



ETHICS REVIEW COMMISSION RECOMMENDATION NO. 20151110-03b

Date: November 10, 2015

Subject: Proposed Amendments to Chapter 2-7 of City Code (Ethics and Financial Disclosure) and Chapter 2-3 of City Code (City Auditor)

Motioned By: Vice Chair Einhorn

Seconded By: Commission Member Smith

Recommendation

The Commission recommends various amendments to Chapter 2-7 and Chapter 2-3 of the City Code to provide a process for the Commission and the City Auditor to work together regarding investigations and determinations of violations of certain provisions of the City Code and the City Charter, to ensure due process for affected parties, and to perform cleanup of outdated provisions, etc.

Description of Recommendation to Council

Please see attached proposed amendments to Chapter 2-7 and Chapter 2-3 of the City Code.

Rationale:

Reform and close loopholes in the Auditor and Ethics processes.

Vote: 8-0

For: Chair Austin Kaplan, Vice Chair Peter Einhorn, and Commission Members Meagan Harding, Matthew Lamon, Donna Beth McCormick, Paul Quinzi, Kenneth Smith, and Brian Thompson

Against: None.

Abstain: None.

Absent: Commission Members J. Michael Ohueri, Dennis Speight, and Robert "Ben" Stratmann

Attest:

Austin Kaplan, Commission Chair

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

CHAPTER 2-7. - ETHICS AND FINANCIAL DISCLOSURE.

ARTICLE 1. - GENERAL PROVISIONS.

§ 2-7-1 - DECLARATION OF POLICY.

- (A) It is the policy of the City that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all City officials and employees is adopted.
- (B) This code has the following four purposes:
 - (1) To encourage high ethical standards in official conduct by City officials and employees;
 - (2) To establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the City;
 - (3) To require disclosure by such of official and employees of private financial or other interests in matters affecting the City; and
 - (4) To serve as a basis for disciplining those who refuse to abide by its terms.
- (C) The provisions of this chapter shall not apply to political contributions, loans, expenditures, reports or regulation of political campaigns or the conduct of candidates in such campaigns.

Source: 1992 Code Section 2-3-1; Ord. 031204-9; Ord. 031211-11.

§ 2-7-2 - DEFINITIONS.

In this chapter:

- (1) **AFFECTED** means in the case of a person, entity or property, means reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question. For instance, a person or entity owning real property, entering into a contract with the City, or seeking a permit or franchise is "affected" by votes or decisions such as zoning of the property, approval of the contract, or granting of the permit. Affected does not include those persons or entities who are subject to an indirect or secondary effect from official action. Creditors, independent contractors, or guarantors of a person "affected" by a vote or decision are not also deemed to be "affected" by virtue of their relationship with the affected person. The vote or decision need not be the only producing cause of the economic effect or consequence reasonably likely to result. In determining whether a person, entity or property is or was "affected by" a vote or decision, it shall not be necessary to prove the actual existence or occurrence of an economic effect or consequence if such effect or consequence would be reasonably expected to exist or occur. Additionally, a vote or decision to place a matter on a ballot is deemed to affect a person, entity or property to the same extent that the results of the election would effect the person, entity or property.
- (2) **CITY EMPLOYEE or EMPLOYEE** means any person employed by the City but does not include independent contractors hired by the City.
- (3) **CITY OFFICIAL or OFFICIAL**, unless otherwise expressly defined, means the mayor, members of the city council, municipal court judges (including substitute judges), city manager, assistant city managers, city clerk, deputy city clerks, city attorney, deputy city attorneys, all department heads or deputy department heads, whether such person is salaried, hired or elected, and all other persons holding positions designated by the City Charter, as it may be amended from time

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

to time. City official, unless otherwise expressly defined, includes individuals appointed by the mayor and city council to all City commissions, committees, boards, task forces, or other City bodies unless specifically exempted from this chapter by the city council.

- (4) **DECISION** means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other City board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body. A decision of a City employee means any action in which the employee exercises discretionary authority, including but not limited to the issuance of permits, imposition or collection of fines or fees, authorizations for expenditures, and other non-ministerial acts.
- (5) **DISCRETIONARY AUTHORITY** means the power to exercise any judgment in a decision or action.
- (6) **ENTITY** means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted, but does not include a governmental body.
- (7) **HARM** means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.
- (8) **INCIDENTAL INTEREST** means an interest in a person, entity or property which is not a substantial interest and which has insignificant value, or which would be affected only in a de minimis fashion by a decision. This chapter does not establish dollar limits on the terms "insignificant value" and "de minimis," which shall have their usual meanings and be subject to interpretation on a case by case basis.
- (98) **MINISTERIAL ACT** means an act performed in a prescribed manner and not requiring the exercise of any judgment or discretion.
- (109) **REMOTE INTEREST** means an interest of a person or entity, including a City official or employee, who would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general City fees, City utility charges, or a comprehensive zoning ordinance or similar decisions is incidental to the extent that the councilmember would be affected in common with the general public.
- (101) **SUBSTANTIAL INTEREST** means an interest in another person or an entity if: the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less; the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council; or the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000 or more except that a home mortgage loan for the person's homestead or a loan or lease of a personal automobile shall not be deemed a substantial interest in the creditor or guarantor if entered into at a market rate with a commercial lending institution before the previous 12 months.
- (124) **SUBSTANTIAL INTEREST IN REAL PROPERTY** means an interest in real property which is an equitable or legal ownership with a market value of \$5,000 or more.

Source: 1992 Code Section 2-3-2; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review Commission on November 10, 2015

ARTICLE 2. - ETHICS REVIEW COMMISSION.

§ 2-7-26 - FUNCTIONS.

The Ethics Review Commission has jurisdiction over this chapter, Section 2-1-24 (Conflict of Interest and Recusal);^{1.1} Chapter 2-2 (Campaign Finance);^{2.7} Chapter 4-8 (Regulation of Lobbyists);^{3.7} [Article II, Section 9, of the City Charter \(Interference in Personnel Matters\)](#); 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.

Source: 1992 Code Section 2-3-26; Ord. 031204-9; Ord. 031211-11; Ord. 20080214-012; Ord. 20120426-084.

§ 2-7-27 - LIMIT ON THE COMMISSION'S JURISDICTION.

Notwithstanding any other provision of the City Code, the Ethics Review Commission may not hear or initiate a sworn complaint alleging a violation of Article 4 (Code of Ethics) against a member of the City's classified municipal civil service system or a member of a state civil service system.

Source: [Ord. No. 20150129-021, Pt. 1, 2-9-15](#).

§ 2-7-28 - [COMMISSION ACTION ON INFORMATION RECEIVED FROM THE AUDITOR.](#)

[If the commission receives information from the city auditor under Subsections \(J\) or \(K\) of Section 2-3-6 \(Powers and Duties\), the commission shall consider the information at the next feasible meeting of the commission, but no later than 60 days after receipt unless agreed upon by the parties or by vote of the commission. The chair of the commission shall cause a notice to be sent to the auditor, the person who is the subject of the investigation, and any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct no later than the 14th day before the date scheduled for the meeting. The person who is the subject of the investigation or any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct may present sworn testimony and other information relating to the investigation at the meeting. A commission member may not receive an ex parte communication regarding the information, and shall treat the matter in the same manner as a sworn complaint under Section 2-7, Article 3 \(Violations: Complaints and Hearing Procedures\). The commission may take any action on the information that is within its jurisdiction, including dismissing the matter. The commission shall forward notification of its findings and action to the city manager or appropriate authority. The city manager or appropriate authority has sole authority to determine disciplinary action. \(RESERVED\)](#)

§ 2-7-29 - REPORTS; OPINIONS.

