

**ORDINANCE NO.**

**AN ORDINANCE AMENDING CHAPTER 2-7, ARTICLE 2 OF THE CITY CODE RELATING TO THE ETHICS REVIEW COMMISSION AND ARTICLE 3 RELATING TO VIOLATIONS, COMPLAINTS AND HEARING PROCEDURE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Section 2-7-26 of the City Code is amended to read:

**§2-7-26 FUNCTIONS.**

The Ethics Review Commission has jurisdiction over [~~shall have the duty and power, unless otherwise provided, to rule upon the appropriate disposition of allegations of violations of~~] this chapter, Section 2-1-24 (*Conflict of Interest and Recusal*), Chapter 2-2 (*Campaign Finance*), Chapter 4-8 (*Regulation of Lobbyists*), and Article III, Section 8, of the City Charter (*Limits on Campaign Contributions and Expenditures*). The commission shall hear and rule on sworn complaints alleging violations of the provisions within the commission's jurisdiction. The city manager shall provide funding for all necessary and reasonable functions of the commission in fulfilling its duties

**PART 2.** Section 2-7-30 of the City Code is amended to read:

**§ 2-7-30 DUTIES.**

(A) The Ethics Review Commission shall, in addition to its other duties:

- (1) prescribe forms for reports, statements, notices, and other documents required by the provisions within the commission's jurisdiction [~~this chapter and Chapter 2-2 (*Campaign Finance*)~~];
- (2) prepare and publish materials explaining the duties of individuals subject to the provisions within the commission's jurisdiction [~~this chapter and Chapter 2-2 (*Campaign Finance*)~~];
- (3) review all statements and reports filed with the commission in order to obtain compliance with the provisions within the commission's jurisdiction [~~this chapter~~];

- 1 (4) accept and file any information voluntarily supplied that exceeds the  
2 requirements of the provisions within the commission's jurisdiction [~~this~~  
3 ~~chapter~~];
- 4 (5) preserve statements and reports filed with the commission for a period of  
5 five years from the date of receipt;
- 6 (6) review the provisions within the commission's jurisdiction [~~this chapter~~]  
7 and make appropriate recommendations to the city council concerning  
8 the provisions within the commission's jurisdiction [~~this chapter~~], and  
9 perform an annual review and evaluation of the dollar limits established  
10 in Chapter 2-2 (*Campaign Finance*) and make recommendations to the  
11 city council as to those limits;
- 12 (7) review all public opinions related to the provisions within the  
13 commission's jurisdiction [~~this chapter~~] that are issued by the city  
14 attorney;
- 15 (8) conduct hearings in accordance with the provisions of this chapter and  
16 the commission's rules on sworn complaints alleging violations of the  
17 provisions within the commission's jurisdiction [~~Chapter 2-2 (Campaign~~  
18 ~~Finance)~~]; and
- 19 (9) schedule and oversee the forums among candidates in City elections  
20 provided for in Chapter 2-2 (*Campaign Finance*).

21 (B) The commission may:

- 22 (1) prepare reports and studies to advance the purposes of the provisions  
23 within the commission's jurisdiction [~~this chapter~~];
- 24 (2) request the city council and city manager to provide such assistance as it  
25 may require in the discharge of its duties; and
- 26 (3) make recommendations to the city manager concerning the role of the  
27 ombudsman concerning this chapter.

28 **PART 3.** Section 2-7-41 of the City Code is amended to read:

29 **§ 2-7-41 COMPLAINTS.**

30 (A) In this article:

- 31 (1) **COMPLAINANT** means a person filing a sworn complaint; and

1 (2) RESPONDENT means a person who is alleged in a sworn complaint to  
2 have violated a provision within the jurisdiction of the Ethics Review  
3 Commission.

