

MEMORANDUM



CITY OF DALLAS

Date January 24, 2014

To Honorable Mayor and Members of the City Council

Subject **ETHICS ADVISORY COMMISSION 2013 ANNUAL REPORT**

In accordance with Dallas City Code Chapter 8, Section 8-1.1, the Ethics Advisory Commission is submitting the annual report of the Commission's activities for your review.

A handwritten signature in black ink, appearing to read 'Randy H. Skinner', with a horizontal line underneath.

Randy H. Skinner, Chairman
Ethics Advisory Commission

c: A.C. Gonzalez, City Manager
Rosa A. Rios, City Secretary

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CITY OF DALLAS

**ETHICS
ADVISORY
COMMISSION**

**ANNUAL REPORT
2013**

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**ETHICS ADVISORY COMMISSION
2013 ANNUAL REPORT**

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TAB 1

ETHICS ADVISORY COMMISSION MEMBERS

The Ethics Advisory Commission is composed of seven (7) members. The full City Council appoints members to this commission. At each biennial appointment, the Mayor determines the interview method for all nominees submitted for consideration (i.e., interview by full City Council, a City Council Committee, or Ad-hoc Committee established for this purpose).

Commissioner	Position	Member as of	Current Status
Randy H. Skinner, Chairman	1	6/30/08	Holdover as of 12-31-13
VACANT (10/14/13 to present)	2	—	—
Linda Camin	3	3/29/10	Holdover as of 12-31-13
Mickie Simpson Bragalone, Vice-Chair	4	3/31/10	Holdover as of 12-31-13
Albert Gonzalez	5	4/23/12	Holdover as of 12-31-13
Brent McDougal	6	5/08/12	Holdover as of 12-31-13
Roger Wedell	7	2/06/06	Holdover as of 12-31-13

OTHER BOARD MEMBERS SERVING IN 2013

Commissioner	Position	Original Appointment Date	Current Status
Jonathan Haywood	2	4/25/12	Resigned 10-14-13

TAB 2

MISSION STATEMENT

The Ethics Advisory Commission is an advisory body having the jurisdiction to review and make findings concerning any alleged violation of the City of Dallas' Code of Ethics. It can make findings concerning any persons subject to the provisions of the Code, including but not limited to current city officials and employees, former city officials and employees and persons doing business with the city. Complaints must be filed within one year after the date of the alleged violation. The Commission may not consider any alleged violation occurring before January 1, 2001 or more than one year before the date of the filing of a complaint.

The Ethics Advisory Commission has the power to:

- 1) Establish, amend and rescind rules and procedures governing its own internal organization and operations in a manner and form consistent with the Code of Ethics.
- 2) Meet as often as necessary to fulfill its responsibilities.
- 3) Review, index, maintain on file and dispose of sworn complaints.
- 4) Make findings of fact as necessary for the disposition of a complaint.
- 5) Make notifications, extend deadlines and conduct investigations.
- 6) Exert any other powers as are specifically granted in the Code of Ethics.

TAB 3

SUMMARY OF ACTIVITIES

The following are topics of discussion the Ethics Advisory Commission had throughout the year:

- **POLITICAL ACTIVITY**

At its January 18, 2013 meeting, a commissioner suggested possibly reviewing Chapter 12A-10 (Political Activity) which reads as follows:

(a) City officials. In any election, except his or her own, a city official shall not:

(1) use the prestige of the city official's position with the city on behalf of a candidate, political party, or political committee, except that:

(A) a city official is not prohibited from lending his or her name so long as the office held with the city is not mentioned in connection with the endorsement; and;

(B) a city council member is not prohibited from lending his or her name and official city title in connection with any election for public office or in connection with any election ordered by the city of Dallas on a proposition or measure;

(2) serve as the designated campaign treasurer for a candidate under the Texas Election Code; or

(3) solicit or receive contributions for a candidate, political party, or political committee, except that a city official is not prohibited from serving on a steering committee to plan a program of solicitation and listing the member's name without reference to the office held when the committee as a whole is listed.