The commission shall receive reports of ~~briefings trainings~~ regarding this chapter of newly appointed and employed board and commission members and employees ~~and copies of public opinions related to this chapter that have been issued by the city attorney since the last meeting.~~

Source: 1992 Code Section 2-3-29; Ord. 031204-9; Ord. 031211-11; Ord. 20080214-012.

Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review Commission on November 10, 2015

§ 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;
- (2) prepare and publish materials explaining the duties of individuals subject to the provisions within the commission's jurisdiction;
- (3) review all statements and reports filed as required by provisions within the commission's jurisdiction in order to obtain compliance with the provisions within the commission's jurisdiction;
- (4) accept and file any information voluntarily supplied that exceeds the requirements of the provisions within the commission's jurisdiction;
- (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 and make appropriate recommendations to the city council concerning the provisions within the commission's jurisdiction, 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 that are issued by the city attorney;~~
- ~~(78)~~ 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;
- ~~(89)~~ 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; and
- (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.~~

Source: 1992 Code Section 2-3-30; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084.

§ 2-7-31 - STAFFING.

- (A) The Ethics Review Commission shall be assigned staff by the city attorney to assist in its duties.
- (B) When complaints are filed related to the mayor, city councilmembers, city manager, city attorney, department heads and deputies, independent legal counsel shall be utilized to advise the commission and participate in hearings.
- (C) (1) Any City official or, employee ~~or candidate for City elective office~~ may request, and the city attorney shall thereupon promptly issue, a confidential written opinion concerning the meaning or effect of any section, word, or requirement of this chapter as it affects such official or, employee ~~or candidate~~, except that the city attorney will not issue a written opinion regarding a matter which forms the basis of a complaint currently pending before the commission. At the request of such official, employee or candidate the city attorney shall render a confidential opinion, not subject to public disclosure.

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (2) If a complaint is subsequently filed with the commission about any specific action, omission, or alleged conflict of interest which has been the subject, whole or in part, of a city attorney's opinion, the independent legal counsel shall act as commission attorney on said complaints.
- (D) The city clerk shall make the reporting and complaint forms and information developed by the Commission available to the public and shall assist citizens in complying with filing procedures.

Source: 1992 Code Section 2-3-31; Ord. 031204-9; Ord. 031211-11; Ord. 20060209-003.

§ 2-7-32 - RULES.

The Ethics Review Commission may adopt, amend, and rescind rules of procedure to carry out the provisions of this chapter. Such rules shall be consistent with this chapter and other applicable law.

Source: 1992 Code Section 2-3-32; Ord. 031204-9; Ord. 031211-11.

ARTICLE 3. - VIOLATIONS; COMPLAINT AND HEARING PROCEDURES.

§ 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 sworn complaint alleging a violation of a provision within the jurisdiction of the Ethics Review Commission shall specify each code section or charter provision alleged to have been violated.
- (C) A complaint alleging a violation of a provision within the jurisdiction of the commission 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 of the action alleged as a violation, and not afterward.
- (D) On the sworn complaint of any person filed with the city clerk's office or on the commission's own initiative, the commission shall consider possible violations of a provision within the jurisdiction of the commission by City officials and employees, former City officials and employees, 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.
- (E) Not later than three-five working days after the city clerk receives a sworn complaint, the city clerk shall acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the city attorney, the chair of the commission, and the respondent. The city clerk shall also send a copy of the complaint to any person or entity identified as involved in the alleged inappropriate conduct if the person or entity's name and contact information is listed on the complaint form.
- Not later than the 10th working day after receipt of a complaint, the commission shall notify in writing the complainant and the respondent 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 of the reasons for the delay and shall subsequently give the complainant the appropriate notification.
- (F) The commission may consider a possible violation of a provision within the jurisdiction of the commission on the commission's own initiative. Within seven days of the commission's decision to consider a possible violation, the commission shall draft a written complaint specifying each code section or charter provision alleged to have been violated, 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. Not later

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

~~than the 15th working day after the drafting of the complaint, the commission shall notify in writing the respondent of the date for the preliminary hearing.~~

(F) Not later than five working days after receipt of a complaint from the city clerk, the chair of the commission shall make an initial determination as to whether the complaint is within the commission's jurisdiction.

(1) If the chair determines that a complaint is within the commission's jurisdiction, the chair shall set the complaint for preliminary hearing at the next feasible commission meeting, but no later than 60 days after the chair's initial determination unless agreed upon by the parties or by vote of the commission. At least 10 working days prior to the meeting, the chair shall cause a written notice of the date of the preliminary hearing to be sent to the complainant, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. For good cause, the chair may grant a postponement request made by the complainant, the respondent, or any person or entity identified as involved in the alleged inappropriate conduct.

(2) If the chair determines that a complaint is not within the commission's jurisdiction, the commission shall review the chair's jurisdictional determination at the next feasible commission meeting and may overturn the chair's determination.

(a) Not later than five working days after the chair determines that a complaint is not within the commission's jurisdiction, the chair shall cause a written notification of such initial determination to be sent to the complainant, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct.

(b) If the commission determines that a complaint is not within its jurisdiction but is within the city auditor's investigatory jurisdiction, the commission shall refer the complaint to the city auditor for possible investigation.

(c) If the commission determines that a complaint is not within its jurisdiction, the chair shall cause a written notification of the commission's final jurisdictional determination to be sent to the complainant, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. If applicable, the notification shall state that the commission has referred the complaint to the city auditor for possible investigation.

(d) If the commission overturns the chair's initial determination and determines that a complaint is within the commission's jurisdiction, the complaint shall be set for preliminary hearing in accordance with the procedures set forth in Subsection (F)(1).

(G) The commission may consider a possible violation of a provision within the jurisdiction of the commission on the commission's own initiative. Within 10 working days of the commission's decision to consider a possible violation, the commission shall draft a written complaint specifying each code section or charter provision alleged to have been violated, shall file a copy of the complaint with the city clerk, and shall provide a copy of the complaint to the city attorney, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. A complaint initiated by the commission need not be sworn. The chair shall set the complaint for preliminary hearing at the next feasible commission meeting, but no later than 60 days after the complaint is filed with the city clerk unless agreed upon by the parties or by vote of the commission. At least 10 working days prior to the meeting, the chair shall cause a written notice to be sent to the respondent and any person or entity identified as involved in the alleged inappropriate conduct notifying the respondent and any person or entity identified as involved in the alleged inappropriate conduct of the date of the preliminary hearing. For good cause, the chair may grant a postponement request made by the respondent or any person or entity identified as involved in the alleged inappropriate conduct.

Editor's note—As set forth in Ord. 20120426-084. Intended text is probably "...a copy of the complaint." Future legislation will correct the provision if needed.

Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review Commission on November 10, 2015

§ 2-7-42 - DEFENSE OF OFFICIAL OR EMPLOYEE BY CITY ATTORNEY.

