

ORDINANCE NO. 20180510-014

AN ORDINANCE AMENDING CITY CODE CHAPTER 2-7 (*ETHICS AND FINANCIAL DISCLOSURE*) RELATING TO THE AUTHORITY AND PROCEDURES OF THE ETHICS REVIEW COMMISSION.

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

PART 1. City Code Section 2-7-41 (*Complaints*) is amended to add new Subsections (E) and (F) to read as follows, to re-letter existing Subsections (E) and (F) as (G) and (H), respectively, and re-letter the remaining subsections:

§ 2-7-41 COMPLAINTS.

- (E) A complainant must disclose in the complaint filed with the commission evidence actually known to the complainant tending to negate guilt or mitigate the seriousness of the offense. Further, the complainant must disclose to the commission and the respondent any additional evidence discovered during the complaint process that negates guilt or mitigates the seriousness of the offense until the commission has taken final action on the complaint.
- (F) A city official or employee may not reveal information relating to the filing or processing of a complaint, except as required for the performance of the official's or employee's official duties, or as required by law. All papers and communications relating to a complaint 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. Investigations conducted by the Office of the City Auditor or any other City department must be conducted in a confidential manner and records of any such investigations are confidential to the extent permitted by law.

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

§ 2-7-43 PROHIBITION OF EX PARTE COMMUNICATIONS.

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

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

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

- (A) Subject to the limitations in this section, [F]if a complaint proceeds to a final hearing, the commission may subpoena or request witnesses to attend and testify, administer oaths and affirmations, take evidence, and subpoena or request the production of books, papers, records, or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.
- (B) Before the commission may issue a subpoena, the commission shall submit a written request for a person to appear before them, for the production of documents, or for any other evidence. All city officials and employees will cooperate with the commission to assist it in carrying out its charge, and must supply requested testimony and documents if the documents are public records as set forth in the Public Information Act (Chapter 552 of the *Texas Government Code*) or other applicable law. Identifying information about any informant or witness in documents provided to the commission must be redacted.
- (C) The commission may issue a subpoena on its own or upon request of a complainant or respondent. If requested by a party to the complaint, the party must make a sworn request and state that the party in good faith believes that such item or testimony exists. The party must provide a detailed description of any requested items or testimony

sufficient to be able to identify the items or information; must state that the party has attempted to obtain such items or information otherwise; and, that the party in good faith believes that the person or entity whose name and address is specified in the sworn request does possess or control the requested item or information.

(D) Any subpoena issued by the commission is subject to the following 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.

- (F) Appeal. A person that is a party to the complaint or subject of a subpoena may appeal the commission's decision on an objection to a subpoena to the Audit and Finance Committee of the City Council by filing an appeal with the City Clerk's office no later than ten days after the commission's decision. The request for an appeal must include a concise statement detailing the reasons the person believes the commission's decision should be overruled. The City Clerk will distribute the request for an appeal in the same manner described in subsection (E) above. The staff assigned to the commission will place the appeal on the next available committee agenda in accordance with the council's committee meeting procedures. The committee may vote to adopt, reject or modify the decision of the commission. A member of the Council may not take any part in a deliberation, vote, or decision regarding a subpoena issued to the council member or is issued in a complaint alleging a violation by the council member or a member of their staff.

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 sanction(s). 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*), 2-7-46 (*Oaths and Requests for Information*), and subsection (D) of Section 2-7-41(*Complaints*) shall not be subject to criminal penalties under the City Code. The commission may receive additional testimony or statements before

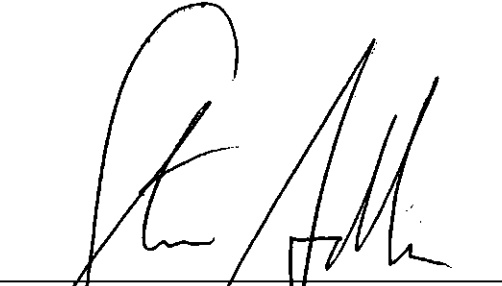
considering sanctions but is not required to do so. If the respondent acted in reliance upon a public written opinion of the city attorney, the commission shall consider that fact.

PART 5. This ordinance takes effect on May 21, 2018.

PASSED AND APPROVED

May 10, 2018, 2018

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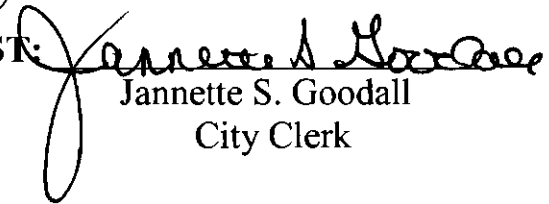
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk