

Memorandum



CITY OF DALLAS

DATE August 1, 2014
TO The Honorable Mayor and Members of the City Council
SUBJECT Proposed Amendments to the Code of Ethics

On Wednesday, August 6, 2014, the City Council will be briefed by the City Attorney's Office on amendments to the City's Code of Ethics proposed by the Ethics Advisory Commission (EAC) and the Budget, Finance & Audit Committee of the City Council. Members of the City Secretary's Office and the EAC will be available to answer questions about the proposals.

The briefing is attached for your review. Please let me know if you have questions or need additional information.

Chris Bowers

Christopher D. Bowers
First Assistant City Attorney

Attachment

c: Warren M. S. Ernst, City Attorney
A.C. Gonzales, City Manager
Rosa A. Rios, City Secretary
Randy Skinner, Chair, Ethics Advisory Commission

Proposed Amendments to the Code of Ethics

City Council Briefing
August 6, 2014



Introduction

“No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business. . . . The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.”

-John F. Kennedy

Background

- The Code of Ethics applies to:
 - current and former city employees
 - current and former City Council members
 - current and former board and commission members
 - persons doing business with the City, and
 - lobbyists

Background

- When complaints are filed, the City Attorney's Office does not represent the City officials or employees charged with ethics violations because the Code of Ethics provides that the Office "shall act as the legal counsel" to the Ethics Advisory Commission (EAC)
- The persons charged often feel a need to retain outside counsel at their own expense even when the complaints are frivolous

Background

- A preliminary panel of the EAC will summarily dismiss a complaint within 21 days of its filing if the panel determines that the complaint:
 - does not state a claim, or
 - is not supported by just cause.
- If the complaint is not summarily dismissed, the EAC will hold an evidentiary hearing and “make all reasonable efforts to issue a written decision” within 45 days after receipt of the complaint.

Background

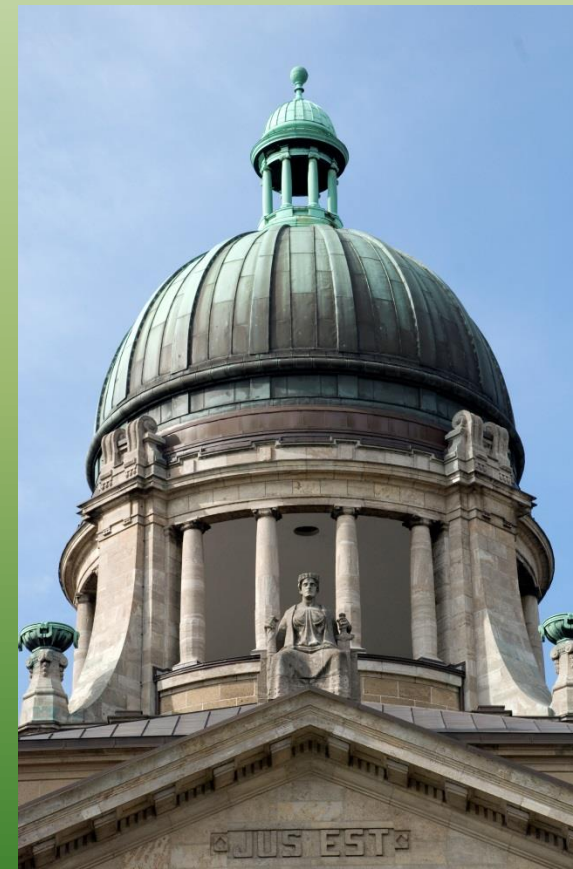
If the EAC determines a person has violated the Code, the EAC will notify the body or person that supervises the violator and may recommend that the violator:

- receive a letter of notification
- receive a letter of admonition
- receive a reprimand
- be removed or suspended
- be prosecuted for perjury, and
- be disqualified from contracting with the City for up to two years

Background

In 2012 and 2013:

- Total of six complaints alleging ethics violations were filed with the EAC
- Preliminary panels of the EAC dismissed all six, finding that they failed to state a claim



Background

The EAC has proposed amending the Code of Ethics to:

