

DIVISION 3. - CODE OF ETHICS^[3]

Footnotes:

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Editor's note— The editor has, at his own discretion, treated Ord. No. 97-63, § 2, as amending the Code by repealing Div. 3, §§ 2-49—2-60, and adding a new Div. 3, §§ 2-49—2-70, as herein set out. Former Div. 3 pertained to similar subject matter, and derived from the Code of 1960, §§ 2-23—2-30, and Ord. No. 84-17, adopted March 22, 1984; Ord. No. 94-38, adopted July 14, 1994; Ord. No. 94-65, adopted October 13, 1994; Ord. No. 95-49, adopted August 10, 1995; and Ord. No. 96-94, adopted October 24, 1996.

Charter reference— Personal interests in city contracts, Art. XIV, § 2; malfeasance in office, Art. XIV, § 4.

State Law reference— State code of ethics, V.T.C.A., Gov. Code Ch. 572.

Sec. 2-49. - Short title and scope.

The provisions of this division shall be known as the "Code of Ethics," and shall govern the conduct of all public officials and employees in the discharge of their official duties with the city. Public officials and employees of the city shall comply with applicable provisions of the laws of the state and the city Charter regulating the conduct of public officials and employees. It is not the intent of the city council in adopting the code of ethics that violations thereof are subject to criminal penalties.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 05-052, § 2, 9-8-05)

Sec. 2-50. - Declaration of policy.

It is hereby declared to be the policy of the city that the proper operation of democratic government requires that public officials and employees be independent, impartial, responsible and accountable to the people of the city; that governmental decisions and policy should be made in accordance with the city Charter; that no public official or employee should have any interest, financial or otherwise direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature that is in conflict with the proper discharge of duties in the public interest; that public office and public employment are positions of public trust imposing the duty of a fiduciary upon all employees and officeholders, who are not to use their public position for personal gain. Further, public officials and employees are bound to discharge faithfully the duties of their offices regardless of personal considerations, recognizing that the public interest must be their primary concern.

To implement such a policy, the city council deems it advisable to enact this code of ethics for all officers, employees and board members, whether elected or appointed, paid or unpaid, to serve not only as a guide for official conduct of the city's public servants, but also as a basis for discipline for those who refuse to abide by its terms. To this end, there is established in this chapter an ethics commission for the city. In addition to this code of ethics, public officials and employees are subject to state ethics, gift, and honorarium laws.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 02-047, § 2, 5-9-02)

Sec. 2-51. - Definitions.

As used in this division, the following terms shall have the meanings respectively ascribed to them in this section:

Affinity shall mean those people who are related to each other as a consequence of marriage; relatives falling within the first degree of affinity would include an officer or employee's spouse, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

Benefit means any gift, favor, service or thing of value.

Board shall mean any board, commission, or committee established by city council, Charter, or state law.

Business means any activity engaged in for economic gain, or for charitable, educational, or philanthropic purposes.

Business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law.

Candidate means a person who files for a city elected office.

Consanguinity shall mean those people who are related to each other by blood or adoption; relatives falling within the first degree of consanguinity would include an officer or employee's father, mother, son or daughter.

Defective as to form shall mean the complainant failed to complete an affidavit of complaint provided by the city secretary in the form approved by the ethics commission.

Election means the process by which individuals, whether opposed or unopposed, seek election to city elective offices.

Employee shall mean any person employed by the governmental entity including those individuals employed on a part-time basis. The definition of "employee" shall not include any independent contractor, persons employed by the city under civil service or persons employed by the city wharves or park board.

Financial interest shall mean:

- (1) A person who owns ten (10) percent or more of the voting stock or shares of the business entity, or owns either ten (10) percent or more or fifteen thousand dollars (\$15,000.00) or more of the fair market value of the business entity; or,
- (2) A person who received during the previous year more than ten (10) percent of the person's gross income from the entity; or,
- (3) A person who is an equitable or legal owner of real property with a fair market value of two thousand five hundred dollars (\$2,500.00) or more.

Frivolous complaint. A complaint is frivolous when it is clearly insufficient on its face and is presumably filed for mere purposes of delay or to embarrass the person complained against.

Governmental entity shall include the city, city wharves board, or city park board.

Hearing, sufficiency shall mean a commission meeting held within ten (10) days of receipt of a complaint to determine whether the complaint alleges the existence of reasonable grounds to believe that a violation of the code of ethics has occurred. A hearing on the merits of the complaint shall be scheduled if the commission determines that a hearing on the merits is warranted.

Hearing, determination shall mean a hearing on the merits of the complaint where the commission receives evidence and hears testimony to determine whether a violation of the code of ethics has occurred.

Impropriety means conduct that violates or gives the appearance that one (1) or more of the standards of conduct established in the code of ethics has been violated.

Knowingly. A person acts knowingly, or with knowledge, with respect to the nature of their conduct or to circumstances surrounding their conduct when the person is aware of the nature of their conduct or

that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of their conduct when the person is aware that their conduct is reasonably certain to cause the result.