(b) Employees.

(1) The purpose of this subsection is to implement the order of the United States District Court for the Northern District of Texas in Hickman vs. City of Dallas, 475 F. Supp 137 (N.D. Tex. 1979), by delineating those portions of Chapter III, Section 17(c) of the city charter that may continue to be enforced.

(2) An employee of the city immediately forfeits employment with the city if the employee:

(A) becomes a candidate for election to the Dallas city council;

(B) becomes a candidate for nomination or election in a partisan election for public office within a county in which the city of Dallas resides, or in a partisan election for a public office, the constituency of which includes all or part of a county in which the city of Dallas resides;

(C) becomes a candidate for nomination or election to an elective public office where the holding of that office will conflict with the full and proper discharge of the employee's duties with the city; or

(D) is a managerial or supervisory city employee and becomes a candidate for nomination or election to an elective public office of an entity having direct or indirect contractual relations with the city that involve the employee's department.

(c) Influencing subordinates. A city official or employee shall not, directly or indirectly, induce or attempt to induce any city subordinate of the official or employee to:

(1) participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue; or

(2) refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this subsection.

(d) Paid campaigning. A city official or employee shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot, if the official or employee participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. "Anything of value" does not include a meal or other item of nominal value the city official or employee receives in return for providing information on an item pending on the ballot.

(e) Official vehicles. A city official or employee shall not display or fail to remove campaign materials on any city vehicle under his or her control.

(f) Elections. A city employee shall not use the prestige of his or her position with the city on behalf of any candidate, political party, or political committee.

(g) Charter provisions. A city official or employee shall comply with the provisions governing political activity set forth in Chapter XVI, Section 16 of the city charter, as those provisions have been judicially interpreted in *Wachsman v. City of Dallas*, 704 F.2d 160 (5th Cir. 1983).

(h) Public property and resources. Limitations on the use of public property and resources for political purposes are imposed by Section 12A-9 of this chapter.

To date, this review has not occurred.

- **CITY EMPLOYEE ETHICS TRAINING**

At its April 19, 2013 meeting, an update to the commission regarding the city's employee ethics training efforts is to be provided. At the time the initial update was requested from the Human Resources Department, the training efforts were still underway and there was nothing to report. There has not been a commission meeting set as of that time.

- **PROPOSED AMENDMENTS TO CHAPTER 12A (ETHICS POLICY)**

On April 16, 2012, the commission approved certain amendments to Chapter 12A that would better help address complaints filed. These amendments would (1) provide a "gatekeeping" process to ensure complaints received meet the necessary requirements in order for a preliminary panel hearing to be set, specifically that they are accurately filled out and meet the requirements of Chapter 12A in order to be heard; (2) disqualify frivolous complainants from filing additional complaints during a given period; and (3) provide for administrative changes to allow uniformity between the Code and the EAC Rules of procedure. All complaints received in 2013 were dismissed at the Preliminary Panel level. Further, most complaints received in previous years have also been dismissed at this level.

These amendments were approved by the City Council Budget, Finance & Audit Committee on April 16, 2012 and were submitted to Mayor Michael Rawlings in accordance with the City Council Rules of Procedure for placement on an agenda to allow approval by the City Council. Tab 6A reflects the recommendation submitted to Mayor Rawlings by the Budget, Finance & Audit Committee. To date, no action has been taken by the Mayor or City Council on this item. (See Tab 6A)

At its April 16, 2012 meeting, the Budget, Finance & Audit Committee further recommended that the Ethics Advisory Commission examine Rule 11 of the Federal Rules of Civil Procedure. The recommendation was not communicated to the commission until January 24, 2014, so the review has not been conducted but will be scheduled for a future commission meeting.