In the event a complaint is filed with the Ethics Review Commission against any official or employee of the City, alleging a violation of Article 4 (Code of Ethics), if the official or employee reasonably believed the conduct charged was not prohibited by Article 4 (Code of Ethics) and acted in reasonable reliance upon a public opinion rendered by the city attorney, the city attorney shall be authorized to represent the official or employee before the commission, or to employ and pay private counsel to represent the official or employee before the commission.

Source: 1992 Code Section 2-3-42; Ord. 031204-9; Ord. 031211-11.

§ 2-7-43 - PROHIBITION OF EX PARTE COMMUNICATIONS.

After a complaint has been filed and during the pendency of a complaint before the Ethics Review Commission, a member of the commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the commission.

Source: 1992 Code Section 2-3-43; Ord. 031204-9; Ord. 031211-11.

§ 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 has occurred. The complainant, or the legal counsel for the Ethics Review Commission in cases considered on 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.
- (B) The respondent shall have the opportunity to respond but is not required to attend or make any statement. The respondent may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation. If the respondent agrees that a violation has occurred, the respondent may so state and the commission may consider the appropriate sanction or prosecution.
- (C) The complainant and the respondent 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 has occurred, the commission shall schedule a final hearing. If a majority of the membership of the commission ~~dedoes~~ not determine that there are reasonable grounds to believe that a violation has occurred, the complaint shall be automatically dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.

Editor's note — As set forth in Ord. 20120426-084. Intended text is probably "If a majority of the membership of the commission..." Future legislation will correct the provision if needed.

- (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. Before a complaint is dismissed for failure to allege a violation, the complainant or

Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review Commission on November 10, 2015

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 may ask the commission at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.

Source: 1992 Code Section 2-3-44; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084.

§ 2-7-45 - FINAL HEARING.

- (A) The final hearing shall be held at the next feasible commission meeting, no later than 60 days unless agreed upon by the parties or by vote of the commission, within 30 days 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 has occurred. The chair of the commission may grant one two postponements, not to exceed 15 days each, on the request of the complainant, or respondent, or any person or entity identified as involved in the alleged inappropriate conduct.
- (B) The issue at a final hearing shall be whether a violation of a provision within the jurisdiction of the commission has occurred. The commission shall make its determination based on the preponderance of the credible evidence in the record. The complainant and respondent must attend a final hearing. However, if the respondent fails to attend, the commission may proceed with the final hearing at its discretion. All parties and witnesses shall make their statements under oath. If the commission determines that a violation has occurred, the commission shall state the commission's findings in writing, shall identify each code section or charter provision that has been violated, and, within five 10 working days, shall deliver a copy of the commission's findings to the complainant, if any, the respondent, and the city clerk.

Source: 1992 Code Section 2-3-45; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084.

§ 2-7-46 - OATHS AND REQUESTS FOR INFORMATION.

If a complaint proceeds to a final hearing, the Ethics Review Commission may subpoena or request witnesses to attend and testify, administer oaths and affirmations, take evidence and subpoena or request the production of books, papers, records, or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation. Failure to comply with a subpoena issued by the commission is a class C misdemeanor offense, punishable by a fine not to exceed \$500. The commission may also request assistance from the city auditor with investigation of allegations in a complaint, and the commission may consider the city auditor's investigation at a final hearing on the complaint.

Source: 1992 Code Section 2-3-46; Ord. 031204-9; Ord. 031211-11.

§ 2-7-47 - PROSECUTION.

If the Ethics Review Commission determines that a violation of Section 2-1-24, 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 shall deliver a copy of the commission's findings to the complainant, if any, the respondent, 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.

Source: 1992 Code Section 2-3-47; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084.

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

§ 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) 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 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 acted in reliance upon a public written opinion of the city attorney, the commission shall consider that fact.
- (C) If the commission determines that a violation has occurred, the commission may impose or recommend the following sanctions:
 - (1) A letter of notification is the appropriate sanction when the violation is clearly unintentional, or when the respondent's conduct complained of was made in reliance on a public written opinion of the city attorney. A letter of notification must advise the respondent 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 the appropriate sanction if the commission finds that the violation is minor 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 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 a recommendation for the length of a suspension, is 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. A recommendation regarding an unsalaried City official or a salaried official appointed by the city council shall be transmitted by the commission to the city council. The final authority to carry out a recommendation regarding an unsalaried City official or of a salaried official appointed by the city council is the city council. A recommendation regarding a City employee shall be directed by the commission to the city manager. The final authority to carry out a recommendation regarding a city employee is the city manager.
 - (5) A letter of censure or a recommendation of recall is 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 a local newspaper of the largest general circulation, and shall be sent by the commission to the city council.

Source: 1992 Code Section 2-3-48; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084.

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

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (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, as those sanctions are more fully described in Section 2-7-48, 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.

Source: Ord. 20120426-084.

ARTICLE 4. - CODE OF ETHICS.

§ 2-7-61 - CONDUCTING BUSINESS THROUGH PARTNERSHIPS, PROFESSIONAL CORPORATIONS, AND OTHER ENTITIES.

If a City official or employee is a member of a partnership or professional corporation, or conducts business through another entity, a substantial interest of the partnership, professional corporation, or entity shall be deemed to be a substantial interest of the City official or employee if:

- (A) the partnership or professional corporation has fewer than 20 partners or shareholders;
- (B) regardless of the number of partners or shareholders, the official or employee has an equity interest, share, or draw equal to or greater than five percent of the capital or revenues of the partnership, professional corporation, or other entity; or
- (C) with regard to the partnership, professional corporation, or other entity's substantial interest in a client, the official has personally acted within the preceding 24 months in a professional or fiduciary capacity for that client.

Source: 1992 Code Section 2-3-61; Ord. 031204-9; Ord. 031211-11.

§ 2-7-62 - STANDARDS OF CONDUCT.

- (A) No City official or employee shall transact any business in his official capacity with any entity in which he has a substantial interest.
- (B) No City official or employee shall formally appear before the body of which the official or employee is a member while acting as an advocate for himself or any other person, group, or entity.

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (C) No salaried City official or employee shall represent, for compensation, any other person, group or entity before any department, commission, board or committee of the City.
- (D) No salaried City official or employee shall represent, directly or indirectly, any other person, group or entity in any action or proceeding against the interests of the City, or in any litigation in which the City or any department, commission, or board or committee thereof is a party; provided, however, that nothing herein shall limit the authority of the city attorney and his staff to represent the City, its boards, commissions, committees and officers and particularly the Human Rights Commission in the discharge of their duties, including equal employment opportunity cases.
- (E) No salaried City official or employee shall represent, directly or indirectly, any person, group or entity in any action or proceeding in the municipal courts of the City which was instituted by a City official or employee in the course of official duties.
- (F) No City official shall represent any person, group or entity in any action or proceeding in the municipal courts of the City which was instituted by or arising from a decision of a board, commission, committee, task force or other body on which the official serves.
- (G) No City official or employee shall accept or solicit any gift or favor, that might reasonably tend to influence that individual in the discharge of official duties or that the official or employee knows or should know has been offered with the intent to influence or reward official conduct
- (H) (1) No City official or employee shall solicit or accept other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.

(2) If a City official or employee accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official or employee might reasonably be expected to act, investigate, advise, or make a recommendation, the official or employee shall disclose that fact to the board or commission on which he serves or to his supervisor and shall take no further action on matters regarding the potential future employer.
- (I) No salaried City official or employee shall use his official position to secure a special privilege or exemption for himself or others, to harm another, or to secure confidential information for any purpose other than official responsibilities.
- (J) No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- (K) No City official or employee shall accept remuneration, directly or indirectly, for campaign work relating to an item placed on the ballot if that individual served on the body which exercised discretionary authority in the development of the ballot item and participated in the discussion or voted on the item.
- (L) No salaried City official and certain City employees to include the mayor, councilmembers, the city manager, assistant city managers, the city clerk, deputy city clerks, council aides, municipal court clerk, deputy municipal court clerks, municipal judges (including substitute judges), the city auditor, assistants to the city auditor, the city attorney, deputy city attorneys, assistant city attorneys, purchasing agents and those employees with the authority to purchase or contract for the City, all department heads, deputy department heads, and the spouse of each of the above, shall solicit nor propose on a contract, enter into a contract or receive any pecuniary benefit from any contract with the City. This prohibition does not include any employment contract which may be authorized for the official, a contract of sale for real property or a contract for services which are available to all citizens.
- (M) For a period of two years after leaving office, a former mayor or councilmember may not solicit or propose on a contract with the City or enter into a contract with the City for the sale to the City of any goods or services other than real estate. This subsection does not apply to a former mayor or councilmember who had a business relationship with the City in the six months immediately

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

preceding taking the office of mayor or councilmember if the solicitation or proposal is on behalf of the same business.

- (N) For a period of two years after leaving office, a former mayor or councilmember, members of their family, or anyone acting on their behalf, may not sell or lease any real estate to the City unless the city council has designated the property for acquisition and would otherwise have to acquire the property through its power of eminent domain.
- (O) No City official or employee shall engage in fraud or abuse, as those terms are defined in Chapter 2-3 of City Code (City Auditor).

Source: 1992 Code Section 2-3-62; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-63 - PROHIBITION ON CONFLICT OF INTEREST.

- (A) A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.
- (B) A City official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity. This subsection does not apply to a City official or employee who:
 - (1) serves as a corporate officer or member of the board of directors of a nonprofit entity that is owned by the City or created by the city council; or
 - (2) as a duty of office or as a job assignment, serves as a corporate officer or member of the board of directors of a nonprofit entity as a representative of the City.
- (C) Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.
- (D) Nothing in this chapter shall prohibit the city council from participating in a vote or decision relating to salaries, terms of office or travel budgets of city councilmembers.
- (E) If a member of the city council participates in a vote or decision on a contract for the purchase by the City of any goods or services from a person or entity in which the member has a substantial interest, the contract is voidable by the City.
- (F) A document prepared by the City that solicits bids or proposals from vendors, service providers, or other persons shall provide notice of the provisions of this section.

Source: 1992 Code Section 2-3-63; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-64 - DISCLOSURE OF CONFLICT OF INTEREST.

- (A) A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.
- (B) To comply with this section, a councilmember or unsalaried City official, prior to the vote or decision, either shall file an affidavit as required by Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments) of the Local Government Code

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

or, if not so required, shall publicly disclose in the official records of the body the nature and extent of such interest.

- (C) To comply with this section, a City employee shall notify in writing his supervisor of any substantial interest he may have in a natural person, entity or property which would be affected by an exercise of discretionary authority by the City employee and a supervisor shall reassign the matter.

Source: 1992 Code Section 2-3-64; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-65 - SUBSTANTIAL INTEREST OF RELATIVE.

- (A) A substantial interest of a spouse of a City official or employee shall be deemed to apply to that official or employee for the purposes of Sections 2-7-63 (Prohibition on Conflict of Interest) and 2-7-64 (Disclosure of Conflict of Interest) concerning disclosure and recusal or reassignment.
- (B) If the spouse of a City official or employee does business through a partnership or other entity, the substantial interests of that partnership or entity shall not be deemed under Section 2-7-61 (Conducting Business Through Partnerships, Professional Corporations, and Other Entities) to apply to the City official or employee.
- (C) A City official or a City employee may not participate in a vote or decision affecting a substantial interest of a person to whom the official or employee is related in the first or second degree of consanguinity or affinity. This subsection does not apply to a substantial interest of a relative based on the relative's employment by a governmental body.
- (D) For the purposes of Subsection (C): A relative other than a spouse has a substantial interest if:
- (1) the person owns 10 percent or more of the voting stock or shares of the entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the entity; or
 - (2) funds received by the person from the entity exceed 10 percent of the person's gross income for the previous year; or
 - (3) the person has a substantial interest in real property if the interest is an equitable or legal ownership in real property with a fair market value of \$2,500 or more.

Source: 1992 Code Section 2-3-65; Ord. 031204-9; Ord. 031211-11; Ord. 20110428-047.

§ 2-7-66 - MISUSE OF OFFICIAL INFORMATION.

No former City official or former employee shall use any confidential information to which he had access by virtue of his official capacity and which has not been made public concerning the property, operations, policies, or affairs of the City, to advance any personal financial interest.

Source: 1992 Code Section 2-3-66; Ord. 031204-9; Ord. 031211-11.

§ 2-7-67 - RESTRICTIONS ON PROVIDING REPRESENTATION OF OTHERS.

- (A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (1) BEFORE THE CITY means before the city council, a board or commission, or a City official or employee.
 - (2) CASE, PROJECT OR MATTER means to refer to specific cases, projects or regulatory matters, rather than generic policies, procedures or legislation of general application. For instance, the zoning process or site plan review process is not a "case, project or matter" within the meaning of this section; however, a specific zoning case or site plan would constitute a "case, project or

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

matter" subject to the restrictions imposed in this section. It is not the intent of this chapter, and this chapter shall not be construed, to proscribe the practice of any profession or occupation by former City officials and employees.

- (3) REPRESENT means all communications with and appearances before the City in which the City is asked to make a decision, as that term is defined in this chapter. The term represent does not include communications and appearances involving only ministerial action on the part of the City.
- (B) A City employee in a position which involves significant decision-making, advisory, or supervisory responsibility, or a City official who leaves the service or employment of the City shall not, within 12 months after leaving that employment or service, represent any other person or entity in any formal or informal appearance, if the City official or employee has received or shall receive remuneration from the person, entity or members of the entity being represented:
 - (1) before the City concerning a case, project or matter over which the person exercised discretionary authority as a City employee or official; or
 - (2) before any other agency on a case, project or matter over which the person exercised discretionary authority as a City employee or official.
- (C) A former City employee or official who is subject to the requirements of Subsection (B) shall, during the 24 months after leaving the service or employment of the City, disclose his previous position and responsibilities with the City and the work performed, if any, as a City employee or official regarding the matter for which he is appearing before the City whenever he represents any other person or entity in any formal or informal appearance before the City.
- (D) In any formal or informal appearance before the City, a person representing a person or entity which employs a former City official or employee who had discretionary authority over the project or matter for which the person or entity is appearing before the City shall disclose any former involvement of such former City official or employee in the project or matter. This disclosure requirement shall be in effect for 24 months after the former City official or City employee leaves City service or employment.
- (E) This section shall become effective from and after February 1, 1987. This section shall not apply to persons who left the service or employment of the City prior to February 1, 1987.

Source: 1992 Code Section 2-3-67; Ord. 031204-9; Ord. 031211-11.

ARTICLE 5. - FINANCIAL DISCLOSURE.

§ 2-7-71 - DEFINITIONS.

