



April 13, 2012

Honorable Jerry Allen  
Councilmember, District 10  
1500 Marilla, 5DS  
Dallas, Texas 75201

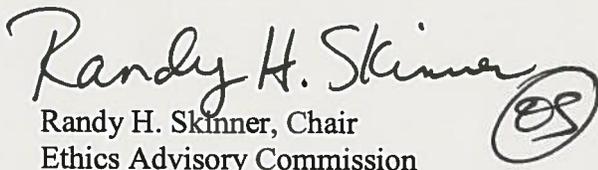
Dear Councilmember Allen:

On April 16, 2012, nominees to the Ethics Advisory Commission (EAC) for the 2011-2013 term will interview with the Budget, Finance and Audit Council Committee. We are looking forward to providing you information on our personal and professional backgrounds, as well as our thoughts on the responsibilities of the Ethics Advisory Commission.

During the meeting, I will give the committee a brief overview of the EAC's work for the past year, which will include the recommended changes to Chapter 12A of the Dallas City Code. First Assistant City Attorney Chris Bowers will present the specific changes to the committee and answer the legal/technical questions that may arise.

Again, thank you for the opportunity to interview and we look forward to providing you with information on the work of the EAC.

Sincerely,

A handwritten signature in black ink that reads 'Randy H. Skinner'. To the right of the signature is a circular stamp containing the initials 'RS'.

Randy H. Skinner, Chair  
Ethics Advisory Commission

Attachment

C: Mayor and Members of the City Council  
Mary K. Suhm, City Manager  
Thomas P. Perkins, Jr., City Attorney  
Rosa A. Rios, City Secretary  
Chris Bowers, First Assistant City Attorney  
Jeanne Chipperfield, Chief Financial Officer

## **The Ethics Advisory Commission's Recommended Amendments to the Code of Ethics**

- Clarify that the Ethics Advisory Commission (EAC) may advise the City Council as requested and make recommendations concerning the Code of Ethics and ethics policies.
- Clarify that a city official or employee may file an ethics complaint.
- Allow a complainant to bring a complaint based on information and belief.
- Specify what information must be submitted for a complaint to be complete.
- Require the City Secretary to reject incomplete or untimely ethics complaints.
- Require complainants and persons charged in a complaint to provide evidence in a format that the City Secretary can duplicate or display.
- Authorize the City Secretary to select randomly another member of the EAC to sit on a preliminary panel if the member selected randomly is not available to serve.
- Allow the City Secretary to give written notice to complainants and persons charged in complaints by facsimile, email, or first class mail if the person consents.
- Increase the time for a preliminary panel of the EAC to make a finding as to whether a complaint states an ethics violation and is supported by just cause from 21 days to 30 days.
- Increase the time for the EAC to make all reasonable efforts to issue a written decision from 45 days to 60 days.
- Clarify that a person who makes a false statement in a hearing before the EAC or a preliminary panel is subject to prosecution for perjury.
- Authorize the EAC to determine if a complaint is frivolous.
- Authorize the EAC to prohibit a person who files a frivolous complaint from submitting another complaint for:
  - up to 2 years for the first frivolous complaint filed in the last 5 years, and
  - up to 4 years if the EAC had determined within the last 5 years that the person had submitted another frivolous complaint.

## ORDINANCE NO. \_\_\_\_\_

An ordinance amending Sections 12A-25, 12A-26, 12A-27, 12A-28, 12A-29, and 12A-38 and adding a new Section 12A-40.1 of CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended; requiring the city secretary to reject incomplete or untimely ethics complaints; clarifying the advisory duties of the ethics advisory commission; clarifying that a city official or employee may file an ethics complaint; specifying what must be submitted for a complaint to be complete; allowing a complainant to bring a complaint based on information and belief; requiring complainants and persons charged in a complaint to provide evidence in a format that the city secretary's office can duplicate or display; authorizing the city secretary to select randomly another member of the commission to sit on a preliminary panel if the member selected randomly is not available to serve; allowing the city secretary to give written notice to complainants and persons charged in complaints by facsimile, email, or first class mail if the person consents; increasing the time for a preliminary panel of the ethics advisory commission and the commission to make certain findings and decisions; clarifying that a person who makes a false statement in a hearing before the ethics advisory commission or a preliminary panel is subject to prosecution for perjury; authorizing the ethics advisory commission to determine if complaints are frivolous and sanction those who file frivolous complaints; making certain semantic, grammatical, and structural changes; providing a saving clause; providing a severability clause; and providing an effective date.