Principal employer shall mean primary employment and shall include a corporation, partnership, sole-proprietorship, joint venture, individual, or any other legal entity.

Public official shall mean any person who is an elected or appointed official, including any member of a board, commission or committee of the city.

State shall mean the State of Texas.

Working days shall mean days the city is open for business.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 98-24, § 2, 4-23-98; Ord. No. 05-052, § 3, 9-8-05)

Sec. 2-52. - Standards of conduct.

No public official or employee shall:

- (1) *Gifts or benefits.* Accept or solicit any gift, benefit, favor, service or thing of value, such that it might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct:
 - a. From any person, group, or business entity subject to regulation, inspection, or investigation by any city department, agency, commission, or board on which the public official or employee serves;
 - b. From any person, group, or business entity who is interested in or likely to become interested in any proposed ordinance, resolution, or decision upon which such public official or employee must act or make a recommendation;
 - c. From any person, group, or business entity who is interested in or likely to become interested in any contract, purchase, payment, claim, or other pecuniary transactions involving the exercise of the employee's discretion; and,
 - d. From a person, group, or business entity against whom the public official or employee knows litigation is pending or contemplated by the city.
 - e. In accordance with state law, the following are exceptions to the gift or benefit limitations that apply to public officials and public employees:
 1. A gift that has a value of less than fifty dollars (\$50.00) excluding cash or a negotiable instrument if it was not given in exchange for any exercise of official discretion;
 2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
 3. Food, lodging, transportation, or entertainment accepted as a guest provided the donor is present and, if the donor is required by law to report those items, reported by the donor;
 4. Reimbursement for food, lodging, transportation or other work related expenses used solely to defray the expenses in the performance of duties or activities;
 5. Statutory provided fees; and,
 6. Political contributions as defined by state election laws.
- (2) *Misuse official information.* Misuse official information or disclose any confidential information gained by reason of the position of the public official or employee concerning the property, operations, policies or affairs of the city.
 - a. To use such confidential information to advance any personal interest, financial or otherwise;

- b. To acquire or help another person to acquire a pecuniary interest in any property, transaction, or enterprise affected by the information;
 - c. To speculate or aid another to speculate on the basis of the information; or
 - d. To use the information with the intent to obtain a benefit or to harm another.
 - e. This subsection (2) shall not prohibit the disclosure or use of confidential information, when required or permitted by law;
 - f. The prohibition on the misuse of information does not apply to a public official or employee who uses information that is deemed open to the public.
- (3) *Misuse of property.* Use their position or office or use the property, facilities, personnel, equipment, or supplies, or any thing of value belonging to the city that has come into the individual's custody or possession by virtue of their public office or employment:
- a. For purposes unrelated to the interests of the city;
 - b. For private advancement or gain;
 - c. To secure privileges or exemptions; or
 - d. To grant or give any favor, service, consideration, treatment, advantage, or thing of value to any person, group, or business entity beyond that which is available to individual members of the public.
 - e. The prohibition on the misuse of government property shall not prohibit such use that is available to the public generally.
- (4) *Conflict of interest.*
- a. No public official shall knowingly vote or deliberate on any matter in which the public official has a financial interest.
 - b. No public official shall knowingly vote or deliberate on any matter in which the public official has a financial interest in the real property under consideration.
 - c. No public official shall knowingly vote or deliberate on any matter in which the public official's principal employer has a financial interest.
 - d. No public official shall knowingly vote or deliberate on any matter in which the public official serves on the board of directors or other governing body of an entity that benefits from the matter under consideration. This provision does not apply to public officials serving in an ex officio capacity with full voting privileges.
 - e. No public official shall knowingly vote or deliberate on any matter in which the public official serves as an officer of any entity that benefits from the matter under consideration.
- Any contract to which the governmental entity is a party and in which the public official or employee has a direct or indirect financial interest that has not been disclosed shall be voidable or rescindable at the option of the governmental entity. Any contract to which the governmental entity is a party and in which the public official or employee has a direct or indirect financial interest or benefit that has not been disclosed does not render an action of the governmental entity voidable unless the matter under consideration would not have passed without the vote of the person who violated this subsection. The term "contract" means any agreement with, or claim, account or demand against, the governmental entity.
- (5) *Representation.* Represent, as agent, any person, group, or business entity:
- a. Before that person's board, committee, or commission; or
 - b. Before a board or commission that has appellate jurisdiction over that person's board, committee, or commission.
 - c. The restrictions in this subsection do not prohibit:

