

## 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 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) 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.
- (8) MINISTERIAL ACT means an act performed in a prescribed manner and not requiring the exercise of any judgment or discretion.
- (9) 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.
- (10) 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.
- (11) 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.

## 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), 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

88 complaints alleging violations of the provisions within the commission's jurisdiction. The city manager shall provide  
89 funding for all necessary and reasonable functions of the commission in fulfilling its duties.

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

91 § 2-7-27 - LIMIT ON THE COMMISSION'S JURISDICTION.

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

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

96 § 2-7-28 - **COMMISSION ACTION ON INFORMATION RECEIVED FROM THE AUDITOR.**

97 If the commission receives information from the city auditor under Subsection (J) of Section 2-3-6 (Powers and  
98 Duties), the commission shall convene not later than the 30<sup>th</sup> day after the date the chair of the commission receives  
99 the information. The commission shall consider the information at that meeting. The chair of the commission shall  
100 cause a notice to be sent to the person who is the subject of the investigation and any person or entity mentioned or  
101 referenced as being involved in the alleged inappropriate conduct no later than the 20<sup>th</sup> day before the date scheduled  
102 for the meeting. The person who is the subject of the investigation or any person or entity mentioned or referenced  
103 as being involved in the alleged inappropriate conduct may present sworn testimony and other information relating  
104 to the investigation at the meeting. A commission member may not receive an ex parte communication regarding the  
105 information, and shall treat the matter in the same manner as a sworn complaint under Section 2-7, Article 3  
106 (Violations: Complaints and Hearing Procedures). The commission may take any action on the information that is  
107 within its jurisdiction, including dismissing the matter. The commission shall forward notification of its findings  
108 and action to the city manager or appropriate party. The city manager or appropriate party has sole authority to  
109 determine disciplinary action. -

110 § 2-7-29 - REPORTS; OPINIONS.

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

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

115 § 2-7-30 - DUTIES.

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

- 117 (1) prescribe forms for reports, statements, notices, and other documents required by the provisions within  
118 the commission's jurisdiction;
- 119 (2) prepare and publish materials explaining the duties of individuals subject to the provisions within the  
120 commission's jurisdiction;
- 121 (3) review all statements and reports filed with the commission in order to obtain compliance with the  
122 provisions within the commission's jurisdiction;
- 123 (4) accept and file any information voluntarily supplied that exceeds the requirements of the provisions  
124 within the commission's jurisdiction;
- 125 (5) preserve statements and reports filed with the commission for a period of five years from the date of  
126 receipt;

**Comment [CS1]:** When last discussed, ERC/AKaplan was going to propose updated language for handling referred complaints and complaints on the ERC's own initiative.

Auditor has agreed that when it substantiates an allegation (obtains evidence that indicates that a violation has occurred) under the jurisdiction of the ERC, the Auditor will file a sworn complaint and have a representative present for any hearing but will not be the "complainant" as defined for other ERC matters.

However, Auditor will not file a sworn complaint for referred matters (not within the Auditor's investigative jurisdiction as revised in Part 5 above, because the Auditor will not have done work to obtain evidence related to the allegation.

**Comment [AK2]:** Can we streamline this paragraph by referring to our regular hearing rules?

How about something like this: If the commission receives information from the city auditor under Subsection (J) of Section 2-3-6, it shall treat that information as a sworn complaint under Section 2-7 and shall proceed to a preliminary hearing, and, if necessary, a final hearing, with the Commission acting in place of the Complainant. Additionally, the Commission shall cause notice to be sent consistent with its hearing notice rules to the subject of the investigation and any person or entity mentioned or referenced as being involved in the alleged inappropriate conduct.

Where the city auditor obtains evidence that indicates a violation has occurred, the auditor shall have a representative present for any preliminary and final hearings.

**Comment [CS3]:** See comment above.

- 127 (6) review the provisions within the commission's jurisdiction and make appropriate recommendations to the  
128 city council concerning the provisions within the commission's jurisdiction, and perform an annual  
129 review and evaluation of the dollar limits established in Chapter 2-2 (Campaign Finance) and make  
130 recommendations to the city council as to those limits;
- 131 (7) review all public opinions related to the provisions within the commission's jurisdiction that are issued by  
132 the city attorney;
- 133 (8) conduct hearings in accordance with the provisions of this chapter and the commission's rules on sworn  
134 complaints alleging violations of the provisions within the commission's jurisdiction;
- 135 (9) schedule and oversee the forums among candidates in City elections provided for in Chapter 2-2  
136 (Campaign Finance).
- 137 (B) The commission may:
- 138 (1) prepare reports and studies to advance the purposes of the provisions within the commission's  
139 jurisdiction;
- 140 (2) request the city council and city manager to provide such assistance as it may require in the discharge of  
141 its duties; and
- 142 (3) make recommendations to the city manager concerning the role of the ombudsman concerning this  
143 chapter.