- 4 (B) [~~(A)~~] A sworn complaint alleging a violation of a provision within the  
5 jurisdiction of the Ethics Review Commission [~~(s) of this chapter~~] shall  
6 specify each [~~the~~] code section or charter provision [~~(s) of this chapter~~]  
7 alleged to have been violated.
- 8 (C) [~~(B)~~] A complaint alleging a violation of Sections 2-7-62 (*Standards of*  
9 *Conduct*) through 2-7-65 (*Substantial Interest of Relative*) must be filed with  
10 the city clerk within two years from the date [~~commission~~] of the action  
11 alleged as a violation, and not afterward.
- 12 (D) [~~(C)~~] On [~~Upon~~] the sworn complaint of any person filed with the city  
13 clerk's office or on the commission's [~~its~~] own initiative, the commission  
14 shall consider possible violations of a provision within the jurisdiction of the  
15 commission [~~this chapter~~] by City officials and employees, former City  
16 officials and employees, [~~and~~] candidates for election to City offices, and  
17 other persons subject to the provisions set forth in Section 2-7-26  
18 (Functions). The commission may not consider complaints against its own  
19 members [~~; other than members of this commission~~].
- 20 (E) [~~(D)~~] Not later than three working days after the city clerk [~~or his staff~~]  
21 receives a sworn complaint, [~~in compliance with divisions (A) through (C)~~  
22 ~~above,~~] the city clerk [~~or his staff~~] shall acknowledge the receipt of the  
23 complaint to the complainant and provide a copy of the complaint to the city  
24 attorney, the commission, and the respondent [~~person complained against~~].  
25 Not later than the 10<sup>th</sup> [~~ten~~] working day[s] after receipt of a complaint, the  
26 commission shall notify in writing the complainant and the respondent  
27 [~~person who made the complaint and the person complained against~~] of a  
28 date for a preliminary hearing. If the commission does not hold a  
29 preliminary hearing within 20 working days of receipt of the complaint, it  
30 shall notify the complainant [~~person who made the complaint~~] of the reasons  
31 for the delay and shall subsequently give the complainant [~~him~~] the  
32 appropriate notification.
- 33 (F) [~~(E)~~] The commission may consider a possible violation[s] of a provision  
34 within the jurisdiction of the commission [~~of this chapter~~] on the  
35 commission's [~~its~~] own initiative. Within seven days of the commission's  
36 decision to consider a possible violation [~~of this chapter~~], the commission  
37 shall draft a written complaint specifying each [~~the~~] code section or charter  
38 provision [~~(s) of this chapter~~] alleged to have been violated, [~~and~~] shall file a

1 copy of the complaint with the city clerk, and shall provide a copy the  
2 complaint to the city attorney and to the respondent [~~person complained~~  
3 ~~against~~]. Not later than the 15<sup>th</sup> working [15] day[s] after the drafting of the  
4 complaint, the commission shall notify in writing the respondent [~~person~~  
5 ~~complained against~~] of the date for the preliminary hearing.

6 **PART 4.** Section 2-7-44 of the City Code is amended to read:

7 **§ 2-7-44 PRELIMINARY HEARING.**

- 8 (A) The issue at a preliminary hearing shall be the existence of reasonable grounds to  
9 believe that a violation of a provision within the jurisdiction of the Ethics Review  
10 Commission [~~this chapter~~] has occurred. The complainant [~~person filing a~~  
11 ~~complaint~~], or the legal counsel for the Ethics Review Commission in cases  
12 considered on [~~upon~~] the commission's own initiative, shall state the alleged  
13 violation and shall describe in narrative form the testimony and other evidence  
14 which would be presented to prove the alleged violation as stated in the written  
15 complaint. Statements at a preliminary hearing shall be under oath, but there  
16 shall be no cross-examination or requests for persons or evidence issued for the  
17 hearing. Members of the commission may question the complainant, legal  
18 counsel for the commission, or the respondent [~~City official or employee named~~  
19 ~~in the complaint~~].
- 20 (B) The respondent [~~City official or employee named in the complaint~~] shall have the  
21 opportunity to respond but is not required to attend or make any statement. The  
22 respondent [~~official or employee~~] may describe in narrative form the testimony  
23 and other evidence which would be presented to disprove the alleged violation.  
24 If the respondent [~~official or employee~~] agrees that a violation has occurred, the  
25 respondent [~~he~~] may so state and the commission may consider the appropriate  
26 sanction or prosecution.
- 27 (C) The complainant and the respondent [~~City official or employee named in the~~  
28 ~~complaint~~] shall have the right of representation by counsel.
- 29 (D) At the conclusion of the preliminary hearing, the commission shall decide  
30 whether a final hearing should be held. If the commission determines that there  
31 are reasonable grounds to believe that a violation of a provision within the  
32 jurisdiction of the commission [~~this chapter~~] has occurred, the commission [~~it~~]  
33 shall schedule a final hearing. If a majority of the membership [~~four members of~~]  
34 the commission do not determine that there are reasonable grounds to believe that  
35 a violation [~~of this chapter~~] has occurred, the complaint shall be automatically  
36 dismissed. A decision to conduct a final hearing is not a finding that a violation  
37 has occurred.

