



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Meeting Agenda

### Board of Ethics

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**Monday, January 9, 2023**

**6:00 PM**

**Council Work Session Room**

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After determining that a quorum is present, the Board of Ethics of the City of Denton, Texas, will convene in a Regular Meeting on Monday, January 9, 2023, at 6:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

#### 1. ITEMS FOR CONSIDERATION

- A. [BOE23-001](#) Receive nominations and hold an election of a Chair and Vice-Chair.  
[Estimated Presentation/Discussion Time: 5 minutes]  
Attachments: [Exhibit 1 - Agenda Information Sheet](#)
- B. [BOE23-002](#) Consider approval of minutes for November 7, 2022.  
[Estimated Presentation/Discussion Time: 5 minutes]  
Attachments: [Draft Meeting Minutes](#)
- C. [BOE23-003](#) Hold a discussion and consider adoption of the 2023 meeting schedule.  
[Estimated Presentation/Discussion Time: 5 minutes]  
Attachments: [Exhibit 1 - Agenda Information Sheet](#)
- D. [BOE23-004](#) Receive a report, hold a discussion, and take necessary action regarding potential proposals to amend City of Denton Code of Ordinances Chapter 2, Article XI (Ethics) to the City Council.  
[Estimated Presentation/Discussion Time: 60 minutes]  
Attachments: [Exhibit 1 - Agenda Information Sheet](#)  
[Exhibit 2 - Redlined Ethics Ordinance](#)  
[Exhibit 3 - Presentation](#)
- E. [BOE23-005](#) Receive a report, hold a discussion, and give staff direction regarding future meeting topics. [Estimated Presentation/Discussion Time: 10 minutes]  
Attachments: [Exhibit 1 - Agenda Information Sheet](#)  
[Exhibit 2 - Board of Ethics Tentative Meeting Topics \(January 2023\)](#)

NOTE: The Board of Ethics reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

#### CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on January 5, 2023, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.

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## Legislation Text

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**File #:** BOE23-001, **Version:** 1

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### **AGENDA CAPTION**

Receive nominations and hold an election of a Chair and Vice-Chair.

[Estimated Presentation/Discussion Time: 5 minutes]



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Internal Audit

**CITY AUDITOR:** Madison Rorschach

**DATE:** January 9, 2023

### **SUBJECT**

Receive nominations and hold an election of a Chair and Vice-Chair.

### **BACKGROUND**

According to the City of Denton's Boards and Commissions Handbook, Board and Commission officers shall be elected annually in January or February – or at the first board meeting of each calendar year.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On June 12, 2019 the Board initially elected Member Lara Tomlin to Chair. Member Tomlin was reelected as Chair on March 25, 2021 and March 31, 2022.

On September 30, 2021 the Board elected Member Hannah Klassen to Vice Chair. Member Klassen was reelected as Vice Chair on March 31, 2022.

### **EXHIBITS**

1. Agenda Information Sheet

Respectfully submitted:  
Madison Rorschach, 940-349-7228  
City Auditor



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## Legislation Text

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**File #:** BOE23-002, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of minutes for November 7, 2022.

[Estimated Presentation/Discussion Time: 5 minutes]

## City of Denton Board of Ethics

After determining that a quorum is present, the Board of Ethics of the City of Denton, Texas, will convene in a Regular Meeting on Monday, November 7, 2022, at 6:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

**PRESENT:** Vice-Chair Hannah Klaassen, and Members Annetta Ramsay, Tom Pryor, Dustin Pavelek, and Alternate Members Deborah Cosimo and David Zoltner

**ABSENT:** Chair Lara Tomlin and, Member Andrea Eberhard

### 1. ITEMS FOR CONSIDERATION

#### A. **BOE22-031** Consider approval of minutes for October 3, 2022.

Vice-Chair Klaassen moved to approve the minutes as presented; motion seconded by Member Pryor. Motion carried.

AYES (6): Vice-Chair Klaassen, and Members Ramsay, Pryor, Pavelek, and Alternate Members Cosimo and Zoltner

NAYS (0): None

ABSENT 2): Chair Tomlin and, Member Eberhard

#### B. **BOE22-033** Receive a report, hold a discussion, and take necessary action regarding a potential Ethics Ordinance amendment proposals dashboard.

The item was presented, and discussion followed.

Alternate Member Zoltner moved to approve publishing the dashboard as presented; motion seconded by Member Ramsay. Motion carried.

AYES (6): Vice-Chair Klaassen, and Members Ramsay, Pryor, Pavelek, and Alternate Members Cosimo and Zoltner

NAYS (0): None

ABSENT 2): Chair Tomlin and, Member Eberhard

#### C. **BOE22-032** Receive a report, hold a discussion, and take necessary action regarding potential procedures to identify and process Accepted Ethics Complaints that may be frivolous.

The item was presented, and discussion followed.

Member Pavelek moved that the Board should not be able to determine that an Actionable Complaint is a Frivolous Complaint within the same hearing; motion seconded by Alternate Member Zoltner. Motion carried.

AYES (6): Vice-Chair Klaassen, and Members Ramsay, Pryor, Pavelek, and Alternate Members Cosimo and Zoltner

NAYS (0): None

ABSENT 2): Chair Tomlin and, Member Eberhard

Member Ramsay moved that the respondent should not receive notification of the Board of Ethics' determination from a Frivolity Hearing; motion seconded by Alternate Member Cosimo. Motion carried.

AYES (6): Vice-Chair Klaassen, and Members Ramsay, Pryor, Pavelek, and Alternate Members Cosimo and Zoltner

NAYS (0): None

ABSENT 2): Chair Tomlin and, Member Eberhard

Member Ramsay moved that the Complainant should not be able to file for reconsideration once the Board has determined their complaint submitted complaint is a frivolous complaint; motion seconded by Member Pavelek. Motion carried.

AYES (6): Vice-Chair Klaassen, and Members Ramsay, Pryor, Pavelek, and Alternate Members Cosimo and Zoltner

NAYS (0): None

ABSENT 2): Chair Tomlin and, Member Eberhard

**D. BOE22-030 Receive a report, hold a discussion, and give staff direction regarding future meeting topics.**

The item was presented, and discussion followed.

Member Zoltner moved to add a discussion of the burden of proof to a future agenda; motion seconded by Member Ramsay. Motion carried.

AYES (6): Vice-Chair Klaassen, and Members Ramsay, Pryor, Pavelek, and Alternate Members Cosimo and Zoltner

NAYS (0): None

ABSENT 2): Chair Tomlin and, Member Eberhard

**2. CONCLUDING ITEMS**

With no further business, the meeting was adjourned at 7:06 p.m.

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Hannah Klaassen  
Vice-Chair

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Tammy Peal  
Recording Secretary

MINUTES APPROVED ON: \_\_\_\_\_



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## Legislation Text

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**File #:** BOE23-003, **Version:** 1

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### **AGENDA CAPTION**

Hold a discussion and consider adoption of the 2023 meeting schedule.

[Estimated Presentation/Discussion Time: 5 minutes]





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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Internal Audit  
**CITY AUDITOR:** Madison Rorschach  
**DATE:** January 9, 2023

### **SUBJECT**

Hold a discussion and consider adoption of the 2023 meeting schedule.

### **BACKGROUND**

To facilitate compliance with the Texas Open Meetings Act, the City Secretary requires that all City Boards and Commissions approve an annual schedule of regular meetings at the beginning of each calendar year. Staff requested that Board of Ethics members provide information about their meeting time availability.

### **DISCUSSION**

Based on previously received direction from the Board, staff is recommending the following dates be adopted for the 2023 meeting schedule.

- |              |            |              |
|--------------|------------|--------------|
| • February 6 | • May 1    | • October 2  |
| • March 6    | • June 5   | • November 6 |
| • April 3    | • August 7 | • December 4 |

Due to City holidays, the proposed schedule does not include a meeting in July or September. In addition, the Board has historically not met in November and December due to holiday conflicts; however, these do not appear to be issues based on recent changes made to the week of monthly meetings.

Staff would like also direction from the Board regarding moving the meeting start time up from 6:00 PM to 5:30 PM.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On June 25, 2020, the Board of Ethics unanimously agreed to schedule regular meetings the last Thursday of each month at 6:00 PM. On February 25, 2021, the Board gave staff direction to schedule regular meetings the last Thursday of each month generally at 3:00 PM, due to the COVID-19 Pandemic. On March 31, 2022 the Board of Ethics gave direction to hold their regularly scheduled meetings on the first Monday of each month.

### **EXHIBITS**

1. Agenda Information Sheet

Respectfully submitted:  
Madison Rorschach, 940-349-7228  
City Auditor



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## Legislation Text

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**File #:** BOE23-004, **Version:** 1

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### **AGENDA CAPTION**

Receive a report, hold a discussion, and take necessary action regarding potential proposals to amend City of Denton Code of Ordinances Chapter 2, Article XI (Ethics) to the City Council.

[Estimated Presentation/Discussion Time: 60 minutes]



# City of Denton

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Internal Audit

**CITY AUDITOR:** Madison Rorschach

**DATE:** January 9, 2023

### SUBJECT

Receive a report, hold a discussion, and take necessary action regarding potential proposals to amend City of Denton Code of Ordinances Chapter 2, Article XI (Ethics) to the City Council.

### BACKGROUND

City of Denton Code of Ordinances Chapter 2, Article XI (Ethics), Sec. 2-277 (i) states that the Board of Ethics may recommend amendments to Article XI (i.e. the Ethics Ordinance) to the City Council.

