

# The Ethics Commission and You

## Ten Points for Consideration

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## **Ethics Commission and You: 10 Points for Consideration**

As city attorneys, we are often approached by our clients with requests to prepare ordinances, ordinance amendments, policies, and procedures, etc. Some requests are self-explanatory; others are not. But city attorneys are always well-served by examining the motivating factors behind specific requests and what may best serve the client's need. This is particularly true when it comes to developing and adopting a municipal ethics commission. In this paper, we will cover 10 key points for city attorneys to consider in advising their clients about the good, the bad, the ugly and the in-between options that come into play on this issue.

### **1. Motivations for Adopting an Ethics Commission**

A client's motive in establishing an ethics commission can range anywhere from political influence, desires to enhance public trust, or to create a means of fielding complaints without (or to avoid) the necessity of city council involvement. While political pressure to create or adopt an ethics commission at times may be overwhelming, the creation of a quasi-independent municipal body should not be rushed merely to get something on paper. The creation of an ethics commission should be methodical.

Generally, municipal ethics commissions focus on compliance and enforcement of an adopted ethics policy, as opposed to broader value-based beliefs such as morals (conduct that goes above and beyond the minimum requirements of the law). Unless otherwise specified by the policy, municipal ethics policies generally will apply to both city officials and employees. Therefore, it is important that the client understands that once an ethics commission charged with enforcing an ethics policy is created, members of the city council also will be subject to that oversight and enforcement.

While elected members of a city council should not fear an inquiry into compliance with an ethics policy, members of council still should be aware that poorly worded protocols and procedures can make following the process extremely difficult and costly. Further, hasty creation and adoption of ethics complaint procedures can leave your client susceptible to abuse by complainants. As a result, before an ordinance creating an ethics commission is adopted, you must fully understand the underlying motivation as to why your client wants to create a quasi-independent body charged with enforcement of municipal ethics policies. Understanding the motives and end-goals is the first step in drafting an ordinance that is properly adapted to the specific needs of your city.

### **2. Ordinance and/or Charter Considerations**

As many of you know, municipal ordinances are like a patchwork quilt that has been pieced and sewn together over many years and by many minds. Sometimes an ordinance is adopted and fits the municipal scheme perfectly, while in other cases, adjustments must be made to prevent conflict, confusion and/or overlap. And in still other cases, an ordinance is adopted but plagued by latent problems that were not considered or thought of prior to enactment.

With that in mind, before creating and adopting an ethics commission, it's important to review and analyze the existing authority contained in ordinances -- and in the case of home-rule municipalities, the charter. While this may seem like a common-sense rule for the creation and adoption of any ordinance, certain aspects become particularly important in implementing an ethics commission.

One main area must be considered is determining the type of authority the commission will have. Depending on the desired scope and enforcement abilities, some cities may have to account for overlap of authority between the ethics commission and the city council. If your city is one that expressly grants the city council authority to conduct investigations into specific conduct, you may want to ensure the commission's scope of authority is clearly and unambiguously stated. Therefore, you may want to include a provision in the ordinance stating the commission's enforcement authority is limited to investigating written complaints of alleged violations of, or compelling compliance with, an adopted ethics policy. To identify areas of overlapping authority, a good exercise is to think through the authority that will be adopted from its trigger (i.e., a complaint is filed) through the determination and assessment of penalties, or in some cases, the issuance of a recommendation. Walking through hypothetical scenarios will allow you to identify any procedural kinks in the application of the commission's granted authority.

Minimizing ambiguity will save time, costs, and unnecessary headache when determining who has authority to investigate a specified complaint or in explaining why the commission, as opposed to the city council, has oversight regarding a specific complaint. Questions that should be considered may include:

- Will the commission be limited to enforcing an adopted ethics policy or it be provided some other type of authority (i.e., authority to revise an ethics policy)?
- Will the commission be empowered to assess penalties for violations, or will it act solely in an advisory role?
- If it will assess penalties, what appeal process will be implemented?
- Who or what will hear the appeal?
- Will the commission oversee the actions of city officials, employees, or both?
- If it oversees the actions of employees, how does the commission's role affect an adopted personnel manual?

While many more questions could be asked, these are a few that will have to be considered when creating and ultimately adopting any municipal ethics commission.

### **3. Composition of the Commission**

Like most members of municipal boards, commissions and committees, members of an ethics commission are generally appointed by either the mayor or city council. This is to ensure they remain insulated from the political process they are charged with regulating and from any political pressures encountered by those who seek, or hold, an elected office or position. This is a very important consideration for ethics commissions.

The members must remain independent of the city officials and/or employees they oversee, to make clear that the commission serves the public interest and not the personal interests of any public official or employee. After all, the typical goal of establishing an ethics commission is to enhance public trust in the neutral enforcement of an adopted ethics policy through a quasi-independent entity.

