

ARTICLE VIII. - CODE OF ETHICS

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DIVISION 1. - IN GENERAL

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Sec. 2-801. - Legislative findings.

It is found and declared that accepting a position as a public official carries with it the acceptance of trust that the official will work to further the public interest. Maintaining that public trust is critical to the continued operation of good government. In addition, public decision-making should be open and accessible to the public at large. To preserve this public trust, there are five principles to which public officials should adhere:

- (1) A city official should represent and work towards the public interest and not towards private/personal interests;
- (2) A city official should accept and maintain the public trust (i.e.. must preserve and enhance the public's confidence in their public officials);
- (3) A city official should exercise leadership, particularly in the form of consistently demonstrating behavior that reflects the public trust;
- (4) A city official should recognize the proper role of all government bodies and the relationships between the various government bodies; and
- (5) A city official should always demonstrate respect for others and for other positions.

(Ord. No. 11,072, § 2, 2-26-09)

Sec. 2-802. - Definitions.

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

City board shall mean the city council or a board, commission, task force, committee or subcommittee of the city, whether elected, appointed, paid or unpaid, which has regulatory authority or

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decision-making authority that is more than merely advisory.

City official or official means the mayor, a member of the city council, a member of a city board, the municipal court judge, associate municipal court judges, the city manager, deputy city manager, assistant city manager, city clerk, deputy city clerk, city attorney, assistant city attorneys, all department directors and assistant department directors or equivalent positions, whether such person is salaried, hired or elected. The term shall not include a city employee subject to V.T.C.A., Local Government Code §§ 143.001.

Ethics commission means that commission established in article IV, division 14 of this chapter.

Investigating attorney means a licensed attorney, who is appointed by the ethics commission with the consent of city council, and who shall be responsible for processing a complaint in the manner set forth in division 3 of this article.

(Ord. No. 11,072, § 2, 2-26-09; Ord. No. 11,562, § 1, 1-27-11)

DIVISION 2. - STANDARDS

[Sec. 2-803. - Standards of conduct.](#)

[Sec. 2-804. - Ex-parte communications.](#)

Sec. 2-803. - Standards of conduct.

No city official shall:

- (1) Engage in conduct that would violate V.T.C.A., Local Government Code § 171.003;
- (2) Engage in conduct that would violate V.T.C.A., Local Government Code § 212.017;
- (3) Represent any person other than himself or the city, before the city board on which the city official sits or over which the city official has appointment or budgetary powers;
- (4) Disclose or use in an unofficial capacity, confidential information acquired in the course of official duties, or engage in conduct that would violate V.T.C.A., Penal Code § 39.06;
- (5) While acting in his official capacity, grant or influence the granting of any special consideration, advantage or favor to any person beyond that which is:
 - a. The general practice to grant or make available to the public at large;
 - b. The general practice in assisting other governmental entities;
 - c. The general practice in aiding or promoting the economic development of the city; or
 - d. Authorized through a variance, special exception or other similar exception provided for in this Code or by law;

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- (6) Engage in conduct that would violate V.T.C.A., Penal Code § 36.07;
- (7) Engage in conduct that would violate V.T.C.A., Penal Code § 36.08;
- (8) Make use of staff, vehicles, equipment, materials or property of the city except in the course of his official duties or as duly authorized by the proper city official, or engage in conduct that would violate V.T.C.A., Penal Code § 39.02(a)(2);
- (9) Participate in the appointment, vote for appointment, or discussion of a person to a city board if such person is related to the city official in the first degree by consanguinity or affinity as determined under V.T.C.A., Government Code ch. 573;
- (10) Use his position, directly or indirectly, to effect the city employment status of a person related to the city official in the first degree by consanguinity or affinity as determined under V.T.C.A., Government Code ch. 573;
- (11) Receive a pecuniary gain in any sale or lease to the city of any real estate when the interest in real property from which the pecuniary gain is received was obtained under circumstances which would lead a reasonable person to expect that the city intended to purchase, condemn or lease said real estate;
- (12) Misrepresent facts or the source of facts or recommendations brought before the city council, any board or commission or to any other person while acting in his official capacity; or
- (13) Fail to respond to a request for information or documentation by the ethics commission or the investigating attorney acting on behalf of the ethics commission, when the requested information is relevant to the ongoing investigation.