On April 19, 2013, the commission recommended an additional change to Section 12A-25(c) (7) to remove the words "as requested" from this section, which would then read "To advise the city council on ethical matters and make recommendations concerning the city's ethics code and policies." This amendment was presented to Councilmember Jerry Allen, as EAC Liaison and Chair of the Budget, Finance & Audit Committee, but was not accepted and, therefore, not presented to the Budget, Finance & Audit Committee.

- **ETHICS ISSUES FOR EAC REVIEW**

Per Chairman Skinner and his discussion with Mayor Rawlings, the commission is awaiting feedback on potential ethics issues Mayor Rawlings wants the commission to review. At the request of the commission, City Secretary Rios met with Mayor Rawlings and he is to report back through the commission chair at a future date.

- **CHAPTER 15A – POLITICAL CONTRIBUTIONS**

The commission is still waiting for a response from the City Council as to whether or not to conduct a review of Chapter 15A which governs political contributions to City Council candidates by individuals and specific purpose committees. The commission made the initial inquiry as to review of Chapter 15A on September 26, 2008. (See Tab 6B)

- **COMPLAINTS PROCESSED**

A total of three (3) ethics complaints were received and processed by the City Secretary's Office:

DATE SUBMITTED	COMPLAINANT	RESPONDENT	PRELIMINARY PANEL HEARING DATE/RESULTS	EVIDENTIARY HEARING HELD
01/03/13	Richard P. Sheridan	Ann Margolin Councilmember	Yes <u>1/18/13</u> Dismissed	No
5/24/13	Collette L. Flanagan	David Brown Dallas Chief of Police	Yes <u>6/14/13</u> Dismissed	No
10/31/13	Richard P. Sheridan	Mayor Mike Rawlings	Yes <u>11/15/13</u> Dismissed	No

Note: See 2013 Complaint Index behind Tab 7 for more detailed information

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TAB 4



**ETHICS ADVISORY COMMISSION
MEETING MINUTES
JANUARY 18, 2013
9:47 A.M.**

Members Present: Randy Skinner, Chair
Mickie Simpson Bragalone, Vice Chair
Jonathan Haywood
Brent McDougal
Linda Camin
Roger W. Wedell

Member(s) Absent: Albert Gonzalez

Staff Present: Rosa A. Rios, City Secretary
Warren Ernst, Administrative Assistant City Attorney
Lisa Christopherson, Senior Assistant City Attorney
Jesse Salazar, Boards and Commissions Manager, CSO
Dawna Brown, EAC Coordinator, CSO

Call to Order

Meeting called to order at 9:47 a.m. by Chairman Skinner.

Agenda Item I – Approval of Minutes for March 30, 2012

Vice Chair Bragalone moved approval of the minutes of the March 30, 2012 Ethics Advisory Commission Meeting.

Motion seconded by Commissioner Wedell and unanimously adopted.

Agenda Item II – Review and Approval of 2012 Annual Report to the City Council

At Vice Chair Bragalone's request, the Commission received clarification regarding the recommended changes to the Dallas City Code noted in the report included all of the prior recommendations made by the Commission to the City Council.

Commissioner McDougal moved approval of the 2012 Ethics Advisory Commission Annual Report and its subsequent submission to the City Council.

Motion seconded by Commissioner Bragalone and unanimously adopted.

Agenda Item III – Calendar

Chairman Skinner requested Commissioners let him know if they had any topics they would like added to the calendar.

Commissioner Camin suggested reviewing Section 12A.10 – Political Activity.

Commissioner Bragalone suggested revisions to the calendar, particularly the summer meeting dates.

Commissioner Camin requested a status report from the City Manager regarding ethics education of city staff.

Commissioner Camin inquired if current members of Council attended new member orientation. City Secretary Rios stated all members of the City Council are invited to attend a Councilmember-Elect orientation and Chapter 12A is covered at that time.

Commissioner Wedell suggested new Councilmembers be made aware of pending ethics activities. City Secretary Rios stated this would be added to the documentation.

Adjournment

The meeting was adjourned at 10:00 a.m.