One way of increasing the commission's neutrality in both appearance and in practice is provide required qualifications to be a member of an ethics commission. Implementing qualifications to sit on an ethics commission board is recommended. Members of an should not be members of the city council or any other municipal body, and they should not be employees of the city. This ensures that members are not amongst the fertile ground in which the complaints that they may consider arise. Qualifications also ensure their independence from outside influence, or any appearance of improper influence. Some qualifications (or disqualifications) may include:

- a. A residency requirement;
- b. Prohibiting members of the commission from being a salaried city official or employee;
- c. Prohibiting members of the commission from being an elected public official for any governmental body;
- d. Prohibiting members of the commission from being a candidate for any elected public office;
- e. Prohibiting members of the commission from being an official of a political party;
- f. Prohibiting members of the commission from being a campaign treasurer, campaign manager, official or other policy or decision-maker for the campaign of any candidate for elected public office;
- g. Prohibiting members of the commission from being a campaign treasurer, campaign manager, official or other policy or decision-maker for any political action committee as defined in the Texas Election Code;
- h. Prohibiting members of the commission from being a member of any other city board or commission for the City in which the members serves; and
- i. Prohibiting members of the commission from having a conviction of a felony or any crime involving moral turpitude or have been found by the Ethics Commission to have previously violated any provision of the City Code of Ethics.

While the qualifications may limit the pool of willing and eligible volunteers, there is nothing apart from the commission's establishing ordinance that requires a specific number of members. That said, it probably is unwise to form a commission with fewer than five members: The body should be large enough to effectuate its purposes yet small enough to work, communicate, deliberate and function effectively, as a cohesive group.

In addition to implementing qualifications, an ethics commission also should have a sufficient number of alternate members to step in should the need arise. Problems where alternate members are required might include the ability to establish a quorum, a conflict of interest, or the resignation or death of a member. The number of alternates should be sufficient in relation to the size of your commission. This particularly important in smaller communities, where everyone is a

“who’s who” and risks of having a member conflicted out are greatly increased. For example, a five-member board should have three alternates, a seven-member board should have four, and nine-member board should have five. Understandably, filling seats on any municipal boards is not always easy and depends greatly on the pool of willing volunteers. Although my recommendation is heavily weighted on the conservative side, you want to create a commission that suits the particular needs of your city.

#### **4. What is the Commission enforcing?**

While the obvious answer is “ethics,” more needs to be considered than the general basis for the ethics commission’s existence. Before creating and ultimately adopting an ethics commission, you need to have an adequate and enforceable ethics policy. An enforceable policy sets forth the required standards and principles of conduct for city officials and employees, and it must clearly and thoroughly explain an employee’s or official’s obligations.

Problems arise when a policy requires compliance with subjective moral components (as opposed to objective conduct or some other measurable components). Although such provisions might be included, the ability to enforce them will prove challenging. For instance, while ethics policies may be written in a very general sense, merely requiring acts of officials and employees to be “good,” “trustworthy,” and “instill public trust” such provisions will be particularly challenging to enforce when ethical conduct is not specified or prohibited. Moreover, members of the commission likely will have very different (and possibly subjective) opinions as to what does or does not comply with such general requirements. Moreover, while typical ethics policies provide sufficient notice of required conduct, there may be a few provisions that will require adjustments to enable proper enforcement. In other words, provisions of an ethics policy should clearly delineate between conduct that is compliant and conduct that is not. This not only informs officials and employees of their obligation but also assists the commission’s application of an ethics policy to alleged unethical conduct.

If your client is considering adopting or creating an ethics commission, it is good practice to review and analyze the existing ethics policy (if there is one) to see whether any of the provisions require adjustment to clear up ambiguity or to eliminate subjective components. Many times, ethics policies that were drafted without enforcement in mind likely need to be adjusted before an enforcement mechanism, like an ethics commission, is adopted. If your city has not adopted an ethics policy, this should take priority before the creation and adopting of an ethics commission charged with enforcing it.

#### **5. The Ethics Complaint**

An ethics complaint is the trigger that causes an ethics commission to act. Ethics complaints should always be in writing. At a minimum, the written complaint should include:

- A statement of the facts upon which it is based,
- provisions from the adopted ethics code or policy that allegedly were violated,
- The name of the individual who is the subject of the complaint, and
- The signature of the complainant.

Other requirements might include the complainant's mailing address, telephone number, e-mail address, list of witnesses, submission of evidence (i.e., documents, photos, videos, etc.) A city also might require the complaint to be made under oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. The ordinance may also include a prohibition on anonymous complaints.

It is highly recommended and even encouraged that your client develop and adopt a complaint form to be used in all instances. Merely requiring a written complaint, without more, creates too much uncertainty and likely would raise questions as to what actually qualifies as an ethics complaint (as opposed to merely airing a general grievance or frustration). The best and easiest way to avoid this problem is to create and adopt an official form that is mandatory for submissions. If a form is adopted, there no question as to whether the complainant who submits it actually intended to trigger a formal ethics investigation and resolution process.

## **6. Vetting Improper or Frivolous Complaints**

In a perfect world, authority would never be abused. But as you know, we are not living in a perfect world, and for that reason certain procedural safeguards are recommended when creating an ethics commission. One of the most frequently encountered problems that an ethics commissions will face involves the filing of frivolous complaints.

Frivolous complaints waste the public's time, money, and resources, and they typically are filed to do nothing more than annoy and harass the subject of the complaint. The frequency with which frivolous complaints are filed make it necessary for many municipal entities to use a vetting process, in attempts to ensure only valid complaints make their way before the commission. Moreover, and depending on the authorizing ordinance, an ethics commission might not have authority to consider complaints that do not allege violations of an ethics policy.

