

DIVISION 2. - ETHICS COMMISSION

Sec. 2-320. - Establishment.

An ethics commission is created and shall consist of nine (9) members. The city council shall solicit nominations for the ethics commission from a wide variety of professional and community organizations in the city. Interested individuals may also submit their names for consideration. Members of the commission may not hold or be a candidate for any city elected or appointed office. The city council shall appoint the members of the ethics commission by a two-thirds (2/3) vote of the full council.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-321. - Terms.

Members shall hold office for three-year terms commencing October 1. In order to establish staggered terms, however, the initial terms of three (3) members shall be one year, and the initial terms of another three (3) members shall be two (2) years. The persons serving such shorter terms shall be determined by lot. No holding over is permitted except as expressly provided in this code of ethics.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-322. - Removal.

In addition to the council's usual powers of removal, members of the commission may be removed by a majority of the council for cause. In considering a complaint filed with the city secretary or on its own initiative, the council may follow the procedures hereinafter set forth regarding the disposition of such alleged violations.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-323. - Vacancies.

All vacancies shall be filled for the unexpired terms. A member shall hold office until his successor has been appointed, and shall continue to hold office after his successor has been appointed for the limited purpose of disposition of all complaints filed and for which presentation of evidence was commenced during that member's term.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-324. - Chairperson; quorum.

The commission shall elect a chairperson and a vice-chairperson. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position. The officers of the commission shall serve one-year terms. A majority of the members of the commission shall constitute a quorum.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-325. - Meetings.

The commission shall have such meetings as may be necessary to fulfill its responsibilities. The chairperson or any three (3) members may call a meeting provided that reasonable notice is given to each member.

The commission shall meet at least once a year. The date of the annual meeting shall be in September as set by the commission.

The commission shall comply with the Texas Open Meetings Act.

(Ord. No. 20781, § 1, 9-19-1989; Ord. No. 23460, § 1, 10-13-1998; Ord. No. 24614, § 1, 10-9-2001)

Sec. 2-326. - Duties.

- (a) The commission shall, in addition to its other duties:
- (1) Review all proposed changes to this ordinance and make recommendations to city council before being placed on a city council agenda for action.
 - (2) Prepare and publish pamphlets and other materials explaining the duties of individuals subject to the code of ethics. Such materials shall include instructions to the public about how to obtain information such as financial disclosures, campaign reports, and the like from the city.
 - (3) Review all statements and reports filed with the city.
 - (4) Annually review the code of ethics and make appropriate recommendations to the city council after conducting a public hearing on any such recommendations.
 - (5) Review all public opinions related to the code of ethics that are issued by the city attorney.
 - (6) Prepare and disseminate a report listing all campaign contributions and expenditures for each candidate within thirty (30) days following the deadline for filing the last campaign finance reports for each city council election. For the purposes of this provision, a general election and run-off election shall be considered as a single city council election.
- (b) The commission may:
- (1) Adopt rules of procedure for the conduct of its business and to carry out the provisions of the code of ethics, consistent with the code of ethics and other applicable law.
 - (2) Prepare reports and studies to advance the purposes of the code of ethics.
 - (3) Request the city council and city manager to provide such assistance as it may require in the discharge of his duties.

(Ord. No. 20781, § 1, 9-19-1989; Ord. No. 028271, § 4, 8-18-2009)

Sec. 2-327. - Staffing.

The commission shall be assigned staff by the city attorney to assist in its duties. The commission shall also designate independent legal counsel, and when complaints are filed, such independent legal counsel may be utilized to advise the commission and participate in hearings.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-328. - Legal opinions and services.

- (a) Any council member, employee or board member may submit a written request to the city manager for an opinion concerning the meaning or effect of any section, word or requirement of the code of ethics as it affects such official, employee or board member. The city manager shall submit such request to the city attorney, who will promptly issue a written opinion to the city manager. Such opinion shall be filed with the city secretary with a copy to the requesting person shall constitute an authoritative determination of the meaning of this article, until amended by the council.
- (b) If a complaint is filed with the ethics commission about any specific action, omission or alleged conflict of interest by the charged person which has been the subject, in whole or in part, of a city attorney's opinion, the independent legal counsel shall act as the commission's attorney on said complaint.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-329. - Jurisdiction of commission.

The ethics commission shall have jurisdiction of complaints involving any "city official" which includes the mayor and members of the city council, city manager, deputy and assistant city managers, city secretary, city attorney, department heads, and municipal court judges (including substitute judges), and all members of any board, commission or committee of the city, including the board of any corporation created by the city.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-330. - Complaints.