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Randy H. Skinner, Chairman

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**ETHICS ADVISORY COMMISSION
MEETING MINUTES
APRIL 19, 2013
9:00 A.M.**

Members Present:

Randy Skinner, Chair
Mickie Simpson Bragalone, Vice Chair
Jonathan Haywood
Albert Gonzalez
Brent McDougal
Linda Camin
Roger W. Wedell

Staff Present:

Rosa A. Rios, City Secretary
Biliera Johnson, Assistant City Secretary
Lisa Christopherson, Senior Assistant City Attorney
Jesse Salazar, Boards and Commissions Manager,
CSO
Dawna Brown, EAC Coordinator, CSO

Call to Order

Meeting called to order at 9:00 a.m. by Chairman Skinner.

Agenda Item I – Approval of Minutes for January 18, 2013

Commissioner Camin moved approval of the minutes of the January 18, 2013 Ethics Advisory Commission Meeting.

Motion seconded by Commissioner Wedell and unanimously adopted. (Bragalone and McDougal absent when vote taken)

Agenda Item II – Consideration amendment to draft ordinance Dallas City Code Chapter 12A (Code of Ethics) regarding jurisdiction of power and resubmission to City Council.

This proposed change modifies Section 12A-25(c) (7) of Chapter 12A to read, “To advise the city council ~~as requested~~ on ethical matters and make recommendations concerning the city’s ethics code and policies.”

Chairman Skinner stated Councilmember Allen had reviewed the ordinance and was favorable towards the change. Chairman Skinner informed the Commission that Mayor Rawlings would later be presenting ethics recommendations to the Commission as discussed by the City Council during their retreat. No other details were presented by Chairman Skinner.

Commissioner Camin moved to approve the amendment.

Motion seconded by Commissioner Haywood and unanimously adopted. (Bragalone and McDougal absent when motion approved)

Agenda Item III – Consider changes to EAC Calendar

The next EAC meeting is scheduled for July 19, 2013. City Secretary Rios stated most all boards and City Council take recess in July. Chairman Skinner decided to wait until the Commission hears from the Mayor regarding ethics recommendations to decide whether or not to hold a meeting in July.

City Secretary Rios stated the Commission had asked for an update regarding the City’s efforts on ethics training for city staff and that since Human Resources is presently in the middle of ethics training for all city employees, they would report on the outcome of the training at the next EAC meeting following the completion of training efforts.

Commissioner Camin asked if Councilmembers received ethical training during orientation. City Secretary Rios stated Councilmembers do receive training, however; the training given to Councilmembers is somewhat different than the training received by city employees.

Commissioner Camin asked for clarification regarding several recommendations previously submitted by the Commission to the City Council. Chairman Skinner restated Mayor Rawlings would make recommendations to City Council from the consultant that presented during the City Council retreat, and the City Council will vote on new recommendations and send those to the Commission this summer.

City Secretary Rios stated the upcoming election and the appointment of new City Councilmembers could delay action on the recommendations until after the new City Council has been officially seated.

Commissioner Bragalone expressed her concern regarding the length of time for Council to respond to recommendations submitted by the Commission. By consensus, City Secretary Rios was asked to inform the Mayor's Office of this concern.

Adjournment

The meeting was adjourned at 9:16 a.m.

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Randy H. Skinner, Chairman

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TAB 5

**2013
ETHICS ADVISORY COMMISSION
ATTENDANCE**

2013 MEETING DATES	PLACE	1/18/2013 REGULAR MEETING	4/19/2013 REGULAR MEETING	7/19/2013 REGULAR MEETING	10/18/2013 REGULAR MEETING
Randy H. Skinner	01	P	P	CANCELLED	CANCELLED
Jonathan D. Haywood	02	P	P	CANCELLED	CANCELLED
Linda Camin	03	P	P	CANCELLED	CANCELLED
Mickie Simpson Bragalone	04	P	P	CANCELLED	CANCELLED
Albert Gonzalez	05	A	P	CANCELLED	CANCELLED
Brent McDougal	06	P	P	CANCELLED	CANCELLED
Roger Wedell	07	P	P	CANCELLED	CANCELLED

TAB 6

EAC'S PENDING REQUESTS FROM CITY COUNCIL AS OF 12-31-13

- Amendments to Chapter 12A of the Dallas City Code (Frivolous Complaints)

- Submitted to Mayor Michael Rawlings on April 26, 2012.