In developing a vetting process, it is important to remember that the scope of authority granted to a municipal ethics commission is limited by the authority contained in its governing ordinance or, in some cases, charter. The scope of authority determines whether the commission has can even examine specific allegations contained in a filed complaint. Generally, the scope of the commission's enforcement authority is limited to an adopted ethics policy or code, but can be expanded to suit your client's needs. In any case, a vetting process should be designed to remove incomplete complaints (complaints missing required information) and complaints which the ethics commission has no authority to investigate. A vetting process ensuring that a commission considers only valid complaints is highly recommended and should have a provision included in the establishing ordinance.

Typically, the vetting process is handled by the City Attorney, but it can be delegated to another city official. However, depending on the complexity of the adopted ethics policy that and ethics commission is charged with enforcing, the vetting process is best left with the City Attorney in most cases. The intent is to screen all complaints, sorting out the legitimate complaints from those that are not. A legitimate ethics complaint is one that alleges violations of an adopted ethics policy (as opposed to merely identifying perceptions of generally unethical conduct). The vetting process assumes the alleged facts are true and asks, if true, whether such facts violate a provision

of the adopted ethics policy? If the answer is yes, the complaint is then sent to the commission for a formal investigation of the complaint and assessing the credibility of any statements or testimony, and the validity of any evidence. If the answer is no, the complaint should be summarily dismissed. The vetting process prevents the commission from meeting, expending time and wasting resources on incomplete, improper, or frivolous complaints the body has no authority to investigate.

## **7. Due Process, Procedures, and Training**

For a commission to engage in any form of investigation or enforcement, procedures and protocols of investigation must provide the minimum requirements for due process. Municipal ethics commissions do not need to adhere to the stringent standards applicable to courts of law, but they must ensure at minimum that the individual subject to the complaint is provided notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

As you know, adequate notice depends on the circumstances involved, but generally needs to state why the notice is being given, what the commissions plans to do, how and when it may be done, and what action could deprive the subject of life, liberty, or property. The notice should also include a copy of the complaint as well. An opportunity to be heard refers to a hearing, which provides an individual an opportunity to appear before a court, a committee, a board, or a council to present evidence and argument before being deprived of life, liberty, or property. While the specifics of what ultimately will be required rests on the particular circumstances for your city, any process and procedures developed must account for these minimum requirements.

The creation of an ethics commission is not controlled by state law (other than the Texas Open Meetings Act). As a result, it can be created to suit your city's specific needs. Municipal ethics commissions have only the powers and duties authorized by their authorizing ordinance or in some cases, a city's charter. Other than assuring the minimum requirements for due process are met, the procedures for how an ethics commission implements its granted authority is completely up to the authorizing ordinance.

An ordinance creating an ethics commission should provide a framework that defines that extent of its authority. The ordinance also should provide some discretion to the commission itself. Allowing some level of discretion to an ethics commission increases the body's independence both in practice and appearance, in addition to giving its members a sense of autonomy and ownership. One way of doing this is to allow a commission to adopt their own internal procedures and protocols for conducting their meetings and investigating complaints. Though not required, it is highly recommended that such adoption occur via resolution, memorializing the procedures and the date on which they were adopted as "internal" procedures, and made available for public view.

Allowing a commission to adopt its own procedures gives the commission the ability to customize how it implements its authority, while also permitting adjustments to procedures and protocols without the need for involvement by city council. This authority will also bolster the commission's independence and credibility to those filing complaint and those who may be the subject of one. However, if you choose to empower an ethics commission to adopt its own procedures and protocols, be sure that any specific requirement that you, or your client, want to include is contained within the ordinance itself. Aspects that should be contained within a

commission's authorizing ordinance include but are not limited to: the scope of the commission's authority, requirements of the written complaint and notice to the individual made subject of the complaint (as covered above), qualifications for commission appointees, and just about anything else you believe needs to remain unaltered. If the commission is provided the authority to adopt their own procedures for conducting meeting and investigating complaints, make sure that the commission, as well as the council, understand that you, as the city attorney, must review and analyze them before they can be adopted and implemented.

Once procedures and protocols have been created (either by the authorizing ordinances or the commission itself), training on those procedures and protocols should be provided. Members of an ethics commission are tasked with a very difficult job, especially if they are authorized to assess penalties. Consequently, members need to be prepared and feel confident in the exercise of their authority. Walking the members from the receipt of a complaint, through investigation, and finally a determination in training mode will make the process of implementing their authority easier when the time comes.

## **8. Enforcement Authority**

In general, the primary purpose of an ethics commission is to enforce the provisions of an adopted ethics policy or code. For independent enforcement of an adopted ethics policy, a commission will need some enforcement mechanisms at its disposal. Typical enforcement mechanisms include civil fines, letters of admonishment, letters of reprimand, and even the power to order mandatory ethics training or compel compliance with specified provisions of an ethics policy. The type of enforcement mechanisms provided to an ethics commission is limited only by its authorizing ordinance, so think through what you want the commission to be empowered with when drafting the ordinance. By providing an ethics commission some level of independent enforcement authority, the ability to resolve ethics violations could be completely contained at the commission level versus requiring final determination by city council.