1. A public official or employee from appearing before city council or a city department, agency, board, committee, or commission to represent that person's own interest or property;
 2. A public official or employee from appearing before the city council or a city department, agency, board, committee, or commission to address employment matters; or
 3. A public official or employee from bringing any lawful claim or lawsuit against the city.
- (6) *Outside employment or compensation.* Accept other employment or compensation that could reasonably be expected to impair the officer or employee's independence of judgment in the performance of the officer or employee's official duties.
- (7) *Disclosure of interest.* A public official or employee shall disclose the existence of a financial interest in any person, business entity or real property involved in any decision pending before such officer or employee, in accordance with this section and Chapter 176 of the Texas Local Government Code or its successor. To comply with this paragraph, the public official shall, prior to any discussion or determination of the matter, file a conflicts disclosure statement, which shall be in substantially the same form as that adopted by the state ethics commission, with the city secretary and publicly disclose in the official records of the board or governmental entity the nature of the interest including the public official's principal employer. To comply with this paragraph, the employee shall notify their superior in writing of the nature of any financial interest they may have in a person, business entity or real property that would be affected by an exercise of discretionary authority by the employee and such superior shall assign the matter to another employee. Furthermore, the employee shall also file the conflicts disclosure statement with the city secretary. These requirements are in addition to the state law disclosure provisions imposed upon local government officials and employees.
- (8) *Nepotism.*
- a. A city councilmember shall not discuss or vote to appoint any person related to the councilmember by affinity or consanguinity within the first degree to any position on a city board, committee, or commission.
 - b. No appointed public official or employee who has the authority to appoint, supervise, evaluate, or discipline another employee shall hire or appoint any person related by affinity or consanguinity within the first degree to any office, clerkship, or other paid position within the city.
 - c. Persons who are related by affinity or consanguinity within the first degree shall not be employed or otherwise work in the same department within the city.
 - d. To the extent this section conflicts with the nepotism provision in article XIV, section 6 of the city Charter, the city Charter shall prevail.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 98-24, § 4, 4-23-98; Ord. No. 02-047, § 3, 5-9-02; Ord. No. 05-052, § 4, 9-8-05)

Sec. 2-53. - Ethics commission.

- (a) The ethics commission shall consist of seven (7) members. Four (4) or more commissioners shall constitute a quorum, but no action of the commission shall have any force or effect unless it is adopted by the favorable votes of four (4) or more of the commissioners.
- (b) The members of the ethics commission shall be appointed by the city council.
- (c) All members shall be residents of the city. No member shall hold any city elected or appointed office or be a candidate for any such office. As nearly as is reasonably possible, the membership of the ethics commission shall be fairly representative of all of the several economic, religious, cultural, ethnic and racial groups that comprise the population of the city. The city council shall develop a list of

community, civic and professional organizations that shall be invited to make suggestions for appointments to the ethics commission.

- (d) No member shall serve for more than six (6) consecutive years nor be appointed for more than two (2) full terms.
- (e) Members of the ethics commission may be removed by a majority of the city council for any violation of the code of ethics.
- (f) All vacancies shall be filled for the unexpired terms. A member shall hold office until a successor has been appointed by the city council and shall continue to hold office after the successor has been appointed by the city council for the limited purpose of the disposition of all complaints deliberated upon by that member. No member may participate in a decision regarding a complaint the ethics commission discussed or reviewed prior to the expiration of the previous member's term. New members shall assume the duties of office with respect to all complaints initiated after the previous member's term.
- (g) In accordance with the city Charter, article XIV, section 21, the ethics commission shall monitor and enforce the "code of ethics," which shall apply to all elected and appointed officials, members of committees, commissions, or boards, whether such officials or members are paid or unpaid, and to all city employees. The ethics commission shall investigate any alleged violation of the city Charter.
- (h) Members shall maintain objectivity and be free of conflicts of interest in discharging their duties. Members of the commission shall be independent in fact and appearance when hearing matters brought before the commission. When a member of the commission has any reason to believe that he or she cannot be impartial, intellectually honest and free of conflicts of interest in discharging any of the duties of the commission, such member shall disclose the facts and circumstances which create the conflict and shall not vote or otherwise participate in consideration of the matter.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 98-63, § 2, 7-23-98; Ord. No. 05-052, § 5, 9-8-05; Ord. No. 11-076, § 2, 10-27-11)

Sec. 2-54. - Complaints.

- (a) A complaint alleging a violation of the code of ethics shall specify the section thereof alleged to have been violated and the date the alleged violations occurred. The complainant must be a resident of the city. The complainant shall complete an affidavit of complaint provided by the city secretary in the form approved by the ethics commission and attach it to the complaint. The affidavit shall provide notice that filing a frivolous complaint may subject the complainant to criminal penalties. The affidavit of complaint shall be sworn to as true and correct by the complainant.
- (b) Upon the sworn affidavit of complaint being filed with the city secretary's office, the city secretary shall, no later than the next working day, provide a copy of the affidavit of complaint to the ethics commission, the person complained of, and the city attorney.
- (c) Not later than five (5) working days after receipt of a copy of an affidavit of complaint from the city secretary, the city attorney shall notify the commission, the complainant, and the person complained of if the affidavit of complaint is defective as to form. When the city attorney notifies the complainant that the affidavit of complaint is defective as to form, the complainant may, prior to the sufficiency hearing, file a sworn amended affidavit of complaint with the city secretary. The city secretary shall immediately provide a copy of the sworn amended affidavit of complaint to the commission, the person complained of, and the city attorney. The complainant may appeal the city attorney's opinion regarding form to the commission.
- (d) Upon receipt of the affidavit of complaint, the ethics chair, or in the chair's absence the vice chair, shall request the city secretary to schedule a sufficiency hearing to be held within ten (10) working days and notify the ethics commission. The ethics chair, or in the chair's absence the vice chair, shall provide written notification of the sufficiency hearing date to the complainant and person complained of.