In this article:

- (1) **CITY OFFICIAL** means the mayor, members of the city council and their aides, Municipal Court Judges (including Substitute Judges), city manager, Assistant city managers, city clerk, Deputy city clerks, city attorney, Deputy city attorneys, Treasurer, Comptroller, City Auditor, Purchasing Officer, the initial and subsequent commissioners of the Conventions and Visitors Commission, all department heads, deputy department heads, and where no deputy department head serves, the first principal assistant of such department, and spouses of each, and spouses of and the members of the City boards and commissions described in Section 2-7-72(C) (Reports). City appointees to other governmental bodies may be required to file financial information statements without being deemed City officials under Section 2-7-2 (Definitions).
- (2) **SPOUSE** of a City official includes a domestic partner, which means an individual who lives in the same household and shares common resources of life in a close, personal, intimate relationship with the City official if under Texas law the individual would not be prevented from marrying the City official on account of age, consanguinity, or prior undissolved marriage to another. A domestic partner may be of the same, or opposite, gender as the City official.

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

Source: 1992 Code Section 2-3-71; Ord. 031204-9; Ord. 031211-11; Ord. 20071129-011.

§ 2-7-72 - REPORTS.

- (A) By ~~the last Friday of~~ April 30 of each year, City officials shall file with the city clerk a public statement of financial information which shall cover the previous year which is defined as January 1 through December 31. The mayor and members of the city council and spouses shall also file with the city clerk an updated statement of financial information by the last Friday of July for the previous period of January through June. Such updated statement shall only include any change in a "substantial interest" or "substantial interest in real property" as defined in Section 2-7-2 (Definitions) since the last filed statement. Within 30 days after the end of their term, the mayor and members of the city council and spouses shall also file with the city clerk a statement of financial information for the previous year which is defined as January 1 through December 31.
- (B) Any non-elective City officials covered by Section 2-7-71 (Definitions) who are appointed or hired shall file an initial statement of financial information for the previous calendar year within 30 days of being hired or appointed. Thereafter, such person shall, within the time limits provided by this article, file a statement of financial information for the full appropriate reporting period. However, any salaried City official who resigns or is terminated for any reason shall file with the city clerk a public statement of financial information which shall cover the current year to the date of resignation or termination on or before his last day as a salaried employee. In such event, a salaried employee shall not be required to file a public statement of financial information for the year in which the resignation or termination occurred. He shall, at that time, also file a statement of financial information for the previous year if one has not been submitted prior to the employee's termination date.
- (C) The members of the following boards and commissions shall report the information required by Subsection (E):
 - (1) Arts Commission;
 - (2) Board of Adjustment;
 - (3) Environmental Board;
 - (4) Historic Landmark Commission;
 - (5) Housing Authority of the City of Austin;
 - (6) Parks and Recreation Board;
 - (7) Planning Commission;
 - (8) Public Safety Commission;
 - (9) Zero Waste Advisory Commission;
 - (10) Water and Wastewater Commission;
 - (11) Waterfront Planning Advisory Board;
 - (12) Urban Renewal Agency; and
 - (13) Zoning and Platting Commission.
- (D) In addition to other required information, the mayor and members of the city council shall report the amount or category of information as designated in Section 2-7-73 (Categories), for any item reported under Subsection (E)(1), (3), (4), (6), (7), (10), (11) or (12) .
- (E) A City official shall include the following information by separate listing in the required statement of financial information, such information to include the source of income or assets and liabilities of their spouses but shall not require a separate report by such official's spouse:

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (1) All sources of occupational income which exceed 10 percent of the official's gross income or \$5,000 in salary, bonuses, commissions or professional fees; or \$20,000 in payment for goods, products or nonprofessional services, excluding the amount but including the name and address of the employer or source of income, and the nature of the occupation or business of each source.
- (2) If the official is a self-employed solo practitioner, or if the official owns or controls at least a five percent interest in a partnership, professional corporation or other entity through which the official does business, the official shall report the names and addresses of the clients or customers from whom the official, partnership, professional corporation, or other entity received at least 10 percent of its gross income or \$5,000 in salary, bonuses, commissions or professional fees; or \$20,000 in payment for goods, products or nonprofessional services of gross income during the reporting period.
- (3) An itemized list of all sources of income from interest, dividends, royalties, rents, trust disbursements, or other non-occupational sources, excluding the amount, but identifying the source, for each such source exceeding either 10 percent of the official's gross income or \$5,000.
- (4) The identification of any person, business entity or other organization from whom the City official reporting has received a gift or favor of any money or other thing of value in excess of \$100, or a series of gifts from the same source during the reporting period the total value of which exceeds \$100, excluding the value of the gift, but including the identification of the source. Excluded from this requirement are campaign contributions which are reported as required by state statute and gifts received from the following relatives:
 - (a) spouse;
 - (b) children;
 - (c) parents;
 - (d) grandchildren;
 - (e) grandparents;
 - (f) brothers;
 - (g) sisters;
 - (h) uncles;
 - (i) aunts;
 - (j) nephews;
 - (k) nieces;
 - (l) first cousins;
 - (m) children-in-law;
 - (n) parents in-law;
 - (o) grandchildren-in-law;
 - (p) grandparents-in-law;
 - (q) brothers-in-law;
 - (r) sisters-in-law;
 - (s) uncles-in-law;
 - (t) aunts-in-law;
 - (u) nephews-in-law;

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (v) nieces-in-law; and
 - (w) first cousins-in-law.
- (5) The name of any corporation, partnership, limited partnership, or other entity in which the official held, owned, acquired, or sold stock or other equity ownership having a value exceeding \$5,000 or equivalent to five percent or more of the stock or equity in the entity.
 - (6) A description, excluding the face amount, of all bonds, notes and other commercial paper which the official held, owned, acquired, or sold at any time during the reporting period if the combined face value of the bond, notes and commercial paper exceeds \$5,000.
 - (7) Any other income or revenue of the official in excess of \$5,000, including a description of sources, but excluding amounts.
 - (8) An itemized list of all real property in which the official holds any legal or beneficial interest, including real property for which the official has entered into a contract for sale, and including a description sufficient to locate the property, stating the state address, if any, and the present use of the property.
 - (9) An itemized list of all real property held, owned, acquired, sold or under contract for sale by a corporation, partnership, limited partnership, professional corporation, or other entity in which the official owns or controls at least a five percent interest, including a description sufficient to locate the property, stating the street address, if any, and the present use of the property.
 - (10) All loans and extensions of credit exceeding \$5,000 on which the official is lender or creditor, excluding the amount of the loan or extension of credit but including the name of the debtor and the rate of interest, if any.
 - (11) All loans or transactions exceeding \$5,000 on which the official is a guarantor or co-signor, excluding the amount of the loan or guarantee, but including the names of the borrower and lender.
 - (12) All loans to, debts of, and other financial liabilities of the official which are in excess of \$5,000 and all loans to, debts of and other financial liabilities of any corporation, partnership, limited partnership, professional corporation or other entity in which the official owns or controls at least five percent interest, which liabilities exceed \$5,000. For all debts, loans and liabilities presently outstanding or which existed at any time during the reporting period, the official shall state when the liability was incurred, the rate of interest being charged, if any, and the name of the lender, creditor or obligee, but not the amount of the liability.
 - (13) All boards of directors of which the official is a member and the offices or executive positions which the official holds in corporations, partnerships, limited partnerships, professional corporations or other entities, including non-business entities, stating for each the name of the entity and the position held. There shall be excluded from this item positions on corporations or other entities owned by the City or created by the city council.
- (F) If, during a reporting period, the mayor or member of the city council has accepted the offer of any trip or excursion from a person or entity other than the City, then he shall report the following to the city clerk before embarking on such a trip or excursion:
- (1) the name of the sponsor;
 - (2) the place or places to be visited;
 - (3) the purpose of such a trip or excursion; and
 - (4) the date and duration of any such trip or excursion.
- Within 15 days of return from such a trip or excursion, the mayor or Councilmember shall report to the city clerk the approximate value of such a trip or excursion.

**Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (G) If any City official or City employee has accepted any item by way of gift or loan on behalf of the City, such gift or loan must be promptly reported to the city manager or his designee who shall have the gift or loan inventoried as City property in the case of a gift, or as a loan to the City in the case of a loan.

Source: 1992 Code Section 2-3-72; Ord. 031204-9; Ord. 031211-11; Ord. 20071129-011; Ord. 20090618-047; 20090723-097; Ord. 20090827-021; 20120126-049; [Ord. No. 20141211-204, Pt. 25, 7-1-15.](#)

§ 2-7-73 - CATEGORIES.

Where a monetary amount or value of income of an asset is required to be reported by the mayor or members of the city council, the exact amount need not be reported. The statement may instead include the category of amount as follows:

- (A) Category I: \$1 to less than \$10,000;
- (B) Category II: At least \$10,000 but less than \$20,000;
- (C) Category III: At least \$20,000 but less than \$50,000;
- (D) Category IV: At least \$50,000 but less than \$75,000;
- (E) Category V: At least \$75,000 but less than \$100,000; and
- (F) Category VI: \$100,000 or more, report to nearest \$100,000.

Source: 1992 Code Section 2-3-73; Ord. 031204-9; Ord. 031211-11.

§ 2-7-74 - FINANCIAL DISCLOSURE BY CANDIDATES.

- (A) Non-incumbent candidates for election to City offices shall file a public statement of financial information for the previous year with the city clerk within five working days after the deadline for filing for their respective offices. Incumbent candidates for election to City offices shall file a public statement of financial information for the previous year with the city clerk within five working days after the deadline for filing for their respective offices; provided that if such financial statement for the appropriate reporting period has already been filed pursuant to this article, such incumbent candidate shall not be required to refile an identical statement.
- (B) Incumbent and non-incumbent candidates for election to City offices shall file the same information as is required by the mayor and members of the city council under this article.

Source: 1992 Code Section 2-3-74; Ord. 031204-9; Ord. 031211-11.

§ 2-7-75 - SWORN FINANCIAL DISCLOSURE STATEMENTS.

- (A) All public statements of financial information required by this article shall be sworn to and shall constitute public records.
- (B) A statement of financial information may be filed electronically under procedures to be determined by the city clerk. By filing electronically a person required to file a statement of financial information states on oath before the city clerk that the facts stated in the statement of financial information are true to the best of the person's knowledge or belief.
- (C) A statement of financial information that is filed with the city clerk is considered to be under oath by the person required to file the statement regardless of the absence of or defect in the affidavit of verification, including a signature. This subsection applies to a statement of financial information that is filed electronically or otherwise.

Recommended changes to Chapter 2-7 of City Code as approved by the Ethics Review Commission on November 10, 2015

Source: 1992 Code Section 2-3-75; Ord. 031204-9; Ord. 031211-11; Ord. 20060608-013.

§ 2-7-76 - FILING DATES FOR STATEMENTS.

~~Annual statements required by this article must be received by the city clerk by 4:45 p.m. on the last Friday in April.~~ Statements ~~as otherwise~~ required by this article shall be received by the city clerk by 4:45 p.m. on the last day required. When the last day falls on a Saturday or Sunday, or on an official City holiday as established by city council, the deadline for receipt by the city clerk is extended to 4:45 p.m. of the next day which is not a Saturday or Sunday or official City holiday.

Source: 1992 Code Section 2-3-76; Ord. 031204-9; Ord. 031211-11.

§ 2-7-77 - FAILURE TO FILE FINANCIAL DISCLOSURE REPORTS.

For provisions concerning the removal of certain City officials for failure to file financial disclosure reports, see Section 2-1-21 (Eligibility Requirements and Removal).

Source: 1992 Code Section 2-3-77; Ord. 031204-9; Ord. 031211-11.

§ 2-7-99 - PENALTY.

Any violation of the provisions of Sections 2-7-6~~61~~ (~~Conducting Business Through Partnerships, Professional Corporations, and Other Entities~~Misuse of Official Information) through 2-7-76 (Filing Dates for Statements) shall be a class C misdemeanor offense punishable ~~punished~~ by a fine in an amount not exceeding \$500.

Source: 1992 Code Section 2-3-999; Ord. 031204-9; Ord. 031211-11; Ord. 20111110-052.

No amendments are proposed to Article 6 of Chapter 2-7 (ANTI-LOBBYING AND PROCUREMENT).

Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015

CHAPTER 2-3. - CITY AUDITOR.

§ 2-3-1 – DEFINITIONS.

(1) **ABUSE** means the misuse of a City office, employment, contract, or other position with the City to obtain personal gain or favor from another City employee, vendor, or citizen.

(2) **FRAUD** includes, but is not limited to:

(a) the unauthorized taking of a City resource for personal gain by deception including by forgery or by altering any document;

(b) the misappropriation of funds, supplies, or another City resource, through methods including, but not limited to fraud, theft, embezzlement, and misrepresentation;

(c) the intentional improper handling of or reporting of money or financial transactions;

(d) the intentionally improper destruction or removal of records or other City resources; or

(e) the misuse of official City information for personal benefit.

(3) **WASTE** means:

(a) the grossly inefficient or uneconomical use of City assets or resources; or

(b) the unnecessary incurring of costs to the City as a result of grossly inefficient practices, systems, or controls.

(4) **PERSONAL BENEFIT** means:

(a) anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

§ 2-3-2 - APPOINTMENT.

(A) The office of the city auditor is created under Section 17 (City Auditor) of Article VII (Finance) of the Charter. A majority of the council shall appoint a city auditor in accordance with the procedure established in Section 2-3-3 (Selection Process; City Auditor Vacancy).

(B) The council may not appoint as city auditor a person who:

(1) has served as the City's mayor, a council member, or city manager within five years before the date of the appointment; or

(2) is related, by affinity or consanguinity within the second degree, to the mayor, a council member, or the city manager.

(C) The council shall provide the city auditor with a discrete budget sufficient to perform the auditor's responsibilities and duties under this chapter.

(D) A majority vote of the members of the council is required to remove the city auditor as provided by Section 17 (City Auditor) of Article VII (Finance) of the City Charter.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

37 Source: 1992 Code Sections 2-8-1(A), and 2-8-2(A), (C), and (J); Ord. 031204-9; Ord. 031211-11.

38 **§ 2-3-3 - SELECTION PROCESS; CITY AUDITOR VACANCY.**

39 (A) The council shall appoint a nominating committee to recommend candidates for city auditor. The
40 committee shall consist of five members, including:

- 41 (1) three council members appointed by the council;
- 42 (2) the state auditor; and
- 43 (3) the city manager.

44 (B) Not later than the 15th day after its members are appointed, the nominating committee shall hold its
45 first meeting to consider applicants for city auditor. The committee shall select a chair and vice chair
46 by majority vote.

