

MINUTES BOARD OF ETHICS August 13, 2018

After determining that a quorum was present, the City of Denton Board of Ethics of the City of Denton, Texas convened in a meeting on Monday, August 13, 2018 at 6:00 p.m. in the City Council Work Session Room, 215 E. McKinney Street, Denton, Texas at which time the following items were considered:

Present: Don Cartwright, Ben Clark, Deborah Cosimo, Jesse Davis, Kara Engstrom, Karen McDaniels, Lara Tomlin, David Zoltner,

Absent: Ron Johnson, Sandy Kristoferson.

Staff: Umesh Dalal, Trey Lansford, Bryan Langley, Sarah Kuechler, Charlie Rosendahl, Kelly Campbell

Special Speaker: Alan Bojorquez, Attorney

**Regular Meeting**

1. ITEMS FOR CONSIDERATION

JDavis: Calling this meeting to order at 6:03pm. The first item on our agenda is the Report from the City auditor.

- A. Report from City Auditor and hold a discussion regarding the role and responsibility of the City Auditor in the ethics process.  
Exhibit 1: AIS Auditor's Role  
Exhibit 2: Processing an Ethics Complaint  
Exhibit 3: Presentation

Umesh Dalal: Good evening. My name is Umesh Dalal, and I'm City Auditor of the City. My roll with this Board, the ordinance requires me to provide staff support to the Ethics Board. That includes only administrative support. The City Auditor is required neither to conduct investigation nor enforce the ordinance under that \_\_\_\_\_ to do so. My duties are few, as far as disclosures are concerned, if City official or their spouses are partnered with any owner of the business(s) that have pending matters in front of City Council, they must disclose with the City Auditor, so they must file a formal disclosure from my office. The reason disclosure is required to be filed with the City Auditor if they/any City official has a conflict of interest for matters pending before the body that they are presenting. So, for example, if some of you there is a conflict of interest with the Board of Ethics then that needs to be disclosed. That public official is required to abstain from voting on that particular matter. Second duty is to receive complaints. The complaints must be in prescribed forms which is available from my office. I'm required to verify whether the complaints are complete, which means that it is enclosed with all the information, they are signed and notarized. If any of the items are not present, then I'm supposed to send it back for rectification. The complaint must be filed in timely manner. What that means is that it has to be filed within 6 months of complainant knowing, having acquired the knowledge about the incident, or maximum, it has to be filed within 2 years from when the incident occurred. For former public officials that time period is one year. Under specific circumstances, ethics complaint may be received from the hotline that is obliged by my office. I will visit that a little bit in another form. The third duty is to receive request for advisory opinion. Any City official may request an advisory opinion if there is a question about compliance

44 with this ordinance, it's kind of getting an advanced ruling, "if I do this, will that be a violation?"  
45 Both requests must be submitted in writing to the City Auditor. When I get the request, I'm required  
46 to assign it to either a panel or special counsel. The next would be a scheduled hearing. The  
47 ordinance requires me to hold a scheduled hearing for one of the two purposes. Once a panel  
48 determines that the complaint is actionable, in that case we must go through the whole process of  
49 holding a hearing and analyze that the complaint...hear the evidence of the complaint. Or, if the  
50 complainant or accused, does not lie, the panel's decision and they want to appeal, at that time a  
51 hearing is scheduled. Last duty of City Auditor, as far as the actual complaint is concerned is request  
52 for reconsideration of complaint. If the complainant and accused disagree with the decision which  
53 is rendered by the Board, they may request, this is one more attempt for the Board to reconsider  
54 their decision, this request needs to be filed with my office. There are two administrative duties,  
55 which are not covered here. The first is for training. I'm required to approve a training program  
56 and it must include an introduction and overview, all your expectations, mandates and book editions,  
57 as provided by the ordinance for public officials. As part of their education/orientation, City officials  
58 must complete a training program regarding this ordinance annually or within 90 days from  
59 commencing their official duties. For officials remitting their services with the City, the City  
60 Auditor will provide information regarding continuing restrictions upon representation of others,  
61 there are specific probations in ordinance regarding that. There are two types of additional  
62 disclosures that are required. Of the City officials know of a violation exists, that official has a duty  
63 to report that violation. If they fail to report it, that is also a violation according to the ordinance.  
64 City officials sometimes have a reluctance of reporting, because one board member has knowledge  
65 of violation committed by another board member, then they may be reluctant to disclose their name  
66 and complaint. Such complaints can be made on the City Auditor's hotline. That is a concern, if  
67 the complaint is made on the hotline than is accepted. I did talk about the business disclosures. Any  
68 official must disclose a conflict of interest on any matter brought before the City Council, then that  
69 must be disclosed. Also requires a report that must be filed annually or within 90 days of taking  
70 office. Now the language of the ordinance is not very clear, and I will defer that requirement to  
71 Alan to address. However the failure to submit such a report does not, and this is for complaint,  
72 unless after it was identified and notified to that public official and the public official does not submit  
73 that report within 90 days. Questions? (4-0:12:30)