(Ord. No. 11,072, § 2, 2-26-09; Ord. No. 11,562, § 2, 1-27-11)

Sec. 2-804. - Ex-parte communications.

In any judicial or quasi-judicial matter before a city board or in the award of a contract by a city board, a city official sitting on such board shall not, outside of that city board meeting, communicate with or accept a communication from a person, who is a party to the matter being considered or who represents such person, regarding such matter. If such communication should occur, this section will not be deemed violated if the city official discloses such communication at an open meeting of the city board on which he is a member prior to its consideration of the matter.

(Ord. No. 11,072, § 2, 2-26-09)

DIVISION 3. - PROCESS

[Sec. 2-805. - Reporting of ethics violations.](#)

[Sec. 2-806. - Processing and investigating a complaint.](#)

[Sec. 2-807. - Penalties.](#)

Sec. 2-805. - Reporting of ethics violations.

Any person who believes that a violation of any portion of the article has occurred may file a complaint with the ethics commission, after which the ethics commission shall proceed as provided in section 2-806. However, nothing in this article shall be construed to prevent complainants from instituting direct legal action through the appropriate administrative or judicial means. Furthermore, no complaint shall be accepted or processed if the alleged violation occurred more than four years prior to the filing of the complaint.

(Ord. No. 11,072, § 2, 2-26-09)

Sec. 2-806. - Processing and investigating a complaint.

(a) The ethics commission shall have the primary responsibility for investigations under this article. The ethics commission shall, with the consent of city council, designate an investigating attorney to process a complaint.

(b) The investigating attorney shall investigate a complaint and within a time prescribed by ethics commission rules, shall submit a preliminary analysis and recommendation to the ethics commission. The investigating attorney shall make one of the following recommendations both orally and in writing to the ethics commission:

(1) *Enforcement shall not be taken and complaint should be dismissed.* If recommending that no enforcement action be taken, the investigating attorney shall set forth the reasons for the recommendation.

(2) *A determination hearing should be held.* If recommending that a determination hearing be held, the investigating attorney shall prepare a probable cause report, which shall contain a summary of law, facts, evidence gathered during the investigation, and the reasons for the recommendation. The evidence may include exculpatory and mitigating information, of which the investigating attorney has knowledge, as well as hearsay, including declarations of investigators or others relating to the statements of witnesses or concerning the examination of physical evidence.

(3) *A referral to another agency is appropriate.* If the ethics commission concurs with this recommendation, it shall direct the investigating attorney to refer the information to the appropriate agency and the ethics commission shall take no further action.

(c) The ethics commission is not bound by the recommendation of the investigating attorney, and may vote to dismiss the complaint, set the complaint for a determination hearing, or refer the complaint to another agency, regardless of the investigating attorney's recommendation.

(d) In determining whether to dismiss a complaint, the ethics commission shall consider the following:

(1) *Frivolous complaint.* The ethics commission shall dismiss a complaint that it determines is frivolous. In determining whether a complaint is frivolous, the ethics commission shall consider the following factors:

- a. Whether the complaint is made in bad faith;
- b. Whether the complaint is brought for the purpose of harassment;
- c. Whether the complaint has any basis in fact or law;

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- d. The timing of the complaint with respect to when the facts supporting the alleged violation become known or should have become known to the complainant, and with respect to the date of any pending election in which the city official is a candidate or is involved with a candidacy, if any;
- e. The nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the ethics commission;
- f. The existence and nature of any relationship between the city official and the complainant before the complaint was filed;
- g. If the city official is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the city official;
- h. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
- i. Any evidence of the complainant's motives in filing the complaint.

(2) *Ex parte communications.* The ethics commission may dismiss a complaint if the complainant engages in an improper ex parte communication with a member of the ethics commission. An improper ex parte communication for purposes of this subsection is one made outside of a meeting of the ethics commission, exclusive of that provided for in section 2-805

(3) *Refusal to cooperate.* The ethics commission may dismiss a complaint if it determines that the complainant refuses to cooperate in the investigation or refuses to provide requested information to the ethics commission or to the investigating attorney in a timely manner.

(e) A determination by the ethics commission to dismiss a complaint shall not prevent any other agency or department from initiating other enforcement action, including disciplinary action, based on the same allegations and facts.