### DISCUSSION

During the last year, the Board of Ethics has reviewed the City of Denton's Ethics Ordinance and the Board's Rules of Procedure. During this time, the Board has developed eleven proposals to amend the Ethics Ordinance. In order to facilitate review, approval, and forwarding of these proposals, discussion of this packet is being spread across several meetings. The following proposals are intended for discussion during this meeting. Estimated minutes needed to discuss each proposal is shown for reference:

Prop.	Description	Est. Min.
23-4	<p>Add a recusal requirement for certain aggregate campaign contributions:</p> <ul style="list-style-type: none"><li>Add "receipt of more than a five-hundred dollars (\$500.00) Campaign Contribution from an individual, Business Entity, or other organization during the most recent Election Cycle, as evidenced by campaign finance reports required by the Texas Ethics Commission and filed with the City Secretary" to the definition of conflicting interest.</li><li>Add a definition of Campaign Contribution as follows: "a contribution to a candidate for mayor or city council in any of the following forms: a monetary contribution or a non-monetary contribution (in-kind contribution)."</li><li>Add a definition of City Secretary as follows: "the person appointed to serve in the capacity provided for by Section 2.12 of the City Charter, or their designee and clerical staff acting in the City Secretary's absence."</li><li>Add a definition of Election Cycle as follows: "the period of time beginning on the day after the last regular election for the office of mayor or council member of a particular council place and ending on the day the results of the next regular election for that position are declared as provided for by Section 3.04 of the City Charter."</li></ul>	10
23-7	<p>Add a recusal requirement for client relationships:</p> <ul style="list-style-type: none"><li>Add "existence of a client relationship with a person or Business Entity including any business, financial, or professional relationship to which a duty of care, confidence, trust, or privilege applies to the City Official" to the definition of conflicting interest.</li></ul>	20
23-9	<p>Adjust the disclosure requirement for Affiliated or Partner Business Entities to require recusal:</p>	10

- Add “knowledge of a Business Entity being an Affiliated or Partner of a Business Entity that the City Official or their Relative has a conflicting of interest in as defined in subsections (a)(3)(A), (a)(3)(B), (a)(3)(C), (a)(3)(D),” to the definition of conflicting interest.
- Add definition Affiliated as follows: “Business Entities are “affiliated” if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent Business Entity.”
- Add a definition Partner as follows: “a person who engages in an activity or undertaking with another; “partner” includes someone named as a partner in the following types of businesses: general Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or Professional Corporation.”
- Remove requirement for City Officials to disclose knowledge of being a partner with one of the owners of a Business Interest with a Pending Matter in certain instances that would now require recusal.

Clarify by what process the Board of Ethics may determine a Complaint is Frivolous:

- 23-11**
- Create a process by which a Complainant may be ordered to show cause why the Board should not determine that the Complaint is a Frivolous Complaint including:
    - Providing for notification of the Order to Show Cause issuance;
    - Prohibiting withdrawal of the Complaint once an Order to Show Cause is issued;
    - Allowing the Complainant and Respondent to submit a written sworn response to the Order to Show Cause and providing for a submission and distribution timeline;
    - Providing a timeline by which a Frivolity Hearing must be held;
    - Clarifying that the Complainant is not required to appear at the Frivolity Hearing for a determination to be made;
    - Clarifying that the Complainant has the right to present a defense and be represented by legal counsel at the Frivolity Hearing; and
    - Clarifying that the Respondent is prohibited from presenting a defense at a Frivolity Hearing.
  - Create a requirement for a Preliminary Assessment Panel or the Board of Ethics to dismiss an Ethics Complaint and issue an Order to Show Cause prior to determining if a Complaint is Frivolous.
  - Clarify that a Preliminary Assessment Panel may by simple majority issue an Order to Show Cause if a Complaint is dismissed and removing reference to the Preliminary Assessment Panel’s ability to recommend that a Hearing first be held to determine frivolity.
  - Prohibit a Complainant for requesting reconsideration if a Complaint has been determined to be Frivolous.
  - Add a definition of Order to Show Cause as follows: “an order from the Board of Ethics requiring a Complainant to justify or explain why a submitted Ethics Complaint should not be determined to be a Frivolous Complaint.”

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### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

The Ethics Ordinance was first adopted by the City Council on May 1, 2018. Based on recommendations made by the Board of Ethics the Ethics Ordinance was amended on June 2, 2020 by the City Council. On January 25, 2022, the Ethics Ordinance was amended by the City Council to remove the requirement that preference be given to certain professions for service on the Board. Based on recommendations made by the Board of Ethics, the Ethics Ordinance was amended on July 19, 2022 by the City Council.

### **EXHIBITS**

1. Agenda Information Sheet
2. Redlined Ethics Ordinance
3. Presentation

Respectfully submitted:  
Madison Rorschach, 940-349-7228  
City Auditor

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AMENDING THE CODE OF ORDINANCES, RELATED TO CHAPTER 2, TITLED “ADMINISTRATION,” ARTICLE XI, TITLED “ETHICS,” TO REMOVE CERTAIN EXCLUSIONS FROM THE PROHIBITION AGAINST A CITY OFFICIAL’S SUBSEQUENT WORK ON PROJECTS FOR WHICH THE OFFICIAL SUBSTANTIALLY PARTICIPATED IN THEIR OFFICIAL ROLE; PROVIDING FOR FINDINGS OF FACT; PROVIDING SEVERABILITY; PROVIDING A REPEALER CLAUSE, PROVIDING CODIFICATION; CONFIRMING PROPER NOTICE AND MEETING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 1, 2018, the City Council of the City of Denton enacted a new Code of Ethics to foster a culture of integrity for those who serve the municipality and our citizenry (the “Code”); and

WHEREAS, the Code presented the consensus of preferences expressed by the City Council over a period of eight (8) public work sessions, and four (4) public hearings, which were broadcasted. Altogether, the work sessions exceeded twenty (20) hours of deliberations; and

WHEREAS, this Code of Ethics applies to the Mayor, City Council, Planning and Zoning, Zoning Board of Adjustment, Historic Landmark Commission, Board of Ethics, Public Utilities Board, Department Heads appointed by the City Council, and Vendors; and

WHEREAS, on June 26, 2018, the City Council passed an amendment, clarifying ineligibility to serve on the Board of Ethics in Section 2-277; and

WHEREAS, on June 2, 2020, the City Council repealed the previously adopted Chapter 2, Article XI, entitled “Ethics,” in its entirety and replaced it with an amended Code.

WHEREAS, on January 25, 2022, the City Council passed an amendment, removing preference qualifications for Members of the Board of Ethics; and

WHEREAS, on July 19, 2022, the City Council passed an amendment, updating the composition requirements of a panel, clarifying what is included in the contents of an accepted ethics complaint, and clarifying the process for recommending a frivolity hearing; and

WHEREAS, the Board of Ethics, having heard and decided multiple complaints under the Code, has met over six meetings to discuss proposed changes to the Code; and

WHEREAS, the City Council finds the attached amended Code reasonable, necessary, and consistent with the intent of the City Council in drafting the Code of Ethics; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. The Code of Ordinances of the City of Denton, a Texas home-rule municipal corporation, is hereby amended by repealing the previously adopted Chapter 2, Article XI, entitled "Ethics," in its entirety and replacing it with the amended Code as provided in Attachment A, attached hereto and incorporated into this Ordinance.

SECTION 3. Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 4. The City Secretary is hereby directed to record and publish the attached rule, regulation, and policy in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

SECTION 5. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the ordinance was passed and approved by the following vote [\_\_ - \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
Alison Maguire, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

**CITY OF DENTON**  
**CODE OF ORDINANCES**  
**CHAPTER 2: ADMINISTRATION**  
**ARTICLE XI. ETHICS**

**DIVISION 1. GENERAL**

**Sec. 2-265. Authority**

This Article is enacted pursuant to the authority granted to the City under Section 14.04 of the Charter.

**Sec. 2-266. Purpose**

The purpose of this Article is to foster an environment of integrity for those that serve the City of Denton and our citizenry. The City Council enacted this Article in order to increase public confidence in our municipal government. It is the policy of the City that all City Officials and employees shall conduct themselves in a manner that assures the public that we are faithful stewards of the public trust. City Officials have a responsibility to the citizens to administer and enforce the City Charter and City Ordinances in an ethical manner. To ensure and enhance public confidence in our municipal government, each City Official must strive not only to maintain technical compliance with the principles of conduct set forth in this Article, but to aspire daily to carry out their duties objectively, fairly, and lawfully. Furthermore, this Article was enacted to ensure that decision makers provide responsible stewardship of City resources and assets.

It is not the purpose of this Article to provide a mechanism to defame, harass or abuse their political opponents, or publicize personal grudges. Rather, this Article is intended to provide a framework within which to encourage ethical behavior, and enforce basic standards of conduct while providing due process that protects the rights of the Complainant and the Respondent.

**Sec. 2-267. Prospective**

This Article shall apply prospectively, and shall not sustain any Complaints based on acts or omissions alleged to have taken place prior to May 15, 2018.

**Sec. 2-268. Applicability**

This Article applies to the following persons:



- (a) City Officials;
- (b) Former City Officials whose separation from city service occurred less than one (1) year from the date of the alleged violation of this Article. Application of this Article to Former City Officials shall be limited to alleged violations:
  - (1) that occurred during the term as a City Official;
  - (2) of the prohibition on representing others for compensation (§2-273(d)(2)); or
  - (3) of the prohibition of subsequent work on prior projects (§2-273(h));
- (c) Vendors; and
- (d) Complainant(s), who must comply with this Article's procedures and the prohibition on Frivolous Complaints.

#### **Sec. 2-269. Definitions**

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accepted Complaint:* a sworn allegation of a violation of this Article after the required documentation has been submitted to the City Auditor and determined to be administratively complete.

*Actionable Complaint:* an Accepted Complaint that has been deemed by a Panel to contain allegations and evidence that, if accepted as true, would support a finding that a violation of this Article occurred.

*Advisory Opinions:* written rulings regarding the application of this Article to a particular situation or behavior.

*Affiliated:* Business Entities are “affiliated” if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent Business Entity.

*Article:* this Chapter 2, Article XI of the Code of Ordinances for the City of Denton.

*Baseless Complaint:* a Complaint that does not allege conduct that would constitute a violation of this Article, or that does not provide evidence that, if true, would support a violation of this Article.

*Board of Ethics:* the oversight entity established by the Council to administer this Article.

*Business Entity:* a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, political subdivision, government agency, university, or any other entity recognized by law.

**Commented [RM1]: Proposal 9:**  
Added based on San Antonio Ethics Ordinance to define “an affiliated” for clarity.

*Campaign Contribution:* a contribution to a candidate for mayor or city council in any of the following forms: a monetary contribution or a non-monetary contribution (in-kind contribution).