74  
75 Jesse Davis: Have you seen, and you may not have, but one of our members is not here tonight, he  
76 is an experienced administrative law judge, he has dealt with similar things before. He has wrote  
77 some of his concerns down for us, entitled Ron Johnson's Comments, have you seen that before?

78  
79 UDalal: No, I have not.

80  
81 JDavis: The only reason I mention it is because the first six or seven items that he wanted us to talk  
82 about tonight specifically deal with the complaint form. It's thinks like some substantive and some  
83 are like using a colon versus a semicolon. Knowing that's part of what you and your staff does, I'd  
84 like to make sure you get a copy of this. It's not necessarily this Board's business to draft this form  
85 for you, but I wanted to make sure you had his comments. One of his other questions, though I think  
86 it is appropriate for now was when you receive a complaint and you are going over for completeness  
87 and timeliness, one of the things that he asked is if it would also be appropriate at that time for the  
88 City Auditor to determine if the complaint meets the requirement of firsthand knowledge, required  
89 by the ordinance that the complainant have firsthand knowledge of the alleged unethical conduct, or  
90 you may feel that is too close to deciding the content on the complaint and that is better left to the  
91 Board to handle?  
92

UDahal: I would say it is the latter. That will require me to make a determination. I do not feel that is my place to make that determination. The ordinance does not charge that responsibility on the City Auditor. City Auditor is supposed to do like the staff and support, and I cannot go beyond that.

JDavis: This is a new process for Denton, we've had experienced hands guiding us, but also it is new for us. Is there anything about the way that the process looks to you so far cause you any concern or any advice for us as a Board at this point?

UDahal: Like you pointed out, this process is brand new. So, as there is some experience with this process, the process probably will be \_\_\_\_\_ (?). (4-0:15:21) At this time, we don't have any experience of complaints that we have received, so it is difficult to judge that at this time.

JDavis: Do you have any sense that there are 10 or 20 complaints waiting for us, now that the Board is constituted?

UDahal: None that I've seen.

JDavis: Any other questions? Thank you very much. Before we pick up on item 1. B, I would be remiss in not introducing our newest member, not new, you were voted in at the same time as we all were, but could you go ahead and introduce yourself?

Ben Clark: Yeah, my name is Ben Clark, I'm from Denton, been here pretty much my whole life, went to Denton High, then went down to Baylor, came back now run a real estate company (name of company) (Alcott Ranch and Properties?) and so I just want to get more involved in the city at the government level. I talked to Gerard and he found a spot that would fit for me, so, I'm excited. Don't know what all it entails so far, but I'm excited.

- B. Report from attorney Alan Bojorquez, hold a discussion, and give staff direction regarding the Board of Ethics rules of procedures required by Ethics Ordinance No. 18-757 and subject to confirmation by City Council.

Exhibit 1: AIS Rules of Procedure

Exhibit 2: Draft Rules of Procedure

Exhibit 3: Proposed Board of Ethics Timeline

Exhibit 4: Ron Johnson's Comments

JDavis: Thank you, appreciate that. Item 1, B is receiving a report from Alan Bojorquez, does everyone have their redline? Did everyone get a chance to read before tonight? Alan, ready when you are

Alan Bojorquez: We went through our notes and Charlie was kind enough to share his notes from our last meeting and we produced Draft I. As Jesse mentioned, you should have received a redline version of that. To remind everyone and Ben, our newest member, the Code of Ethics, the ordinance adopted by the City Council, requires that the Board of Ethics adopt its own procedural rules for how it is going to conduct its own business. Then before those become effective the City Council has to consent them, which they are scheduled to do at their meeting next week. Because we had so many changes and edits to the last draft that you were presented, the Board wanted to not just pass those on to the Council as edited, but to give you a chance to come back, review and discuss them one more time. That is the point of tonight's meeting, and that's why I'm here is to discuss those with you and you let me know first of all did we adequately address the concerns, suggestions or comments you raised from last time? And then finally is there something that we did not address

that you want brought up, because the goal from Staff's perspective at this point is that when you leave tonight it will be because you will have approved a version of these rules of procedures that can then go to City Council for approval. Sound accurate? Ready to proceed?