Should the commission's determinations and actions (i.e., assessment of penalties) find its way before a reviewing court, the standard of review would be derived from its authorizing ordinance, if specified. If no standard is specified, the commission determinations and actions likely would fall under the "substantial evidence rule," which is widely used for interpreting administrative decisions. Several variations of the substantial evidence rule exist, but in general, a court applying the rule looks only at the record made before the administrative body and determines if its findings are reasonably supported by substantial evidence. With that in mind, before any determination and action is made by the commission, the record should reflect any evidence the commission relied on in supporting such determination and action. However, if a different standard of review is desired, make sure it is clearly expressed in the ordinance.

## **9. Conflict Counsel**

Be prepared to advise your client that conflict counsel may be required if you (the city attorney) are implicated in a complaint, become a witness to actions on which a complaint is based, or if reasons arise wherein, you have determined a conflict of interest is present. Identifying the reason(s) why a conflict counsel is necessary is only half the battle; the other half requires you to



explain to your client (i.e., the city council and/or city manager) the need to retain outside counsel. This is an area where your client needs to understand that should conflict counsel be required, you, as the city attorney, will be unable to advise the commission or the city council on matters concerning or relating to the issue that caused the conflict. In many cases, it's a good idea to specify "automatic conflicts" within the authorizing ordinance. For example:

Should a conflict arise wherein the City Attorney cannot perform the duties required under this ordinance, an independent outside attorney, who does not otherwise represent the city, shall be appointed by the Mayor and shall have the same duties and authority as prescribed under this ordinance and shall be entitled to reasonable compensation as determined by the Mayor for the duties performed in the particular case. An automatic conflict exists when a complaint alleging a violation of the ethics code by the Mayor, a member of the City Council, City Attorney or an Assistant City Attorney; or when requested by the City Attorney due to a potential legal conflict of interest.

While any variation of the above provision is recommended, be sure that any provision included is appropriately tailored to your city.

A word of caution: The retention of a conflict counsel likely will bring increased expense, particularly when the conflict counsel hired is getting up to speed on the adopted ethics policy as well as process and procedures of the commission they are now advising. Informing your client ahead of time of the possibility that you may not be able to advise them on certain matters relating to the commission and that a conflict counsel will be required will at least "grease the wheels," in the event that the need for a conflict counsel arises.

#### **10. If you build it, they will come**

If you build it, they will come. And yes, while this isn't the correct quote from Kevin Costner's 1989 hit *Field of Dreams*, it does make the point that an ethics commission cannot be used if one is not created. For that reason, don't be surprised that once an ethics commission is created and adopted, it will be utilized out the gate. As you are well aware, citizens, employees, and officials tend to file complaints for all sorts of reasons. Thus, once an ethics commission is created, it easily can be abused if not set up correctly.

An ethics commission provides an avenue to resolve complaints of ethics violations, but to do so effectively, it must be structured to 1) be independent, in both appearance and practice, 2) avoid abuse, 3) protect and provide due process, and 4) hold individuals accountable for unethical actions.

# Example A – Ethics Complaint Form

## ETHICS COMPLAINT FORM

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*Please PRINT or TYPE all information requested on this form*

### PART A – COMPLAINANT INFORMATION (this identifies YOU as the Complainant)

Full Printed Name: \_\_\_\_\_  
LAST FIRST M.I. (optional)

Home Address: \_\_\_\_\_  
NUMBER STREET CITY ZIP

Alt. Address (opt.): \_\_\_\_\_  
NUMBER STREET CITY ZIP

Contact Phone Number (PRIMARY): \_\_\_\_\_ (OTHER): \_\_\_\_\_

### PART B – COMPLAINANT DECLARATION

I HEREBY DECLARE that I, \_\_\_\_\_, have a complaint against  
(Print Name)

the following person(s): \_\_\_\_\_  
(Print Name(s))

### *Provide Department and Title Information*

\_\_\_\_\_ Elected Official / Title: \_\_\_\_\_

\_\_\_\_\_ Appointed Official / Title: \_\_\_\_\_

\_\_\_\_\_ Candidate for Office / Office Sought: \_\_\_\_\_

\_\_\_\_\_ Employee / Department & Title: \_\_\_\_\_

#### **Person #1:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Knowledge:** \_\_\_\_\_

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**PART C – PERSONS WITH RELEVANT KNOWLEDGE OF THE ALLEGED VIOLATION**

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**Person #2:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Knowledge:** \_\_\_\_\_

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**Person #3:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Knowledge:** \_\_\_\_\_

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**PART D – DESCRIPTION OF COMPLAINT**

Provide a statement of the facts upon which your complaint is based. Describe the events in the order in which they occurred. Keep dates of the events in sequence. Include any witnesses present when the alleged violation(s) took place. Be factual; the information you provide in this statement must be based on facts and not on personal conjecture. Try to answer the questions, “who”, “what”, “where”, and “when”. Attach extra sheets if more space is required.

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**PART E – ETHICS ORDINANCE CODE VIOLATIONS**

List the sections and paragraphs of the Code of Ethics you believe to have been violated:

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**PART F – SOURCE OF EVIDENCE**

Identify sources of evidence, if any, you believe should be considered by the Ethics Commission and attach copies of any pertinent information you have to support your allegation(s).