*Candidate:* a person who has filed an application for a place on a ballot seeking public office, or one who has publicly announced the intention to do so.

*Charged:* to be charged with a violation of this Article is to have an Accepted Complaint deemed Actionable.

*City:* the City of Denton in the County of Denton and State of Texas.

*City Auditor:* the person appointed to serve in the capacity provided for by Section 6.04 of the City Charter, or their designee and clerical staff acting in the City Auditor's absence.

*City Official:* for purposes of this Article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and Zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board.

*City Secretary:* the person appointed to serve in the capacity provided for by Section 2.12 of the City Charter, or their designee and clerical staff acting in the City Secretary's absence.

*Code:* the Code of Ordinances of the City of Denton, Texas, as such Code may be amended from time to time.

*Complainant:* the human individual who submitted a Complaint to the City.

*Complaint:* written documentation submitted to the City accusing a City Official of violating this Article.

*Confidential Information:* any written information that could or must be excepted from disclosure pursuant to the Texas Public Information Act, if such disclosure has not been authorized; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized by the City Council or City Manager.

*Council:* the governing body of the City of Denton, Texas, including the Mayor and City Council Members.

*Deliberations:* discussions at the dais; voting as a Member of the Board or Commission; or presentations as a member of the audience before any City Board or Commission; conversing or corresponding with other City Officials or Staff. This term does not apply to a general vote on a broad, comprehensive, or omnibus motion, such as approval of the City budget or polling places.

**Commented [RM2]: Proposal 4:**

Added based on San Marcos Ethics Ordinance to define campaign contribution for clarity.

May need direction on in-kind contributions.

**Commented [RM3]: Proposal 4:**

Added for clarity based on addition of campaign contribution prohibition.

*Department Heads:* the employees appointed by the City Council, those being the City Manager, City Auditor, City Attorney, and Municipal Court Judge.

*Election Cycle:* the period of time beginning on the day after the last regular election for the office of mayor or council member of a particular council place and ending on the day the results of the next regular election for that position are declared as provided for by Section 3.04 of the City Charter.

*Former City Official:* a City Official whose separation from city service occurred less than one (1) year from the date of an alleged violation of this Article.

*Frivolous Complaint:* a sworn Complaint that is groundless and brought in bad faith, or groundless and brought for the purpose of harassment.

*Interfere:* a person interferes with a process or activity pertaining to this Article when they intentionally and wrongfully take part in, or prevent, a City process or activity from continuing or being carried out properly or lawfully.

*Order to Show Cause:* an order from the Board of Ethics requiring a Complainant to justify or explain why a submitted Ethics Complaint should not be determined to be a Frivolous Complaint.

*Panel:* an *ad hoc* subcommittee of the Board of Ethics consisting of three (3) members assigned by the Chairperson or designated by the City Auditor (as applicable) on a rotating basis,

*Partner:* a person who engages in an activity or undertaking with another; "partner" includes someone named as a partner in the following types of businesses: General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or Professional Corporation.

*Pending Matter:* an application seeking approval of a permit or other form of authorization required by the City, State, or Federal law; a proposal to enter into a contract or arrangement with the City for the provision of goods, services, real property, or other things of value; a case involving the City that is (or is anticipated to be) before a civil, criminal, or administrative tribunal.

*Person:* associations, corporations, firms, partnerships, bodies politic, and corporate, as well as individuals.

*Recklessly:* a person acts recklessly when they are aware of but consciously disregard a substantial and unjustifiable risk that a certain result is probable from either their conduct, or in light of the circumstances surrounding their conduct. The risk must be of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that an ordinary person would exercise under the circumstances.

**Commented [RM4]: Proposal 4:**

Directed to include on 8/1/2022. Definition based on San Marcos Ethics Ordinance and discussion during 8/1/2022 meeting.

**Commented [RM5]: Proposal 11:**

Directed to draft on October 3, 2022.

**Commented [RM6]: Proposal 9:**

Taken from San Antonio's ethics code.

**Commented [RM7]: Proposal 9:**

Taken from Denton's previous "Business Disclosures" section and added to provide clarity and format consistency.

*Relative:* a family member related to a City Official within the third (3<sup>rd</sup>) degree of affinity (marriage) or consanguinity (blood or adoption) in accordance with Texas Government Code, Title 5, Subtitle B, Chapter 573.

*Respondent:* a City Official who has been charged in a Complaint with having violated this Article.

*Shall:* a mandatory obligation, not a permissive choice.

*Special Counsel:* an independent, outside attorney engaged by the City to advise the City as an organization and/or the Board of Ethics.

*Vendor:* a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

#### **Sec. 2-270. Cumulative & Non-Exclusive**

This Article is cumulative of and supplemental to all applicable provisions of the City Charter, other City Ordinances, and State/Federal laws and regulations. Compliance with this Article does not excuse or relieve any person from any obligation imposed by any other Rule. Attempts to enforce this Article shall not be construed as foreclosing or precluding other enforcement options provided by other law.

### **DIVISION 2. RULES OF CONDUCT**

#### **Sec. 2-271. Expectations**

The following list conveys the City Council's expectations for City Officials. These expectations are aspirational, and shall not serve as the basis for a Complaint.

- (a) City Officials are expected to conduct themselves in a manner that fosters public trust.
- (b) City Officials are charged with performing their public duties in a way that projects a high level of personal integrity and upholds the integrity of the organization.
- (c) City Officials must avoid behavior that calls their motives into question and erodes public confidence.
- (d) City Officials shall place the municipality's interests and the concerns of those the City serves above private, personal interests.
- (e) Those who serve the City are expected to value honesty, trustworthiness, diligence, objectivity, fairness, due process, efficiency, and prudence as values the City professes.
- (f) City Officials must balance transparency with the duty to protect personal privacy and preserve the confidential information with which the City has been entrusted.

- (g) It is neither expected nor required that those subject to this Article relinquish or waive their individual rights.

#### Sec. 2-272. Mandates

- (a) **Duty to Report.** City Officials shall report any conduct that the person knows to be a violation of this Article. Failure to report a violation of this Article is a violation of this Article. For purposes of this section, submittal of a Complaint or a report made to the Fraud, Waste, or Abuse hotline shall be considered to be a report under this Section. A report to the hotline may remain anonymous unless disclosed by the caller.

- (b) **Financial Disclosures.** All Candidates for City Council, including Candidates for Mayor, shall file financial information reports as required by, and in accordance with, State law. All prospective Vendors and City Officials shall file disclosure forms as required by, and in accordance with, State law.

- ~~(b)(c)~~ **Financial Payment Disclosures.** When a Pending Matter is before the City Official, and the City Official has knowledge of giving a payment to or receiving a payment from a Person or Business Entity with the Pending Matter, the City Official shall file with the City Auditor and City Secretary a report disclosing the existence of the payment. Neither the existence of payments described in this Section, nor the submission of a report required by this Section shall prevent a City Official from participating in Deliberations on matters pending before the City absent a Conflicting Interest.

- ~~(c)~~ **Business Disclosures.** ~~When a Pending Matter is before the City Official, and the City Official has knowledge of being a partner with one of the owners of the Business Interest with the Pending Matter, all City Officials shall file with the City Auditor a report listing the known names of human individuals with whom the City Official or the City Official's spouse is named partner in the following types of businesses: General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or Professional Corporation. Annual reports shall be submitted within ninety (90) days of taking office. Failure to submit a report shall not serve as a basis for a Complaint unless the City Official fails to submit a report within thirty (30) days of being provided written notification of the omission. Neither the existence of a business relationship as described in this Section, nor the submission of a report required by this Section shall prevent a City Official from participating in Deliberations on matters pending before the City absent a Conflicting Interest.~~

**Commented [RM8]: Proposal 12:**

Draft language for Council discussion on 12/6/22 based on two-minute pitch direction on 9/27/22.

**Commented [RM9]: Proposal 9:**

Directed to remove on 10/3/22 based on direction to change affiliated business entity/partner interests from only requiring disclosure to requiring recusal.

#### Sec. 2-273. Prohibitions

- (a) **Conflicts of Interest:**

- (1) *Deliberation Prohibited.* It shall be a violation of this Code for a City Official to knowingly deliberate regarding a Pending Matter for which the City Official

currently has a Conflicting Interest. City Officials with a current Conflicting Interest in a Pending Matter must recuse themselves and abstain from Deliberations. It is an exception to this recusal requirement if the City Official serves on the City Council, Planning and Zoning Commission, Board of Ethics, Historic Landmark Commission, Public Utilities Board, or Board of Adjustment; where a majority of the members of that body is composed of persons who are likewise required to file (and who do file) disclosures on the same Pending Matter.

- (2) *Disclosure Required.* If a City Official has a Conflicting Interest in a Pending Matter, the City Official shall disclose the nature of the Conflicting Interest by filing a sworn statement with the City Auditor. Disclosures under this subsection shall be for the time period, including the previous calendar year, and up to date where the Conflicting Interest arises before the City Official.
- (3) *Definition of Conflicting Interest.* For purposes of this Article, the term is defined as follows:

*Conflicting Interest:* a stake, share, equitable interest, or involvement in an undertaking in the form of any one (1) or more of the following:

- (A) ownership of ~~five-ten~~ percent (~~5~~10%) or more voting shares or stock in a Business Entity;
- (B) receipt of ~~funds from a Business Entity exceeding ten percent (10%) of the City Official's gross income for the previous year~~ ~~more than six-hundred dollars (\$600.00) in gross annual income from a Business Entity~~, as evidenced by a W-2, 1099, K-1, or similar tax form;
- (C) ownership of more than ~~ten percent (10%) six-hundred dollars (\$600.00)~~ of the fair market value of a Business Entity;
- (D) ownership of ~~an interest of more than ten percent (10%) of the fair market value of an interest in real property with a fair market value of more than six-hundred dollars (\$600.00);~~
- (E) receipt of more than a five-hundred dollars (\$500.00) Campaign Contribution from an individual, Business Entity, or other organization during the most recent Election Cycle, as evidenced by campaign finance reports required by the Texas Ethics Commission and filed with the City Secretary;
- (F) serves on the Board of Directors or as an Officer of a Business Entity, unless the City Official was appointed to that position by the City Council; ~~and/or~~
- (G) serves on the Board of Directors (i.e., governing body) or as an Officer of a nonprofit corporation or an unincorporated association, unless the City Official was appointed to that position by the City Council;

**Commented [RM10]: Proposal 3:**  
Directed to draft on 8/1/2022.

**Commented [RM11]: Proposal 4:**  
Directed to draft on 8/1/2022. Related changes made in Section 2-269 Definitions to add definition of "Campaign Contribution," "City Secretary," and "Election Cycle."

