

CITY OF AUSTIN ETHICS REVIEW COMMISSION
RULES AND PROCEDURES FOR COMPLAINTS AND HEARINGS UNDER CITY CODE
CHAPTER 2-7

I. PRE-HEARING PROCEDURES

A. COMPLAINT:

1. Any person who alleges an existing or former City official or employee, or candidate for election to City Office, or another person subject to the provisions set forth in Section 2-7-26, has violated City Code Sections 2-1-24, or Chapters 2-7, 2-2, and 4-8 or Art. 3 Sec. 8 of the Charter, shall have the right to file a sworn complaint with the City Clerk in accordance with the City Code §2-7-41.
2. The ERC may file its own complaint within the jurisdiction of the commission on its own initiative in accordance with City Code § 2-7-41[F].
3. ERC may not consider complaints filed against its own members. § 2-7-41[d].

B. COMPLAINT REQUIREMENTS:

1. The complaint shall specify each code section or charter provision alleged to have been violated by the individual(s) and the date of each alleged violation.
2. The complaint shall be filed with the City Clerk within two years from the date of action alleged as a violation and not afterward. §§ 2-7-41[B] and 2-7-41[C].

C. DISQUALIFICATION OF ERC MEMBERS FROM HEARING:

1. Disqualification requests may be made by the complainant, the respondent, or a member of the ERC prior to the commencement of the preliminary hearing.
2. An ERC member must recuse himself/herself from a hearing if the member is involved in the dispute or if a party or a witness is a member of the ERC member's immediate family.
3. An ERC member should disqualify himself/herself if the individual believes that he/she will not be able to make an impartial decision.
4. ERC voting member shall be disqualified from hearing the case if he arrives after the testimony of the first witness has begun.
5. An ERC member can be disqualified if a majority of the ERC determines that a member engaged in *ex parte* communications with complainant, respondent, or their representatives.

D. LEGAL REPRESENTATION: Either party has a right to be represented at hearings under City Code Chapter 2-7 by counsel.

E. PROHIBITION OF EX-PARTE COMMUNICATIONS:

1. After a complaint has been filed and during the pendency of a complaint before the ERC, a member of the ERC may not communicate directly or indirectly with

any party, person or representative of either party about any issue of fact or law regarding the complaint except at a meeting of the ERC.

2. Parties are not permitted to contact any ERC member directly or indirectly for any purpose relating to the complaint before the ERC. All communications concerning the complaint must be directed to the City Clerk or City Attorney assigned to the matter.

F. NOTICE OF COMPLAINT: No later than 3 working days after the city clerk receives a sworn complaint, the city clerk shall acknowledge and provide notice of the receipt of the complaint to the city attorney, ERC, and the Respondent. § 2-7-41[e].

G. NOTICE OF PRELIMINARY HEARING: No later than the 10th working day after receipt of a complaint by ERC, ERC shall notify in writing the complainant and the respondent of a date and time for the preliminary hearing. The hearing shall be held within 20 working days of receipt of the complaint. If the hearing is held beyond that date, ERC shall notify the complainant of the reasons for the delay and shall subsequently give the complainant the appropriate notification. § 2-7-41[e].

II. PRELIMINARY HEARING PROCEDURES

A. INITIAL DISCLOSURES.

1. At the preliminary hearing, the complainant or ERC legal counsel, if ERC filed complaint, shall state the alleged violation and the testimony and evidence that would be offered at a final hearing. § 2-7-44[A].
2. Respondent shall have opportunity to respond at the preliminary hearing, but is not required to attend or make any statement. Respondent may describe in narrative form the testimony and other evidence which shall be presented to disprove the alleged violation. § 2-7-44B.
3. All statements by the parties at the preliminary hearing shall be under oath. § 2-7-44 [A].

B. EXAMINATION OF PARTIES. No cross-examination of the parties shall be permitted at the preliminary hearing, but ERC members can question the complainant, legal counsel for the commission or the respondent. § 2-7-44B.

C. RIGHT TO REPRESENTATION. Complainant and Respondent shall have the right to be represented by counsel at the preliminary hearing. § 2-7-44 [C].

D. PRELIMINARY HEARING DISPOSITION.

1. At the conclusion of the preliminary hearing, ERC shall decide whether a final hearing should be held.

- a. **EXISTENCE OF REASONABLE GROUNDS.** If ERC determines that there are reasonable grounds to believe that a violation of a provision within the jurisdiction of the ERC has occurred by a majority of the membership of the ERC, then the ERC shall schedule a final hearing. § 2-7-44 [A] and [D].
- b. **FAILURE TO ALLEGE VIOLATION.** If the ERC determines the complaint does not allege a violation of a provision within its jurisdiction, then before a complaint is dismissed for failure to allege a violation, the complainant or legal counsel for the ERC shall be permitted one opportunity, within a period of time to be specified by the ERC, to revise and resubmit the complaint. § 2-7-44 [E]. The time period by which a complaint may be revised and resubmitted shall be specified in a letter by the ERC to complainant.
- c. **UNCONTESTED VIOLATION.** If respondent agrees on the record that a violation has occurred, ERC can consider appropriate sanction or prosecution at preliminary hearing. § 2-7-44 [B].
- d. **DISMISSAL OF COMPLAINT.** If a majority of the ERC determines there are no reasonable grounds to believe that a violation of a provision within the jurisdiction of the ERC has occurred, the complaint shall be automatically dismissed. § 2-7-44[D].