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STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

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BEFORE ME, the undersigned authority, on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, personally appeared, \_\_\_\_\_, known to me to be the person whose name is subscribed hereto, and being duly sworn stated that he/she has personal knowledge:

“I certify that I have read this complaint, I fully understand its contents, and I declare under penalty of perjury under the laws of the State of Texas (Texas Penal Code § 37.02), that the foregoing statements and photocopies of attached documents are true and correct. I understand that a copy of this complaint will be sent to the Chair of the Ethics Commission and to the individual charged in this complaint and that all papers and communications relating to this complaint must be treated as confidential to the extent allowed by law.”

\_\_\_\_\_  
(SIGNATURE)

My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_. I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY SEAL

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Upon completion of ALL sections of this Complaint Form, hand-deliver or send by certified mail with any attachments to:

Office of the City Secretary  
[Address]

# Example B – Commission Procedures – General

Not for Use for Investigation or Hearings on Complaints

## ARTICLE I. GENERAL PROVISIONS

### **(A) Definitions**

1. *The Commission* shall mean the Ethics Commission of the City of \_\_\_\_\_, which is a commission established by the city council [ordinance or charter section]. The Commission may establish its own rules and procedures, but such are subject to change by City Council resolution or ordinance.
2. *City Secretary* shall mean the City Secretary of the City of \_\_\_\_\_.
3. *Chair* shall mean the chairman of the Commission \_\_\_\_\_.
4. *Officers of the Commission* shall mean the Chair, Vice-Chair and Secretary of the Commission.
5. *Presiding Officer* shall mean the officer or Commission member presiding over any meeting of the Commission. By default, the Presiding Officer shall be the Chair.
6. *Vice-Chair* shall mean the vice-chairman of the Commission.

### **(B) Purpose and Duties**

The Commission's primary functions are:

1. To execute its duties as articulated in [ordinance number];
2. To consider and recommend \_\_\_\_\_ to the City Council;  
and
3. [list all other duties, powers, etc.]

### **(C) Office and Custodian of Records**

1. The Commission designates City Hall, located at \_\_\_\_\_, \_\_\_\_\_, Texas [zip], as its office.
2. The Commission further designates the City Secretary as its custodian of records. All records of the Board shall be filed with the City Secretary. The Commission, through the assistance of the City Secretary, shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact

that a member is absent or fails to vote. The Commission shall keep records of its examinations and other official actions, which shall be stored in the Office of the City Secretary.

3. The Commission further designates \_\_\_\_\_ as its primary liaison with City administration.
4. The Commission designates the Chair of the Commission as the primary officer responsible for communications on behalf of the Commission and interaction with City administration.

## **ARTICLE II. MEMBERSHIP**

- (A) The Commission is composed of [number] members who are \_\_\_\_\_ [i.e. voters, property owners, citizens, etc.] and may be appointed by the city council. The city council may also appoint three alternate members who shall serve in the absence of one or more regular members. Each member serves as the will of the city council unless otherwise mandated by state law
- (B) Commission members are appointed for a term of \_\_\_\_\_ year(s). The terms are not triggered by appointment but run continuously. Any member who is not appointed at the expiration of a term is deemed appointed to fill an unexpired term.
- (C) A vacancy on the Commission shall be filled for the unexpired term. The date on which a new member is appointed to serve on the Commission shall not extend nor reduce the duration of the term. The new member appointed shall serve until the remainder of the term is complete.

## **ARTICLE III. OFFICERS**

- (A) The officers of the Commission shall consist of a chair, vice-chair, and secretary as well as any other officers that are deemed necessary to the operation of the Board. Each officer position is for a term of one year. Elections for officer positions are to be held annually for officer positions, even if the positions were filled due to vacancy at a time prior to the annual election. Vacancies for officer positions shall be filled by an election from the Commission membership by the Commission.
- (B) The election of officers shall occur by the Commission membership by majority vote.
- (C) The Chair shall serve as the Presiding Officer during all Board meetings at which the Chair is present. Should the Chair be unable or unwilling to serve at any particular time, the Vice-Chair shall be the Presiding Officer and shall assume all duties of the Chair during the time the Chair is unable or unwilling to perform his/her duties.

(D) While not an officer of the Commission, the City Attorney shall act as the Commission's attorney by default. Should a conflict of interest arise, the City Attorney shall be recused from representing the Commission for the matter which caused the conflict.

#### ARTICLE IV. PROCEDURES

(A) **Meetings:** In general, the Commission shall follow the procedures below. Such procedures are subject to policies and ordinances adopted by the City Council by resolution or ordinance and the Texas Open Meetings Act. In the absence of an express procedure, the Presiding Officer is responsible for the orderly progression of any meeting. Meetings of the Commission are held at the call of the Presiding Officer and at other times as determined by the Commission. The Presiding Officer or acting presiding officer may administer oaths and compel the attendance of witnesses at any meeting.