Laura Tomlin: I know on "Confidentiality," the added sentence of the first line, ends with "is" I think that should be "are."

JDavis: If you don't mind, could I start with Ron Johnson's memo concerns. Looking over it, I think the main, substantive he raised, we didn't spent a lot of time last time talking about cross examination. Can you tell us why your experience and your advice is that we not include cross examination in the hearing?

ABorjorquez: I don't have a strong feeling about it one way or the other. When we discussed it with the City Council, I recall that the basic consensus was that hearings should be somewhat streamlined, not overly long or overly combative. This is not a court of law, so it shouldn't be conducted as if it is a Court, with too many legal procedures. Question became what we think are the essential elements to put into a set of procedures that will give someone their say, their ability to present evidence, to have that deliberated and that yielded not providing for cross examination. If that is something you are wanting to recommend, I don't have an objection to it other than these points I've just stated.

LTomlin: I know after reading Ron Johnson's comments, I think cross examination might be good. When you have one side bringing someone and asking all their questions, getting all their answers (4-0:21:07) the other side is not getting a chance to question what they just testified to. Ron Johnson suggested have like five questions or a time limit or maybe ask the Chair for cross examination. I don't think that's a bad idea.

Don Cartwright: I think it says, though, that our Chairman can allow it, if he wants to. It doesn't completely deny it here. But I think they should, especially against the accused, otherwise they'll come in with a preferred statement and say nothing but good and there's no chance to question him on it. Also, if its Quickbooks, if there's some underlying reason its filed and not because of what's there that's a good reason why they should cross examine, at least cross examine the accused.

JDavis: You can certainly imagine a citation where the complainant is an individual, there's no legal counsel involved and they are just doing their best to present the complaint and it may not come to anything, they may just be barking up the wrong tree, but if they come in expecting to just say their peace and not have things prepared, they may not have a witness, might not have someone to give the information they need in a full way, might need to cross examine the accused, to kind of develop what they are saying.

ABorjorquez: Again, I'm not arguing one way or the other. In my day job as a City Attorney elsewhere, I certainly have prosecuted a number of cases and I know we have some prosecutors in the room, it is fun or zero fun to watch those Pro Se defendants come in and try to cross examine someone. It is also interesting to see what happens when you've got a professional prosecutor on one side of the docket and a Pro Se on the other side. I don't know how much I've experienced that yielding anything that helps us to determine did the defense take place or did it not take place. But certainly something that is provided in a legal form. This is not a criminal or civil court. It is an administrative body. You seldom see it in an administration bodies, planning and zoning there is no cross examining a witness, board of adjustment, most BOAs these days do not have cross examination. But we can certainly build it in, if you think that might be helpful and that's what you want to recommend to the council.[4-0:23:46].

193  
194 LTomlin: I kind of think, as far as like Zoning and the other Boards not having it, this is a little  
195 different, because this is somebody's reputation. It's a little more serious, they are being accused.  
196 That's what makes me think that cross examination would be good.  
197

198 JDavis: David, what do you think it would do? You were involved in the process that got us here.  
199 How important do you think that something like that is to the transparency and acceptance of the  
200 process?

