

ORDINANCE NO. 20120426-084

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~~];
- (4) accept and file any information voluntarily supplied that exceeds the requirements of the provisions within the commission's jurisdiction [~~this chapter~~];

- (5) preserve statements and reports filed with the commission for a period of five years from the date of receipt;
- (6) review the provisions within the commission's jurisdiction [~~this chapter~~] and make appropriate recommendations to the city council concerning the provisions within the commission's jurisdiction [~~this chapter~~], and perform an annual review and evaluation of the dollar limits established in Chapter 2-2 (*Campaign Finance*) and make recommendations to the city council as to those limits;
- (7) review all public opinions related to the provisions within the commission's jurisdiction [~~this chapter~~] that are issued by the city attorney;
- (8) conduct hearings in accordance with the provisions of this chapter and the commission's rules on sworn complaints alleging violations of the provisions within the commission's jurisdiction [~~Chapter 2-2 (Campaign Finance)~~]; and
- (9) schedule and oversee the forums among candidates in City elections provided for in Chapter 2-2 (*Campaign Finance*).

(B) The commission may:

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

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

§ 2-7-41 COMPLAINTS.

(A) In this article:

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

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

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

§ 2-7-44 PRELIMINARY HEARING.

- (A) The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of a provision within the jurisdiction of the Ethics Review Commission [~~this chapter~~] has occurred. The complainant [~~person filing a complaint~~], or the legal counsel for the Ethics Review Commission in cases considered on [~~upon~~] the commission's own initiative, shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation as stated in the written complaint. Statements at a preliminary hearing shall be under oath, but there shall be no cross-examination or requests for persons or evidence issued for the hearing. Members of the commission may question the complainant, legal counsel for the commission, or the respondent [~~City official or employee named in the complaint~~].
- (B) The respondent [~~City official or employee named in the complaint~~] shall have the opportunity to respond but is not required to attend or make any statement. The respondent [~~official or employee~~] may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation. If the respondent [~~official or employee~~] agrees that a violation has occurred, the respondent [~~he~~] may so state and the commission may consider the appropriate sanction or prosecution.
- (C) The complainant and the respondent [~~City official or employee named in the complaint~~] shall have the right of representation by counsel.
- (D) At the conclusion of the preliminary hearing, the commission shall decide whether a final hearing should be held. If the commission determines that there are reasonable grounds to believe that a violation of a provision within the jurisdiction of the commission [~~this chapter~~] has occurred, the commission [~~it~~] shall schedule a final hearing. If a majority of the membership [~~four members of~~] the commission do not determine that there are reasonable grounds to believe that a violation [~~of this chapter~~] has occurred, the complaint shall be automatically dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.
- (E) The commission, at any time during the preliminary hearing, may also dismiss a complaint if the complaint does not allege conduct which would be a violation of a provision within the jurisdiction of the commission [~~this chapter~~]. Before a complaint is dismissed for failure to allege a violation, the complainant or the legal counsel for the commission shall be permitted one opportunity, within a period to be specified, to revise and resubmit the complaint.

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

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

§ 2-7-45 FINAL HEARING.

- (A) The final hearing shall be held within 30 days [~~as expeditiously as possible~~] following the determination by the Ethics Review Commission that there are reasonable grounds to believe that a violation of a provision within the jurisdiction of the commission [~~this chapter~~] has occurred [~~, but in no event shall it be held more than 30 days after said determination~~]. The commission may grant two postponements, not to exceed 15 days each, on [~~upon~~] the request of the respondent [~~City official or employee named in the complaint~~].
- (B) The issue at a final hearing shall be whether a violation of a provision within the jurisdiction of the commission [~~this chapter~~] has occurred. The commission shall make its determination based on the preponderance of the credible evidence in the record. All witnesses shall make their statements under oath. If the commission determines that a violation has occurred, the commission [~~it~~] shall state the commission's [~~its~~] findings in writing, shall identify each [~~the particular~~] code section or charter provision that has [~~(s) of this chapter which have~~] been violated, and, within five working days, shall deliver a copy of the commission's findings to the complainant, if any, the respondent, [~~person named in the complaint~~] and the city clerk.

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

§ 2-7-47 PROSECUTION.