To date, this item has not been scheduled for City Council consideration. (See Subsection 6A)

- Authority to review Chapter 15A of the Dallas City Code

- Submitted to City Council on September 26, 2008.

To date, no response has been received. (See Subsection 6B)

TAB 6A

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 I. 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~~[A]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.[;]

(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.[;]

(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) [(f)] 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) [(g)] 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 [~~eommission~~] 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

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TAB 6B



City of Dallas

September 26, 2008

Honorable Mayor and
Members of the Dallas City Council
Dallas City Hall
1500 Marilla – 5FN
Dallas, TX 75201

Dear Mayor and Members of the Dallas City Council:

On June 4 and 18, 2008, the City Council interviewed individuals for appointment and reappointment to serve as members of the Ethics Advisory Commissions (EAC) for the term 2007-2009.

During the interview discussion, City Councilmembers expressed interest in the EAC reviewing specific issues and concerns. On June 11, 2008, some of the issues were resolved by amending Chapter 12A of the Dallas City Code. The following issues are pending resolution:

- gifts and contributions to Councilmembers from zoning applicants
- clarification of the definition of “per city election” period for purposes of collecting campaign contributions defined Chapter 15A of the Dallas City Code

After discussion on September 19, 2008 regarding how to address the issues expressed by the City Council as a part of our work plan, the EAC members request formal direction and/or consensus of the City Council in order to begin work on the specific issues identified. At present, the issues are not considered a part of the commission’s purview as currently stated in Chapter 12A of the Dallas City Code.

Once we receive formal consensus or vote of the City Council, the EAC will include the specific issues as a part of our work plan.

If you need clarification or have questions regarding the issues stated above, please contact me at skinner.randy@gmail.com or call me at (214) 316-1356.

Sincerely,

A handwritten signature in cursive script that reads "Randy Skinner".

Randy Skinner
Chairman, Ethics Advisory Commissions

C: Members, Ethics Advisory Commissions
Deborah Watkins, City Secretary
Mary K. Suhm, City Manager
Thomas P. Perkins, Jr., City Attorney
Rosa A. Rios, Assistant City Secretary
Jesus Toscano, Executive Assistant City Attorney
Gwen Satterthwaite, Executive Assistant City Attorney
Lisa Christopherson, Assistant City Attorney
Daniel Soliz, Manager of Boards and Commissions, City Secretary Office

TAB 7

2013 ETHICS COMPLAINT INDEX

DATE FILED	COMPLAINANT	RESPONDENT	CODE VIOLATION CITED	DATE HEARD	STATUS/OUTCOME
1/03/13	Richard P. Sheridan	Ann Margolin Councilmember	12A-10(a) 12A-10(a)(1) 12A-10(a)(A) 12A-10(a)(B) 12A-10(a)(3)	01/18/13	Dismissed by Preliminary Panel. Based upon the evidence submitted the complaint fails to state a claim under Chapter 12A Dallas City Code (Code of Ethics)
5/24/13	Collette L. Flanagan	David Brown Dallas Chief of Police	12A-3(a) 12A-3(a)(1) 12A-4(a) 12A-18	06/14/13	Dismissed by Preliminary Panel. Based upon the evidence submitted the complaint fails to state a claim under Chapter 12A Dallas City Code (Code of Ethics)
10/31/13	Richard P. Sheridan	Mike Rawlings, Mayor	12A-4	11/15/13	Dismissed by Preliminary Panel. Based upon the evidence submitted the complaint fails to state a claim under Chapter 12A Dallas City Code (Code of Ethics)