(H) direct or indirect solicitation of an offer of employment for which the application is still pending, receipt of an offer of employment which has not been rejected, or acceptance of an offer of employment from a person or Business Entity within the past twelve (12) months;

**Commented [RM12]: Proposal 5:**

Directed to draft on 10/3/22. Language is based on the San Antonio ethics code.

(I) direct or indirect engagement in negotiations pertaining to business opportunities, where such negotiations are pending or not terminated with a person or Business Entity within the past twelve (12) months;

**Commented [RM13]: Proposal 6:**

Directed to draft on 10/3/22. Language is based on the San Antonio ethics code.

(J) knowledge of an individual or Business Entity being an Affiliated or Partner of a Business Entity that the City Official or their Relative has a conflict of interest as defined in subsections (a)(3)(A), (a)(3)(B), (a)(3)(C), or (a)(3)(D);

**Commented [RM14]: Proposal 9:**

Directed to draft on 10/3/22. Language is based on the San Antonio ethics code.

(K) existence of a client relationship with a person or Business Entity including any business, financial, or professional relationship to which a duty of care, confidence, trust, or privilege applies to the City Official; and/or

~~(F)~~(L) existence of more than a five-thousand dollars (\$5,000.00) debt with a person or Business Entity whereby the City Official is either the debtor or creditor.

**Commented [RM15]: Proposal 7:**

Directed to draft on 10/3/22. This option falls more in line with the San Antonio code.

Other option from model code might look like:

"direct or indirect receipt of more than one-thousand dollars (\$1,000) during the past twenty-four months from a person or Business Entity in return for the supply of goods or services directly from the City Official or from the City Official's Outside Employer, but only if the City Official knows or has reason to know the goods or services were supplied." Whereby client is defined as "any business, financial, or professional relationship to which a duty of care, confidence, trust or privilege applies."

A City Official is considered to have a Conflicting Interest if the City Official's Relative has a Conflicting Interest.

The term Conflicting Interest does not include ownership of an interest in a mutual or common investment fund that holds securities or assets unless the City Official participates in the management of the fund.

**Commented [RM16]: Proposal 8:**

Directed to draft on 10/3/22. Language is based on the Austin ethics code.

(b) **Gifts.**

(1) *General.* It shall be a violation of this Article for a City Official or a City Official's Relative to accept any gift that might reasonably tend to influence such Officer in the discharge of official duties.

**Commented [RM17]:** Overarching question – should this require recusal for Relatives as it is currently broadly defined, only for the City Official, or for the City Official and their spouse/domestic partner (most common).

(2) *Specific.* It shall be a violation of this Article for a City Official to accept any gift for which the fair market value is greater than fifty dollars (\$50.00). It shall be a violation of this Article for a City Official to accept multiple gifts for which the cumulative fair market value exceeds two hundred dollars (\$200.00) in a single fiscal year.

**Commented [RM18]: Proposal 1:**

Directed to draft on 8/1/2022.

(3) It shall be a violation of this Article for a Vendor to offer or give a Gift to a City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

- (4) *Definition of Gift.* Anything of monetary value, including but not limited to cash, personal property, real property, services, meals, entertainment, and travel expenses.
- (5) *Exceptions.* This definition shall not apply to the following, which are allowed under this Article:
- (A) a lawful campaign contribution;
  - (B) meals, lodging, transportation, entertainment, and related travel expenses paid for (or reimbursed by) the City in connection with the City Official's attendance at a conference, seminar or similar event, or the coordinator of the event;
  - (C) meals, lodging, transportation, or entertainment furnished in connection with public events, appearances, or ceremonies related to official City business, nonprofit functions, or charity functions, or community events, if furnished by the sponsor of such events (who is in attendance);
  - (D) complimentary copies of trade publications and other related materials;
  - (E) attendance at hospitality functions at local, regional, state, or national association meetings and/or conferences;
  - (F) any gift that would have been offered or given to the City Official because of a personal, familial, professional relationship regardless of the City Official's capacity with the City;
  - (G) tee shirts, caps, and other similar promotional material; and
  - (H) complimentary attendance at political, nonprofit, or charitable fund raising events.
- (6) *Donations.* It is not a violation under this Article for a City Official to accept a Gift prohibited by this Article on behalf of the City of Denton. Conveyance of a Gift prohibited by this Article to the City of Denton or a nonprofit corporation cures any potential violation.
- (7) *Reimbursement.* It is not a violation under this Article for a City Official to accept a Gift prohibited by this Article and promptly reimburse the Person the actual cost or fair market value of the gift.

(7)(8) *Disclosure Required.* If a City Official chooses to accept a gift the City Official shall disclose the value of the gift and the nature of the gift's acceptance by filing an affidavit with the City Auditor.

(c) **Outside Employment.**

- (1) *Applicability of Section.* This subsection applies to Department Heads.

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Commented [RM19]: Proposal 1:  
Directed to draft on 8/1/2022.



- (2) *Prohibition.* It is a violation of this Article for a Department Head to solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
  - (3) *Disclosure and Consent.* It is a violation of this Article for a Department Head to accept employment from any Person other than the City without first disclosing the prospective employment arrangement in writing to the Mayor and receiving the Mayor's written consent.
- (d) **Representation of Others.**
- (1) *Current City Officials.* It shall be a violation of this Article for a City Official to represent for compensation any person, group, or entity before a board or commission of the City. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
  - (2) *Former City Officials.* It shall be a violation of this Article for a City Official to represent for compensation any person, group, or entity before the City Council or a board, commission, or staff of the City for a period of one (1) year after termination of official duties. This prohibition applies to representation in the form of advocacy or lobbying regarding discretionary approvals of the City, not routine, ministerial actions. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation. The prohibition in this subsection solely applies to the Former City Official, and shall not be construed to apply to other affiliated Persons. This subsection does not apply to Former City Officials who represent others for compensation in the course of applying for non-discretionary, ministerial permits and routine approvals. It shall be an exception to this Article when the Former City Official is employed by or owns a small business which existed before the Former City Official commenced service as a City Official and is the sole source of specialized knowledge or expertise necessary within that small business, and that knowledge or expertise is necessary to transact business with the City.
- (e) **Improper Influence.** It shall be a violation of this Article for a City Official to use such person's official title/position to:
- (1) secure special privileges or benefits for such person or others;
  - (2) grant any special consideration, treatment, or advantage to any citizen, individual, business organization, or group beyond that which is normally available to every other citizen, individual, business organization, or group;
  - (3) assert the prestige of the official's or employee's City position for the purpose of advancing or harming private interests;

- (4) state or imply that the City Official is able to influence City action on any basis other than the merits; or
  - (5) state or imply to state or local governmental agencies that the City Official is acting as a representative of the City, as an organization, or as a representative of the City Council without first having been authorized by the City Council to make such representation (except the Mayor, City Manager, and City Attorney).
- (f) **Misuse of Information.**
- (1) *Personal Gain.* It shall be a violation of this Article for a former City Official to use any confidential information to which the City Official had access by virtue of their official capacity and which has not been made public concerning the property, operations, policies, or affairs of the City, to advance any personal or private financial interest of any Person.
  - (2) *Confidential Information.* It shall be a violation of this Article for a City Official to intentionally, knowingly, or recklessly disclose any confidential information gained by reason of the City Official's position concerning the property, operations, policies, or affairs of the City. This rule does not prohibit the reporting of illegal or unethical conduct to authorities designated by law.
- (g) **Abuse of Resources.** It shall be a violation of this Article for a City Official to use, request, or permit the use of City facilities, personnel, equipment, software, supplies, or staff time for private purposes (including political purposes), except to the extent and according to the terms that those resources are generally available to other citizens and the City Officials for official City purposes.
- (h) **Abuse of Position.** It shall be a violation of this Article for any City Official to engage in the following:
- (1) *Harassment & Discrimination.* Use the Official's position to harass or discriminate against any person based upon ethnicity, race, gender, gender identity, sexual orientation, marital status, parental status, or religion.
  - (2) *Interference.* Interfere with any criminal or administrative investigation alleging the violation of any provision of this Article, the City Charter, administrative policy, or executive order in any manner, including but not limited to seeking to persuade or coerce City employees or others to withhold their cooperation in such investigation is a violation of this Article.
- (i) **Subsequent Work on Prior Projects.** It shall be a violation of this Article for any former City Official, within one (1) year of the cessation of official duties for the City, to perform work on a compensated basis relating to a City contract or arrangement for the provision of goods, services, real property, or other things of value, if while in City service the former City Official personally and substantially participated in the negotiation, award or administration of the contract or other arrangement. ~~This Section does not apply to a City Official whose involvement with a contract or arrangement was limited to Deliberations~~

~~as a member of the City Council, Planning and Zoning Commission, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board.~~

**Commented [RM20]: Proposal 2:**  
Directed to revise on June 6, 2022.

### **DIVISION 3. IMPLEMENTATION**

#### **Sec. 2-274. Staffing**

- (a) **City Auditor.** The City Auditor's Office shall be responsible to provide staff and clerical support to the Board of Ethics to assist in the implementation and enforcement of this Article. The degree of support required shall be at the discretion of the City Auditor. Nothing herein creates a duty for the City Auditor to enforce this Article. Furthermore, this Article shall not be construed as requiring the City Auditor to investigate allegations of violations of this Article submitted via the Fraud, Waste, or Abuse hotline.
- (b) **Conflicts Log.** The City Auditor's Office shall, in cooperation with the City Secretary's Office, maintain a Conflicts Log on an ongoing basis listing the Conflicting Interests disclosed by City Officials in accordance with this Article. The log is a public record. The City Auditor is neither authorized nor required to inspect or act upon the content of the Conflicts Log.
- (c) **City Manager.** If a Complaint accuses the City Auditor of violating this Article, the duties of the City Auditor under this Article shall be performed by the City Manager for purposes of processing that Complaint.

#### **Sec. 2-275. Legal Counsel**

- (a) **City Attorney.** The City Attorney shall provide legal support to the City Auditor and the Board of Ethics in the administration of this Article. Nothing herein shall be construed to limit the authority of the City Attorney to render legal guidance in accordance with the City Attorney's professional obligations and standards.
- (b) **Special Counsel.** Independent, outside legal services shall be engaged by the City Attorney on the City's behalf to provide legal support to the City Auditor and the Board of Ethics when:
  - (1) in the City Attorney's discretion it is necessary in order to comply with the Texas Disciplinary Rules of Professional Conduct (for lawyers), or is in the best interest of the City;
  - (2) when the City Council deems Special Counsel is necessary; or
  - (3) when action is being taken by the Board of Ethics regarding any council member.

#### **Sec. 2-276. Training**

- (a) **Curriculum.** The City Auditor shall approve a training program that provides an introduction and overview of the expectation, mandates, and prohibitions provided for by this Article.

- (b) **Orientation.** City Officials shall complete a training session regarding this Article within ninety (90) days of commencing their official duties.
- (c) **Annual.** City Officials shall complete an annual training session regarding this Article.
- (d) **Exiting Officials.** Information shall be provided to City Officials terminating their City service regarding the continuing restrictions on the representation of others by certain former City Officials.

**Sec. 2-277. Board of Ethics**

- (a) **Creation.** There is hereby created a Board of Ethics for the City of Denton.
- (b) **Appointment.** The Board of Ethics shall be appointed by majority vote of the City Council.
- (c) **Number.** The Board of Ethics shall consist of seven (7) regular members, and three (3) alternate members.
- (d) **Terms.** Board of Ethics members (regular and alternates) shall be appointed for two (2) year, staggered terms. Members may be reappointed for successive terms. Appointment to fill a vacancy shall be for the remainder of the unexpired term. Members of the inaugural Board of Ethics shall draw straws to determine which three (3) members shall receive an initial term of one (1) year in order to stagger terms. In total, members may only serve three (3) consecutive terms. A member may be reappointed no sooner than one (1) year after expiration of a previous term.
- (e) **Eligibility.** Membership on the Board of Ethics is limited to residents of the City of Denton.
- (f) **Ineligibility.** The following shall disqualify a person from serving on the Board of Ethics:
  - (1) current service as a City Official;
  - (2) separation from city service as a City Official within two (2) years of the appointment;
  - (3) familial relations to a City Official within the third (3<sup>rd</sup>) degree of affinity (marriage) or consanguinity (blood or adoption);
  - (4) current service as an elected official in Denton County; and / or
  - (5) conviction of a felony or crime of moral turpitude.
- (g) **Alternates.** Alternate members of the Board of Ethics shall attend meetings only upon request by the City Auditor's Office. The role of an alternate is to participate in meetings of the Board of Ethics as a replacement for a regular member who is absent or abstaining.
- (h) **Scope of Authority.** The Board of Ethic's jurisdiction shall be limited to implementation and enforcement of this Article, and shall include the authority to administer oaths and affirmations, issue and enforce limited subpoenas to compel the attendance of witnesses and the production of testimony, evidence, and/or documents as is reasonably relevant to the Actionable Complaint, as provided by the City Charter. The issuance and enforcement

of subpoenas shall be only upon a majority vote of the Board of Ethics, in accordance with the Rules of Procedure, and enforcement shall be through any of the Sanction options listed herein.

- (i) **Amendments.** The Board of Ethics may recommend amendments to this Article. A recommendation from the Board of Ethics is not required for the City Council to exercise its discretion in amending this Article.
- (j) **Officers.** At the first meeting of each fiscal year the Board of Ethics shall select from among its members a Chairperson and Vice-Chairperson.
- (k) **Rules of Procedure:** The Board of Ethics shall adopt rules of procedure governing how to conduct meetings and hearings. Such procedural rules are subject to confirmation or modification by the City Council.
- (l) **Removal:** The City Council may, by a vote of two-thirds (2/3), remove a member of the Board of Ethics for cause. Justifications warranting removal for cause shall include neglect of duty, incompetence, gross ignorance, inability or unfitness for duty, or disregard of the Code of Ordinances.

#### **Sec. 2-278. Advisory Opinions**

- (a) **Requests.** Any City Official may request an Advisory Opinion on a question of compliance with this Article. Requests shall be submitted in writing to the City Auditor, who shall assign the request to a Panel or Special Counsel.
- (b) **Issuance.** A Panel of the Board of Ethics shall issue Advisory Opinions upon request. Advisory Opinions shall be issued within thirty (30) days of receipt of the request. This time limitation is tolled and shall not run until the Board of Ethics is empaneled and its Rules of Procedure are confirmed by the City Council.
- (c) **Reliance.** It shall be an affirmative defense to a Complaint that the Respondent relied upon an Advisory Opinion. In making a determination on the proper disposition of a Complaint, the Board of Ethics may dismiss the Complaint if the Board finds that:
  - (1) the Respondent reasonably relied in good faith upon an Advisory Opinion;
  - (2) the request for an Advisory Opinion fairly and accurately disclosed the relevant facts; and
  - (3) less than five (5) years elapsed between the date the Advisory Opinion was issued and the date of the conduct in question.

#### **Sec. 2-279. Complaints**

- (a) **Complainants.** Any person who has first-hand knowledge that there has been a violation of Sections 2-272 and/or 2-273 of this Article may allege such violations by submitting a Complaint. The persons who may submit Complaints includes (but is not limited to) members of the Board of Ethics.

- (b) **Form.** Complaints shall be written on, or accompanied by, a completed form promulgated by the City Auditor.
- (c) **Contents.** A Complaint filed under this section must be in writing, under oath, must set forth in simple, concise, direct statements, and state:
- (1) the name of the Complainant;
  - (2) the street or mailing address, email address, and the telephone number of the Complainant;
  - (3) the name of each person Respondent of violating this Article;
  - (4) the position or title of each person Respondent of violating this Article;
  - (5) the nature of the alleged violation, including the specific provision of this Article alleged to have been violated;
  - (6) a statement of the facts constituting the alleged violation and the dates on which, or period of time in which, the alleged violation occurred; and
  - (7) all documents or other material available to the Complainant that are relevant to the allegation.
- (d) **Violation Alleged.** The Complaint must state on its face an allegation that, if true, constitutes a violation of this Article.
- (e) **Affidavit.** 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 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.
- (f) **Limitations Period.** To be accepted, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Article. A Complaint will not be accepted more than two (2) years after the date of the act or omission. Notwithstanding the foregoing, nothing in this subsection shall be construed to extend the one (1) year limitation of activity applicable to Former City Officials. The time for filing a Complaint regarding an alleged violation of this Article where the alleged violation occurred after the Effective Date but before the Board of Ethics is empaneled shall be tolled and not begin to run until such time as the Board of Ethics is empaneled and its Rules of Procedure are confirmed by the City Council.
- (g) **Filing.** Complaints shall be submitted to the City Auditor. Submission of Complaints may be made by hand delivery, U.S. Mail, or email directed to an email address publicly listed by the City Auditor.
- (h) **Acceptance of Complaint.** Within five (5) business days of receiving a Complaint, the City Auditor shall determine if it is administratively complete, and timely, and not submitted by a prohibited Complainant.

- (1) *Administratively Complete.* A Complaint is administratively complete if it contains the information described above. If the Complaint is administratively complete, the City Auditor shall proceed as described in this Article. If the Complaint is incomplete, the City Auditor shall send a written deficiency notice to the Complainant identifying the required information that was not submitted.

The Complainant shall have ten (10) business days after the date the City Auditor sends a deficiency notice to the Complainant to provide the required information to the City Auditor, or the Complaint is automatically deemed abandoned and may not be processed in accordance with this Article. Within five (5) business days of a Complaint being abandoned, the City Auditor shall send written notification to the Complainant and the Respondent.

- (2) *Timely.* To be timely, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Article. A Complaint will not be accepted more than two (2) years after the date of the act or omission.

~~(2)(3)~~ *Prohibited Complainant.* Per Section 2-282(c), if the Board of Ethics has previously determined that an Ethics Complaint submitted by a Complainant was frivolous, they may prohibit that individual from filing future Complaints. If the Complaint was filed by a Complainant prohibited from doing so, the City Auditor shall send a written deficiency notice to the Complainant informing them that their Complaint will not be accepted.

- (i) **Notification of Acceptance.** Within five (5) business days of determining that a Complaint is administratively complete and timely, the City Auditor shall send a written notification of acceptance and a copy of the complaint to the Complainant, the Respondent, and the City Attorney; and a copy of the complaint to the Respondent.

For purposes of this provision, a Complaint shall be considered Accepted when the City Auditor has deemed the submittal administratively complete and timely.

- (j) **Confidentiality.** A Complaint that has been submitted to the City is hereby deemed confidential until such time as the Complaint is either dismissed or placed on an agenda for consideration by the Board of Ethics in accordance with this Article. Clerical and administrative steps shall be taken to identify and manage confidential information in accordance with this Article. The confidentiality created by this Article includes the fact that a Complaint was submitted and the contents of that Complaint. It shall be a violation of this Article for a City Official or the Complainant to publicly disclose information relating to the filing or processing of a Complaint, except as required for the performance of official duties or as required by law. Requests for records pertaining to Complaints shall be responded to in compliance with the State law. The limited confidentiality created by this Article is limited in scope and application by the mandates of the Texas Public Information Act, Chapter 552 of the Texas Government Code.

- (k) **Ex Parte Communications.** After a Complaint has been filed and during the pendency of a Complaint before the Board of Ethics, it shall be a violation of this Article:

**Commented [RM22]: Proposal 10:**

Added based on direction received on August 1, 2022 in relation to proposed new frivolous complaint sanctions.