47 (C) Not later than the 90th day after its first meeting, the nominating committee shall recommend to the
48 council three candidates selected by a majority of the committee members.

49 (D) Not later than the 15th day after the council receives the nominating committee's recommendation,
50 the council shall select a city auditor from the recommended candidates.

51 (E) If the city auditor's position is vacated, the auditor's first assistant shall serve as acting city auditor
52 during the vacancy.

53 Source: 1992 Code Section 2-8-8; Ord. 031204-9; Ord. 031211-11; Ord. No. 20150129-026, Pt. 8, 2-9-
54 15.

55 **§ 2-3-4 - QUALIFICATIONS FOR CITY AUDITOR.**

56 The city auditor must:

- 57 (1) be knowledgeable in performance and financial auditing, public administration, and public
58 financial and fiscal practices;
- 59 (2) be licensed as a certified public accountant or certified internal auditor; and
- 60 (3) exercise due professional care in carrying out the auditor's duties, and ensure that due
61 professional care is employed to conduct an audit.

62 Source: 1992 Code Section 2-8-1(B); Ord. 031204-9; Ord. 031211-11.

63 **§ 2-3-5 - INDEPENDENCE, OBJECTIVITY, AND AUDIT STANDARDS.**

64 (A) The city auditor shall organize and administer the auditor's office to operate without interference or
65 influence that might adversely affect an independent and objective judgment of the auditor.

66 (B) The city auditor:

- 67 (1) shall organize the auditor's office as necessary to perform the auditor's responsibilities and
68 duties under this chapter;
- 69 (2) may not be actively involved in partisan City political activity;
- 70 (3) may not conduct or supervise or allow an employee to conduct or supervise an audit of an
71 activity for which the person was responsible or in which the person was employed during the
72 two years before the date of the audit;

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

(4) shall adhere to government auditing standards established by the Comptroller General of the United States to conduct the auditor's work and be independent as defined by the standards; and

(5) shall follow accepted industry standards to conduct the auditor's investigative work, such as the general and qualitative standards under the "Quality Standards for Investigations" established by the Council of the Inspectors General on Integrity and Efficiency; and

~~(6)~~ is responsible for selection of an audit area and may consider requests from council and the city manager in selecting an audit area.

Source: 1992 Code Section 2-8-2(B) and (D) through (G); Ord. 031204-9; Ord. 031211-11.

§ 2-3-6 - POWERS AND DUTIES.

(A) The city auditor shall examine City operations to identify an opportunity to reduce costs, increase efficiency, quality, and effectiveness, or otherwise improve management of a City function, program, service, or policy. The auditor shall manage a reporting system through which a City employee or a member of the public may submit an allegation of wrongdoing. The person making an allegation need not provide the person's name. An allegation may include:

(1) an allegation of fraud, waste or abuse;

(2) a violation of personnel policy; or

(3) a violation of law, including a violation of Chapter 2-7 (Ethics and Financial Disclosure)

(B) The city auditor shall communicate directly with the council audit committee and the council, attend council audit and finance committee meetings, and regularly meet with council.

(C) The city auditor shall establish audit policies and procedures consistent with government auditing standards established by the Comptroller General of the United States, and applicable law and regulation.

(D) The city auditor may conduct a performance or financial-related audit, investigation, and other audit work to determine if:

(1) a current City function, program, service, or policy:

(a) is authorized by the council or other legal authority; and

(b) is conducted to accomplish its intended objective;

(2) a function, program, service, or policy is effective in achieving its stated or intended result or benefit, including the level of effectiveness;

(3) an audited function, program, service, or policy effectively, economically, and efficiently acquires, protects, and uses its resources, including personnel, property, and space;

(4) a function, program, service, or policy complies with a mandate regarding efficiency, economy, effectiveness, or expenditure of public funds adopted by council or other legal authority;

(5) management for a function, program, service, or policy has adopted an administrative and accounting control system to effectively, economically, and efficiently carry on the function or program; and

(6) a function, program, service, or policy is providing financial and performance reports that accurately, fully, and fairly disclose all information required by law or other criteria necessary to:

(a) ascertain the nature and scope of the function, program, service, or policy; and

(b) establish a proper basis for evaluating the results of the function, program, service, or policy.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- (E) When required or implied by audit objectives, the auditor shall determine the cause of an inefficient, uneconomical, or ineffective function, program, service, or policy.
- (F) The city auditor may conduct follow-up review determined to be necessary by the city auditor to verify a report or plan from the city manager in response to an audit recommendation. The city auditor shall review a follow-up report or plan from the city manager in response to an audit recommendation.
- (G) If the city auditor determines that a city employee or official may have violated the law, or may be reasonably anticipated to commit a violation, the auditor shall:
- (1) consult with and obtain advice from the city attorney;
 - (2) promptly ~~immediately~~ report the suspected violation to the appropriate authority; and
 - (3) if the suspected violation is criminal, notify the appropriate chief prosecuting authority.
- (H) The city auditor may hire a certified or registered public accountant, qualified management consultant, or other professional expert necessary to perform the auditor's duties, in compliance with the City's procurement requirements.
- (I) Notwithstanding any other provision of the City Code, neither the auditor nor any external party hired by the auditor shall make a determination concerning an allegation of a violation of Chapter 2-7, Article 4 (Code of Ethics).
- ~~(J)~~(J) Notwithstanding any other provision of the City Code, the auditor shall hire an external party to investigate any material allegation alleging a violation of City Code that constitutes fraud, waste, or abuse, by a member of the city council, a member of a council member's direct staff, or the city manager. The auditor shall submit the results of any substantiated external investigation to the Ethics Review Commission, which shall make the final determination on the allegation.
- ~~(J)~~(K) If the auditor conducts an investigation of an allegation alleging a violation of City Code that constitutes fraud, waste, or abuse by the city clerk, the clerk of the municipal court, a municipal court judge, a person appointed by the mayor or the city council to a City board, task force or similar body, or by a City employee who is not either a member of the classified municipal civil service system or of a state civil service system the auditor shall submit the results of any substantiated investigation to the Ethics Review Commission, which shall make the final determination on the allegation.
- ~~(K)~~(L) The auditor may conduct an investigation of an allegation alleging a violation of law or policy by a City employee who is a member of the classified municipal civil service system or of a state civil service system. If the auditor conducts an investigation of an employee covered by a civil service system, the investigation must be done in a way that is consistent with the law and any applicable labor agreement. If the auditor obtains sufficient evidence that indicates that a violation has occurred, the auditor shall provide a copy of the result of an investigation under this section to the city manager or other appropriate party. The city manager or appropriate party may conduct a separate investigation. The city manager or appropriate party has the authority to determine that a violation has occurred and the appropriate disciplinary action.
- ~~(L)~~(M) A person who is the subject of an investigation by the auditor may bring to any interview with the auditor a representative or advisor of the person's choice.
- ~~(M)~~(N) For each investigation in which the auditor obtains sufficient evidence that indicates that a violation has occurred, the auditor shall prepare a draft investigative report, which shall remain confidential, and deliver the draft report to the person who is the subject of the investigation and any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct. The person who is the subject of the investigation and any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct may submit a written response to the draft report

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

within 20 working days after receiving the report. The auditor shall deliver a copy of the final report, including any response submitted, to the appropriate authority, the person who is the subject of the investigation, any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct, the council, and the city manager. The auditor shall retain a copy of the report in the auditor's office for the applicable retention period under the City's records management program.

