



ORDINANCE NO. 2019-23

AN ORDINANCE OF THE CITY OF RICHMOND, TEXAS, AMENDING RICHMOND CODE, CHAPTER 2 "ADMINISTRATION," ARTICLE III "ETHICS;" PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, by Ordinance No. 2005-05 the City Commission adopted a comprehensive ethics ordinance governing the officers and employees of the City; and,

WHEREAS, the ethics regulations were amended by Ordinance No. 2011-07, by Ordinance No. 2017-08, and by Ordinance No. 2019-02; and

WHEREAS, the Board of Ethics and Compliance reviewed the provisions of the ethics ordinance recommends changes; and

WHEREAS, the City Commission of the City of Richmond now deems it appropriate to adopt a revised ethics ordinance; **Now Therefore**,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF RICHMOND, TEXAS:

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. Article III "Ethics," of Chapter 2 "Administration," of the Code of Ordinances, City of Richmond, Texas is amended to read as follows:

"Chapter 2 – ADMINISTRATION

.....

ARTICLE III. - ETHICS

DIVISION 1. - GENERALLY

Sec. 2-63. - Policy.

It is hereby declared to be the policy of the city that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible only to the people of the city; that no officer, employee or member of any standing committee or board shall permit any interest, financial or otherwise, or engagement in any business, transaction or professional activity to conflict with the proper discharge of his duties in the public interest; that public office shall not be used for personal gain, the gain of special interests, or any other interest contrary to the public interest; and that the city commission at all times shall be maintained as a nonpartisan body. To implement such policy, the city commission deems it advisable to enact a code of ethics for all officials and employees, whether elected or appointed, paid or unpaid, to serve not only as a guide for official conduct of the city's public servants, but also as a basis for establishing accountability for those who refuse to abide by its terms.

Sec. 2-64. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Benefit.

- (1) The term "benefit" means anything reasonably regarded as economic gain or benefit. State law, court decisions and state ethics advisory opinions concerning what constitutes a benefit shall govern in construing this definition.
- (2) For purposes of this article, the term "benefit" does not include the following:
 - a. Promotional or commemorative items of minimal value, such as mugs, caps, tee shirts and key rings if such items are unsolicited and are not offered in exchange for any action or inaction on the part of the employee or officer;
 - b. Discounts on meals offered by local restaurants if such discounts are unsolicited and are not offered or accepted in exchange for any action or inaction on the part of the employee or officer;
 - c. A fee prescribed by law to be received by the officer or employee or any other benefit to which the officer or employee is lawfully entitled or for which the officer or employee gives legitimate consideration in a capacity other than as an officer or employee;

- d. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the employment or official status of the recipient;
- e. A benefit to an officer required to file a statement under Texas Government Code Ch. 572, or a report under Texas Election Code title 15 that is derived from a function in honor or appreciation of the recipient if:
 - 1. The benefit and the source of any benefit in excess of \$50.00 is reported in the statement; and
 - 2. The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are not reimbursable by the city;
- f. A political contribution as defined by Texas Election Code title 15;
- g. An item with a value of less than \$50.00, excluding cash or a negotiable instrument as described by Texas Business and Commerce Code § 3.104;
- h. An item issued by another governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;
- i. Food, lodging, transportation, or entertainment accepted as a guest if the donor is present and the donation is reported as required by law; or
- f. Door prizes or items won with raffle tickets or by some form of drawing.

Board means the city board of ethics and compliance.

Business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust or any other entity recognized by law.

Clear and convincing evidence means evidence that allows a reasonable person to form a firm belief or conviction that the alleged violation occurred.

Complainant means an individual who files a sworn complaint with the board.

Employee means a person employed by the city or appointed by the City Commission, but shall not mean any independent contractor hired by the city.