**Commented [RM23]: Minor Clarity Change 1:**

Directed to draft on June 6, 2022.

**Commented [RM24]: Proposal 10:**

Directed to draft on June 6, 2022. Included with Proposal 10 to facilitate review and approval.

- (1) for the Complainant, the Respondent, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a Complaint in *ex parte* communication with a member of the Board of Ethics or any known witness to the Complaint; or
  - (2) for a Member of the Board of Ethics, to knowingly allow an *ex parte* communication about the subject matter or merits of a Complaint, or to communicate about any issue of fact or law relating to the Complaint directly or indirectly with any person other than a Member of the Board of Ethics, the City Auditor's office, the City Attorney's office, or Special Counsel.
- (l) **Retaliation Prohibited.** After a Complaint has been filed, and during or after the pendency before the Board of Ethics, it shall be a violation of this Article:
- (1) For a City Official, Former City Official, or Vendor to directly or indirectly discriminate against, harass, threaten, harm, damage, penalize, or otherwise retaliate against any person who:
    - (A) Files a complaint regarding an alleged violation of this Article, or
    - (B) Testifies, assists, or participates in any manner in a proceeding or hearing under this Article.
  - (2) The outcome of the original ethics complaint shall not be deemed relevant to the complaint of retaliation itself.

**Sec. 2-280. Preliminary Assessment**

- (a) **Referral to Chairperson.** Accepted Complaint(s) shall be referred to the Chairperson of the Board of Ethics within five (5) business days of being determined administratively complete.
- (b) **Assignment of Panel.** Within five (5) business days of receiving an Accepted Complaint, the Chairperson of the Board of Ethics shall assign the Complaint to a Panel for Preliminary Assessment. Board members who have previously submitted an Ethics Complaint against the Respondent in a Preliminary Assessment shall not be assigned to the Panel unless a majority of the Board members have previously submitted an Ethics Complaint against the Respondent. The Chairperson shall order a meeting of the Panel, which shall be conducted in compliance with the Texas Open Meetings Act. Each Panel shall select a Presiding Officer to conduct Panel deliberations.
- (c) **Panel Determination.** Within ten (10) business days of being assigned an Accepted Complaint, the Panel shall review the Complaint on its face and determine whether the Complaint is:
  - (1) *Actionable:* the allegations and evidence contained in the Complaint, if true, would constitute a violation of this Article.



- (2) *Baseless*: the allegations and evidence contained in the Complaint, if true, would not constitute a violation of this Article.

Actionable Complaints shall be returned to the Chairperson for listing on an agenda for a public hearing to be held within thirty (30) calendar days of a Panel's Actionable determination. Baseless Complaints shall be dismissed. Written notification of the Panel's determination shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Written notifications of dismissal shall include notice of the right to appeal.

- (d) ~~Recommendation to Determine Frivolity~~**Order to Show Cause.** If the Panel dismisses a Complaint by determining it to be Baseless, it may, by simple majority, order a Complainant to show cause why the Board should not determine that the Complaint is a Frivolous Complaint as provided by Section 2-282(c). ~~Before filing notification of its determination, the Panel may consider recommending a hearing first be held to determine if an Accepted Complaint is frivolous. Written notification of the Panel's recommendation to hold a hearing to determine frivolity shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Hearings to determine frivolity shall be held within thirty (30) calendar days of a Panel's recommendation. Once a Panel has recommended that a Hearing be held to determine frivolity, the Complainant may not withdraw their Complaint.~~
- (e) **Appeals.** A Panel's preliminary assessment under this Section 2-280 may be appealed to the Board of Ethics by either the Complainant or the Respondent, as applicable. An appeal shall be perfected by filing a written notice of appeal with the City Auditor within ten (10) business days of the date of the written notification.

#### Sec. 2-281. Meetings

- (a) **Calling Meetings.** Meetings of the Board of Ethics shall be called upon request of the Chairperson, three (3) members, or the City Auditor.
- (b) **Quorum.** The quorum necessary to conduct meetings of the Board of Ethics shall be four (4). The Chairperson (or acting chairperson) shall count toward the establishment of a quorum and retains the right to vote.
- (c) **Hearings:**
- (1) *Scheduling:* Hearings shall be scheduled by the City Auditor upon the filing of:
- (A) a Panel determination that a Complaint is Actionable;
- (B) an Appeal challenging a Panel's dismissal of a Complaint as Baseless; or
- (C) ~~an Order to Show Cause as provided by Section 2-282(c). Panel recommendation that a hearing be held to determine if an Accepted Complaint is Frivolous.~~
- (2) *Purpose:* The purpose of the hearing(s) shall be solely to determine whether:

**Commented [RM25]: Proposal 11:**  
Directed to draft on October 3, 2022.

**Commented [RM26]: Proposal 11:**  
Directed to draft on June 6, 2022.

**Commented [RM27]: Proposal 11:**  
Updated as part of order to show cause process creation.

- (A) a violation of this Article occurred, and if so to assess the appropriate sanction;
  - (B) an Accepted Complaint was erroneously dismissed as Baseless by a Panel; and/ or
  - (C) an Accepted Complaint is Frivolous.
- (3) *Sworn Testimony:* All witness testimony provided to the Board of Ethics shall be under oath.
- (4) *Burden of Proof:* Because the burden of showing that a violation of this Article occurred is placed on the Complainant, it is the Complainant that has the obligation to put forth evidence, including testimony, supporting the Complaint. The Complainant is required to testify at the hearing unless it is held to determine if an Accepted Complaint is frivolous. A Complainant's failure to testify at a hearing, other than a hearing to determine frivolity, shall be grounds for dismissal of a Complaint.
- (5) *Representation:* The Respondent shall have a right to present a defense. Both the Complainant and the Respondent have a right to be represented by legal counsel.
- (d) **Open Meetings.** All meetings and hearings of the Board of Ethics, including Panel deliberations, shall be conducted pursuant to the Texas Open Meetings Act. The Board of Ethics may convene in Executive Session (i.e., conduct a closed meeting) as allowed by the Act. All final actions of the Board of Ethics shall take place in open session.
- (e) **Postponement in Certain Instances.**
- (1) *Board:* Proceedings may be postponed upon majority vote by the members of the Board of Ethics.
  - (2) *Parties:* The Complainant and the Respondent are each entitled to one (1) postponement without cause. Additional postponements shall be solely for good cause and at the discretion of the Board of Ethics.
  - (3) *Criminal Proceedings:* If a Complaint alleges facts that are involved in a criminal investigation or a criminal proceeding before a grand jury or the courts, the Board of Ethics may, when a majority of its members deem appropriate, postpone any hearing or any appeal concerning the Complaint until after the criminal investigation or criminal proceedings are terminated.

**Sec. 2-282. Disposition**

- (a) **Dismissal.** If the Board of Ethics determines at the conclusion of a hearing by simple majority vote of its members that a Complaint should be dismissed, it may do so upon finding:
  - (1) the Complaint is Baseless;

- (2) the alleged violation did not occur;
  - (3) the Respondent reasonably relied in good faith upon an Advisory Opinion, as provided in this Article; or
  - (4) the Complainant failed to testify at the hearing.
- (b) **Sanctions.** If the Board of Ethics determines by simple majority vote of those present and voting at the conclusion of a hearing that a violation has occurred, it may within ten (10) business days impose or recommend any of the following sanctions:
- (1) *Letter of Notification.* If the violation is clearly unintentional, or when the Accuser's action was made in reliance on a written Advisory opinion, a letter of notification shall advise the Respondent of any steps to be taken to avoid future violations.
  - (2) *Letter of Admonition.* If the Board of Ethics finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notification.
  - (3) *Letter of Reprimand.* If the Board of Ethics finds that the violation:
    - (A) was minor and was committed knowingly, intentionally, or in disregard of this Article; or
    - (B) was serious and may have been unintentional.
  - (4) *Recommendation of Suspension.* If the Board of Ethics finds that a violation was committed by a member of the Planning & Zoning Commission, Zoning Board of Adjustment, Board of Ethics, Public Utilities Board, Historic Landmark Commission, or a Department Head, and it:
    - (A) was serious and was committed knowingly, intentionally, or in disregard of this Article or a state conflict of interest law; or
    - (B) was minor but similar to a previous violation by the Person, and was committed knowingly, intentionally or in disregard of this Article.

The final authority to impose a suspension rests with the City Council.
  - (5) *Ineligibility.* If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Notice of all sanctions imposed by the Board of Ethics shall be transmitted to the Respondent, Complainant, City Auditor, City Attorney, and City Council.

- (c) **Frivolous.**

(1) *Prohibition.* It is a violation of this Article for a Person to submit a Frivolous Complaint.

(2) *Order to Show Cause.* If the Board or a Panel dismisses an Ethics Complaint the Board or Panel may, by simple majority, order a Complainant to show cause why the Board should not determine that the Complaint is a Frivolous Complaint. Once an Order to Show Cause has been issued to a Complainant, the City Auditor shall not accept or process another Complaint from the Complainant until the Board has determined whether the complaint is Frivolous. An Order to Show Cause must be issued in order to determine if a Complaint is Frivolous.

**Commented [RM28]:** Proposal 11:  
Directed to draft on November 7, 2022.

Written notification of the Order to Show Cause shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Once an Order to Show Cause has been issued, Panel has recommended that a Hearing be held to determine frivolity, the Complainant may not withdraw their Complaint.

**Commented [RM29]:** Proposal 11:  
Directed to draft on June 6, 2022.

(3) *Order to Show Cause Response.* The Complainant and the Respondent shall each have the opportunity to submit a written a sworn response, together with such other information they believe is relevant. The response must be submitted to the City Auditor within ten (10) calendar days after the date that the Complainant was given written notice of the Order to Show Cause. Copies of all information provided to the Ethics Board by the Complainant or the Respondent must be distributed to all parties to the Complaint within ten (10) calendar days after the Board receives the information.

