-1977; Ord. 10617, § 1 (2), passed 6-26-1990)

§ 2-265—2-275 RESERVED.