Officer or official means any member of the city commission and any appointed member of a board, commission, or committee established by ordinance, charter, state law or action of city commission whether created on a temporary or permanent basis; provided, however, that no member of a board, commission, committee, or entity that functions only in an advisory or study capacity shall be deemed an officer or official of

the city. Municipal court judges, including associate judges, are considered officers for purposes of this article.

Party or parties means the complainant and the respondent.

Probable cause means that level of evidence to cause a reasonable person to believe that it is more likely than not that the alleged violation occurred.

Reasonable belief or reasonably believed means a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

Relative means any person related to an officer within the first degree by consanguinity or affinity and shall include a parent, child, spouse, spouse's parent, and, child's spouse.

Respondent means the person who is alleged to have committed a violation of a law enforced by the board.

Substantial interest in a business entity means that:

- (1) The person owns ten percent or more of the voting stock or shares of the business entity;
- (2) The person owns ten percent or more of the shares of the business entity;
- (3) The person owns ten percent or more of the fair market value of the business entity;
- (4) The person owns \$5,000.00 or more of the fair market value of the business entity; or
- (5) Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.

Substantial interest in real property means that the person has an equitable or legal ownership with a fair market value of \$2,500.00 or more.

Sec. 2-65. - Effective date; prospective application; retroactive application.

This article and the provisions of this article shall take effect after final enactment by the city commission and publication of either the article or caption of the article. Any alleged violation of the laws referenced in division 2 of this article which occurred prior

to final enactment by the city commission and publication of either the article or caption of the article shall be subject to the laws, orders, and regulations in effect prior to the final enactment of the ordinance from which this article is derived. Any amendment of this article that repeals a requirement or regulation of this article alone, shall be applied retroactively.

Sec. 2-66. - Discrimination prohibited.

This article shall not be applied to discriminate on the basis of race, sex, national origin, or religion.

DIVISION 2. - STANDARDS OF CONDUCT

Sec. 2-91. - Standards of conduct for officers and employees.

No officer or employee shall knowingly or intentionally:

(1) Represent or appear on behalf of private interests of others before any agency of the city or any city board, commission or committee, or represent any private interest of others in any action or proceeding involving the city. This subsection shall not be construed:

- a. To prohibit any city commission member from expressing concerns, questions, or comments to any city agency, board, commission, or committee which have been expressed to him by his constituents;
- b. To prohibit any employee or city commission member from representing himself before any agency, board or commission, if such city official or employee is not otherwise prohibited under this article from so acting; or
- c. To prohibit an officer from representing the private interests of others to any agency, board, or commission, other than the agency, board, commission, or committee on which the officer serves.

(2) Except as provided herein, represent or appear on behalf of the private interest of others before the city commission or a city agency, board, commission or committee of which the employee or officer is a member. The officer or employee shall have the right to appear before the city commission or city agency board, committee or commission of which the officer or employee is a member on behalf of a nonprofit corporation or organization of which the officer or employee is a

member to discuss any matters of concern to the nonprofit corporation or organization;

(3) Solicit, accept or agree to accept a benefit that is not available to the general public under the same or similar circumstances from a person the officer or employee:

a. Knows to be subject to regulation, inspection or investigation by the officer, employee or the city; or

b. Knows to be subject to the authority of the officer or employee to make recommendations about or to approve purchasing of goods or services;

(4) Use the officer's or employee's official position to secure special privileges or exemptions for himself or others which are contrary to the public interest as prohibited by other law;

(5) Use any information which is not available to the general public and which is gained solely by reason of his official position or employment for his own personal gain or benefit or for the private interest of others;

(6) Disclose information that at the time of its disclosure is confidential information by law or by city rules and/or policies;

(7) Engage in any outside activities which create a conflict of interest for the officer or employee (as defined in this article or state law);

(8) Accept other employment incompatible with the officer's or employee's duties with the city;

(9) While on active duty or in the course and scope of his employment, service or term with the city, in his official capacity, use the influence or prestige of his position or title as an officer or employee of the city for or against any candidate for any elective office; provided, however, that all officials and employees are encouraged to register and vote as they may choose in all local, state, and national elections and no officer or employee shall be prohibited from participating in any political process solely in his individual capacity as a private citizen;