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

SECTION 1. That Section 12A-25, "Jurisdiction and Powers," of Article VII, "Ethics Advisory Commission," of CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 12A-25. JURISDICTION AND POWERS.**

(a) Jurisdiction. The ethics advisory commission shall have jurisdiction to review and make findings concerning any alleged violation of this chapter by any person subject to those provisions, including but not limited to current city officials and employees, former city officials and employees, and persons doing business with the city, if a complaint is filed within one year after the date of the alleged violation. The commission may not consider any alleged violation that occurred before January 1, 2001 or more than one year before the date of the filing of a complaint. The city secretary shall not accept or process any complaint that is filed more than one year after the date of the violation alleged in the complaint.

(b) Termination of city official's or employee's duties. The termination of a city official's or employee's duties does not affect the jurisdiction of the ethics advisory commission with respect to alleged violations occurring prior to the termination of the official's or employee's official duties.

(c) Powers. The ethics advisory commission has the following powers only:

(1) To establish, amend, and rescind rules and procedures governing its own internal organization and operations in a manner and form consistent with this article.

(2) To meet as often as necessary to fulfill its responsibilities.

(3) To request from the city manager through the city council the appointment of such staff as is necessary to carry out the duties of the commission.

(4) To review, index, maintain on file, and dispose of sworn complaints.

(5) To make findings of fact as necessary for the disposition of a complaint.

(6) To make notifications, extend deadlines, and conduct investigations.

(7) To advise the city council as requested on ethical matters and make recommendations concerning the city's ethics code and policies.

(8) To make determinations that complaints are frivolous and to make findings of facts and sanction persons who file frivolous complaints.

(9) Such other powers as are specifically granted in this chapter or by the city council."

SECTION 2. That Section 12A-26, "Complaints," of Article VII, "Ethics Advisory Commission," of CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 12A-26. COMPLAINTS.**

(a) Filing. ~~Except for an ethics advisory commission member, a~~<sup>A</sup>ny resident of the city, ~~or~~ any person doing business or attempting to do business with the city, or any city official or employee at the time the alleged violation of this chapter occurred or the complaint is submitted ~~{(other than an ethics advisory commission member)}~~ who believes there has been a violation of this chapter may file a ~~[sworn]~~ complaint ~~[, under the penalty of perjury,]~~ with the city secretary on a form provided by the city secretary. The complaint must contain the following information and items:

(1) The name, address, email address, and telephone number of the complainant.

(2) The name, address (if known), email address (if known), and telephone number (if known) of each ~~[identify the]~~ person ~~[or persons]~~ who allegedly committed the violation.<sup>[;]</sup>

(3) A ~~[(2) provide a]~~ statement of the facts on which the complaint is based, including the exact date or dates of the alleged violation.<sup>[;]</sup>

(4) Identification of ~~[(3) to the extent possible, identify]~~ the ethics provision or provisions allegedly violated, using either a citation to the applicable section and paragraph of this chapter or a description containing substantially the same language as the ethics provision or provisions. ~~[; and]~~

(5) Copies of the documents or other evidence, if any, referenced in the complaint or in the complainant's possession that support the complaint attached to the complaint.

(6) The names, addresses, email addresses (if known), and telephone numbers of witnesses, if any, that can offer testimony in support of the complaint.

(7) Other ~~[(4) identify]~~ sources of evidence, if any, that the complainant recommends should be considered by the ethics advisory commission.

(8) An affidavit in which the complainant swears or affirms, under the penalty of perjury, that all information submitted in and with the complaint is true and correct or is based on the complainant's information and belief, based on credible evidence, that a violation of this chapter has occurred.