(2)(4) *Frivolity Hearing.* Hearings to determine frivolity shall be held within thirty (30) calendar days the issuance of an Order to Show Cause by the Preliminary Panel or Board. A hearing shall be scheduled on frivolity if the Preliminary Panel recommends an Accepted Complaint first be considered for frivolity. The Complainant shall have a right to present a defense and a right to be represented by legal counsel, but the Complainant is not required to testify appear at a frivolity hearing to determine if their submitted Complaint is frivolous. The Respondent is prohibited from presenting a defense at a hearing scheduled due to an issued Order to Show Cause.

**Commented [RM30]:** Proposal 11:  
Directed to draft on October 3, 2022.

(5) *Super-Majority Vote.* If the Board of Ethics determines at the conclusion of a frivolity hearing by a vote of two-thirds (2/3) of its the Members present that a Complaint was Frivolous, the Board may within ten (10) business days impose a sanction as provided by Section 2-282(b) prohibit the Complainant from filing another complaint alleging one or more violations of this Article for up to:-

**Commented [RM31]:** Proposal 11:  
Directed to draft on October 3, 2022.

**Commented [RM32]:** Proposal 10:  
Directed to draft on June 6, 2022.

(A) Two (2) years after the date of the Board's determination that the eComplaint is Frivolous if the Board had not determined within the preceding five years that another Ceomplaint filed by the Ceomplainant was Frivolous; or

~~(A)(B)~~ Four (4) years after the date of the Board's determination that the Ceomplaint is Frivolous, if the Board had determined within the preceding five years that another Ceomplaint filed by the Ceomplainant was Ffrivolous.

Notice of all complaint filing prohibitions imposed by the Board of Ethics shall be transmitted to the Complainant, City Auditor, City Attorney, and City Council.

~~Upon finding that a Complaint is Frivolous, the Complaint is dismissed.~~

~~(3)~~(6) *Factors.* In making a determination on frivolity, the Board of Ethics shall consider the following factors:

- (A) the timing of the sworn Complaint with respect to when the facts supporting the alleged violation became known or should have become known to the Complainant, and with respect to the date of any pending election in which the Respondent is a Candidate or is involved with a candidacy, if any;
- (B) the nature and type of any publicity surrounding the filing of the sworn Complaint, and the degree of participation by the Complainant in publicizing the fact that a Complaint was filed;
- (C) the existence and nature of any relationship between the Respondent and the Complainant before the Complaint was filed;
- (D) if the Respondent is a Candidate for Election to Office, the existence and nature of any relationship between the Complainant and any Candidate or group opposing the Respondent;
- (E) any evidence that the Complainant knew or reasonably should have known that the allegations in the Complaint were groundless; and
- (F) any evidence of the Complainant's motives in filing the Complaint.

~~(4)~~(7) *External Remedies.* Complainants who submit Frivolous Complaints are hereby notified that their actions may subject them to criminal prosecution for perjury (criminal prosecution), or civil liability for the torts of defamation or abuse of process.

#### Sec. 2-283. Reconsideration

The Complainant or Respondent may request the Board of Ethics to reconsider its decision unless a Complaint has been determined to be Frivolous. The request must be filed with the City Auditor within five (5) business days of receiving the final opinion of the Board of Ethics. The request for reconsideration shall be sent to the Chairperson of the Board of Ethics and the non-filing party (Complainant or Respondent). If the Chairperson finds, in the Chairperson's sole discretion, that the request includes new evidence that was not submitted at a prior hearing, and that the new evidence bears directly on the Board of Ethic's previous determination, the Chairperson shall

Page 22 of 220

**Commented [RM33]: Proposal 10:**

Directed to include on August 1, 2022. Additional procedure added to Sec. 2-279 (h) to ensure complaints submitted by prohibited complainants are not Accepted by the City Auditor.

**Commented [RM34]: Proposal 10:**

Directed to draft on November 7, 2022.

**Commented [RM35]: Proposal 11:**

Directed to draft on November 7, 2022.

schedule a hearing on the request for reconsideration to occur within thirty (30) business days after filing with the City Auditor. Absent new evidence, the Chairperson shall unilaterally dismiss the request for reconsideration and provide notice to the Parties.

**Sec. 2-284. Nepotism**

- (a) **City Council.** No Person shall be employed by the City who is a relative of any member of the City Council within the third (3<sup>rd</sup>) degree of affinity or consanguinity.
- (b) **Preexisting Employment.** The prohibitions of this Section do not apply to a Person who was employed by the City more than six (6) months prior.

**Sec. 2-285. General Procedural Matters**

- (a) **Deadlines.** Any deadline provided in this Article shall be construed as expiring at 5:00 p.m. local time on the last day.
- (b) **Mailbox Rule.** Under this Article, a deadline for any response or request for appeal is met when the date the response or request for appeal is mailed falls within the timeline requirements of this Article. The posted date of any mailing will control whether it meets the timeline requirements of this Article.

**Sec. 2-286. Lobbyists [reserved]**



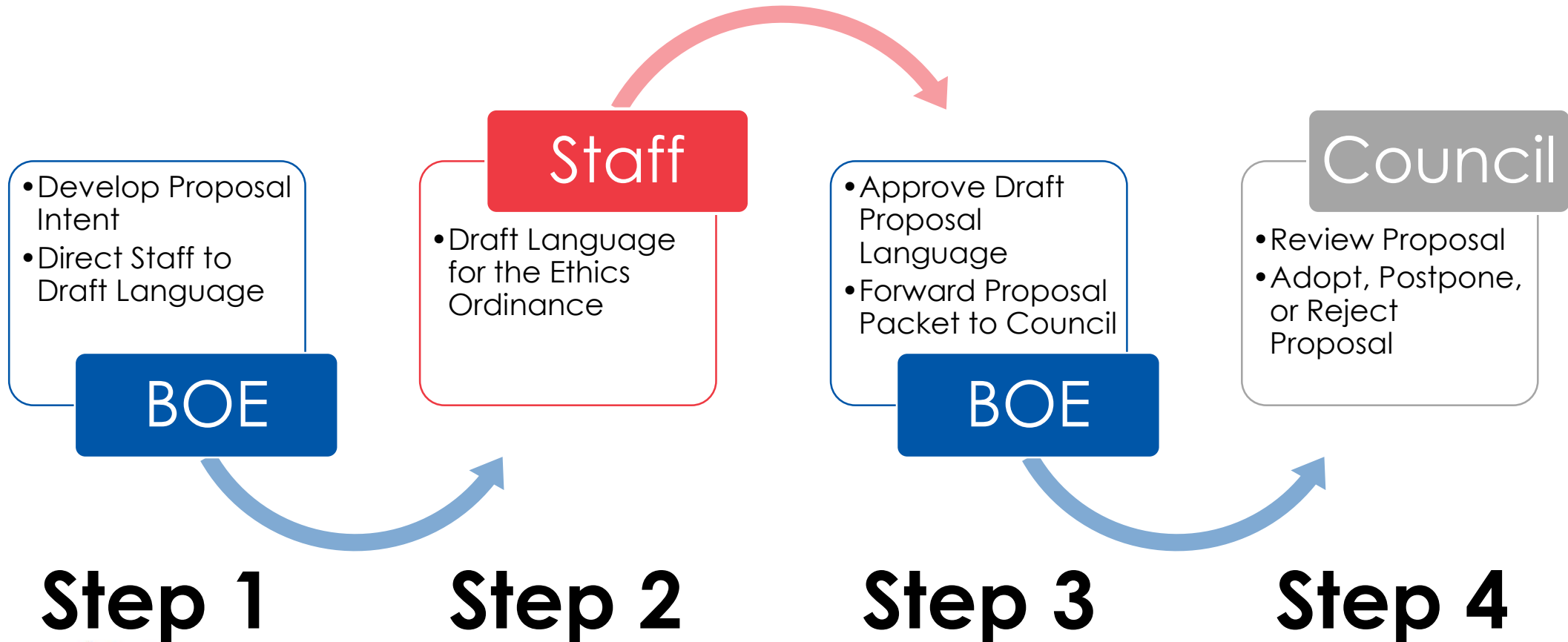


# Proposed Amendments to the Ethics Ordinance

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Board of Ethics  
January 9, 2023

# Ethics Ordinance Amendment Process



BOE 23-004

2



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

- Creates a requirement for City Officials to recuse themselves from deliberations if a Pending Matter is brought forward by an individual, Business Entity, or other organization that contributed at least \$500 to their campaign.

(E) receipt of more than a five-hundred dollars (\$500.00) Campaign Contribution from an individual, Business Entity, or other organization during the most recent Election Cycle, as evidenced by campaign finance reports required by the Texas Ethics Commission and filed with the City Secretary;

Campaign Contribution: a contribution to a candidate for mayor or city council in any of the following forms: a monetary contribution or a non-monetary contribution (in-kind contribution).

Election Cycle: the period of time beginning on the day after the last regular election for the office of mayor or council member of a particular council place and ending on the day the results of the next regular election for that position are declared as provided for by Section 3.04 of the City Charter.



# Proposal 7: Add Recusal Requirement for Client Relationships

- Creates a requirement for City Officials to recuse if they have a client relationship with a person or Business Entity.

(K) existence of a client relationship with a person or Business Entity including any business, financial, or professional relationship to which a duty of care, confidence, trust, or privilege applies to the City Official; and/or

- Other language option:
  - “direct or indirect receipt of more than \$1,000 during the past twenty-four months from a person or Business Entity in return for the supply of goods or services directly from the City Official or from the City Official’s outside employer, but only if the City Official knows or has reason to know the goods or services were supplied.”



# Proposal 9: Adjust Requirement for Business Partner Relationships from Disclosure to Recusal

- Change the requirement for City Officials to disclose a business partner relationship to a recusal requirement.

