ETHICS REVIEW COMMISSION

RULES FOR APPEALS OF DISQUALIFICATIONS UNDER CITY CODE CHAPTER 2-7, ARTICLE 6

ANTI-LOBBYING AND PROCUREMENT

1. OVERVIEW

A. Pursuant to City Code Section 2-7-109(A), the Ethics Review Commission ("the Commission") adopts the following rules for an impartial appeal of disqualifications under City Code Chapter 2-7, Article 6 (*Anti-Lobbying and Procurement*).

B. Appeals shall be heard by a subcommittee of less than a quorum of the Commission. City Code § 2-7-109(A).

C. The following rules are effective immediately upon approval by the Commission. These rules are in effect unless and until superseded by subsequent amendment by the Commission or by rules adopted by the purchasing officer in accordance with Chapter 1-2 (*Adoption of Rules*). City Code § 2-7-109(C).

2. DEFINITIONS

The following definitions apply to these rules:

A. All definitions in City Code § 2-7-101.

B. "Agreements between the Parties" refers to a written agreement that is signed by the parties or their counsel and filed with the City Clerk.

C. "Appeal" means a written application to the Commission to have a disqualification reversed pursuant to City Code section 2-7-109(A).

D. "City business day" means a day on which city offices conduct business.

E. "Parties" refers to the respondent and the purchasing officer, or the purchasing officer's designee.

3. NOTICE OF APPEAL PROCEDURES

A. A respondent may appeal a notice of disqualification from the purchasing officer to a subcommittee of less than a quorum of the Commission by filing a written notice of appeal with the City Clerk's Office. The respondent's notice of appeal must be filed within five calendar days of respondent's

receipt of written notice of disqualification by the purchasing officer pursuant to City Code sections 2-7-109(A) and 2-7-110(B).

B. A respondent who fails to timely file a notice of appeal with the City Clerk, waives the right to appeal the disqualification. If a disqualified respondent fails to file a notice of appeal within five calendar days or in the manner specified in these rules, the Commission shall dismiss the appeal. City Code § 2-7-109(A)

C. Filing Process. A notice of appeal must be filed by a respondent with the City Clerk in the following manner: (a) in person before 5:00 p.m. with the City Clerk's Office, 301 W. 2nd Street, Suite 1120, Austin, TX 78701; (b) by email delivered on or before 11:59 p.m. to the following address: City.Clerk@austintexas.gov; or (c) by certified mail, return receipt requested and addressed to: City Clerk's Office, P.O. Box 1088, Austin, Texas 78767, when postmarked on or before the date of the deadline. Any notice of appeal that exceeds 25 megabytes must be filed with the City Clerk on a USB drive. The respondent must confirm receipt by the City Clerk of any electronic records that exceed 20 megabytes that are filed by email to City.Clerk@austintexas.gov.

D. Content of Notice of Appeal. A respondent's appeal must be in writing and presented in a concise, logical and factual manner. The appeal must include:

1. The respondent's name, address, telephone, fax number and email address.
2. The identifying number and description of the solicitation.
3. A copy of the disqualification notice. Any confidential portions of the disqualification notice must be redacted before filing. If the respondent considers any portion of the disqualification notice to be confidential and that portion of the disqualification notice was not marked as confidential by the Purchasing Officer, the respondent may redact the information considered confidential.
4. A detailed statement of the factual and legal grounds for the appeal, including copies of any relevant documents or electronic records other than confidential information or documents/records. Any relevant confidential information, including documents or records, must be filed with the Commission's liaison, and must be excluded from the notice of appeal.

E. City Clerk's Notice. No later than the fifth city business day after receipt of a notice of appeal, the City Clerk shall acknowledge receipt of the notice of

appeal to the respondent and provide a copy of the notice of appeal to the City Attorney, the Chair of the Commission, and the Purchasing Officer.

4. SUBCOMMITTEE APPOINTMENTS

A. As soon as practical after receipt of notice of appeal, the Commission Chair (or Vice-chair in the Chair's absence) shall appoint a subcommittee of less than a quorum of the Commission members to hear the appeal of a disqualification. The subcommittee shall consist of an odd number of members that is less than a quorum of the Commission. The Commission Chair shall appoint the chair of the subcommittee who will preside over the appeal hearing. In the event the Commission Chair has not appointed a subcommittee chair prior to the beginning of the appeal hearing, the subcommittee shall select its chair.

B. In the event one or more subcommittee members is unavailable to attend the appeal hearing, the hearing shall not be rescheduled as long as at least three members of the Commission are available to appear and do appear at the appeal hearing.

C. A decision on the appeal can only be made by the Commission members who appear at the appeal hearing.

5. HEARING PROCESS

A. Prohibition of Ex Parte Communications. After an appeal has been filed and during the pendency of an appeal before a subcommittee of less than a quorum of 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 the hearing on the appeal.

B. Scheduling and Filings

1. A hearing on the appeal of a disqualification shall be scheduled within 30 calendar days of the Commission's receipt of notice of appeal from the City Clerk and shall not be extended except based on a finding of good cause by the Commission Chair, by agreement of the parties, or due to unavailability of three members of the Commission. "Good cause" may include, but is not limited to, a request by law enforcement to postpone the appeal hearing until a criminal investigation or prosecution is completed.