- (e) If a complaint alleges facts concerning a possible violation of the code of ethics and such allegations are involved in a criminal investigation or a criminal proceeding, the ethics commission may postpone any hearing or any appeal concerning such complaint until after the criminal investigation or criminal proceedings are terminated.
- (f) After a complaint has been filed and during the pendency of a complaint before the ethics commission, a member of the ethics commission may not communicate directly or indirectly with any party or person about any issue of law or fact regarding the complaint except at a meeting of the ethics commission. However, nothing in this section shall prohibit communications between members of the ethics commission and the commission's attorney, or between members of the ethics commission concerning scheduling an ethics commission meeting.
- (g) A complaint alleging a violation of the code of ethics must be filed with the city secretary within six (6) months after the commission of the action alleged as a violation and not afterward. The ethics commission will not consider or act on any alleged violation concerning a public official or employee who is no longer serving or employed by the city or on any complaint alleging a violation that has previously been presented to and considered by the ethics commission.
- (h) The filing by any person of a frivolous complaint, as determined by the ethics commission, shall be unlawful and a misdemeanor offense punishable by a fine not exceeding five hundred dollars (\$500.00).

(Ord. No. 05-052, § 6, 9-8-05)

Editor's note— Ord. No. 05-052, § 6, adopted September 8, 2005, repealed and reenacted § 2-54 to read as herein set out. Formerly, § 2-54 pertained to complaints and confidentiality, and derived from Ord. No. 97-63, § 2, adopted August 14, 1997.

Sec. 2-55. - Defense of public official or employee acting in reliance of city attorney opinion.

- (a) It shall be a defense to a violation of the code of ethics that the public official or employee acted in reasonable reliance upon an opinion rendered by the city attorney.
- (b) In accordance with section 2-36, the city shall defend any public official or employee of the city against any claims or lawsuits filed against the public official or employee that are related to the official duties of the public official or employee in an amount not to exceed five thousand dollars (\$5,000.00). The city council must approve any expenditure in excess of five thousand dollars (\$5,000.00), in advance.
- (c) The city shall not be responsible for any costs attributable to any public official or employee if such person is found by the ethics commission, and upheld by the city council if appealed, to have violated the code of ethics.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 05-052, § 7, 9-8-05)

Sec. 2-56. - Opinions by city attorney.

The city attorney will provide a legal opinion to the ethics commission when requested in writing by the chair, or in the chair's absence the vice chair, of the ethics commission.

In the event the city attorney's office cannot issue a legal opinion, consult, or advise the ethics commission because of a conflict of interest, the city attorney shall advise, in writing, both city council and the ethics commission. The ethics commission shall be entitled to seek outside legal counsel and the city council shall consider funding outside legal counsel if requested by the ethics commission.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 05-052, § 8, 9-8-05)

Sec. 2-57. - Sufficiency hearings.

- (a) The commission shall hear appeals as to whether the affidavit of complaint is defective as to form. If the commission determines the affidavit of complaint is defective as to form, the complainant may be given one (1) opportunity to amend and resubmit the complaint within five (5) working days from the date of the sufficiency hearing. Upon receipt of an amended complaint, the chair, or in the chair's absence the vice chair, shall request the city secretary to schedule the sufficiency hearing within ten (10) working days. If the commission determines the affidavit of complaint is not defective as to form, it shall proceed with the sufficiency hearing.
- (b) The issue at the sufficiency hearing shall be whether the complaint alleges the existence of reasonable grounds to believe that a violation of the code of ethics has occurred. At the sufficiency hearing, the ethics commission shall make at least one of the following determinations:
 - (1) The complaint does not allege a violation of the code of ethics;
 - (2) The commission has insufficient information to determine whether the complaint alleges a code of ethics violation; or
 - (3) The complaint adequately alleges a violation of the code of ethics.
- (c) If the complaint is determined to have insufficient information to allege a violation of the code of ethics, the complainant may be given one (1) opportunity to amend and resubmit the complaint within five (5) working days from the date of the sufficiency hearing. Upon receipt of an amended complaint, the chair, or in the chair's absence the vice chair, shall request the city secretary to schedule the sufficiency hearing within ten (10) working days. If the complainant does not amend and resubmit the complaint within such time, the original complaint is denied without the need for further action of the commission.
- (d) The commission may hear the testimony of the complainant who shall state the alleged violation and describe in narrative form the testimony and other evidence that would be presented to prove the alleged violation as stated in the complaint. All testimony shall be given under oath or affirmation. The person complained against shall have the opportunity to respond but is not required to attend or make any statement.
- (e) If the ethics commission determines that a hearing is warranted, it shall schedule the determination hearing within ten (10) working days of the sufficiency hearing and provide reasonable notice to the complainant and the person complained against.
- (f) The complainant and the person complained against may ask the ethics commission at a sufficiency hearing to request certain persons and evidence for the determination hearing, if one is scheduled.
- (g) The Texas Public Information Act shall govern all documents filed pursuant to the code of ethics.
- (h) The ethics commission's meetings shall be governed by the Texas Open Meetings Act and may be conducted in a closed session in accordance with such Act.