1. *Call to Order.* Call the meeting to order.
2. *Roll Call.* Acknowledge the presence of members in the room for the purposes of quorum. However, for purposes of any cases before the Commission seeking action, each case must be heard by at least four members of the Commission.
3. *Citizens to be Heard.* If applicable.
4. *Business.* The Commission shall hear any new or old business as designated by the Agenda and the Presiding Officer. It is within the Presiding Officer's discretion to allow presentations of agenda items by applicants before a motion is made.
5. *A Motion.* A motion must be made for each agenda item that is to be discussed. For example, "Motion to approve (or deny) [item as stated on the posted agenda]."
6. *Second to Motion.* A second to the motion must be made before discussion can occur on an agenda item. Seconding an item does not mean the member offering the second agrees with the motion. The second is an acknowledgement the motion should be discussed. If no second is made within a reasonable time of the motion as determined by the Presiding Officer, the motion will not be discussed.
7. *Discussion.* Members may discuss the motion on an agenda item once seconded. Discussion and deliberation are considered one-in-the-same for purposes of these rules.
8. *Call for Vote.* Once a motion has been made, seconded and the opportunity for discussion has passed any member of the Commission may call for a vote on the motion. The Presiding Officer shall restate the motion and call for a vote of the members on the motion. The Commission members shall vote on the motion. Whether the motion passes or fails depends on the number of affirmative votes under state law and City ordinance. Absent a state law or City ordinance



addressing the vote, a motion is deemed passed by an affirmative vote of a majority of those members present and voting on the motion.

9. *Adjournment.* Once no other business is present for a particular meeting, the Chair will adjourn the meeting and state the time for the record. No motion or second is necessary for adjournment. If business is still present from the agenda, any Commission member may still move to adjourn at any time, which would require a second and majority vote to pass.

### **(B) Special Hearings by Application**

1. As the majority of the Commission functions are reactions to requests made by either an applicant or a member of the City staff, the Commission is not expected to meet on a regular basis. The Commission shall meet as needed based on the proper submission of a request.
2. If a person seeks action or a decision from the Commission, the person may fill out the proper application and file it with the City Secretary's Office.
3. An application is only considered filed if complete and the filing fee has been paid, if any.
4. The Commission may hear any application authorized by law within its jurisdiction.
5. The Commission's authority to act upon an application shall be subject to federal, state, and local regulations.
6. Upon any decision of the Commission regarding an application the [Chair or designated city official] shall reduce the decision of the Commission to writing and provide a copy to the applicant. A copy must also be placed in the Commission's offices, by and through the Office of the City Secretary. Upon request by the Chair, the [City Manager] may assume the duty of reducing the decision to writing and providing all necessary copies to the appropriate persons. The individual facts and thought process considered for any decision are different per Commission member. When a body, especially a governmental body, makes a decision based on a collective vote, each individual member may have their own reasons and facts supporting their vote. The Chair is not required to list the grounds or reason for any particular decision. The Chair is only required to reduce to writing the final decision result, based on the motion made at the meeting.

**(C) Appeals to the Board [if applicable]**

1. Appeals to the Commission may be made by any person aggrieved or affected by a decision of [list official or authority for appeal].
2. Such appeal must be filed within a reasonable time by filing with the official from whom the appeal is taken and with the Commission, a notice of appeal specifying the grounds thereof, and by paying a filing fee as required by City policy. Unless otherwise defined by state law, in typical situations, a reasonable time to file an appeal does not exceed fifteen (15) calendar days from the date of the official's decision.
3. Upon the filing of a completed application and payment of the filing fee, the City Secretary shall transmit to the Chair, the [City Manager or other designated liaison] and the official whose actions are being appealed a copy of the appeal. Upon receipt of the notice of appeal, the administrative official whose actions are the subject of the appeal shall forthwith transmit to the Commission, by and through the City Secretary's Office, all the papers constituting the record upon which the action appealed from was taken.
4. The Commission shall fix a reasonable time for the hearing of the appeal, giving public notice thereof as well as due notice to the parties in interest, and decide the case within a reasonable time.
5. Upon the hearing any party may appear in person or by agent or by attorney.
6. The Commission reviews an appeal based on state and local laws. The Commission may reverse or affirm, in whole or in part, or modify the decision from which an appeal is taken. The Commission may also make the correct order, requirement, decision, or determination, and for that purpose only the Commission has the same authority as the administrative official.
7. Upon the Commission's decision, the Chair shall reduce the decision of the Commission to writing and provide a copy to the appellant. A copy must also be placed in the Board's offices, by and through the Office of the City Secretary. Upon request by the Chair, the [City Manager] may assume the duty of reducing the decision to writing and providing all necessary copies to the appropriate persons.
8. The City Secretary shall then forward the Commission's decision to the appellant.

**(D) Judicial Review [if applicable]**

1. Persons and entities authorized by state law may appeal a decision of the Commission to a court of competent jurisdiction.
2. [Or state no appeal is permitted and the decision of the board is final.]