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

145 § 2-7-31 - STAFFING.

- 146 (A) The Ethics Review Commission shall be assigned staff by the city attorney to assist in its duties.
- 147 (B) When complaints are filed related to the mayor, city councilmembers, city manager, city attorney, department  
148 heads and deputies, independent legal counsel shall be utilized to advise the commission and participate in  
149 hearings.
- 150 (C) (1) Any City official, employee or candidate for City elective office may request, and the city attorney shall  
151 thereupon promptly issue, a written opinion concerning the meaning or effect of any section, word, or  
152 requirement of this chapter as it affects such official, employee or candidate. At the request of such  
153 official, employee or candidate the city attorney shall render a confidential opinion, not subject to public  
154 disclosure.
- 155 (2) If a complaint is subsequently filed with the commission about any specific action, omission, or alleged  
156 conflict of interest which has been the subject, whole or in part, of a city attorney's opinion, the  
157 independent legal counsel shall act as commission attorney on said complaints.
- 158 (D) The city clerk shall make the reporting and complaint forms and information developed by the Commission  
159 available to the public and shall assist citizens in complying with filing procedures.

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

161 § 2-7-32 - RULES.

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

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

165 ARTICLE 3. - VIOLATIONS; COMPLAINT AND HEARING PROCEDURES.

166

167 § 2-7-41 - COMPLAINTS.

168 (A) In this article:

169 (1) COMPLAINANT means a person filing a sworn complaint; and

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

172 (B) A sworn complaint alleging a violation of a provision within the jurisdiction of the Ethics Review Commission  
173 shall specify each code section or charter provision alleged to have been violated.

174 (C) A complaint alleging a violation of Sections 2-7-62 (Standards of Conduct) through 2-7-65 (Substantial  
175 Interest of Relative) must be filed with the city clerk within two years from the date of the action alleged as a  
176 violation, and not afterward.

177 (D) On the sworn complaint of any person filed with the city clerk's office or on the commission's own initiative,  
178 the commission shall consider possible violations of a provision within the jurisdiction of the commission by  
179 City officials and employees, former City officials and employees, candidates for election to City offices, and  
180 other persons subject to the provisions set forth in Section 2-7-26 (Functions). The commission may not  
181 consider complaints against its own members.

182 (E) Not later than ~~three~~ five working days after the city clerk receives a sworn complaint, the city clerk shall  
183 consult with the city attorney to determine if the complaint is under the jurisdiction of the commission. If the  
184 complaint does not appear to be under the commission's jurisdiction, and if the complaint appears to be under  
185 the city auditor's jurisdiction, the city clerk shall send the complaint to the city auditor. If the complaint is  
186 under neither the jurisdiction of the commission or the auditor, the city clerk shall retain a copy of the  
187 complaint but take no further action on the complaint. If the complaint does not appear to be under the  
188 commission's jurisdiction, the city clerk shall advise the complainant of the disposition of the complaint. If the  
189 complaint appears to be under the commission's jurisdiction, the city clerk shall acknowledge the receipt of the  
190 complaint to the complainant and provide a copy of the complaint to the city attorney, the chair of the  
191 commission, ~~and~~ the respondent, and any person or entity identified as involved in the alleged inappropriate  
192 conduct. Not later than the 10th working day after receipt of a complaint by the chair, the commission shall  
193 notify in writing the complainant and the respondent of a date for a preliminary hearing. If the commission  
194 does not hold a preliminary hearing within 20 working days of receipt of the complaint by the chair, it shall  
195 notify the complainant of the reasons for the delay and shall subsequently give the complainant the appropriate  
196 notification.

197 (F) The commission may consider a possible violation of a provision within the jurisdiction of the commission on  
198 the commission's own initiative. Within seven days of the commission's decision to consider a possible  
199 violation, the commission shall draft a written complaint specifying each code section or charter provision  
200 alleged to have been violated, shall file a copy of the complaint with the city clerk, and shall provide a copy the  
201 complaint\* to the city attorney and to the respondent. Not later than the 15th working day after the drafting of  
202 the complaint, the commission shall notify in writing the respondent of the date for the preliminary hearing.

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

205 Source: 1992 Code Section 2-3-41; Ord. 031204-9; Ord. 031211-11; Ord. 20120426-084.

206

207 **There are no proposed changes to the remainder of Chapter**  
208 **2-7, and these sections are therefore omitted.**

**Comment [CS4]:** Need to include option to name involved third parties and provide contact information on the sworn complaint form.