(Ord. No. 05-052, § 9, 9-8-05)

Editor's note— Ord. No. 05-052, § 9, adopted September 8, 2005, repealed and reenacted § 2-57 to read as herein set out. Formerly, § 2-57 pertained to prohibition of ex parte communications and derived from Ord. No. 97-63, § 2, adopted August 14, 1997.

Sec. 2-58. - Determination hearing.

- (a) The issue at a determination hearing shall be whether a violation of the code of ethics has occurred. The ethics commission shall make its determination based on the greater weight and degree of the credible evidence and testimony.

- (b) The commission may administer oaths and affirmations, take evidence, request and issue subpoenas for witnesses to attend and testify, and request and issue subpoenas for the production of books, papers, records, or other evidence needed for the performance of the commission's duties or the exercise of its powers. The subpoena shall be issued on the sworn affidavit of the complaining party, the person complained against, or the chair, or in the chair's absence the vice chair, of the ethics commission. The affidavit shall state that the affiant in good faith believes that such item exists, and stating in detail a description of any such items, sufficient to identify such item. The affiant shall state that the party requesting the subpoena has not been able to obtain such item, and that the affiant in good faith believes that the item is in the possession or control of a person or entity whose name and address is specified in the sworn affidavit.
- (c) The ethics commission, at its discretion, may hear testimony in oral, written, video, audio, or narrative form. All testimony shall be given under oath or affirmation. At the discretion of the chair, or in the chair's absence the vice chair, testimony shall be limited to that which is relevant, reliable, well founded, trustworthy, reasonable, verifiable, and authenticated. Members of the ethics commission may question any witness. The person complained against shall have the opportunity, but not the requirement, to respond to the complaint.
- (d) The ethics commission shall state its findings of fact and vote on the issue in open session. The ethics commission shall then state its findings in writing, and shall identify any section of the code of ethics that has been violated. The chair, or in the chair's absence the vice chair, of the ethics commission shall sign the findings. Within five (5) working days thereafter, the ethics commission shall deliver a copy of the findings to the city secretary. The city secretary shall promptly send a copy of the commission's findings via certified mail to the complainant and to the person complained against. The determination of the ethics commission shall be final unless a written appeal is filed within ten (10) days in accordance with the code of ethics.
- (e) All documents filed pursuant to the code of ethics shall be governed by the Texas Public Information Act.
- (f) The ethics commission's meetings shall be governed by the Texas Open Meetings Act and may be conducted in a closed session in accordance with such Act.

(Ord. No. 05-052, § 10, 9-8-05)

Editor's note— Ord. No. 05-052, § 10, adopted September 8, 2005, repealed and reenacted § 2-58 to read as herein set out. Formerly, § 2-58 pertained to hearings and determinations, and derived from Ord. No. 97-63, § 2, adopted August 14, 1997.

Sec. 2-59. - Reserved.

Sec. 2-60. - Sanctions to be imposed or recommended by ethics commission; appeals.

- (a) If the ethics commission determines that a violation of the code of ethics has occurred, it shall proceed directly to determine the appropriate recommended sanctions. The ethics commission may receive additional testimony or statements before considering sanctions but is not required to do so. If the person complains against acted in reliance upon an opinion of the city attorney, the ethics commission shall consider the fact.
- (b) If the ethics commission determines that a violation of the code of ethics has occurred, it may impose or recommend the following sanctions:
 - (1) The ethics commission may direct a letter of notification to any public official, or to the city manager of any employee. A letter of notification shall be the recommended sanction when the ethics commission finds that a violation is clearly unintentional, or when the conduct of the person complained against was done in reliance upon an opinion of the city attorney. A letter of notification shall advise the public official or city manager of steps that the public official or the

city manager's employee should take to avoid future violations. The ethics commission shall send a copy of any letter of notification to city council, if the person complained against is a public official.