1 (E) The commission, at any time during the preliminary hearing, may also dismiss a  
2 complaint if the complaint does not allege conduct which would be a violation of  
3 a provision within the jurisdiction of the commission [~~this chapter~~]. Before a  
4 complaint is dismissed for failure to allege a violation, the complainant or the  
5 legal counsel for the commission shall be permitted one opportunity, within a  
6 period to be specified, to revise and resubmit the complaint.

7 (F) The complainant, legal counsel for the commission, and the respondent [~~City~~  
8 ~~official or employee named in the complaint~~] may ask the commission at a  
9 preliminary hearing to request certain persons and evidence for a final hearing, if  
10 one is scheduled.

11 **PART 5.** Section 2-7-45 of the City Code is amended to read:

12 **§ 2-7-45 FINAL HEARING.**

13 (A) The final hearing shall be held within 30 days [~~as expeditiously as possible~~]  
14 following the determination by the Ethics Review Commission that there are  
15 reasonable grounds to believe that a violation of a provision within the  
16 jurisdiction of the commission [~~this chapter~~] has occurred [~~, but in no event shall~~  
17 ~~it be held more than 30 days after said determination~~]. The commission may  
18 grant two postponements, not to exceed 15 days each, on [~~upon~~] the request of  
19 the respondent [~~City official or employee named in the complaint~~].

20 (B) The issue at a final hearing shall be whether a violation of a provision within the  
21 jurisdiction of the commission [~~this chapter~~] has occurred. The commission shall  
22 make its determination based on the preponderance of the credible evidence in  
23 the record. All witnesses shall make their statements under oath. If the  
24 commission determines that a violation has occurred, the commission [~~it~~] shall  
25 state the commission's [~~its~~] findings in writing, shall identify each [~~the particular~~]  
26 code section or charter provision that has [~~(s) of this chapter which have~~] been  
27 violated, and, within five working days, shall deliver a copy of the commission's  
28 findings to the complainant, if any, the respondent, [~~person named in the~~  
29 ~~complaint~~] and the city clerk.

30 **PART 6.** Section 2-7-47 of the City Code is amended to read:

31 **§ 2-7-47 PROSECUTION.**

32 If the Ethics Review Commission determines that a violation of Sections 2-7-66  
33 (*Misuse of Official Information*), 2-7-67 (*Restrictions on Providing Representation*  
34 *of Others*), or Article 5 (*Financial Disclosure*) has occurred, the commission [~~it~~]  
35 shall deliver a copy of the commission's findings to the complainant, if any, the  
36 respondent [~~person named in the complaint~~], and the city attorney recommending

1 prosecution or setting forth requirements to be complied with in order that  
2 voluntary compliance may be had and final determination obtained.

3 **PART 7.** Section 2-7-48 of the City Code is amended to read:

4 **§ 2-7-48 SANCTIONS.**

5 (A) This section applies only to violations other than violations of Chapter 2-2  
6 (Campaign Finance) and Article III, Section 8, of the City Charter (Limits on  
7 Campaign Contributions and Expenditures).

8 (B) [~~(A)~~] If the Ethics Review Commission determines that a violation of  
9 Sections 2-7-62 (*Standards of Conduct*), 2-7-63 (*Prohibition on Conflict of*  
10 *Interest*), 2-7-64 (*Disclosure of Conflict of Interest*), and 2-7-65 (*Substantial*  
11 *Interest of Relative*) occurred, it shall proceed directly to a determination of  
12 the appropriate sanction[~~s~~]. A violation of Sections 2-7-62 (*Standards of*  
13 *Conduct*), 2-7-63 (*Prohibition on Conflict of Interest*), 2-7-64 (*Disclosure of*  
14 *Conflict of Interest*), and 2-7-65 (*Substantial Interest of Relative*) shall not  
15 be subject to criminal penalties under the City Code. The commission may  
16 receive additional testimony or statements before considering sanctions but  
17 is not required to do so. If the respondent [~~City official or City employee~~  
18 ~~named in the complaint~~] acted in reliance upon a public written opinion of  
19 the city attorney, the commission shall consider that fact.

20 (C) [~~(B)~~] If the commission determines that a violation has occurred, the  
21 commission [~~it~~] may impose or recommend the following sanctions:

22 (1) A letter of notification is [~~shall be~~] the appropriate sanction when the  
23 violation is clearly unintentional, or when the respondent's [~~official or~~  
24 ~~employee's~~] conduct complained of was made in reliance on a public written  
25 opinion of the city attorney. A letter of notification must [~~shall~~] advise the  
26 respondent [~~official or employee to whom it is directed~~] of any steps to be  
27 taken to avoid future violations. The commission may direct a letter of  
28 notification to any official or employee covered by this chapter.