201 David Zoltner: Not being a lawyer, obviously, it makes sense to me that there should be some  
202 opportunity. You kind of jumped way ahead to the actual hearings for the Board itself. Maybe I  
203 should be waiting till we get there, but one of the things that jumped out at me was in the preliminary  
204 assessment, and maybe this is a question for Mr. Dalal, but I'm trying to envision a preliminary  
205 hearing where there is an Auditor, panel of 3, the accused and accuser sitting side by side in a  
206 preliminary hearing and neither are allowed to comment or speak. Now on paper that may make  
207 sense, but in real life, does anyone have any experience where that actually happened? That to me  
208 seems to be a very problematic situation. Does that happen? Maybe in your experience or Alan's  
209 where these panels have actually met. It says they may attend these meetings but may not speak.  
210 From a human standpoint, that's kind of a problem for me.  
211

212 JDavis: If it's ok with you, let's wrap the cross exam question, and then come back to the  
213 preliminary hearing.  
214

215 DZoltner: Well, that's fine. As far as the cross examination, again, it just makes sense to me to  
216 have some opportunity to at least clarify what someone is hearing. Whether it is actual cross  
217 examination, and again, I'm not being lawyer, I can't define what is written, but at some opportunity  
218 to clarify what the accused has said.  
219

220 JDavis: There seems to be some consensus allowing some form of cross examination. The way it  
221 is now it gives the Chair discretion on when that should take place.  
222

223 LTomlin: What number is that again?  
224

225 JDavis: Number 18.  
226

227 DZoltner: On Ron's document?  
228

229 JDavis: No, Ron's document it is #8 and he does a great discourse on due process, I was indifferent,  
230 or probably anti-cross examination at first, but he describes the people participating in the hearing  
231 need to feel they had a full and fair hearing, Part of what we are doing is not punitive, we are making  
232 everyone feel good that the process worked. So if they have the opportunity to lob some questions  
233 up there, do some cross examination stuff, maybe they'll feel better about the process.  
234

235 DCartwright: I think it will help the panel, the Board in deciding the creditability of the witness  
236 when you get some underlying questions asked on other than just what the preferred statement is. I  
237 think that will help the Board to have cross examination.  
238

239 JDavis: Does anyone feel we should absolutely not have cross exam? (No response) Then we  
240 have some options. The way it is written now, the Chair can decide on a case by case or frankly a  
241 witness by witness. Or we could leave it that way. Or we could strike that line that begins with

242 “Opposing” and ends with “matter,” and say nothing on the matter. I’d rather say something  
243 rather than nothing.  
244

245 LTomlin: [28:03] Well, you could just change the wording to, “Opposing parties shall be permitted  
246 to cross examine witnesses when authorized by the Chair or presiding member.”  
247

248 JDavis: I presume that he’ll be there but also give the Chair an opportunity to say, you don’t need  
249 to cross if you’re about to just yell at them for five minutes and waste all your time.  
250

251 LTomlin: And the goes back to like what Alan was saying, and I think we’ve seen in the Justice of  
252 the Peace Court’s Pro Se litigant many times to make sure the hearing goes smoothly, you can deny  
253 it.  
254

255 JDavis: How do you feel about that? Does that seem like a good solution? Opposing parties shall  
256 be permitted to cross examine the witnesses when authorized by the Chair or presiding member.  
257

258 DCartwright: That doesn’t change what is on there now then. It’s still saying that they can only do  
259 it with the permission...

260 LTomlin: I guess it’s kind of semantics, but it’s not saying you can’t cross examine, it saying to ask  
261 to cross examine. I don’t know, I think that has a better feel to it as far as trying to make this fair.  
262

263 JDavis: To me, the new wording presumes it is there and is going to happen, and that it is more  
264 extraordinary if the Chair isn’t going to allow it. Whereas the current language is it presumes that  
265 it is not going to happen and it’s more extraordinary that the Chair does allow it. It’s more out of  
266 ordinary.  
267

268 BClark: So what would be the case for them not to allow it? Like regularly is.  
269

270 JDavis: I would say, come along the lines of some of the other rules of procedure order keeping  
271 measures early on, if they’ve cross examined, let’s say it’s been two witnesses already, and they’ve  
272 just badgered and hammered and they’re not getting anywhere, and we just need to move the thing  
273 along. At that point I’d say, no you’re not, just let them present their witness, you don’t get to cross  
274 examine this one. And for me, I can’t speak for future Chairs, but I would count that against their  
275 time. I’d have the stopwatch going, just like in cross examination to date, when you start talking,  
276 there’s your time, and you’re using your time up. And they need to be made aware of that from the  
277 beginning. You can ask all the questions you want, but you’ll be using up your time.  
278

279 LTomlin: Might have to also amend, I don’t know if we’d have to put that in the Time portion,  
280 about the time, this includes cross examination, or if you’d be pursuing?  
281