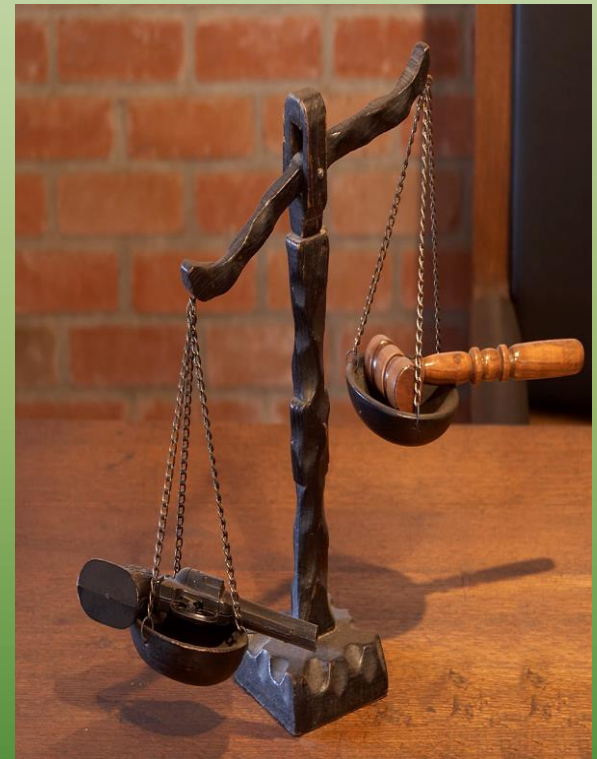
- expand the role of the EAC
- encourage the filing of legitimate complaints
- require complainants to provide more information
- require the prompt dismissal of incomplete or untimely complaints
- discourage the filing of frivolous complaints, and
- improve the procedures for handling complaints

Background

- The EAC recommended that the City Council adopt these proposals
- The Council's Budget, Finance & Audit (BFA) Committee revised the EAC's recommendation concerning the degree of knowledge required to file ethics complaints and recommended these proposals to the Council
- The EAC adopted the BFA Committee's recommendation
- The City Manager recommends adding a provision to prohibit retaliation against those who file complaints

Proposals to expand EAC's role

- First proposal would authorize the EAC to advise and make recommendations to the City Council concerning the Code of Ethics and ethics policies
- *Currently the Code is silent on this matter*



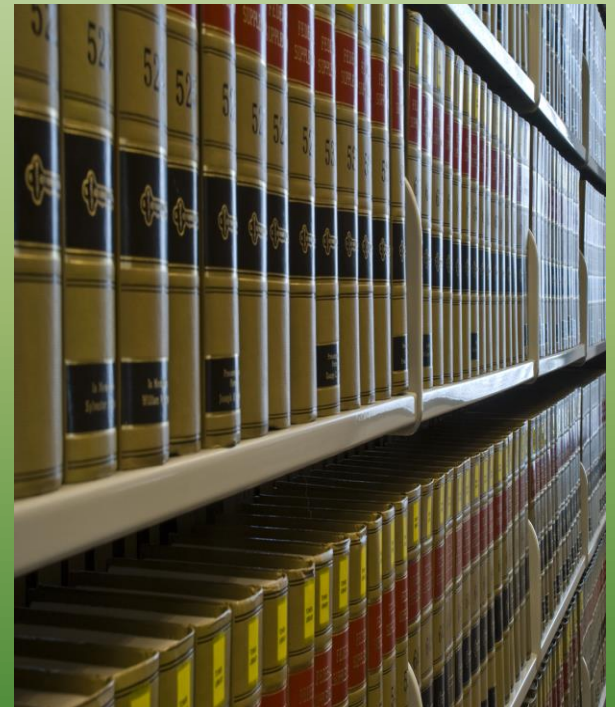
Proposals to expand EAC's role

- Second proposal would authorize the EAC to determine if a complaint is frivolous
- *Currently the Code does not authorize the EAC to make such determinations*



Proposals to encourage the filing of legitimate complaints

- First proposal would clarify that a city official or employee may file an ethics complaint
- *Currently the Code is silent on this matter*



Proposals to encourage the filing of legitimate complaints

Second proposal would allow complaints to be based on a person's best knowledge, information, and belief, formed after a reasonable inquiry, that:

- the facts alleged are supported by the evidence submitted or, if specifically so identified, will likely be supported by evidence after an opportunity for further investigation, and
- the complaint is not being presented for any improper purpose

Proposals to encourage the filing of legitimate complaints

- The proposed change is based on the standard for court filings in Rule 11 of the Federal Rules of Civil Procedure
- *Currently all the facts alleged in complaints must be based on personal knowledge*