(10) Use city supplies, equipment, or facilities for any purpose other than the conduct of official city business, unless otherwise provided for by law, regulations, city policy, or administrative orders or directives;

(11) In a proceeding before the board or city commission under this article and with intent to deceive and with knowledge of the statement's meaning, make a false statement under oath or swear to the truth of a false statement previously made; or

(12) With knowledge that an investigation or board or city commission proceeding under this article is pending or in progress:

- a. Alter, destroy or conceal any record or thing with intent to impair its verity, legibility, or availability as evidence in an ethics investigation or proceeding before the board or city commission under this article; or
- b. Make, present, or use any record, document or thing with knowledge of its falsity and with intent to affect the course or outcome of the ethics investigation or proceeding before the board or city commission.

Sec. 2-92. - Other ethical standards.

It shall be an ethical violation under this article for an officer or employee to intentionally or knowingly violate the Texas Government Code ch. 573 if the provision by its definition applies to the officer or employee in the officer's or employee's capacity with the city.

Sec. 2-93. - Additional standards of conduct for city commission.

The city commission shall be subject to the following additional standards of conduct which must be committed intentionally or knowingly to constitute a violation:

- (1) In any zoning matter (not including the initial adoption of a zoning ordinance) which may appear before the city commission, any city commission member who has a substantial interest in any real property located within 200 feet of the zoning request or in any matter concerning city improvements/projects (other than streets, drainage, and utilities) to be located within 200 feet of real property owned, rented or leased by the official or on which the official operates a place of business shall disclose the existence of such interest to the other city commission members by written statement and thereafter abstain from voting in the matter and refrain from attempting to influence the vote of any other city commission member.
- (2) No city commission member who is on the board of a nonprofit organization may vote on any funding request made to the city commission by that nonprofit organization unless the nonprofit organization has a board of directors or trustees appointed in whole or in part by the city commission.
- (3) If a city commission member has a substantial interest in a business entity or a substantial interest in real estate, and a matter involving the business entity or real estate is pending before the city commission, the city commission member shall not vote on, attempt to influence or otherwise participate in the consideration of the matter, and shall file an affidavit with the city secretary, stating the nature and extent of the interest prior to any determination of the matter, if:

- a. In the case of an interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- b. In the case of an interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

For purposes of this subsection (a)(3), a city commission member shall be considered to have a substantial interest in a business entity or a substantial interest in real property if a relative of the city commission member has a substantial interest in real property or a substantial interest in the business entity. If the city commission member is required to file and does file an affidavit under this section, the city commission member shall not be required to abstain from further participation in the matter or matters requiring such affidavit if a majority of the city commission is composed of persons who are likewise required to file and who do file affidavits of similar interest on the same official action.

(4) The city commission shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the city commission has a substantial interest and the affected city commission member shall abstain from that separate vote. The city commission member who has complied in abstaining in such vote under procedures set forth in Texas Local Government Code ch. 171 may vote on a final budget only after the matter in which the city commission member is concerned has been resolved.

Sec. 2-94. - Defenses.

It shall be a defense to any alleged violation of the standards of conduct specified in this division that the officer or employee acted in reasonable reliance upon a written opinion rendered by the city attorney or an ethics advisory opinion issued by the board.

Sec. 2-95. - Criminal penalties.

Those standards of conduct listed in section 2-91 which mirror a state law provision criminalizing such conduct shall be governed by the state law and be subject to the criminal penalties set forth in the state law.

DIVISION 3. - BOARD OF ETHICS AND COMPLIANCE

Sec. 2-119. - Created.

(a) A board of ethics and compliance shall be established by a majority vote of the city commission. The board shall consist of five members. The mayor shall nominate each member and the city commission shall approve the nominations by simple majority vote.

(b) The mayor may nominate an alternate to the board who shall serve in the absence of appointed regular board member. The city commission shall approve the nomination by simple majority vote.

(c) In the event the mayor is the respondent in the complaint, the mayor pro-tem shall make the nominations. In the event a city commissioner is the respondent in a complaint, the city commissioner shall not participate in the appointment of a board member.

(d) Each member of the board of ethics and compliance shall serve a term of three years and the terms shall be staggered to provide for the appointment of the board members and alternate member over a three-year period.

Sec. 2-120. - Board member qualifications.

Board members shall be qualified voters and residents of the city, with no more than one member from the city's extraterritorial jurisdiction, at the time of appointment and while serving on the board. If a board member ceases to possess the qualifications while serving on the board, such member's office shall be automatically forfeited. No member of the board shall hold elective or appointed office under the city or any other government, hold any other political party office or be a candidate for any of the aforementioned offices.

Sec. 2-121. - Reserved.

Sec. 2-122. - Vacancies on the board.

All vacancies shall be filled by appointment as set forth in section 2-119.

Sec. 2-123. - Removal of board members.

In addition to the city commission's usual powers of removal, members of the board may be removed by a majority vote of the city commission for a violation of this article. In considering a complaint filed with the city secretary against a member of the board, the city commission shall follow the procedures set forth in this article hereof regarding the disposition of alleged violations of this article.

Sec. 2-124. - Chairperson; quorum.

The board shall elect a chairperson and a vice-chairperson to one-year terms. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position. Both the chairperson and the vice-chairperson are entitled to vote on all issues, unless such vote is otherwise prohibited by this article. Three members of the board shall constitute a quorum, but no action of the board shall be of any force or effect unless it is adopted by the favorable vote of the required number of members specified in the particular section.

Sec. 2-125. - Meetings.

The board shall meet at the call of the chairperson or the mayor. The chairperson, upon the request of any three members of the board, shall call a meeting, provided that at least three days' advance notice is given to each member. This section shall not be construed to authorize meetings upon three days' advance notice for hearings on complaints if such time does not give the respondent or any other party the notice required by other provisions of this article. Meetings shall be subject to the applicable provisions of the Open Meetings Act (Texas Government Code ch. 551).

Sec. 2-126. - Laws administered and enforced by the board.

The board shall have authority to enforce Sections 2-91, 2-92, and 2-93 of this Article.

Sec. 2-127. - Powers and duties of the board.

In addition to other duties set forth in this article, the board shall perform the following duties:

- (1) Prescribe forms for reports, statements, notices, and other documents required to be filed with the board;

- (2) Prepare and issue advisory opinions upon request of an employee or officer subject to the board's enforcement authority. Advisory opinions shall be issued not later than the 60th day after the date the board receives the request. Such time may be extended by a majority vote of the board for an additional 30 days;
- (3) Make or cause to be made a copy of the laws referenced in section 2-126, which shall be made readily accessible in the office of the city secretary to all city employees and officers;
- (4) Review all statements and reports filed with the board; and
- (5) Preserve all statements and reports filed with the board for the time period required by the state law pertaining to records management;

Sec. 2-128. - Additional power.

- (a) The board may:
 - (1) Request that the city attorney and city manager provide such assistance as it may require in the discharge of its duties;
 - (2) Adopt, amend and/or rescind rules of procedure to carry out the provisions of this article. Such rules shall be consistent with this article and other applicable laws; and
 - (3) Agree to the settlement of issues.
- (b) The board shall not consider a complaint or vote to investigate a matter outside the board's jurisdiction.
- (c) The board is authorized to issue majority opinions only.

Sec. 2-129. - Staff.