282 JDavis: I can’t speak for anybody else, but the way I would read #20 Time Limitations, 30 minutes  
283 per side, present all their witness testimony, cross examination, question to a witness is witness  
284 testimony you are presenting. And documentary as presented and modified by the Board.  
285

286 DCartwright: You’ll have to keep two timers separately because the cross examination would be  
287 off. The examiners time.  
288

289 JDavis: I think to keep time fairly, I think we were already going to have to run 2 stop watches, at  
290 least, maybe more depending on arguments. It is already a complex time keeping situation. That

kind of goes to Ron's other point too, in fairness, somebody is in the middle of a sentence or in the middle of a thought, to conclude, we not going to...

Karen McDaniels: I'm all for giving the folks the time that they need if we want to that's necessary, because we haven't done this before we really don't know how it is going to go. We can always go back and tighten it up a bit if it appears to be creating more adversarial rather than helpful.

JDavis: Yeah, and again, I can't speak for future Chairs, and you guys as the Board have certain authority to keep them in check too, but if somebody is just beating up some little old lady about something she had no idea about, we are going to keep that in check. If somebody is really pulling out some important information that we need for a case, is on point and makes sense well then we're going to let that go. I think we'll rein it in both times. Equal chance will get either one of those complaints. The really well founded ones that needs development and the leftfield, let's finish this up when we can kind of complaints. So back to #18, how do we feel now about Laura's proposed wording?

DCartwright: Would you repeat, please?

JDavis: Opposing parties shall be permitted to cross examine the witness when authorized by the Chair or presiding member.

DCartwright: Delete "unless authorized by the Chair or presiding member."

JDavis: Just delete... yeah, ok. I see what you are saying; opposing parties shall be permitted to cross examine the witness. I'm ok with that.

LTomlin: Without authorization by the Chair, just shall? I'm ok with that. It goes against their time so, that might be something that should be clear in the timing, but may be something we could tell them, "Ok, you can cross examine, but it's going to take up your time," if it is someone who is not aware.

JDavis: Does everyone feel good about that? Ok, let's take that one as written, "Opposing parties shall be permitted to cross examine the witnesses." Did anyone else remember anything from Ron's comments that you think we ought to take up in a specific way? He had some good global comments for us as a Board like the way we ought to conduct these hearings. Anything else specific from his memo that I'm not catching. Don't be surprised if you see me look at him right in the middle of a hearing, because we are really going to draw on Ron's experience a lot here.

LTomlin: I know he said something about the Complaint affidavit and notarized, I think that's all the complaint, though.

JDavis: I think that's all related to the Complaint, let me make sure of that. And the form.

LTomlin: I think the form covers all three, but I don't know that is something you need to go over.

JDavis: I'm in favor of letting Umesh do the form. He can correct all the typos and stuff, in the rules and let the staff handle the form, if that's all right with you?

DZoltner: Just from my understanding, what is the difference between a notarized Complaint and an Affidavit?

JDavis: I understand the affidavit to be a statement of fact. That the complaint is like here is the base level basic complaint, X did Y, signed by me, I have personal, present knowledge of X did Y. And then the affidavit would be here's how I know about it, here is the narrative, here is how it came about, etc. Whatever supporting facts they think are important so that the complaint would be a sworn statement that X did Y. That was my read of it.

LTomlin: I'm kind of like you, could be the same thing.

JDavis: There's the panel which is the preliminary assessment and then there is preliminary hearings which are for procedural issues, motions for continuances and subpoenas and stuff. You're talking about the preliminary assessments?

DZoltner: Right, right. Where the auditor supposedly meets with the panel and it says no one is welcome, the accused and accuser will not be prohibited from attending that, but no public comment will be accepted. That seems difficult to me. The only reason I mentioned that earlier was because then that cut back to the situation where again you could not cross exam. Well, that's two opportunities to not say anything. That's getting a little bit frustrating right there. So we cleared up the cross examination issue, and I'm not taking issue one way or the other, I'm asking is it practical to expect the accused and accuser to sit side by side in a preliminary hearing, hearing a complaint and not being able to respond to what's being said.

DCartwright: If they are given notice of what this hearing is actually going to do, and they have the option to be there or not be there, I don't see a problem with it, I guess.