## ARTICLE V. AGENDA

1. Agenda items must be submitted in writing to the City Secretary by an authorized individual no later than forty-eight (48) hours prior to the required seventy-two (72) hour posting deadline for an agenda. This equates to a deadline of at least five (5) calendar days prior to a meeting.
2. *Commission Members.* Any Commission member can place an item on the agenda for a meeting which has already been scheduled. An item for the agenda must be submitted to the City Secretary in writing by the Commission member within the required time period. Items may be submitted by electronic or paper form. The member seeking to add the item must include a clear description of the item, the member's name, and contact information of the member. Commission members may place items only upon an agenda for a meeting which has already been called by the Chair. Commission members cannot call special meetings by requesting agenda items. Only the Chair or [City Manager or designated City official] may call a special meeting.
3. *City Staff.* The [City Manager or other designated City official] can place an item on an agenda by submitting the item to the City Secretary and copying the Chair. Such agenda items may be submitted by electronic or paper form. If the requested item will impact or involve multiple departments, those department heads may be consulted. A report must be attached with a clear description of the item and supporting documents.
4. *Citizens and Interested Parties.* Citizens and other interested parties are not permitted to place items on an agenda but may request items be placed by submitting an application for [state application ordinance] or an appeal. Such application or appeal must be complete, submit to the City Secretary, and a filing fee must be paid as listed in the City's policies or ordinances. The application or appeal must include a clear description of the action requested of the Commission. In order for the request to be considered, the citizen or interested party must state their full name, phone number, and mailing address. If the applicant has an email address, such must also be provided in the application.
5. *No Contact.* Once a request has been filed, applicants cannot directly contact any Commission members regarding the application. Directly contacting Commission members can be grounds for denial of the application in violation of these rules or may be penalized as authorized by City ordinance.

## Example C - Ethics Commission Procedures for Violation Hearing

Section \_\_\_\_\_ – Procedures for Violation Hearing by the City of \_\_\_\_\_ Ethics Commission

A. **Definitions:** For purposes of a meeting to determine if a violation of the City’s Ethics Code has occurred, the following definitions of words and phrases controls.

1. *Complainant* shall mean a person who has filed an official complaint against a public employee, officer, or official of the City of \_\_\_\_\_. While an official complaint is not necessary for the Ethics Commission to investigate a concern the Ethics Code has been violated, when a complaint has been filed, the filer shall be known as the Complainant.
2. *Ethics Code* shall mean [cite code or ordinance numbers]
3. *Ethics Commission* shall mean the Ethics Commission of the City of \_\_\_\_\_ created by [cite ordinance or charter provision].
4. *Ethics Compliance Officer* shall mean an individual designated by the [City Manager or City Council] to examine any complaints filed against a City employee or official. Unless stated otherwise in this procedure, the City Attorney shall be the Ethics Compliance Officer. If the Respondent to a complaint is a member of the City Council the City Attorney may not act as the Ethics Compliance Officer. The [City Attorney] shall appoint an outside independent attorney to assume the role of the Ethics Compliance Officer for the complaint. If the appointment of an outside independent attorney is required, such appointed attorney shall be an attorney or law firm which is not employed by the City and does not have any active representation of the City in order to promote neutrality in the process and a disinterested compliance officer. The [City Attorney or Council] shall ensure the outside independent attorney has sufficient qualifications and experience in municipal or ethics matters to fulfill the obligations of the role.
5. *Presiding Officer* shall mean the officer charged with presiding over a hearing of the Commission. Unless disqualified by the Charter or other law from acting as the presiding officer, the Chair shall be the presiding officer at all hearings to determine if a violation of the Ethics Code has occurred. If the Chair is unwilling or unable to act as Presiding Officer, the Vice-Chair shall act as the Presiding Officer. If no Vice-Chair is appointed or if the appointed Vice-Chair is unable or unwilling to act as Presiding Officer, then the Commission member with the most continuous seniority on the Commission who is able to deliberate, and vote shall be the Presiding Officer.

6. *Public Official* shall mean a public officer of the City as defined by state law or an individual appointed by the City Council to hold a specific position, including a position on a City board, commission or committee. An individual may be an employee, or public official or both, depending on the position held. However, for purposes of this section, the municipal court judge shall not be considered a public official or employee.
  
7. *Respondent* shall mean a public employee, officer, or official of the City of \_\_\_\_\_ who is the subject of any investigation, disciplinary or referral consideration. The term includes anyone the subject of any charges being investigated by the Ethics Commission.

**B. General Process:**

1. All hearings to determine if a violation of the City's Ethics Code has occurred shall be special meetings of the Commission.
2. The Ethics Commission shall have the power to utilize a violation hearing to inquire into the official conduct of any department, agency, appointed boards, office, officers, employees or appointed board members of the City for alleged or suspected violations of the City's Ethics Code. Such includes the actions of any member of the City Council, including the Mayor.
3. A member of the Ethics Commission who is a Complainant or Respondent shall not sit at the dais and shall not participate in deliberation or vote. However, such restrictions do not prevent the Complainant or Respondent from counting towards a quorum or in placing items on an agenda.
4. No public comment shall be allowed during a violation hearing, unless agreed upon by a majority vote of the Commission during the hearing or required by City charter or ordinance.