2. SETTING FINAL HEARING.

- a. **TIME FOR HEARING.** The hearing shall be held within 30 days following determination by ERC that a final hearing shall occur.
- b. **POSTPONEMENT OF HEARING.** ERC may grant 2 postponements not to exceed 15 days each, on the request of the Respondent. § 2-7-45.

3. **REQUEST WITNESS ATTENDANCE OR DISCOVERY.** If the ERC determines the complaint will proceed to a final hearing, the complainant, legal counsel for ERC and respondent may ask the ERC at the preliminary hearing to request certain persons and evidence for a final hearing. § 2-7-44[F].

III. FINAL HEARING PROCEDURES

- A. **ASSIGNMENT OF TIME TO SUBMIT EVIDENCE.** If a complaint proceeds to a final hearing, the ERC may request witnesses to attend and testify, take evidence, and request the production of books, papers, records, or other evidence needed for the performance of the commission's duties and exercise of its powers, including its duties and powers of investigation. The ERC shall issue a notice

identifying the witnesses, records, or other evidence it requests the parties submit to it in advance of the hearing, and setting a deadline for each party to submit the requested evidence in advance of the final hearing. Any sworn statements and documentary evidence the parties desire to be considered and a list of witnesses shall be submitted to the designated City Attorney within the time specified in the notice.

- B. HEARING EXHIBITS. All exhibits submitted by the parties shall be numbered sequentially. Complainant's exhibits shall be pre-marked with the letter "C" followed by a dash, followed by a number; for example "C-1". Respondent's exhibits shall be pre-marked with the letter "R," followed by a dash, followed by a number, for example "R-1". Any exhibits not submitted by the deadline set by the ERC shall not be considered unless leave is obtained by Chair or Presiding Member.
- C. HEARING TESTIMONY. Each witness before testifying at the final hearing shall be duly sworn by the Chair or Presiding Member.
- D. ALTERNATIVE PRESENTATION OF EVIDENCE. The Chair or Presiding Member shall conduct the final hearing with a view to expediting the resolution of the complaint and may allow for the presentation of evidence by alternative means including videoconferencing, internet communication, telephonic conferences and means other than an in-person presentation. Such alternative means should afford a full opportunity for all parties to present any evidence that the ERC deems material and relevant to the resolution of the complaint. If a party wishes to present evidence by alternative means other than in-person presentation, a request must be made to the ERC within 10 days of the final hearing. The requesting party will be responsible for the cost and expense associated with the alternative presentation of the evidence.
- E. CONDUCT OF PROCEEDINGS.
 - 1. OPEN AND CLOSE. Complainant shall have the right to open and conclude the presentation of the evidence and argument. Respondent may then elect to present evidence and argument in response to the evidence presented to support its defense, but will not be required to do so. Complainant may be permitted to present rebuttal evidence on any defense raised in Respondent's case presentation.
 - 2. INITIAL STATEMENT. The parties shall present their positions in a narrative form including a summary of documents and witness testimony to be presented. Initial statements shall not exceed 10 minutes.

3. PRESENTATION OF EVIDENCE. The parties may offer such evidence as is relevant and material to the complaint or any defense. All exhibits submitted in advance of the final hearing shall be admitted at the start of final hearing. Parties may proffer testimony of their witnesses if the witness is present and available for further examination, if needed. Testimony of witnesses at hearing shall be in question and answer format. Witnesses for each party shall also submit to questions from the members of ERC. Opposing parties shall not be permitted to cross-examination the witnesses unless authorized by the Chair, or Presiding Member. Parties are restricted to evidence submitted in the packet except if good cause is shown and granted by the majority of the ERC members present.
 4. TIME LIMITATIONS. The parties shall be permitted 30 minutes per side to present all their witness testimony and documentary evidence unless otherwise modified by the ERC.
 5. CLOSING STATEMENTS. If the Chair or Presiding Member permits, each party shall be permitted to make a closing statement summarizing what they believe the evidence at the final hearing proved, or failed to prove.
 6. CLOSING OF HEARING. The Chair or Presiding Member shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving a negative replies or if satisfied that the record is complete, the Chair or Presiding Member shall declare the hearing closed.
- F. RENDITION OF DECISION: Within five (5) working days of the conclusion of the final hearing, the ERC shall render its decision with respect to the claimed violation(s).
1. If the ERC determines a violation has occurred, the ERC shall identify each code section or charter provision that has been violated in writing and deliver such finding[s] to the complainant, respondent and city clerk within five [5] working days. § 2-7-45B.
 2. If the ERC determines a violation of § 2-7-66 [misuse of official information], § 2-7-67 [restriction on providing representation of others], § 2-1-24 [conflict of interest] or Article 5 [financial disclosure] has occurred, the ERC shall identify each code section or charter provision that has been violated in writing and deliver such finding[s] to the complainant, respondent and city

attorney recommending prosecution or setting forth requirements to be complied with in order that voluntary compliance may be had and final determination obtained. § 2-7-47.

These rules and procedures were adopted by a majority vote of the Ethics Review Commission on July 29, 2014.

A handwritten signature in black ink, appearing to read 'Austin Kaplan', with a long horizontal flourish extending to the right.

Austin Kaplan
Chair, Ethics Review Commission