(f) The city attorney, upon the request of the city official and after analyzing potential conflicts of interest, shall represent the city official in the complaint process and at the determination hearing. In the event that a conflict of interest prevents the city attorney from representing the city official, the city official will be notified of the conflict and may request that a defense be provided by the city. The city manager shall, in his sole discretion, determine whether the city will retain alternate counsel for the city official. If there is no conflict but the city official does not wish to utilize the services of the city attorney, the city official may retain counsel at city official's expense.

(g) At the determination hearing:

- (1) The investigating attorney shall present relevant evidence and testimony;
- (2) The city official shall be entitled to present relevant evidence and testimony; and
- (3) The complainant shall be entitled to address the ethics commission.

The ethics commission shall receive and consider testimony of the complainant, the city official, and other relevant witnesses. The ethics commission shall adopt procedural rules governing the conduct of a determination hearing consistent with this section.

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(h) The city official under investigation or his representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence.

(i) If the ethics commission finds merit to the reported violation of this article, the ethics commission will within five days after the hearing report its findings and recommendation for disposition to:

(1) The city council for complaints alleged against the city manager, municipal court judge, associate municipal court judge, or a city official who is not an employee of the city; or

(2) The city manager for complaints alleged against another city official who is an employee of the city and not referenced in subsection (i)(1) of this section.

Such report must be in writing and signed by all participating members of the ethics commission, who voted with the majority.

(j) After receiving the report, the city council or the city manager, as appropriate, shall review the same and take appropriate action consistent with section 2-807 of this Code and/or the personnel rules and procedures.

(Ord. No. 11,072, § 2, 2-26-09; Ord. No. 11,562, § 3, 1-27-11)

Editor's note— Section 3 of Ord. No. 11,562, adopted Jan. 27, 2011, changed the title of § 2-806 from "Processing ethics violations" to "Processing and investigating a complaint."

Sec. 2-807. - Penalties.

(a) Except where otherwise provided by law, it is not the intent of this article that violations of this article be subject to criminal penalties.

(b) The ethics commission may recommend the following to the city council or the city manager, as appropriate:

(1) A letter of notification to the city official advising him of the steps to be taken to avoid further violations if the ethics commission finds that the violation is clearly unintentional:

(2) A letter of admonition to the city official if the ethics commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification:

(3) A letter of reprimand if the ethics commission finds that a violation has been committed intentionally or through disregard of this article:

(4) Removal or suspension from office if the ethics commission finds that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by a city official: or

(5) A letter of censure or a recommendation to recall if the ethics commission finds that a serious or repeated violation of this article has been committed intentionally or through culpable disregard of this article by an elected city official.

(c) Any sanction recommended by the ethics commission shall be directed to:

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(1) The city council if the city official is a city manager, municipal court judge, associate municipal court judge, or another city official who is not an employee of the city or

(2) The city manager if the city official is an employee of the city and not referenced in subsection (c)(1) of this section.

(d) Any document referenced in subsection (b) of this section issued by:

(1) The city manager shall be placed in the public officials personnel file; or

(2) The city council regarding the city' manager or the municipal court judge shall be placed in the applicable personnel file.

(e) Any contract or transaction which was the subject of an official act or action of a city board in which there was a violation of this article, shall be voidable at the option of the city council unless otherwise deemed void by law.

(Ord. No. 11,072, § 2, 2-26-09)

DIVISION 4. - EDUCATION

[Sec. 2-808. - Distribution of and training in the code of ethics.](#)

Sec. 2-808. - Distribution of and training in the code of ethics.

(a) Within 30 days after entering upon the duties of his position, every new city official shall be furnished a written copy of this article. The failure of any city official to receive a copy of this article shall have no effect on that city officials duty to comply with this article or on the enforcement of the provisions of this article. This article shall be posted on the city's webpage.

(b) The city attorney, in consultation with the ethics commission, shall develop educational materials and conduct educational programs on this article for city officials. Such materials and programs shall be designated to maximize understanding of the obligations imposed by this article.

(c) The city manager and department of human resources shall enact an administrative directive requiring that all departments provide their employees with training on this article and/or employees' ethical obligations at least once every other calendar year.

(d) The city attorney shall notify department directors regarding any significant amendments to this article within ten days of adoption. Department directors shall disseminate the information to their employees, who are city officials under this article.

(Ord. No. 11,072, § 2, 2-26-09)