LTomlin: I think that maybe them being there is not necessarily for them to have the hearing that they'll have later, but they can see why the three person panel is doing what they are doing, because you can appeal that dismissal at the preliminary three judge panel so it can give you an opportunity to know what their thinking was to either appeal or not to appeal that. And then you are in front of the whole Board for leave, right?

JDavis: Or to revise their complaint. If the panel is looking at it and says this is baseless for these reasons, then they can make their appeal if they don't like that decision or they can come back and resubmit their complaint. In practical fact, I imagine most complainants will appeal the decision to the Board if they are dismissed out, and so may just have kind of an extra step. I initially had a problem with the panel deciding before we have the whole Board convened, this is just completely baseless, because there's going to be some of these in there. There's going to be some baseless complaints.

DZoltner: I'm not taking position one way or the other, I'm just thinking of a situation where an accused is sitting there about to hear their complaint get brushed away by a panel and not even the full Board and being asked to sit there and say nothing. I'm just looking at this from the human side. On paper, this kind of makes sense. The think I asked first, has this ever happened to anyone who has ever been involved or is currently involved with ethic complaints? I'm just asking is that realistic to expect that?

JDavis: Alan, do you have an opinion? Or experience to share?

ABorjorquez: I've seen Boards of Ethics discuss complaints, determine they are baseless and dismiss them without the accused or complainant ever saying a word. So the answer to your question



is does that ever happen, yes, it does occur. I just want to remind you, I think you understand having read this, the reason this provision is in here is to not have a miniature trial, not to have a miniature hearing, it is to look at the four corners of the document and say does it proceeds or does it end here. The only reason the accused and complainant are allowed to show up is because the City Council of Denton made the policy choice to subject these panels to the Open Meetings Act. Therefore, about as important in writing these rules to make it clear that the complainant and the accused can show up, they can watch, they can listen, but this is not an opportunity for the complainant to supplement what they have filed or for the accused to put out a defense, it is just a screening of the contents of the document. If we were to invite that kind of testimony or comments or argument, I think we are changing what the City Council has adopted.

JDavis: I think one of those words you just used was screening. That's the function of the panel.

ABorjorquez: I think Mr. Zoltner is right in saying that it will be hard for people of either side to show up and be quiet. I think you are correct in that. I think that is just how the process is.

JDavis: You good with that? Make sense?

DZoltner: Again, I was just asking what's practical and I'm ok with that. This is a new process. It will either work or it won't, we'll see.

JDavis: Let's just go around the horn, any other comments to the redline copy? We went through this with a fine-tooth comb last time, so let's just go around, David, any other comments?

DZoltner: No, I'm good with pretty much with everything that's here. I'm curious about the subpoena issue. Only because it was on the ballot that went to the citizen, and I know for a fact that one or two members of the past and current City Council that are pretty adamant about this whole subpoena issue. We've kind of taken it back now to where, if I understand this correctly, the subpoenas will only involve documents that are in the possession of a City official and the subpoena of witnesses can only be a City official. So, I'm just wanting to know what we say or how I should explain the fact that we have kind of maybe backed off the subpoena issue. Right now, subpoenaed documents that are already in the possession of a City official, if you really think about it, that's nothing more than a foyer [43:30] request from a committee rather than an individual. It doesn't trouble me, but I just want to clarify here, it's my understanding nothing private is now on the table. No private witnesses, no private documents, which may challenge one or two of the current Council members. For example, if there's an issue outside of the Council or outside of the City official, real estate matter or whatever, what are you going to do? Because there may not be documents that are in the possession of the City official that are very germane and relevant, so I'd like to hear a little discussion about this whole subpoena thing. City officials only... city documents only, and does that defeat the purpose and are we standing behind what the voters and what some of these City Council members understood this to be?

JDavis: Two things come to mind. The first is, I have some experience with subpoena power granted by the courts, or by what such to the courts. It's always a difficult thing when your subpoena falls on deaf ears and you're forced to find a remedy for that. In District Court you get a Writ of Attachment and a police officer goes out and makes a subpoena happen. In a City Ethics Board, we issue a subpoena to a real estate company or a bank and their lawyer says you shouldn't turn that over because you are going to get sued by somebody, and then what happens when that subpoena comes back? Well we have some remedies but we weren't designed to be a board to have a lot of heavy-handed remedies. So that could be potentially embarrassing for us, call our legitimacy into

question. Another thing comes to mind is that the nature of the complaint seem to be primarily be against a City official who is also a private individual and so that comes into play with conflict of interest. But let's say it's a complaint is against a City Council person for a conflict of interest. They are in involved in some sort of deal that is questionable for whatever reason is stated in the complaint. If they are a City official and they are in direct possession and control of documents related to the deal and we issue a subpoena that says to bring us the financial states from this deal or deeds from whatever is in question, I think this is actually a fairly broad provision when we think about who is the City official and what is in their direct control or possession. It doesn't just have to be the documents in their desk at City Hall.