The city attorney, city secretary and other members of the city staff, as necessary, shall assist the board in administering its functions. When complaints are filed relating to the mayor, city commission members, city attorney, or municipal court judges, independent legal counsel may be selected by the board to advise the board and participate in proceedings. The independent legal counsel shall be selected by the board on a case-by-case basis. If, during the course of proceedings, the respondent raises a defense of reasonable reliance upon a written opinion of the city attorney, the board shall select an independent attorney to continue with the proceedings. In all cases, fee arrangements with independent legal counsel must be approved by the city commission.

Sec. 2-130. - Prohibited participation.

(a) A member of the board shall not participate in a board proceeding relating to an action in which the member is the subject of a sworn complaint filed with the board.

(b) A member of the board shall not participate in or vote on any matter before the board if the matter concerns the member directly or an individual related to the member within the first degree by affinity or consanguinity.

(c) A member of the board who has personal, first-hand knowledge of the facts and circumstances involved in a complaint shall report such knowledge to the board and the board shall determine whether or not the members shall participate in or vote on such matter before the board.

Sec. 2-131. - Records.

Records of the board shall be subject to the provisions of the Public Information Act (Texas Government Code Ch. 552) and other applicable law(s).

DIVISION 4. - COMPLAINT PROCEDURES AND HEARINGS

Sec. 2-161. - Filing of complaint; contents.

(a) An individual shall file with the board a sworn complaint, on a form prescribed by the board, alleging that a person subject to a law administered and enforced by the board has violated a law administered and enforced by the board. Actual filing shall be in the city secretary's office. After two complaints filed by the same person or entity have been dismissed or resulted in a final determination that the employee or officer did not commit an ethical violation under this article, a filing fee in the amount of \$150.00 shall be required for any subsequent complaint filing.

(b) A complaint filed under this section shall be in writing and under oath and shall set forth in simple, concise, and direct statements:

- (1) The name of the complainant;
- (2) The street or mailing address of the complainant;
- (3) The name of the respondent (a complaint shall allege violations by a single respondent);
- (4) The position or title of the respondent;
- (5) The nature of the alleged violation, including if possible, the specific provision of law alleged to have been violated;

(6) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(7) All documents or other material available to the complainant that are relevant to the allegation and a list of all documents or other material within the knowledge of the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known.

(c) The complaint shall be accompanied by an affidavit stating that the information contained in the complaint is either correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public.

(d) The complaint shall state on its face an allegation that, if true, constitutes a violation of a law administered and enforced by the board.

Sec. 2-162. - Processing of complaint.

(a) Upon receipt of a complaint, the city secretary shall inform the city manager. The city attorney shall determine whether a sworn complaint filed with the board complies with the form requirements of section 2-161.

(b) No later than the 14th business day after the date a complaint is filed, the city secretary shall send written notice to the complainant and the respondent. The notice shall state whether the complaint complies with the form requirements of section 2-161.

(c) If the city attorney determines that the complaint does not comply with the form requirements, the city secretary shall send the complaint to the complainant with written notice, a statement explaining how the complaint fails to comply, and a copy of section 2-161. The complainant shall resubmit the complaint not later than the 21st day after the date the notice under subsection (b) of this section is mailed. If the city secretary determines that the complaint is not resubmitted within the 21-day period, the board shall:

(1) dismiss the complaint; and

(2) Not later than the fifth business day after the date of the dismissal, direct the city secretary to send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) If the city attorney determines that a complaint is resubmitted under subsection (c) of this section within the 21-day period but is not in proper form, the city secretary shall send the notice required under subsection (c) of this section, and the complainant shall resubmit the complaint under that subsection.

(e) If the city attorney determines that a complaint returned to the complainant under subsection (c) or (d) of this section is resubmitted within the 21-day period and that the complaint complies with the form requirements, the city secretary shall send the written notice under subsection (b) of this section.

(f) Within 10 business days of the determination that a complaint complies with the form requirements, the city secretary shall provide a copy of the complaint to the board.

(g) Upon the determination that a complaint complies with the form requirements, the city manager shall provide notice of filing of the complaint to the city commission at the next regular meeting of the city commission.