Proposal to require complainants to provide more information

- Proposal would require a complainant to provide:
 - the date(s) of the alleged violation,
 - copies of documents or other evidence (if any) that support the complaint, and
 - names of witnesses (if any) that can offer testimony in support of the complaint
- *Currently the Code does not require the complainant to provide this information*

Proposal requiring prompt dismissal of incomplete and untimely complaints

- Proposal would require the City Secretary to reject:
 - an incomplete ethics complaint after giving the complainant 20 days to provide the required information, and
 - a complaint filed more than one year after the date of the alleged violation
- *Currently the Code does not allow the City Secretary to reject such complaints; instead, a preliminary panel of the EAC must review and dismiss the complaint.*

Proposals to discourage the filing of frivolous complaints

- First proposal would subject a person who makes a false statement in a hearing before the EAC or a preliminary panel to prosecution for perjury
- *Currently the Code provides that a person who **files** (but not makes) a false sworn statement is subject to prosecution for perjury*

Proposals to discourage the filing of frivolous complaints

- Second proposal would authorize the EAC to prohibit persons who file frivolous complaints from submitting another complaint for specified periods of time
- *Currently the Code does not authorize the EAC to prohibit filers of frivolous complaints from filing more complaints*
- *The proposal is similar to provisions concerning frivolous complaints in the San Antonio and El Paso codes of ethics*

Proposals to discourage the filing of frivolous complaints

- 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
- *These definitions are based on Rule 13 of the Texas Rules of Civil Procedure*

Proposals to discourage the filing of frivolous complaints

- If the EAC or a preliminary panel has unanimously dismissed a complaint, the EAC or panel may, by a two-thirds vote, order a complainant to show cause why the EAC should not determine that the complaint is frivolous
- Both the complainant and the person charged in the complaint will have an opportunity to submit a sworn response

Proposals to discourage the filing of frivolous complaints

In determining if a complaint is frivolous, the EAC may consider:

- the timing of the complaint
- the nature and type of publicity surrounding the complaint's filing
- the nature of any relationship between the person charged in the complaint and the complainant
- whether the complainant knew or reasonably should have known that the allegations were groundless, and
- the complainant's motives in filing the complaint

Proposals to discourage the filing of frivolous complaints

When determining whether and for how long to prohibit the filing of another complaint, the EAC shall consider:

- The seriousness of the violation
- The sanction necessary to deter future violations, and
- Any other matters that justice may require

Proposals to discourage the filing of frivolous complaints

- A three-fifths vote of the EAC is required to determine that a complaint is frivolous
- If the EAC determines a complaint is frivolous, it may prohibit persons who file frivolous complaints from submitting another complaint for:
 - o up to 2 years for the first frivolous complaint filed in the last 5 years, and
 - o up to 4 years if the EAC had determined within the last 5 years that the person had submitted another frivolous complaint

Proposals to improve the procedures for handling complaints

- First proposal would require complainants and persons charged in a complaint to provide evidence in a format that the City Secretary can duplicate or display
- *Currently the Code does not require this*



Proposals to improve the procedures for handling complaints

- Second proposal would 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
- *Currently the Code is silent on whether and how a replacement member of a preliminary panel is chosen if the member selected is not available to serve*

Proposals to improve the procedures for handling complaints

- Third proposal would 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
- *Currently the Code requires the EAC to give written notice by certified mail or personal service*

Proposals to improve the procedures for handling complaints

- Fourth proposal would increase the time for a preliminary panel of the EAC to make findings as to whether a complaint states an ethics violation and is supported by just cause from 21 days to 30 days
- *The EAC's preliminary panels have had difficulty meeting and making findings within the 21-day deadline during the holidays, the summer, and sometimes at other times*

Proposals to improve the procedures for handling complaints

- Fifth proposal would increase the time for the EAC to make all reasonable efforts to issue a written decision from 45 days to 60 days
- *The EAC has had difficulty meeting and issuing written decisions within the 45-day deadline during the holidays, the summer, and sometimes at other times*

CMO proposal: prohibit retaliation for filing an ethics complaint

- The City Manager proposes amending the Code to explicitly state that a person may not retaliate against another person for filing an ethics complaint
- *The City Auditor's 2012 audit of the City's ethics program found that the Code does "not explicitly state that whistle-blower protection is available to employees"*

Next steps

- Receive feedback from the City Council about proposals
- Post an ordinance for the Council's consideration on an upcoming voting agenda



QUESTIONS?



Full JFK quote

“No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest. This principle must be followed not only in reality but in appearance. The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.”

John F. Kennedy, Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government, April 27, 1961