**C. Protocols for Conducting a Violation Hearing**

1. **Order.** Call the meeting to order.
2. **Roll Call.** Acknowledge the presence of quorum.
3. **No Citizen Comments:** No citizen comments or citizens to be heard is permitted unless agreed upon by a majority vote of the Commission during the hearing.
4. **Executive Session:** If executive session is necessary, those members of the City Council permitted to deliberate and vote shall convene into executive session pursuant to the Texas Open Meetings Act.
5. **Open Session:** Read the agenda item for a violation hearing which identifies the charges or investigation against the Respondent(s).
6. **Call for Presentation of Charges:** For the first hearing held where charges have been filed or where they will be considered, the Presiding Officer shall call the Ethics Compliance Officer to publicly read a summary of the charges against each Respondent. If more than

one hearing is held regarding the charges, subsequent meetings are not required to read the charges.

7. **Presentation of Investigation Results:** If any investigation has occurred prior to the Ethics Commission convening a violation hearing, the Ethics Compliance Officer shall present such investigation to the Ethics Commission along with evidence collected. This shall be a summary of the factual findings, unresolved factual questions, and reference to the evidence provided to the Commission regarding the read charges. At least fourteen (14) calendar days prior to the holding of a violation hearing where charges will be considered against a Respondent, the Respondent shall be entitled to a copy of any documentary evidence which is anticipated to be presented to the Commission during a violation hearing which is not protected by the attorney / client privilege.
8. **Presentation by Complainants:** If any Complainants exist and wish to speak to the Commission about their complaints, such Complainants shall be given an opportunity to present a sworn statement at the violation hearing. Such statement may be written or provided orally to the City Council while under oath. Each Complainant must be put under oath and sworn before submitting any statement or evidence during the hearing. Oaths may be administered by the City Secretary or any person authorized to administer oaths in Texas. The Commission question any Complainant about their Complaint during this presentation.
9. **Presentation by Called Witnesses:** At the Ethics Commission's discretion, it may call any witnesses it wishes by majority vote of the members of the Commission present and voting. Such witnesses must be put under oath in order to provide information or evidence at the hearing.
10. **Presentation by Respondent:** The Respondent shall be given an opportunity to respond to the charges and present any relevant evidence including testimony from individuals on his / her behalf
  - a. **[Option 1]** However, the Respondent may not ask any witness questions. Only the members of the Commission may ask witnesses questions. The Respondent may only present information and evidence at the hearing if the Respondent is placed under oath. All witnesses called by Respondent must be placed under oath. Only the members of the Ethics Commission may ask any witness questions or to provide any evidence it determines is necessary. [Only use if utilized by a legislative body considering the membership of the legislative body. i.e. City Council.]
  - b. **[Option 2]** The Respondent may cross-examine any witnesses presented who give testimony against the Respondent. However, any member of the Commission may call any cross-examination questions out of order if such questions are abusive, harassing, badgering, or designed to provide false impression to the Commission. The Presiding Officer has the final say as to any calls to order.
11. **Commission Inquiry:** The members of the Ethics Commission may, by majority vote of those members present and voting, recall any witness or inquire of any person or compel the production of any documents or evidence they determine are necessary for the investigation or to make a determination on any charges. Nothing precludes the members

of the Ethics Commission from continuing to seek information, evidence, and testimony, even after the Respondent has provided his / her testimony.

12. **Compelling Documentation:** For the purpose of investigations and hearings, the members of the Ethics Commission, by majority vote of those present and voting, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and other evidence material to the inquiry.
13. **Deliberation/Motion on Complaints:** Any member of the Commission may make a motion to consider the merits of any investigation, charges, disciplinary action or referral action. However, such motion may not be made until after the Respondent has been provided notice and an opportunity to be heard regarding the charges, disciplinary action or referral action.
  - a. If the members of the Ethics Commission determine the Respondent violated the Ethics Code, they may make a motion to impose a sanction or other penalty authorized by law.
  - b. If the Ethics Commission determines the Respondent did not commit the acts alleged or that such acts do not constitute a violation of the City's Ethics Code, they can move to dismiss the charges or cease any investigation.
14. **Motion on Penalty:** If, and only if, the Ethics Commission determine, by affirmative vote of those members present and voting, that a violation of the City's Ethics Code has occurred the Commission may impose a penalty. Penalties imposed must be voted on separately from the determination of whether a Respondent committed a violation. Penalties available to the members permitted to vote include:
  - a. [List any penalties authorized by ordinance or charter;
  - b. To impose a penalty, including but not limited to:
    - i. Letter of Reprimand;
    - ii. Censure;
    - iii. Impose restrictions designed to prevent future violations;
    - iv. Impose training;
  - c. To direct further investigation necessary to determine an appropriate penalty, such as research into available trainings or other third-party options.
15. **Adjournment.** Once all matters are resolved by the Commission it must adjourn.

**Penalties As To Witnesses and Records:** In addition to the penalties which may be imposed upon a Respondent found to have violated the City's Ethics Code, the Ethics Commission may also impose a penalty upon any person, including Complainant, Respondent, witness, citizen, corporation, or other entity, which the Commission finds failed to properly and fully respond to its subpoena to appear, provide testimony or produce documentation. It may also impose a penalty upon anyone found to be disrupting the violation hearing after such person has received a warning regarding the disruption and persisted with any disruptive behavior. The Commission may refer any criminal charges to the state's attorney. The Commission may impose a civil penalty [If authorized by ordinance] for contempt or disruption after notifying the person charged with contempt or disruption of the charge and allowing them the opportunity to respond at a separate hearing.