~~knowledge of an individual or Business Entity being an Affiliated or Partner of a Business Entity that the City Official or their Relative has a conflict of interest as defined in subsections (a)(3)(A), (a)(3)(B), (a)(3)(C), or (a)(3)(D);~~

~~Affiliated: Business Entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent Business Entity.~~

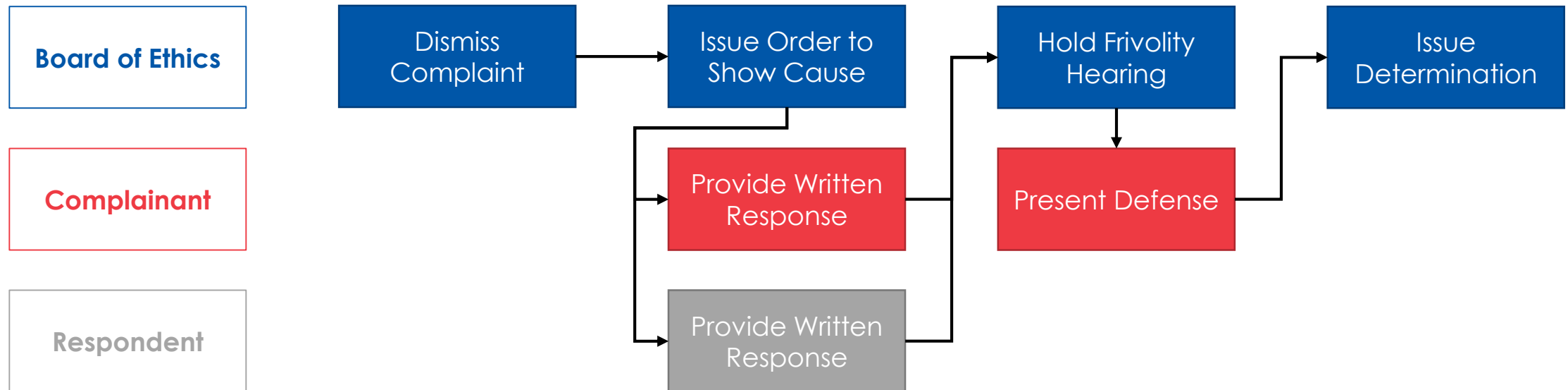
~~**Business Disclosures.** When a Pending Matter is before the City Official, and the City Official has knowledge of being a partner with one of the owners of the Business Interest with the Pending Matter, all City Officials shall file with the City Auditor a report listing the known names of human individuals with whom the City Official or the City Official's spouse is named partner in the following types of businesses: General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or Professional Corporation. Annual reports shall be submitted within ninety (90) days of taking office. Failure to submit a report shall not serve as a basis for a Complaint unless the City Official fails to submit a report within thirty (30) days of being provided written notification of the omission. Neither the existence of a business relationship as described in this Section, nor the submission of a report required by this Section shall prevent a City Official from participating in Deliberations on matters pending before the City absent a Conflicting Interest.~~

~~**Partner:** a person who engages in an activity or undertaking with another; "partner" includes someone named as a partner in the following types of businesses: General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or Professional Corporation.~~



# Proposal 11: Clarify Process by which the Board May Determine a Complaint is Frivolous

- Creates a process by which a Complainant may be ordered to show cause why their Complaint is not frivolous and requires this to occur prior to a determination.



# Proposal 11: Clarify Process by which the Board May Determine a Complaint is Frivolous

(2) Order to Show Cause. If the Board or a Panel dismisses an Ethics Complaint the Board or Panel may, by simple majority, order a Complainant to show cause why the Board should not determine that the Complaint is a Frivolous Complaint. Once an Order to Show Cause has been issued to a Complainant, the City Auditor shall not accept or process another Complaint from the Complainant until the Board has determined whether the complaint is Frivolous. An Order to Show Cause must be issued in order to determine if a Complaint is Frivolous.

Written notification of the Order to Show Cause shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Once an Order to Show Cause has been issued, Panel has recommended that a Hearing be held to determine frivolity, the Complainant may not withdraw their Complaint.

(4) Frivolity Hearing. Hearings to determine frivolity shall be held within thirty (30) calendar days the issuance of an Order to Show Cause by the Preliminary Panel or Board. A hearing shall be scheduled on frivolity if the Preliminary Panel recommends an Accepted Complaint first be considered for frivolity. The Complainant shall have a right to present a defense and a right to be represented by legal counsel, but The Complainant is not required to testify appear at a frivolity hearing to determine if their submitted Complaint is frivolous. The Respondent is prohibited from presenting a defense at a hearing scheduled due to an issued Order to Show Cause.

(3) Order to Show Cause Response. The Complainant and the Respondent shall each have the opportunity to submit a written a sworn response, together with such other information they believe is relevant. The response must be submitted to the City Auditor within ten (10) calendar days after the date that the Complainant was given written notice of the Order to Show Cause. Copies of all information provided to the Ethics Board by the Complainant or the Respondent must be distributed to all parties to the Complaint within ten (10) calendar days after the Board receives the information.

(d) Recommendation to Determine Frivolity Order to Show Cause. If the Panel dismisses a Complaint by determining it to be Baseless, it may, by simple majority, order a Complainant to show cause why the Board should not determine that the Complaint is a Frivolous Complaint as provided by Section 2-282(c). Before filing notification of its determination, the Panel may consider recommending a hearing first be held to determine if an Accepted Complaint is frivolous. Written notification of the Panel's recommendation to hold a hearing to determine frivolity shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Hearings to determine frivolity shall be held within thirty (30) calendar days of a Panel's recommendation. Once a Panel has recommended that a Hearing be held to determine frivolity, the Complainant may not withdraw their Complaint.

The Complainant or Respondent may request the Board of Ethics to reconsider its decision unless a Complaint has been determined to be Frivolous. The request must be filed with the City Auditor

# Questions?

**Madison Rorschach**  
**Board of Ethics Staff Liaison**  
**City Auditor**



BOE 23-004

8



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** BOE23-005, **Version:** 1

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### **AGENDA CAPTION**

Receive a report, hold a discussion, and give staff direction regarding future meeting topics. [Estimated Presentation/Discussion Time: 10 minutes]





# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
www.cityofdenton.com

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Internal Audit

**CITY AUDITOR:** Madison Rorschach

**DATE:** January 9, 2023

### **SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding future meeting topics.

### **BACKGROUND**

City of Denton Code of Ordinances Chapter 2, Article XI (Ethics), Sec. 2-277 (i) states that the Board of Ethics may recommend amendments to Article XI (i.e. the Ethics Ordinance) to the City Council from time to time.

### **DISCUSSION**

Based on direction received at previous meetings the following meeting topics have been proposed.

<b>Topic</b>	<b>Est. Time</b>
Amendment Proposal 1 – Gifts Disclosure Clarification	0:05
Amendment Proposal 2 – Subsequent Work on Prior Projects	0:05
Amendment Proposal 3 – COI: Financial Threshold Adjustments	0:10
Amendment Proposal 4 – COI: Campaign Contributions	0:10
Amendment Proposal 5 – COI: Business Opportunity Negotiations	0:05
Amendment Proposal 6 – COI: Offers of Employment	0:05
Amendment Proposal 7 – COI: Client Relationships	0:20
Amendment Proposal 8 – COI: Debtor/Creditor Relationships	0:05
Amendment Proposal 9 – COI: Business Partner Relationships	0:10
Amendment Proposal 10 – Frivolous Complaint Sanctions	0:10
Amendment Proposal 11 – Order to Show Cause Process	0:20
Amendment Proposal Packet Finalization	0:25
Review Complaint Reconsideration Process	0:30
Comprehensive Review of Current Sanctions	0:60
Comprehensive Review of the Definition of Relatives	0:30
Comprehensive Review of Burden of Proof Requirements <sup>1</sup>	1:30

To help plan for future meetings, a document outlining tentative future meeting topics has been prepared based on direction received previously from the Board of Ethics. This outline was prepared based on a goal to present the 2023 Packet of Proposed Amendments to the Ethics Ordinance on March 21, 2023 to the City Council.

<sup>1</sup> Based on preliminary research staff estimates that the comprehensive review of Burden of Proof Requirements can be broken up into three 30 minutes discussions.



## **DIRECTION**

Based on this information, staff would like direction from the Board on the following:

- The amount of estimated time the Board would generally like regular meetings to last to facilitate scheduling going forward;
- What topic(s), if any, does the Board of Ethics want to be added to February 2023;
- What topic(s), if any, does the Board of Ethics want to be added to March 2023; and
- Any additional topics that the Board wishes to discuss at future meetings.

## **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

The Ethics Ordinance was first adopted by the City Council on May 1, 2018. Based on recommendations made by the Board of Ethics the Ethics Ordinance was amended on June 2, 2020 by the City Council. Based on recommendations made by the Board of Ethics, the Ethics Ordinance was amended on July 19, 2022 by the City Council.

## **EXHIBITS**

1. Agenda Information Sheet
2. Board of Ethics Tentative Meeting Topics (January 2023)

Respectfully submitted:  
Madison Rorschach, 940-349-7228  
City Auditor

## Board of Ethics Tentative Meeting Topics

Updated: January 4, 2023

Meeting	Item	Est. Time
January 9, 2023	Election & Meeting Schedule	0:10
	Minutes	0:05
	Amendment Proposals Language Finalization	(0:60)
	Proposal 4 – COI: Campaign Contributions	0:10
	Proposal 7 – COI: Client Relationships	0:20
	Proposal 9 – COI: Business Partners	0:10
	Proposal 11 – Order to Show Cause Process	0:20
	Future Meeting Topics Update	0:10
	<b>Total Est. Time:</b>	<b>1:30</b>
February 2023	Minutes	0:05
	Amendment Proposals Language Finalization	(0:45)
	Proposal 1 – Gifts Disclosure Clarification	0:05
	Proposal 2 – Subsequent Work on Prior Projects	0:05
	Proposal 3 – COI: Financial Threshold Adjustments	0:10
	Proposal 5 – COI: Business Opportunity Negotiations	0:05
	Proposal 6 – COI: Offers of Employment	0:05
	Proposal 8 – COI: Debtor/Creditor Relationships	0:05
	Proposal 10 – Frivolous Complaint Sanctions	0:10
	<i>Additional topic?</i>	
	Future Meeting Topics Update	0:05
	<b>Total Est. Time:</b>	<b>0:55</b>
March 2023	Minutes	0:05
	Amendment Proposal Packet Finalization & Forwarding	0:25
	Burden of Proof Requirements Review: Part 1	0:30
	<i>Additional topic?</i>	
	Future Meeting Topics Update	0:05
	<b>Total Est. Time:</b>	<b>1:05</b>