- (2) The ethics commission may direct a letter of admonition to any public official, or to the city manager of any employee. A letter of admonition shall be the recommended sanction when the ethics commission finds that the violation is minor or unintentional, but calls for a more substantial response than a letter of notification. The ethics commission shall send a copy of any letter of admonition to the city council, if the person complained against is a public official.
- (3) The ethics commission may direct a letter of reprimand to any public official, or to the city manager of any employee a letter of reprimand shall be the recommended sanction when the ethics commission finds that a violation has been committed intentionally, knowingly or with conscious indifference to the code of ethics. The ethics commission shall send a copy of any letter of reprimand to city council, if the person complained against is a public official. The ethics commission shall recommend that a letter of reprimand be placed in the public official's or employee's personnel file, if the public official is a city council appointee, or in a file maintained by the city secretary if the public official is an elected official.
- (4) The ethics commission may direct a letter recommending removal or suspension from office or employment to any public official, or to the city manager of any employee. A letter recommending removal or suspension from office or employment shall be the recommended sanction when the ethics commission finds that a serious or repeated violation of the code of ethics has been committed intentionally, knowingly or with conscious indifference to the code of ethics by a public official or employee.
 - a. A letter recommending removal from office or a letter recommending suspension from office for a public official appointed by the city council shall be sent to the city council. In such cases the final authority to carry out a recommendation to remove or suspend a public official from office and the length of the suspension shall lie with the city council.
 - b. A recommendation for removal or suspension of a city employee hired by the city manager shall be directed to the city manager. in such cases the final authority to carry out a recommendation to remove or suspend from such an office or employment and the length of the suspension shall lie with the city manager.
- (5) A letter of censure, a recommendation of recall, or a recommendation to institute proceedings for removal from office shall be the appropriate sanction when the ethics commission finds that a serious or repeated violation of the code of ethics has been committed intentionally, knowingly or with conscious indifference to the code of ethics by an elected public official. A letter of censure, a recommendation of recall, or a recommendation to institute proceedings for removal from office, directed to an elected city official, shall be transmitted to the city secretary and to the city council. Any recall proceedings shall be subject to the procedures specified in the city charter. Any proceedings for removal from office shall be in compliance with provisions of the City Charter and state law.

(Ord. No. 97-63, § 2, 8-14-97)

Sec. 2-61. - Appeals following a complaint against a public official.

This section shall apply only to a complaint filed against a public officials and not to a complaint filed against a city manager employees.

- (1) The ethics commission's determination that a violation of the code of ethics has occurred involving a public official, or that a complaint is defective or fails to allege a violation, is final unless a written appeal is filed with the city secretary within ten (10) days after receipt of the ethics commission's determination.

- (2) The public official or the complainant who desires to appeal to city council must file a written appeal stating sufficient facts to show that:
 - a. The ethics commission was prejudiced in its deliberations; or
 - b. New evidence is available which was not considered by the ethics commission; or
 - c. The ethics commission committed some error in its deliberations; or
 - d. Reasons exist as to why the sanctions should be reduced or not imposed.
- (3) The city secretary shall forward the appeal to the city council with a report of the ethics commission's determination. The city council shall consider such written appeal, hear a statement from the complainant and the public official and shall:
 - a. Deny the appeal in its entirety; or
 - b. If city council finds that the written appeal states sufficient facts to satisfy the requirements of paragraph (b) above, schedule its own evidentiary hearing on the appeal or refer the appeal to an independent hearing officer for an evidentiary hearing as provided in paragraph (e) below.
- (4) If the city council schedules its own evidentiary hearing on the appeal, the produces shall apply:
 - a. Such hearing shall be held within thirty (30) days after the council decides to hear the appeal. Council may grant two (2) postponements, not to exceed fifteen (15) days each, upon the request of the public official complained against.
 - b. The hearing of the appeal before the council shall be a new hearing. The issue at such hearing shall be whether a violation of the code of ethics has occurred.
 - c. At the hearing of the appeal, the city council may, pursuant to its investigatory powers under Article 2, section 5 of the City Charter, administer oaths and affirmations take evidence, request and subpoena witnesses to attend and testify, and request and issue subpoenas for the production of books, papers, records or other evidence relevant to the alleged violation. All witnesses shall testify under oath.
- (5) As an alternative to scheduling its own evidentiary hearing on the appeal as provided in (d) above, the council may appoint a hearing officer to conduct such a hearing. The hearing officer shall be an attorney licensed to practice in the State of Texas. The following procedures shall apply:
 - a. The hearing officer shall have the power to hear testimony under oath and receive evidence on behalf of the city council concerning whether a violation of the code of ethics has occurred. The hearing officer shall have the authority to administer oaths and affirmations, and take evidence.
 - b. The hearing officer shall have such testimony and evidence transcribed and reduced to writing by a court reporter and shall file the transcript with the city secretary within such time specified by the city council.
 - c. The hearing officer shall have the power to make rulings concerning the relevancy and admissibility of the evidence and testimony presented to and heard by the hearing officer; however, the hearing officer shall not make any recommendation to the city council concerning whether a violation of the code of ethics has occurred.
 - d. The transcript of the testimony and evidence presented to the hearing officer shall form the evidentiary basis for a hearing to be held before the city council concerning whether a violation of the code of ethics has occurred.
 - e. No evidence or testimony shall be presented at the hearing before the city council other than the aforesaid transcript; however, the complainant and the person complained against shall be entitled to present oral or written arguments to the council concerning whether the testimony and evidence in the transcript establish that a violation of the code of ethics has

occurred. City council shall determine if arguments are to be presented orally or written. If oral arguments are to be presented, city council shall determine the time each party may speak. If written arguments are to be presented, city council shall determine the length of the written arguments and the date the arguments are due.