DZoltner: I'm not advocating for stronger subpoena, frankly I agree with Alan, it probably shouldn't have been there in the first place. This ordinance escaped the Charter Review Committee without the subpoena mentioned. It was actually acted on by the Council when they reviewed everything we did. I'm just asking for some understanding here on, are we still in line with what the voters expect? Is the wording on the ballot, "Administrated and enforced with an Ethics Ordinance including the power of a subpoena, witness and documents, coupled strong and meaningful remedies for infraction."

LTomlin: I don't think that really gives us a whole lot of direction. So if this is what we feel the direction is, I guess City Council can let us know if it is not.

DCartwright: We still get to decide on each individual subpoena, if we are going to issues one or not. It would still be up to use as Board members. We can take into consideration how would we enforce it, who it is to, how important is it before we decide. I mean it's not automatic that someone comes and says they want a subpoena for a certain witness or a certain product and we have to grant it and give it to them. The way I understand it.

JDavis: Which is different from the legal system. You presume you get subpoenas from the Court and somebody else...

DCartwright: I do subpoena's all the time and they don't show up. Not much we could do about it.

ABorjorquez: I'll add to what Dr. Zoltner said, as he read the Charter language and then in section 277(h) of the Ordinance of the Code of Ethics when discussing the scope of authority for the Board of Ethics it describes it as an issue and forced limited subpoenas to compel the attendance of witnesses and production of testimony, evidence and/or documents reasonably relevant to the actionable complaint. So in Council's wording, your authority is limited subpoenas in those brackets. What you have here is an effort to further refine that. If you think that is consistent with the ordinance and the Charter then you can forward this on to Council and see if they have any feedback on that point. I know the Council was not enthusiastic about the subpoena power thinking the exercise of that power might embroil this Board and the City in lots of extraneous legal wrangling but they had to honor the Charter as best they could. That's where they thought the line was. Now you get to draw the line at this point if you think it is sufficient.

JDavis: The 2<sup>nd</sup> full paragraph, ¾ of way down, "provide" should be "provided." Anybody else have a strong opinion on subpoenas and how it's worded here?

LTomlin: I also have like a small thing like you did. After the first redlining, "Subpoenas will not be issued" I know on my copy it looks like the font size is different. It sort of changes "serves as character witness." Just to make it a nice copy.

JDavis: David, do you think there's anything else we need to discuss there with Subpoenas or do you think send it off to Council and see what they think?

DZoltner: I think it kind of matches what their expectations are, but the only reason I ask, if a citizen asks, "What happened to your subpoena power?" How do we respond? I'm ok with this.

JDavis: Doing our darn best as it is.

ABorjorquez: As it was put to me, Dr. Zoltner, the voters gave a very broad grant of power in that Charter amendment and it fell to the Council and this body to refine that in a way that makes sense for this Board and what its capabilities are and what it's really meaning. Because I think a runaway board with a runaway chairman, not this one, could be pretty abusive with this power and would spend a lot of City time and City money fighting those fights because I don't think the lawyers in this town would let that runaway board get away with it so we'd be constantly going to the Courthouse.

DZoltner: That makes sense and I'm only asking if we are saying the same thing. A lot of votes were for subpoena power.

ABorjorquez: A lot of votes from folks who haven't been asked to turn over their bank records.

JDavis: David did you have anything else? We're going to work it around this way.

DZoltner: No

LTomlin: Yeah, I have a few things, mostly grammar things.

ABorjorquez: I take no offense to that. I prepared this very quickly.