(b) Format of evidence. If a complainant or a person charged in a complaint submits evidence in an electronic, mechanical, or other format that the city secretary's office cannot duplicate or display, the city secretary's office shall request that person to provide the evidence in a format that the city secretary's office can duplicate or display. If that person fails to provide the evidence to the city secretary's office in a format that the office can duplicate or display within seven days after the office has made a request, then the evidence may not be presented to or considered by the ethics advisory commission or a panel of the commission.

(c) Acceptance of complaint. Upon receiving a complaint, the city secretary shall determine if it is complete. A complaint is complete if it contains the information described in (a)(1), (2), (3), (4), (5), and (8). If the complaint is complete, the city secretary shall proceed as described in this section. If the complaint is not complete, the city secretary shall, in writing, notify the complainant that the complaint is not complete and state which required information was not provided. The complainant shall have 20 days after the date the city secretary sent notice to the complainant to provide the required information to the city secretary. Otherwise, the complaint is deemed abandoned and may not be processed in accordance with this chapter.

(d) Confidentiality. No city official or employee shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties or as required by law. Ex parte communications by or to members of the ethics advisory commission are prohibited by Section 12A-27(c) of this chapter. 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, Texas Government Code) or other applicable law.

(e) [(e)] Notification. The city secretary shall promptly forward a copy of a complete complaint to the chair of the ethics advisory commission and to the person charged in the complaint. The person charged in the complaint shall have the opportunity to submit a sworn statement, together with such other information he or she feels is relevant. Copies of all information provided to the ethics advisory commission by the complainant and the person charged in the complaint must be distributed to all parties to the complaint within 10 days after the ethics advisory commission receives the information.

(f) [(d)] False accusations and responses. The city secretary shall, in writing, advise the person filing the complaint that falsely accusing someone of a violation of this chapter may result in criminal prosecution of anyone who knowingly makes a false accusation. The city secretary shall, in writing, advise the person charged in the complaint that falsely responding to a complaint may result in criminal prosecution of anyone who knowingly makes a false response.

(g) [(e)] Summary dismissal.

(1) Within 30 [24] days after receipt of a complete complaint, either the chair or vice chair, selected on a rotational basis and subject to availability, and two commission members, selected by lot by the city secretary and subject to availability, shall make a preliminary finding as to whether or not the complaint states a claim under this chapter and is supported by just cause. "Just cause" means such cause as is found to exist upon a reasonable

inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this chapter.

(2) If the preliminary finding is that the complaint does not state a claim under this chapter or does not have just cause, based upon the statements and evidence submitted, the complaint must be dismissed. A determination that a complaint be dismissed can only be made upon the affirmative vote of at least two of the three preliminary panel members. Written notice of the dismissal must be sent to both the person who made the complaint and the person about whom the complaint was made, identifying the reason or reasons for dismissal.

(3) The chair is recused from serving on a preliminary panel for any complaint filed against the mayor, except that the chair may participate in discussions and voting on a complaint against the mayor when it is being considered by the commission as a whole. If the chair, the vice chair, or both are unable to serve on a preliminary panel, the appropriate number of ethics commission members shall be selected by lot by the city secretary as substitutes on the panel. The preliminary panel must always have three members.”

SECTION 3. That Subsection (a), “Evidentiary Hearing,” of Section 12A-27, “Hearing Procedures,” of Article VII, “Ethics Advisory Commission,” of CHAPTER 12A, “CODE OF ETHICS,” of the Dallas City Code, as amended, is amended to read as follows:

“(a) Evidentiary hearing. If a complaint is not summarily dismissed under Section 12A-26(g) [(e)], it will be pursued further at a hearing before the ethics advisory commission. Not less than 10 days before the hearing, the city secretary [~~commission~~] shall, by certified mail or personal service, give written notice of the hearing to both the person who made the complaint and the person about whom the complaint was made. If a person entitled to notice under this subsection consents in writing, the city secretary may give written notice by facsimile, email, or first class U.S. mail. The notice must state the specific provision or provisions of this chapter alleged in the complaint to have been violated, as determined by the preliminary panel.”

SECTION 4. That Subsection (a), “Hearings on Complaints,” of Section 12A-28, “Hearing Rules,” of Article VII, “Ethics Advisory Commission,” of CHAPTER 12A, “CODE OF ETHICS,” of the Dallas City Code, as amended, is amended to read as follows:

“(a) Hearings on complaints. The rules contained in this section apply to all hearings of the ethics advisory commission on complaints not summarily dismissed under Section 12A-26(g) [(e)].”

