

# DUTIES OF ETHICS REVIEW BOARD AND PROCEDURES FOR FILING COMPLAINTS

## **I. DUTIES OF ETHICS REVIEW BOARD:**

### **A. Jurisdiction**

(a) *Jurisdiction.* The ethics review board shall have jurisdiction to investigate and make findings and recommendations concerning:

- (1) Any alleged violation of this Ordinance;
- (2) Any alleged violation of the City Charter;
- (3) Any alleged violation of Texas Local Government Code Chapter 171;
- (4) Any alleged violation of Texas Local Government Code Chapter 176;
- (5) Any alleged violation of Texas Penal Codes Section 36.02, 36.03, 36.07, 36.08, 39.02 AND 39.06; and
- (6) Any alleged violation of Texas Government Code Chapter 553
- (7) Any alleged violation of the City Code of Ordinances

The board shall not consider any alleged violation that occurred more than two (2) years prior to the date of the filing of the complaint or more than two (2) years after the complainant discovered or should have discovered the alleged violation.

(b) *Termination of city official or employee's duties.* The termination of a city official's or employee's duties does not affect the jurisdiction of the ethics review board with respect to alleged violations occurring prior to the termination of official duties.

(c) *Powers.* The ethics review board has power to:

- (1) Establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with this Ordinance;
- (2) Meet as often as necessary to fulfill its responsibilities;

- (3) Designate ethics panels with the power to render decisions on complaints or issue advisory opinions on behalf of the board;
- (4) Request from the city manager through the city council the appointment of such staff as is necessary to carry out its duties;
- (5) Review, index, maintain on file, and dispose of sworn complaints;
- (6) Make notifications, extend deadlines, and conduct investigations;
- (7) Render, index, and maintain on file advisory opinions;
- (8) Provide assistance to the ethics compliance officer of the city in the training and education of city officials and employees with respect to their ethical responsibilities;
- (9) Prepare an annual report and recommend to the mayor and city council needed changes in ethical standards or procedures; and
- (10) Take such other action as is necessary to perform its duties under this Ordinance.

## **B. Hearings.**

At any hearing held by the ethics commission during the investigation or disposition of a complaint, the following rules apply:

- (a) *General rules.* At least three (3) members (a quorum) of the commission must be present for the hearing. Any member of the commission who is not present may not participate in the disposition of the case. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the commission. The commission is not bound by the state rules of evidence and may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless a majority of the commission or the entirety of the quorum so finds by a preponderance of the evidence. If a unanimous decision cannot be made during a hearing attended by only a quorum, the hearing shall be reset until the full ethics review board en banc is convened.
- (b) *Person charged.* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the ethics

panel. Witnesses may not be presented by the person charged, except with the permission of the ethics panel.

- (c) *Complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the ethics panel. Witnesses may not be presented by the complainant, except with the permission of the ethics panel.

### **C. Disposition.**

- (a) *Written opinion.* The ethics commission shall make all reasonable efforts to issue a decision within sixty (60) days after the filing of a complaint. This deadline shall be extended by any amount of time granted to a respondent pursuant to a respondent's request for additional time to respond or to attend proceedings. The ethics panel shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:

(1) Dismiss the complaint; or

(2) Upon finding that there has been a violation of the ethics laws:

a. Make a recommendation of further investigations, criminal prosecution and/or civil remedies to the City Council, the City Manager or the City Attorney; or

b. State why no remedial action is recommended.

If the ethics panel determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion.

(b) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint, the ethics compliance officer, and any member of the ethics review board who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the city secretary, who shall make it available as authorized by law.

(c) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the ethics review board shall not entertain any other similar complaint based on substantially the same evidence.

(d) *Factors relevant to sanctions.* In deciding whether to recommend, in the case of a violation of the ethics law, criminal prosecution and/or civil remedies, the ethics panel shall take into account relevant considerations, including but not limited to the following:

- (1) The culpability of the person charged in the complaint;
- (2) The harm to public or private interests resulting from the violation;
- (3) The necessity of preserving public confidence in the conduct of local government;
- (4) Whether there is evidence of a pattern of disregard for ethical obligations; and
- (5) Whether remedial action has been taken that will mitigate the adverse effect of the ethical violation.

(e) *Civil remedies.* The following civil remedies may be recommended by an ethics panel which finds that the ethics laws have been violated:

- (1) Review of the case by the city manager, or his or her designate, for disciplinary action;
- (2) A suit by the city for damages or injunctive relief;
- (3) Disqualification from contracting;
- (4) Voiding of a contract; and
- (5) A fine.

## **D. Annual Report**

The ethics review board shall prepare and submit an annual report to the mayor and city council detailing the activities of the board during the prior year. The format for the report shall be designed to maximize public and private understanding of the board's operations and shall include a summary of the content of ethics opinions issued by the board and a listing of current city lobbyists based on information gathered by the board from records on file with the city secretary. The report may recommend changes to the text or administration of this Ordinance. The ethics compliance officer of the city shall take reasonable steps to ensure wide dissemination and availability of the annual report of the ethics review board.

## II. PROCEDURES FOR FILING COMPLAINTS:

- (a) *Filing.* Any person (including a member of the ethics review board or its staff, acting personally or on behalf of the board) who believes that there has been a violation of the ethics laws may file a sworn complaint with the city secretary. The complaint shall:
- (1) Identify the person or persons who allegedly committed the violation;
  - (2) Provide a statement of the facts on which the complaint is based; and
  - (3) To the extent possible, identify the rule or rules allegedly violated.

The complainant may also recommend other sources of evidence that the ethics review board should consider and may request a hearing.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the ethics review board, is subject to criminal prosecution for perjury or civil liability for the sort of abuse of process.

- (b) *Confidentiality.* No city official or employee shall reveal information relating to the filing or processing of a complaint except as required for the performance of official duties. Ex parte communications by members of the ethics review board are prohibited by this Article subsection 3(f). All papers relating to a pending complaint are confidential, including the identity of the complainant.
- (c) *Notification.* A copy of a complaint shall be promptly forwarded by the city secretary to the ethics compliance officer and to the person charged in the complaint. The person charged in the complaint shall also be provided with a copy of the ethics rules and shall be informed that:
- (1) Within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the city secretary;
  - (2) Failure to file a response does not preclude the ethics review board from adjudicating the complaint;
  - (3) A copy of any response filed by the person charged in the complaint will be provided by the city secretary to the complainant, who may within seven (7) days respond by a sworn writing filed with the city secretary, a copy of which shall be provided by the city secretary to the person charged in the complaint;
  - (4) The person charged in the complaint may request a hearing; and

- (5) City officials and employees have a duty to cooperate with the ethics review board.
- (d) *Assistance.* The city secretary shall provide information to persons who inquire about the process for filing a complaint.