If the Ethics Review Commission determines that a violation of Sections 2-7-66 (*Misuse of Official Information*), 2-7-67 (*Restrictions on Providing Representation of Others*), or Article 5 (*Financial Disclosure*) has occurred, the commission [~~it~~] shall deliver a copy of the commission's findings to the complainant, if any, the respondent [~~person named in the complaint~~], and the city attorney recommending prosecution or setting forth requirements to be complied with in order that voluntary compliance may be had and final determination obtained.

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

§ 2-7-48 SANCTIONS.

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

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

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

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

(2) A letter of admonition is [~~shall be~~] the appropriate sanction if [~~in these cases in which~~] the 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. The commission may admonish any official or employee covered by this chapter.

(3) A reprimand is [~~shall be~~] the appropriate sanction when the commission finds that a violation has been committed intentionally or through disregard of this chapter. The commission may reprimand any official or employee covered by this chapter. A reprimand directed to a City official shall also be sent to the city council. A reprimand directed to an employee shall be sent to the city manager and included in said employee's personnel file.

(4) A recommendation of removal from office or a recommendation of suspension from office, including [~~as well as~~] a recommendation for the length of a suspension, is [~~shall be~~] the appropriate sanction when the

commission finds that a serious or repeated violation of this chapter has been committed intentionally or through culpable disregard of this chapter, ~~[by an unsalaried City official.]~~ A recommendation regarding ~~[of removal from office or a recommendation of suspension from office for]~~ an unsalaried City official or ~~[for]~~ a salaried official appointed by the ~~[mayor and]~~ city council shall be transmitted by the commission to the city council. The final authority to carry out a [such] recommendation[s] regarding an unsalaried City official or of a salaried official appointed by the city council is ~~[to remove from office or suspend from office and the length of the suspension shall be with]~~ the city council. A recommendation regarding a ~~[of suspension of]~~ City employee[s] shall be directed by ~~[from]~~ the commission to the city manager. The ~~[In such cases the]~~ final authority to carry out a [such] recommendation[s] regarding a city employee is ~~[to suspend from employment and the length of suspension shall be with]~~ the city manager.

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

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

§ 2-7-49 CAMPAIGN AND LOBBYING VIOLATIONS.

- (A) This section applies to violations of 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*).
- (B) If the Ethics Review Commission determines that a violation of a provision to which this section applies has probably occurred:
- (1) the commission may recommend that the city attorney prosecute the violation;
 - (2) request the appointment of a special prosecutor in cases where it finds this action necessary, with funding provided by the City; or
 - (3) if the commission finds that the violation is minor, clerical, or may have been unintentional, the commission may recommend that the violation not be prosecuted or be prosecuted only if the violation is not corrected.

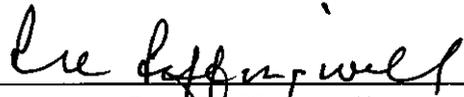
- (C) The commission may consider a violation's severity, frequency, or intentional nature.
- (D) If a respondent is an entity, the commission may find that an individual has violated a provision subject to the section.
- (E) This section does not require the commission to make a recommendation with respect to a complaint.
- (F) The commission may draft and publish a letter of notification, a letter of admonition, a reprimand, or a letter of censure to a respondent found to have violated a provision subject to this section.
- (G) This section does not limit the prosecutorial discretion of the city attorney.

PART 9. This ordinance takes effect on August 1, 2012.

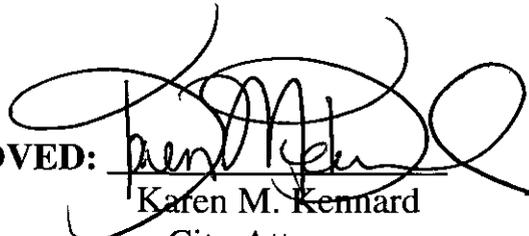
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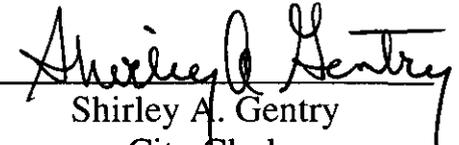
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Lee Leffingwell
Mayor

APPROVED: 
Karen M. Kennard
City Attorney

ATTEST: 
Shirley A. Gentry
City Clerk