29 (2) A letter of admonition is [~~shall be~~] the appropriate sanction if [~~in those~~  
30 ~~eases in which~~] the commission finds that the violation is minor [~~and~~] or  
31 may have been unintentional, but calls for a more substantial response than a  
32 letter of notification. The commission may admonish any official or  
33 employee covered by this chapter.

34 (3) A reprimand is [~~shall be~~] the appropriate sanction when the commission  
35 finds that a violation has been committed intentionally or through disregard  
36 of this chapter. The commission may reprimand any official or employee

1 covered by this chapter. A reprimand directed to a City official shall also be  
2 sent to the city council. A reprimand directed to an employee shall be sent  
3 to the city manager and included in said employee's personnel file.

4 (4) A recommendation of removal from office or a recommendation of  
5 suspension from office, including ~~as well as~~ a recommendation for the  
6 length of a suspension, is ~~shall be~~ the appropriate sanction when the  
7 commission finds that a serious or repeated violation of this chapter has been  
8 committed intentionally or through culpable disregard of this chapter. ~~[by an~~  
9 ~~unsalaried City official.]~~ A recommendation regarding ~~[of removal from~~  
10 ~~office or a recommendation of suspension from office for]~~ an unsalaried City  
11 official or ~~[for]~~ a salaried official appointed by the ~~[mayor and]~~ city council  
12 shall be transmitted by the commission to the city council. The final  
13 authority to carry out a [such] recommendation[s] regarding an unsalaried  
14 City official or of a salaried official appointed by the city council is ~~[to~~  
15 ~~remove from office or suspend from office and the length of the suspension~~  
16 ~~shall be with]~~ the city council. A recommendation regarding a ~~[of~~  
17 ~~suspension of]~~ City employee[s] shall be directed by ~~[from]~~ the commission  
18 to the city manager. The ~~[In such cases the]~~ final authority to carry out a  
19 [such] recommendation[s] regarding a city employee is ~~[to suspend from~~  
20 ~~employment and the length of suspension shall be with]~~ the city manager.

21 (5) A letter of censure or a recommendation of recall is ~~shall be~~ the  
22 appropriate sanction when the commission finds that a serious or repeated  
23 violation of this chapter has been committed intentionally or through  
24 culpable disregard of this chapter by an elected City official. A letter of  
25 censure or a recommendation of recall directed to an elected City official  
26 shall be transmitted by the commission to the city clerk, published by the  
27 city clerk in the ~~[a]~~ local newspaper of the largest general circulation, and  
28 shall be sent by the commission to the city council.

29 **PART 8.** Chapter 2-7 of the City Code is amended by adding a new Section 2-7-49 to  
30 read as follows:

31 **§ 2-7-49 CAMPAIGN AND LOBBYING VIOLATIONS.**

- 32 (A) This section applies to violations of Chapter 2-2 (*Campaign Finance*), Chapter 4-  
33 8 (*Regulation of Lobbyists*), and Article III, Section 8, of the City Charter (*Limits*  
34 *on Campaign Contributions and Expenditures*).
- 35 (B) If the Ethics Review Commission determines that a violation of a provision to  
36 which this section applies has probably occurred:

- 1 (1) the commission may recommend that the city attorney prosecute the  
2 violation;
- 3 (2) request the appointment of a special prosecutor in cases where it finds  
4 this action necessary, with funding provided by the City; or
- 5 (3) if the commission finds that the violation is minor, clerical, or may have  
6 been unintentional, the commission may recommend that the violation  
7 not be prosecuted or be prosecuted only if the violation is not corrected.

8 (C) The commission may consider a violation's severity, frequency, or intentional  
9 nature.

10 (D) If a respondent is an entity, the commission may find that an individual has  
11 violated a provision subject to the section.

12 (E) This section does not require the commission to make a recommendation with  
13 respect to a complaint.

14 (F) The commission may draft and publish a letter of notification, a letter of  
15 admonition, a reprimand, or a letter of censure to a respondent found to have  
16 violated a provision subject to this section.

17 (G) This section does not limit the prosecutorial discretion of the city attorney.

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19 **PART 9.** This ordinance takes effect on \_\_\_\_\_, 2012.

20 **PASSED AND APPROVED**

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24 \_\_\_\_\_, 2012

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Lee Leffingwell  
Mayor

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28  
29 **APPROVED:** \_\_\_\_\_  
30 Karen M. Kennard  
31 City Attorney

**ATTEST:** \_\_\_\_\_  
32 Shirley A. Gentry  
33 City Clerk  
34