SECTION 5. That Subsection (a), “Written Decision,” of Section 12A-29, “Disposition of Complaint,” of Article VII, “Ethics Advisory Commission,” of CHAPTER 12A, “CODE OF ETHICS,” of the Dallas City Code, as amended, is amended to read as follows:

“(a) Written decision. The ethics advisory commission shall make all reasonable efforts to issue a written decision within 60 [45] days after receipt of a complete complaint. The commission shall state its findings in the written decision. The written decision must either:

- (1) dismiss the complaint, with the grounds for dismissal set forth in the decision; or
- (2) find that there has been a violation of this chapter and identify in the decision the particular provision or provisions violated.”

SECTION 6. That Section 12A-38, “Prosecution for Perjury,” of Article VIII, “Enforcement, Culpable Mental State, and Penalties,” of CHAPTER 12A, “CODE OF ETHICS,” of the Dallas City Code, as amended, is amended to read as follows:

**“SEC. 12A-38. PROSECUTION FOR PERJURY.**

Any person who knowingly files or makes a false sworn statement under this chapter is subject to criminal prosecution for perjury under the laws of the State of Texas.”

SECTION 7. That Article VIII, “Enforcement, Culpable Mental State, and Penalties,” of CHAPTER 12A, “CODE OF ETHICS,” of the Dallas City Code, as amended, is amended to add a new Section 12A-40.1, “Frivolous Complaints,” to read as follows:

**“SEC. 12A-40.1 FRIVOLOUS COMPLAINT.**

(a) Definition. A frivolous complaint is a complaint that is groundless and brought either in bad faith or for the purpose of harassment. “Groundless” means no basis in law or fact.

(b) Order to show cause. If the ethics advisory commission or a preliminary panel has unanimously dismissed a complaint, the commission or panel may, by the affirmative vote of at least two-thirds of those present, order a complainant to show cause why the commission should not determine that the complaint is a frivolous complaint.

(c) Effect of order to show cause. Once the ethics advisory commission or a preliminary panel has issued an order to show cause to a complainant, the city secretary shall not accept or process another complaint from the complainant until the commission has determined

whether the complaint is frivolous or the person charged in the complaint has notified the city secretary's office in writing that he or she does not want the commission to determine whether the complaint is frivolous.

(d) Confidentiality. No city official or employee shall reveal information relating to the processing of an order to show cause, except as required for the performance of official duties or as required by law. All papers and communications relating to an order to show cause must be treated as confidential unless required to be made public under the Public Information Act (Chapter 552, Texas Government Code) or other applicable law.

(e) Notification. The city secretary shall promptly forward a copy of an order to show cause to the complainant and the person charged in the complaint.

(f) Response. The complainant and the person charged in the complaint shall each have the opportunity to submit a sworn response, together with such other information he or she feels is relevant. The response must be submitted to the city secretary's office within 10 days after the date that the complainant was given written notice of the order to show cause. Copies of all information provided to the ethics advisory commission by the complainant or the person charged in the complaint must be distributed to all parties to the complaint within 10 days after the commission receives the information.

(g) Format of evidence. If a complainant or a person charged in a complaint submits evidence in an electronic, mechanical, or other format that the city secretary's office cannot duplicate or display, the city secretary's office shall request that person to provide the evidence in a format that the city secretary's office can duplicate or display. If that person fails to provide the evidence to the city secretary's office in a format that the office can duplicate or display within seven days after the office has made a request, then the evidence may not be presented to or considered by the ethics advisory commission or a panel of the commission.

(h) Notice of termination of proceedings. Instead of submitting a sworn response, the person charged in the complaint may notify the city secretary's office in writing that he or she does not want the commission to determine whether the complaint is frivolous. The notice must be submitted to the city secretary's office within 10 days after the date that the complainant was given written notice of the order to show cause. A copy of the notice provided to the city secretary's office must be distributed to all parties to the complaint within 10 days after the commission receives the information. If the person charged in the complaint submits a timely notice to the city secretary's office, the ethics advisory commission shall take no further action to determine whether the complaint is frivolous.