Sec. 2-163. - Preliminary review—Initiation.

(a) Within 30 days of the determination that a complaint that complies with Sec. 2-162, the board shall conduct a preliminary review of the complaint.

(b) The board, by record vote of a majority of the board, shall determine whether the board has jurisdiction over the violation of law alleged in the sworn complaint processed under section 2-162.

(c) Not later than the fifth business day after the date of the board's determination under subsection (b) of this section, the board shall send written notice to the complainant and the respondent stating whether the board has jurisdiction over the violation alleged in the complaint.

(d) If the board determines that the board has jurisdiction and that the evidence submitted by the complainant establish probable cause to believe the alleged violation occurred, the board shall schedule an informal hearing on the complaint and send notice to the respondent which shall include:

- (1) A copy of the complaint and the rules of procedure of the board, if any;
- (2) A statement of the rights of the respondent;
- (3) A statement inviting the respondent to provide to the board any information relevant to the complaint; and
- (4) The date the board will begin the informal review of the complaint.

Notice to the complainant shall state only the date the board will commence its preliminary review of the complaint.

(e) If the board determines that the board does not have jurisdiction over the violation alleged in the complaint or that the evidence submitted does not establish probable cause to believe that the alleged violation occurred, the board shall:

- (1) Dismiss the complaint; and

(2) Not later than the fifth business day after the date of the dismissal, send to the respondent and complainant written notice of the dismissal and the grounds for the dismissal.

Sec. 2-164. - Same—Procedure.

- (a) During a preliminary review, the board:
- (1) Shall consider all submitted evidence related to the complaint;
 - (2) Shall review any documents or material related to the complaint; and
 - (3) Shall determine whether there is clear and convincing evidence that provides cause for the board to conclude that a violation within the jurisdiction of the board has occurred and that it is not technical or de minimis.
- (b) During a preliminary review, the respondent may appear before the board with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 2-165. - Reserved.

Sec. 2-166. - Informal hearing—Procedure.

- (a) During an informal hearing, the board:
- (1) Shall consider all evidence related to a sworn complaint;
 - (2) Shall review any documents or materials related to the sworn complaint;
 - (3) May question the parties and witnesses and require those questions to be answered under oath;
 - (4) May subpoena documents or materials related to the sworn complaint; and
 - (5) Shall determine by clear and convincing evidence whether a violation within the jurisdiction of the board has occurred.
- (b) During an informal hearing, the respondent may appear before the board with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 2-167. - Same—Resolution.

- (a) As soon as practicable after the completion of an informal hearing, the board, by record vote of at least three members of the board, shall issue a decision stating

whether there is clear and convincing evidence for the board to determine that a violation has occurred and whether the violation is technical or de minimis.

(b) If the board determines that there is clear and convincing evidence for the board to determine that a violation has not occurred or the board is unable to determine whether violation has occurred, the board shall:

- (1) Dismiss the complaint; and
- (2) Not later than the fifth business day after the date of the dismissal, send the respondent and complainant a copy of the decision stating the board's determination and written notice of dismissal and the grounds for dismissal; or
- (3) Set a date for a continuation of the informal hearing to receive additional information related to the complaint; and
- (4) Not later than the fifth business day after the date the informal hearing is reset, send the respondent and complainant a notice of the reset informal hearing date stating the additional information the board requires to determine whether a violation has occurred.

(c) If the board determines by record vote of at least three members that there is clear and convincing evidence for the board to determine that a violation has occurred, the board may propose a sanction to the complaint. If the respondent accepts the proposed sanction, not later than the fifth business day after the date of acceptance of the sanction, the board shall send to the respondent a copy of the decision stating the board's determination and written notice of the resolution and the terms of the resolution. If the board's proposed sanction is not accepted by the complaint, the board shall:

- (1) Order a formal hearing to be held in accordance with sections 2-169 through 2-171; and
- (2) Not later than the fifth business day after the date of the decision, send to the respondent a copy of the decision and written notice of the date, time, and place of the formal hearing, a statement of the nature of the alleged violation, and a description of the evidence of the alleged violation. The complainant shall be sent written notice that the complaint has been resolved or the date, time, and place of the formal hearing, as applicable.

(d) A copy of the complaint, the rules of procedure of the board, and a statement of the rights of the respondent shall be sent with the notice required under subsection (c)(2) of this section.

Sec. 2-168. - Standard of evidence.

In all cases, the board shall determine by clear and convincing evidence whether a violation within the jurisdiction of the board has occurred.

Sec. 2-169. - Formal hearing—Subpoenas and witnesses.

(a) A subpoena or other request to testify shall be served at least 20 days in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the board, for the person subpoenaed to prepare for the hearing and to employ counsel, if desired.

(b) The board may order that a person shall not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the board before the date of that witness' scheduled appearance.

(c) A witness may read a written statement or present a brief oral opening statement at a formal hearing.

(d) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a board member, staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

(1) Request to appear personally before the board to testify in the person's own behalf; or

(2) File a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) A witness who testifies at a formal hearing shall be sworn.

Sec. 2-170. - Same—Procedure.

(a) Not later than the fifth business day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, the board shall provide to the respondent:

(1) A list of proposed witnesses to be called at the hearing;

(2) Copies of all documents expected to be introduced as exhibits at the hearing; and

(3) A brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) The respondent shall not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) The board shall adopt rules governing discovery, hearings, and related procedures consistent with this article.

Sec. 2-171. - Same—Resolution.

(a) Not later than the 30th business day after the date the formal hearing is completed, the board by motion shall issue:

(1) A final decision stating its determination at the formal hearing; and

- (2) A written report stating in detail the board's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of a sanction, if any.
- (b) The motion must be adopted by record vote of at least three members.
- (c) Not later than the fifth business day after the date the board issues the final recommendation and written report, the board shall:
- (1) Send a copy of the recommendation and report to the complainant and to the respondent;
 - (2) Make a copy of the recommendation and report available to the public during reasonable business hours; and
 - (3) Send a copy of the recommendation and report to the city commission or city manager, as appropriate.
- (d) The board will make its recommendation to the city manager for ethics complaints against city employees under the city manager's authority or to the city commission for complaints against the mayor or city commissioners; members of boards, commissions, or committees; or city employees appointed by the city commission.

Sec. 2-172. - Sanction authority of board.

If the board determines that a violation has occurred, the board may recommend the following sanctions (in increasing order of severity):

- (1) A letter of admonition,
- (2) A letter of reprimand, or
- (3) A letter of censure.

Sec. 2-173. - Factors considered for assessment of sanction.

The following factors shall be considered in assessing a sanction:

- (1) The seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;
- (2) Whether or not the violation was intentional;
- (3) The history and extent of previous violations;
- (4) The demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;
- (5) The penalty necessary to deter future violations; and
- (6) Any other matters that justice may require.

Sec. 2-174. – Action on final recommendation

- (a) The city commission, upon receipt of the final recommendation of the board shall consider the final recommendation and either approve, deny, or modify the board's recommendation. The city commission shall follow the procedure outlined in Sec. 2-175 if the commission decides to conduct a hearing on the recommendation.
- (b) The city manager, upon receipt of the final recommendation of the board shall consider the final recommendation and either approve, deny, or modify the board's recommendation. The city manager shall follow the procedure outlined in personnel manual, section 9.10 if the city manager decides to conduct a hearing on the recommendation.

Sec. 2-175. -- Appeal of final recommendation.