- (6) Upon completion of either of the hearing procedures specified in paragraph (4) or (5) above, the council shall determine, based on the greater weight and degree of the credible evidence and testimony, whether a violation of the code of ethics has occurred. If the council determines that a violation has occurred, it shall state its findings in writing, shall identify the particular section of the code of ethics that has been violated, and within five (5) working days thereafter shall deliver a copy of the findings to the complainant, the person complained against and the city secretary.
- (7) The council may adopt rules of procedure for the hearing of an appeal. Such rules shall be consistent with the provisions of this article and other applicable laws.
- (8) If the council determines that a violation of the code of ethics occurred, it shall proceed directly to determination of the appropriate sanctions. The council may receive additional testimony or statements before considering sanctions but is not required to do so. If the appointed or elected public official complained against acted in reliance upon an opinion of the city attorney, the council shall consider that fact.
- (9) If the council determines that a violation has occurred, it may impose or recommend the following sanctions:
 - a. A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the public official's conduct complained of was made in reliance on an opinion of the city attorney. A letter of notification shall advise the public official to whom it is directed of any steps to be taken to avoid future violations.
 - b. A letter of admonition shall be the appropriate sanction in those cases in which the council finds that the violation is minor, or may have been unintentional, but calls for a more substantial response than a letter of notification.
 - c. A reprimand shall be the appropriate sanction when the council finds that a violation has been committed intentionally, knowingly or with conscious indifference of the code of ethics.
 - d. Removal or suspension from office shall be the appropriate sanction when the council finds that a serious or repeated violation of the code of ethics has been committed intentionally, knowingly or with conscious indifference of the code of ethics by an appointed public official.
 - e. A letter of censure, a recommendation of recall, or proceedings for removal from office shall be the appropriate sanction when the council finds that a serious or repeated violation of the code of ethics has been committed intentionally, knowingly or with conscious indifference of the code of ethics by an elected public official. A letter of censure, a recommendation of recall, or decision to institute proceedings for removal from office, directed to an elected city official, shall be transmitted to and filed with the city secretary. Any recall proceedings shall be subject to the procedures specified in the City Charter. Any proceedings for removal from office shall be in compliance with provisions of the City Charter and state law.
- (10) Any sanctions imposed by the city council on a public official pursuant to this section shall be by four or more favorable votes of the city council, except that any sanctions imposed by the city council on an elected council member pursuant to this section shall be by majority vote of the remaining members of the city council.

(Ord. No. 97-63, § 2, 8-14-97)

Sec. 2-62. - Appeals by employees.

Any employee aggrieved by a recommendation from the ethics commission or by any action taken by the city manager may appeal in accordance with the city's personnel rules and regulations.

(Ord. No. 97-63, § 2, 8-14-97)

Sec. 2-63. - Appeals following a complaint against an employee.

Any person who filed a complaint and is aggrieved by the decision of the ethics commission, should express their dissatisfaction to the city manager, if the person complained about is an employee.

(Ord. No. 97-63, § 2, 8-14-97)

Secs. 2-64—2-67. - Reserved.

Editor's note— Ord. No. 05-052, §§ 11—14, adopted September 8, 2005, repealed §§ 2-64—2-67 in their entirety, which pertained to criminal penalties, subpoenas, postponement of hearings in certain cases, and compliance with state law, respectively, and derived from Ord. No. 97-63, § 2, adopted August 14, 1997.

Sec. 2-68. - Financial disclosure.

- (a) All candidates for city council, including candidates for mayor, shall file financial information reports as required by, and in accordance with, state law.
- (b) All candidates for board member appointment or reappointment to the Galveston Wharves board, shall be required to complete a financial disclosure form as set forth in this section:
 - (1) All candidates for appointment or reappointment to the board of trustees of the Galveston Wharves board shall complete a financial disclosure form as provided by the city secretary and shall file such completed form with the city secretary. Such form shall be used by the city council in its deliberations regarding the appointment of trustees to the Galveston Wharves board.
 - (2) All appointed trustees to the Galveston Wharves board shall file a completed financial disclosure form with the port director of the Galveston Wharves and shall also file a copy with the general counsel of the Galveston Wharves. Appointed trustees of the Galveston Wharves board shall file such copies within thirty (30) days of the trustee's filling the oath of office as required by law.
 - (3) All current trustees of the Galveston Wharves board shall complete the financial disclosure form and file it with the city secretary within thirty (30) days from the effective date of this section. All current trustees of the Galveston Wharves board shall file a copy of such financial disclosure form with the port director and with the general counsel of the Galveston Wharves board within thirty (30) days of the effective date of this section.
 - (4) All trustees of the Galveston Wharves board shall update and file a financial disclosure form within thirty (30) days of the date of any material change in any of the matters required to be disclosed in the financial disclosure form.
 - (5) Notwithstanding any other provision of this section, all trustees of the Galveston Wharves board shall file an annual financial disclosure form at least once every twelve (12) months. Trustees of the Galveston Wharves board shall submit a copy of such financial disclosure form to the port director and the general counsel for the Galveston Wharves board.
 - (6) Copies of filed financial disclosure forms shall be made available to the general public in accordance with the Texas Open Records Act.
 - (7) Copies of filed financial disclosure forms shall be made available to members of the city council and the ethics commission, and to the city attorney and legal counsel for the Galveston Wharves board upon request by such persons.

- (8) Financial disclosure forms may be used to determine if an individual trustee has a conflict of interest on a particular matter. Such determination shall be made in accordance with the city's code of ethics, state law, federal law or other applicable law, including but not limited to City Charter provisions.
- (9) Legal counsel representing the Galveston Wharves board is specifically authorized to confer with the city attorney and to request the opinion of the city attorney as to conflict of interest matters.
- (10) A failure or refusal of any trustee of the Galveston Wharves board to fully complete the financial disclosure form and file same as required in this section is a violation of the code of ethics.
- (11) Any material misrepresentations or omission of information in any financial disclosure form that is completed and filed in accordance with this section may be considered a violation of the code of ethics.
- (12) The Galveston Wharves shall forward the details of a vote or other matter to the ethics commission if a trustee of the Galveston Wharves board votes on any matter, deliberates, discusses, or recommends a particular action after being advised by general counsel, the city attorney, or special legal counsel appointed by the Galveston Wharves board that the trustee has a conflict of interest. Such report shall be filed in accordance with the provisions of the code of ethics and shall be sworn to by a person with knowledge.
- (13) The ethics commission shall investigate and take appropriate action upon receipt of any complaint filed in accordance with the code of ethics.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 98-24, § 3, 4-23-98; Ord. No. 02-047, § 4, 5-9-02)

Sec. 2-69. - Public records.

- (a) The city secretary shall create and maintain all statements required to be filed with the city secretary under this provision as public records and retain them for a period as required by state law, after which time the city secretary shall destroy the records in accordance with state law.
- (b) All requests for information are subject to the Texas Public Information Act in accordance with city policy.

(Ord. No. 05-052, § 15, 9-8-05)

Editor's note— Ord. No. 05-052, § 15, adopted September 8, 2005, amended § 2-69 in its entirety to read as herein set out. Formerly, § 2-69 pertained to public records—inspection; forms for statements, and derived from Ord. No. 97-63, § 2, adopted August 14, 1997.

Sec. 2-70. - Reserved.

Editor's note— Ord. No. 05-052, § 16, adopted September 8, 2005, repealed § 2-70 in its entirety, which pertained to nepotism and derived from Ord. No. 97-63, § 2, adopted August 14, 1997. Similar provisions may be found at § 2-52.

Sec. 2-53. - Ethics commission.

- (a) The ethics commission shall consist of seven (7) members. Four (4) or more commissioners shall constitute a quorum, but no action of the commission shall have any force or effect unless it is adopted by the favorable votes of four (4) or more of the commissioners.
- (b) The members of the ethics commission shall be appointed by the city council.
- (c) All members shall be residents of the city. No member shall hold any city elected or appointed office or be a candidate for any such office. As nearly as is reasonably possible, the membership of the ethics commission shall be fairly representative of all of the several economic, religious, cultural, ethnic and racial groups that comprise the population of the city. The city council shall develop a list of community, civic and professional organizations that shall be invited to make suggestions for appointments to the ethics commission.
- (d) No member shall serve for more than six (6) consecutive years nor be appointed for more than two (2) full terms.
- (e) Members of the ethics commission may be removed by a majority of the city council for any violation of the code of ethics.
- (f) All vacancies shall be filled for the unexpired terms. A member shall hold office until a successor has been appointed by the city council and shall continue to hold office after the successor has been appointed by the city council for the limited purpose of the disposition of all complaints deliberated upon by that member. No member may participate in a decision regarding a complaint the ethics commission discussed or reviewed prior to the expiration of the previous member's term. New members shall assume the duties of office with respect to all complaints initiated after the previous member's term.
- (g) In accordance with the city Charter, article XIV, section 21, the ethics commission shall monitor and enforce the "code of ethics," which shall apply to all elected and appointed officials, members of committees, commissions, or boards, whether such officials or members are paid or unpaid, and to all city employees. The ethics commission shall investigate any alleged violation of the city Charter.
- (h) Members shall maintain objectivity and be free of conflicts of interest in discharging their duties. Members of the commission shall be independent in fact and appearance when hearing matters brought before the commission. When a member of the commission has any reason to believe that he or she cannot be impartial, intellectually honest and free of conflicts of interest in discharging any of the duties of the commission, such member shall disclose the facts and circumstances which create the conflict and shall not vote or otherwise participate in consideration of the matter.

(Ord. No. 97-63, § 2, 8-14-97; Ord. No. 98-63, § 2, 7-23-98; Ord. No. 05-052, § 5, 9-8-05; Ord. No. 11-076, § 2, 10-27-11)