(i) Evidentiary hearing. Unless notice of termination is provided under Subsection (h), the ethics advisory commission shall hold a hearing to determine whether the complaint is a frivolous complaint. Not less than 10 days before the hearing, the city secretary shall, by certified mail or personal service, give written notice to the complainant and the person charged in the complaint of the date, time, and place of the hearing. If a person entitled to notice under this subsection consents in writing, the city secretary may give written notice by facsimile, email, or first class U.S. mail.

(j) Ex Parte communications. It is a violation of this section for:

(1) the complainant, the person charged in the complaint, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in any ex parte communication about the subject matter of an order to show cause with a member of the ethics advisory commission; or

(2) a member of the ethics advisory commission to:

(A) knowingly entertain an ex parte communication prohibited by Subsection (j)(1); or

(B) knowingly communicate, directly or indirectly, with any person, other than a member of the commission, its staff, or its legal counsel, about any issue of fact or law relating to an order to show cause.

(k) Hearing rules. Unless otherwise provided in this section, the rules for hearings in Section 12A-28 apply to hearings conducted in accordance with this section.

(l) Rights of the complainant and person charged in the complaint. The complainant and the person charged in the complaint have the right to attend the hearing, the right to make a statement, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or another advisor.

(m) In determining whether a complaint is frivolous, the ethics advisory commission may consider evidence of:

(1) the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant;

(2) the nature and type of any publicity surrounding the filing of the complaint;

(3) the existence and nature of any relationship between the person charged in the complaint and the complainant before the complaint was filed;

(4) whether the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(5) the complainant's motives in filing the complaint.

(n) Determination. A determination that a complaint is a frivolous complaint can be made only upon an affirmative vote of three-fifths of all commission members present and voting. Otherwise, the complaint is not deemed frivolous. A finding that a complaint is frivolous must be supported by clear and convincing evidence. "Clear and convincing evidence" means

that measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established. The commission's determination of whether a complaint is frivolous does not affect the prior decision of the commission or preliminary panel on the merits of the complaint.

(o) Sanction for filing a frivolous complaint.

(1) When the ethics advisory commission determines that a complaint is a frivolous complaint, it may prohibit the complainant from filing another complaint alleging one or more violations of this chapter for up to:

(A) two years after the date of the commission's determination that the complaint is frivolous, if the commission had not determined within the preceding five years that another complaint filed by the complainant was frivolous; or

(B) four years after the date of the commission's determination that the complaint is frivolous, if the commission had determined within the preceding five years that another complaint filed by the complainant was frivolous.

(2) When determining whether and for how long to prohibit a complainant who files a frivolous complaint from filing another complaint under this chapter, the ethics advisory commission shall consider the following factors:

(A) The seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation.

(B) The sanction necessary to deter future violations, including whether the violation was an isolated incident or part of a pattern and whether there are any mitigating circumstances.

(C) Any other matters that justice may require.

(3) If the ethics advisory commission prohibits the complainant from filing another complaint for a specific amount of time under Subsection (o)(1), the city secretary shall not accept or process another complaint alleging one or more violations of this chapter from the complainant during the time that the complainant is prohibited from filing a complaint.

(4) The ethics advisory commission may notify the appropriate regulatory or supervisory agency of its findings and determination, including referring its findings and determination to a criminal investigation agency or prosecution entity for investigation of a violation of a state or federal law.

(p) Written decision. If the ethics advisory commission determines that a complaint is frivolous and imposes a sanction, it shall make all reasonable efforts to issue a written decision within 15 days after the hearing. The commission shall state its findings in the written decision.

(q) Notification. Within 10 days after issuing a written decision, the ethics advisory commission shall forward copies of the findings and decision to the complainant, the person charged in the complaint, the city attorney, the city secretary, the city council, and any member of the commission who did not participate in the disposition of the matter. The city secretary shall make copies of the findings and decision available to the public as authorized by law.”

SECTION 8. That CHAPTER 12A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 9. That the terms and provisions of this ordinance are severable and are governed by section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 10. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By \_\_\_\_\_  
Assistant City Attorney

Passed \_\_\_\_\_

Bowers/DCC/0001