2. The Commission's staff liaison shall provide at least ten calendar days' notice of the date and time of the hearing to the email address for the

respondent; the email address for the purchasing officer; and the email addresses for the appointed subcommittee members.

3. The respondent and the purchasing officer, or the purchasing officer's designee, have the right to representation by counsel.

4. At least five city business days prior to the hearing, respondent and the purchasing officer, or the purchasing officer's designee, must file with the Commission's staff liaison, in the manner prescribed by the staff liaison, and serve on the other party a witness list and copies of each document or electronic record relied on for the appeal. The parties may submit confidential records solely for the subcommittee's review and need not share with the other party if confidentiality of the record would arguably be compromised by disclosing the record to the other party. A list of the subject matter of any confidential records filed with the Commission's staff liaison must be provided to the other party. The parties may agree to exchange an exhibit list or partial exhibit list in lieu of exchanging some or all of the evidence relied on by each party. The respondent need not refile any documents or electronic records previously filed with respondent's notice of appeal, and instead may provide a list with subject-matter description of each document or record in the notice of appeal on which the respondent relies.

5. Any documents/records considered confidential, such as those containing proprietary information or trade secrets must be marked as "CONFIDENTIAL" on each page of the document or electronic record and delivered by separate envelope that is sealed and marked "CONFIDENTIAL".

C. Hearing Process

1. Not a Public Meeting. The appeal hearing is not a public meeting and is closed to the public. Only persons who are necessary to the entire proceeding, or to any portion of the proceeding, may attend the portion to which the person's presence is necessary.

2. Confidentiality of the Proceedings. All papers and communications relating to the appeal must be treated as confidential unless required to be made public under the Public Information Act (Chapter 552 of the *Texas Government Code*) or other applicable law.

3. Respondent's Right to Open and Close. The respondent who is subject to a notice of disqualification shall have the right to open and conclude the presentation of evidence and argument.

4. Initial Statements. The parties shall describe their positions in a narrative form including a summary of documents/records and witness testimony to be presented. Initial statements shall not exceed 15 minutes unless the time is extended by the subcommittee chair.

5. Confidential Evidence. Each party has the right to present confidential evidence to the subcommittee (in written form or by verbal testimony. The parties may agree to, and the chair may require, the signing of acknowledgments regarding confidentiality by any necessary persons or parties at the appeal hearing. No party may use the appeal hearing for the purpose of obtaining confidential evidence to which the party would not have access but for the appeal.

6. Presentation of Evidence.

   a. Relevant Evidence. Each party has the right to present relevant evidence to the appeal during the hearing. Whether raised by the objection of a party or a member of the subcommittee, the subcommittee chair will decide whether evidence is relevant to the proceeding. Before making a determination as to relevance, the subcommittee chair may confer with other members of the subcommittee outside the hearing of the parties.

   b. Time for Presentation of Evidence. Each party will have a maximum of 90 minutes to present evidence unless additional time is granted by the subcommittee chair. A party who seeks additional time to present evidence must request additional time prior to the appeal hearing. The parties may reach agreement with the other party as to an alteration of the time for presentation of evidence as long as the combined time for presentation of evidence does not exceed 180 minutes for all evidence presented.

   c. Examination of Witnesses. The subcommittee chair will announce prior to the presentation of evidence whether the subcommittee will allow cross examination of witnesses. Subcommittee members may question witnesses at any point during the proceeding.

7. Closing Statements. The parties shall have ten minutes for closing statements. The parties may reserve a portion of their opening statement time for closing statements. The respondent may make an initial closing statement and a rebuttal statement at the conclusion of the other party's closing statement so long as the time limitation is not exceeded.

8. Confidential Conference of the Subcommittee. At any time during the hearing or at the conclusion of the hearing, the subcommittee may request all persons with the optional exception of the assistant city attorney or outside counsel assigned to advise the subcommittee, to leave the proceeding. The subcommittee may or may not allow the parties to return after the confidential conference. During the confidential conference, or at any time after the appeal hearing, the subcommittee may review evidence and may confer, deliberate, or vote in regard to the outcome of the appeal.

9. The subcommittee may announce its decision in writing after the conclusion of the appeal hearing or verbally after a confidential conference of the subcommittee on the same day as the appeal hearing.

6. DECISION ON THE APPEAL

A. The commission shall make its determination based on the preponderance of the credible evidence in regard to the appeal.

B. On or before the fifth city business day after the appeal hearing, the subcommittee chair shall issue a written order of the subcommittee's decision on the appeal of the disqualification. Written orders will be posted to the Commission website, and a copy of the order shall be provided to the parties and the City Attorney by the Commission's staff liaison.

C. The subcommittee's decision on the appeal shall be final and binding. City Code § 2-7-109(A)

These rules and procedures were adopted by a majority vote of the Ethics Review Commission on September 19, 2018 and amend the rules and procedures adopted on August 8, 2018.

Mary C Kahle — Feb. 24, 2020

Mary Kahle
Chair, Ethics Review Commission

Date of Signature