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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**§ 2-7-41 COMPLAINTS.**

- PART 2.** City Code Subsection 2-7-43 (*Prohibition of Ex Parte Communications*) is amended to read as follows:

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. This prohibition does not prohibit a

1 communication by a city employee with the commission in the performance of the city  
2 employee's official duties.

3 **PART 3.** City Code Section 2-7-46 (*Oaths and Requests for Information*) is amended to  
4 amend Subsection (A), add new Subsections (B), (C), (D) and (E), and to re-letter the  
5 remaining subsections:

6 **§ 2-7-46 OATHS AND REQUESTS FOR INFORMATION.**

7 (A) Subject to the limitations in this section, [F]if a complaint proceeds to a final  
8 hearing, the commission may subpoena or request witnesses to attend and  
9 testify, administer oaths and affirmations, take evidence, and subpoena or  
10 request the production of books, papers, records, or other evidence needed for  
11 the performance of the commission's duties or exercise of its powers,  
12 including its duties and powers of investigation.

13 (B) Before the commission may issue a subpoena, the commission shall submit a  
14 written request for a person to appear before them, for the production of  
15 documents, or for any other evidence. All city officials and employees will  
16 cooperate with the commission to assist it in carrying out its charge, and must  
17 supply requested testimony and documents if the documents are public  
18 records as set forth in the Public Information Act (Chapter 552 of the *Texas*  
19 *Government Code*) or other applicable law. Identifying information about any  
20 informant or witness in documents provided to the commission must be  
21 redacted.

22 (C) The commission may issue a subpoena on its own or upon request of a  
23 complainant or respondent. If requested by a party to the complaint, the party  
24 must make a sworn request and state that the party in good faith believes that  
25 such item or testimony exists. The party must provide a detailed description  
26 of any requested items or testimony sufficient to be able to identify the items  
27 or information; must state that the party has attempted to obtain such items or  
28 information otherwise; and, that the party in good faith believes that the  
29 person or entity whose name and address is specified in the sworn request  
30 does possess or control the requested item or information.

31 (D) Any subpoena issued by the commission is subject to the following  
32 requirements:

- (1) the subpoena may only be served within the Austin-Round Rock Metropolitan Statistical Area defined as Travis, Williamson, Bastrop, Hays, Burnet, and Caldwell;
- (2) may not be served on a current City employee;
- (3) may not be served on current or former staff in the Law Department or outside legal counsel retained by the City; and,
- (4) may not include a request for documentation which the city could withhold under the Public Information Act (Chapter 552 of the *Texas Government Code*).

(E) Objection to subpoena. If a subpoena is issued upon the request of a party to the complaint, a person may object to a subpoena within seven working days after receiving the subpoena. Objections to subpoenas must be in writing and submitted to the city clerk. Not later than the fifth working day after the city clerk receives the objection, the city clerk shall acknowledge the receipt of the objection to the subpoena and provide a copy of the objection to the city attorney, the chair of the commission, the complainant and the respondent. If the commission issued the subpoena upon request of the complainant or respondent, the complainant or respondent shall within three working days after receipt of the objection provide a written response to the city clerk. The city clerk shall provide notice of receipt of a response to the objection in the same manner as receipt of an objection as set forth in this subsection. The commission shall rule on the objection. If a person to whom the subpoena is properly issued fails to object to a subpoena within the time specified in this section, the person waives any objection to the subpoena.

**PART 4.** Subsection (B) of City Code Section 2-7-48 (*Sanctions*) is amended to read as follows:

**§ 2-7-48 SANCTIONS.**

- (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

1 sanction(s). A violation of Sections 2-7-62 (*Standards of Conduct*), 2-7-63  
2 (*Prohibition on Conflict of Interest*), 2-7-64 (*Disclosure of Conflict of*  
3 *Interest*), [~~and~~] 2-7-65 (*Substantial Interest of Relative*), 2-7-46 (*Oaths and*  
4 *Requests for Information*), and subsection (D) of Section 2-7-41(*Complaints*)  
5 shall not be subject to criminal penalties under the City Code. The commission  
6 may receive additional testimony or statements before considering sanctions  
7 but is not required to do so. If the respondent acted in reliance upon a public  
8 written opinion of the city attorney, the commission shall consider that fact.

9 **PART 5.** This ordinance takes effect on \_\_\_\_\_, 2018.

10  
11 **PASSED AND APPROVED**

12  
13 §  
14 §  
15 \_\_\_\_\_, 2018 § \_\_\_\_\_  
16 Steve Adler  
17 Mayor

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19  
20 **APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
21 Anne L. Morgan Jannette S. Goodall  
22 City Attorney City Clerk  
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