- (a) A sworn complaint alleging violation of the code of ethics shall specify the provisions of the rules of conduct alleged to have been violated and facts alleged to constitute the violation.
- (b) Upon the sworn complaint of any one (1) person filed with the city secretary's office, the commission shall consider possible violations of the code of ethics by city officials and board members and former city officials and board members other than members of this commission. In addition, the commission shall consider such possible violations when referred to it as a complaint by majority vote of all council members holding office and qualified to vote thereon. The council may direct the city attorney to draft such referred complaint, which shall be reviewed as other complaints hereunder. The council members voting for the complaint shall sign the complaint.
- (c) A complaint alleging a violation must be filed with the city secretary within six (6) months from the date the complainants knew or should have known of the action alleged as a violation, and not afterward.
- (d) Not later than three (3) working days after the city secretary receives a sworn complaint, he or she shall acknowledge receipt to the complainants, and provide a copy to the city attorney, the commission and the person complained against. Not later than thirty (30) days after receipt of a complaint by the city secretary, the commission shall notify in writing the persons who made the complaint and the person complained against whether it intends to schedule a hearing or take other action concerning the complaint. The person complained against shall have ten (10) days to submit a written response to the complaint prior to the commission deciding whether to hold a hearing. The complainants shall have one opportunity within fifteen (15) days of any denial of their original complaint by the commission to amend their complaint and refile the same with the commission.
- (e) If the commission determines such party's complaint or defense was groundless, legal fees incurred by the complainants, the commission, and the party complained against, in an amount determined reasonable by the commission may be awarded against the unsuccessful party. "Groundless" means (1) without basis or fact, or (2) not warranted by law or reasonably arguable interpretation thereof. The complainants shall not be liable for such fees if the commission has determined grounds exist for a hearing.

(Ord. No. 20781, § 1, 9-19-1989; Ord. No. 20896, § 1, 3-27-1990; Ord. No. 23772, § 4, 9-21-1999; Ord. No. 029428, § 1, 3-27-2012)

Sec. 2-331. - Ex parte communications.

After a complaint has been filed and during the pendency of a complaint before the commission, a member of the commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the commission.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-332. - Hearing.

- (a) The hearing shall be held as expeditiously as possible following the determination by the commission to conduct a hearing on a particular matter. The commission may grant two (2) postponements, not to exceed fifteen (15) days each, upon the request of the person complained against; provided, however, the commission may also delay commencement of a hearing for good cause such as a hurricane or unavailability of a material witness.

- (b) The issue at hearing shall be whether the violation alleged in the complaint occurred. The commission shall make its determination based on the preponderance of credible evidence in the record. All witnesses shall testify under oath. Strict rules of evidence shall not be required; however, the commission shall require that all evidence be of such quality that persons customarily rely on in the conduct of serious affairs. If the commission determines that a violation has occurred, it shall state its findings in writing, shall identify the particular provisions which have been violated, and within five (5) working days shall deliver a copy of the findings to the complainants, the person complained against, and the city secretary.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-333. - Oaths.

If a complaint proceeds to hearing, the commission may subpoena witnesses to attend and testify, administer oaths, take evidence and subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise its powers, including its duties and powers of investigation.

(Ord. No. 20781, § 1, 9-19-1989)

Sec. 2-334. - Sanctions.

- (a) If the commission determines that a violation occurred, it shall proceed directly to determine its recommendation of appropriate sanctions. The affirmative vote of a majority of the members holding office and qualified to vote shall be required for the determination that a violation has occurred and the recommendation any sanction under this code of ethics. The commission may receive additional testimony or statements before considering sanctions, but is not required to do so.
- (b) If the commission determines that a violation has occurred, it may recommend the following:
 - (1) Against a council member or against a board member or city official appointed or confirmed by the council, reprimand, temporary suspension, removal or any other sanction or corrective action within the power of the city council, or recall by the citizens.
 - (2) Against a city official other than those in (1), that appropriate action be taken, as deemed necessary by the city manager.
- (c) In determining its recommendation, the commission shall consider the seriousness of the violation, the importance of deterrence, the impact on public confidence in government, the violations' repeated or isolated nature, the mental state with which the violation was committed, and the prior record of the person complained against. The recommendation shall be reduced to writing and transmitted to the supervisory authority and to the person complained against.
- (d) If the commission finds that conduct occurred which, if willful, would violate the rules of conduct, but the commission cannot determine that the conduct was a willful violation because of ambiguity as to the meaning of the standard of conduct involved, the commission will recommend no sanction, but will issue a clarifying interpretation to guide future cases.
- (e) Nothing in the code of ethics shall change or affect the civil service, at will, or other status of any employee, city official, or board member as established by the City Charter and ordinances.
- (f) The city council or supervisory authority shall consider the recommendation of the commission, but will exercise its own judgment and discretion in determining what action, if any, to take.
- (g) If the commission determines that a violation of any criminal law has occurred, it shall deliver a copy of its findings to the complainants, the person complained against, and the city attorney, recommending whether prosecution should be initiated or setting forth requirements to be complied with in order that voluntary compliance requirements may be had. Said findings shall also be delivered to the county attorney or district attorney, if a violation may be within their jurisdiction.

(Ord. No. 20781, § 1, 9-19-1989)

Secs. 2-335—2-339. - Reserved.