- (a) The respondent may appeal a final recommendation of the board to the city commission. The appeal must be in writing and must be filed with the city secretary within ten calendar days after the final decision.
- (b) The city secretary shall forward the appeal to the city commission with a report of the board determination. The city commission shall consider such written appeal, hear statements from the complainant and the respondent and may either deny the appeal in its entirety or schedule its own evidentiary hearing.
- (c) If the city commission schedules its own evidentiary hearing on the appeal, the following procedures shall apply:
 - (1) Such hearing shall be held within 30 days after the city commission decides to hear the appeal. The city commission may grant two postponements, not to exceed 15 days each, upon the request of the respondent.
 - (2) The hearing of the appeal before the city commission shall be de novo (a completely new hearing). The issue at such hearing shall be whether a violation of division 2 of this article has occurred.
 - (3) At the hearing of the appeal, the city commission may administer oaths and affirmations, take evidence, request and subpoena witnesses to attend and testify, and request and issue subpoenas for the production of books, papers, records, or other evidence relevant to the alleged violation. All witnesses shall testify under oath.
 - (4) If the city commission determines that a violation has occurred, it shall state its findings in writing, shall identify the particular law which has been violated, and, within five working days thereafter, shall deliver a copy of the findings to the complainant, the respondent, and the city secretary.

(5) If the city commission determines that a violation has not occurred or there is insufficient evidence to determine that a violation occurred, the complaint shall be dismissed.

(d) The city commission may adopt rules of procedure for the hearing of an appeal. Such rules shall be consistent with the provisions of this article and other applicable laws.

(e) If the city commission determines that a violation has occurred, it shall proceed directly to determination of the appropriate sanctions. The city commission may receive additional testimony or statements before considering sanctions but is not required to do so. If the respondent reasonably relied upon a written opinion of the city attorney, the city commission shall consider that defense.

(f) If the city commission determines that a violation has occurred, it may impose or recommend the following sanctions:

(1) A letter of admonition shall be the appropriate sanction in those cases in which the city commission finds that the violation is minor or de minimis,

(2) A reprimand shall be the appropriate sanction when the city commission finds that a violation has been committed intentionally, or

(3) A letter of censure shall be the appropriate sanction when the city commission finds that the violation is serious or repeated.

(g) Any sanctions imposed by the city commission on the respondent pursuant to this section shall be by majority vote of the city commission. A city commission member shall not participate, as a commission member, in an appeal to the city commission in which the commission member is the respondent.

(h) An employee under the supervision of the city manager may appeal a final recommendation of the board pursuant to the procedure set forth in section 9.10 of the personnel manual.

Sec. 2-176. - Extension of deadline.

The board may, on its own motion or on the reasonable request of the respondent, extend any deadline for action relating to a sworn complaint, preliminary review, informal hearing, or formal hearing.

Sec. 2-177. - Subpoena.

(a) In connection with an informal or a formal hearing, the board, as authorized by this article, may subpoena and examine witnesses and documents that directly relate to a sworn complaint. A copy of a subpoena of the board must be delivered to the respondent.

(b) At the written request of at least three members of the board, a peace officer shall serve a subpoena of the board in the manner prescribed for service of a district court subpoena.

Sec. 2-178. - Confidentiality.

Except as otherwise provided by law, proceedings and records of the board shall be confidential.

DIVISION 5. - ENFORCEMENT

Sec. 2-210. - Initiation and referral.

On a motion adopted by a majority vote of the board members, the board shall refer matters to the appropriate prosecuting attorney for criminal prosecution.

Sec. 2-211. - Limitations period.

A sworn complaint shall be filed within two years of the date of the alleged violation."

Section 3. Repeal. Any ordinance or other part of any other ordinance in conflict herewith shall be and is hereby repealed only to the extent of such conflict.

Section 4. Severability. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional,; and the City Commission of the City of Richmond, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.


Section 5. Effective Date. This Ordinance shall be effective from and after its adoption.

PASSED AND APPROVED on this the 21st day of October, 2019.



Carl A. Drozd, Mayor Pro Tem

ATTEST:



Laura Scarlato, City Secretary

APPROVED AS TO FORM:



Gary W. Smith, City Attorney