(O) The city auditor shall refer an allegation enumerated in this subsection to the city manager. The city manager shall design a process to inform the city auditor of the disposition of the referred allegations for recordkeeping purposes. The allegations covered by this subsection are those related to:

(1) A personnel issue;

(2) An operational issue;

(3) A de minimus fraud, waste or abuse violation;

(4) A public safety issue that is not related to fraud, waste or abuse; and

(5) An issue that the auditor is not authorized to investigate, and that is not within the jurisdiction of the Ethics Review Commission.

(P) City employees and officials shall cooperate with auditor investigations.

(P) The city manager shall produce a report on the status of investigations regarding fraud, waste, and abuse conducted by the city manager at least twice annually to the Council Audit and Finance Committee.

Source: 1992 Code Sections 2-8-1(B)(3), 2-8-3(B), and 2-8-6; Ord. 031204-9; Ord. 031211-11.

§ 2-3-7 - EMPLOYEES.

(A) Except the city auditor and an assistant otherwise designated by the city auditor, an appointee or employee of the city auditor's office is in the City's classified personnel service.

(B) The city auditor has the authority to appoint, employ, and terminate an assistant or other personnel as necessary to operate the city auditor's office, independently of the direction of the city manager or the council, subject to the budget approval process and personnel policy established by the council for each City department.

(C) The city manager or council may not direct the city auditor to appoint, employ, or terminate an assistant city auditor or other auditor's office personnel, subject to the City's grievance procedure.

Source: 1992 Code Sections 2-8-2(H) and (I); Ord. 031204-9; Ord. 031211-11.

§ 2-3-8 - ANNUAL AUDIT PLAN AND SPECIAL AUDITS.

(A) Not later than the 30th day before the beginning of a calendar year, the city auditor shall submit an annual audit plan to the council for review and comment through the council audit and finance committee.

(B) An annual audit plan under this section shall identify the scope of each audit the city auditor intends to conduct, including:

(1) the department, organization, service, program, function, and policy to be audited; and

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

(2) each potential audit objective to be addressed.

(C) If the city auditor notifies the council audit and finance committee and obtains comments from the committee, an annual audit plan may be amended by the city auditor. The city auditor may request an amendment independently, or at the request of the council audit and finance committee or the city manager.

(D) The city auditor may initiate, conduct, or expand the scope of an audit or investigation if the auditor determines that fraud, waste, abuse, or illegality may have occurred or is occurring, or if an audit finding requires expansion of the scope of the audit or of an investigation in progress. The auditor shall notify the council audit and finance committee of an action under this section., if the auditor determines that:

~~(1) fraud, abuse, or illegality may have or is occurring; or~~

~~(2) an audit finding requires expansion of the scope of an audit or investigation in progress; and~~

~~(3) notify the council audit and finance committee of action take under this section.~~

(E) The city auditor shall distribute the results of a special audit in accordance with Section 2-3-9 (Report Preparation and Release).

Source: 1992 Code Section 2-8-2(G)(1) through (3); Ord. 031204-9; Ord. 031211-11.

§ 2-3-9 - REPORT PREPARATION AND RELEASE.

(A) The city auditor shall prepare a draft audit report for each audit and deliver the report to the city manager.

(B) The city manager shall send the city auditor written comment on the reported audit findings and a written response to each recommendation on or before a date agreed to by the city manager and the city auditor. The city manager's response shall:

(1) state whether the city manager agrees or disagrees with each recommendation;

(2) include the reason for a disagreement; and

(3) describe the action, if any, that will occur in response to a recommendation.

(C) If the city manager's response is timely delivered to the city auditor, the city auditor shall include a copy of the response in the city auditor's final report.

(D) The city auditor shall file a final audit report with the council and the city manager, and retain a copy in the city auditor's office as a permanent record.

(E) An audit report prepared under this section shall adhere to the reporting standards for financial-related and performance audits prescribed by government audit standards.

(F) If appropriate, the city auditor may issue other advisory reports to provide information to the city manager and council.

(G) The auditor shall prepare a summary of the reporting program's activities at least twice annually for presentation to the council audit and finance committee.

Source: 1992 Code Section 2-8-5; Ord. 031204-9; Ord. 031211-11.

§ 2-3-10 - COUNCIL AUDIT AND FINANCE COMMITTEE.

(A) The council audit and finance committee shall assist the council in oversight of and responsibility for the City's financial and performance reporting practices, internal controls, compliance with applicable law and regulation, and initiatives to improve service.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

(B) The committee shall:

- (1) review and make a recommendation to the full council regarding the city auditor's annual audit plan;
- (2) monitor the city auditor's audit results and follow-up activity;
- (3) monitor the City's internal controls through external audits and the city auditor's audits and other activity;
- (4) provide reasonable assurance to the council that the City is in compliance with applicable law and regulation, is conducting its affairs ethically, and is maintaining effective internal controls against a conflict of interest or fraud;
- (5) meet with the director of the Finance and Administrative Services Department on financial questions and to review:
 - (a) the City's financial reports, including a comparison between actual financial performance and the approved budget;
 - (b) the City's fiscal policy, internal control policy, investment policy, debt management policy, and other financial management policies; and
 - (c) the status of the capital improvement program and related projects;
- (6) recommend to the full council an external auditor to conduct the City's annual financial audit; and
- (7) meet with the external auditor approved by the council as necessary, and review financial statements, auditors' opinion, and management letters resulting from the City's annual financial audit.

Source: 1992 Code Section 2-8-3; Ord. 031204-9; Ord. 031211-11; Ord. 20060824-060; Ord. 20090806-032; [Ord. No. 20150129-026, Pt. 5, 2-9-15.](#)

§ 2-3-11 - PEER REVIEW.

- (A) The city auditor is subject to peer review not less than once every three years by a professional, non-partisan, objective person or group, including an auditor or other professional with appropriate government auditing expertise and experience.
- (B) Peer review shall determine compliance by the city auditor with government auditing standards and the quality of the auditor's audit effort and reporting, including:
 - (1) general standards, including staff qualifications, due professional care, and quality assurance;
 - (2) fieldwork standards, including planning, supervision, and audit evidence; and
 - (3) reporting standards, including report content, presentation, and timeliness.
- (C) After the council audit and finance committee has reviewed and approved the written peer review report, the committee shall provide a copy of the written peer review report to each member of the council.
- (D) The city auditor shall pay the cost of the peer review, including reasonable travel and living expenses, from the city auditor's budget.

Source: 1992 Code Section 2-8-7; Ord. 031204-9; Ord. 031211-11.

§ 2-3-12 - ACCESS TO RECORDS AND PROPERTY.

**Recommended changes to Chapter 2-3 of City Code as approved by the Ethics Review
Commission on November 10, 2015**

- 277 (A) Each City officer and employee shall provide the city auditor with free and open access to and
278 furnish copies of information in any medium, including a record, book, account, internal or external
279 memorandum, tape, report, file, diskette, computer data, money, fund, or other information.
- 280 (B) Each City officer and employee shall provide the city auditor with free and open access to property,
281 equipment, facilities, and operations for inspection or observation by the auditor.
- 282 Source: 1992 Code Section 2-8-4; Ord. 031204-9; Ord. 031211-11.

DRAFT