LTomlin: Under E.1 (b), there is just like a big line that just needs to be backspaced so that the formatting stays the same. A little further down at 5, Authority of Chair, it has a colon, and the each item, A-C, but each item ends with a period. Do we want to change the periods to semi-colons and a period at the end? Too picky? Number 10, it's not bold, and again a formatting issue. I only have one substantive question, #24, Deliberations, under E. We may have talked about this and I don't recall, are the deliberations in executive session? Are we deliberating here while there could be anyone sitting behind us listening? I mean this is part of Open Meetings Act, I just want to know. Is that going to affect deliberations or is that just something that has to be done because it has to be open?

ABorjorquez: It was my opinion last time, that in the open meetings act, you as a body are allowed to deliberate in open or closed session. But all decisions must be made in open session.

LTomlin: So if we so chose we could go deliberate in closed session in back room, and once we made the decision then we come out and kind of declare the decision?

ABorjorquez: Yes, I think you can get away with that, it is legal to do. The better practice is to have some public discussion among the Board members about the basis for decision unless it is something that is going to unduly embarrass someone or trigger something that is private and confidential.

LTomlin: I feel like at times it really wouldn't be a problem, but at other times for someone to really speak their mind and talk about things that are like you said are of certain confidentialities, that would be a concession. So if that's allowed under how it is written, I think that's all I have.

JDavis: Just about everything we've deliberated on could potentially come under personnel matters. I think we'd have an argument to make in executive...

DZoltner: Or for legal, either one, personnel or legal. But awkward talk is not an exception. If something is uncomfortable, that is not an exception.

Deborah Cosimo: I do have something, it's more along the lines of observation also about the Advisory opinion. Part of this is to nurture a culture of ethical behavior. It seems if someone has a question about whether or not something they want to do is a conflict of interest, it could put obstacles in their way so that they have to write the City Auditor and the City Auditor determines whether or not a panel over special counsel where you have to wait 30 days, and I'm just wondering if a staff person has a question can they call or email about what they are thinking about doing what is the process for doing it? And get an advisory opinion that way? My concern is that this is a potentially long process that it is going to be an obstacle to people who want to know with a call or wait on an answer.

JDavis: That's a good question. So let's say there is a staff person and they have a question. They ring up the City Auditor or they call the City Attorney's office. So let's start with the City Attorney, what's the response to that staff person, do they need to get an Advisory opinion, or we've been down this road before and the way we read it you really ought not to do that?

Trey Lansford: At the moment, we're taking questions from Council members or City officials, and typically it is something quick that we can get an answer on. I think the differentiation here is that many times that's just a phone call for a quick confirmation one way or the other. I think the Advisory Opinions are people who don't want something in writing that's a detailed explanation of yes or no so if for some reason they get a complaint filed against them, you use the Advisory Opinion then in your area to defend yourself, where as a phone call there is no written document that they can then present.

DCartwright: Is the CAO not willing to do the opinion of CAO in writing for them?

TLansford: It's that specifically, the policy decision here was going to be to the Board of Ethics and would potentially be evidence there. That it would be something aside from the City Attorney's office of or City staff...

DCartwright: We don't have special counsel.

TLansford: Right you don't have one right now but you will. It's to provide that extra step or transparency in the sense that you're not beholden to City staff.

585 DCartwright: Special counsel would be able to do it fairly rapidly, the research or what..  
586

587 TLansford: It's the idea that because we are the City Attorney Office we may be biased towards  
588 one side or the other and it's to remove that appearance of impropriety.  
589

590 JDavis: or City Manager.  
591

592 LTomlin: I think you're concerned about it taking a while. I'm not sure how you would fix that  
593 because if you want three of us to make a decision about something you have to get the three of us  
594 together to hear, so it kind of has to be something that might take five calendar days to accomplish.  
595

596 DZoltner: Or this is whether or not we are discussing or considering an informal advisory opinion  
597 or a formal advisory opinion. According to the just passed Ethics Ordinance, Chapter 2-278, the  
598 City Auditor is the go-to person for a formal advisory opinion, so if you're taking informal  
599 telephones, you would have the option to say well that's pretty tricky.  
600

601 JDavis: You're going to want this one in writing.  
602

603 DCosimo: So having special counsel will answer that.  
604

605 JDavis: If the Auditor chooses to send it to us to convene a panel or to special counsel. So that  
606 could potentially be faster. That's a good point.  
607

608 DCosimo: When I saw it could take 30 days.  
609

610 JDavis: As a Board, I think we could endeavor to do it more quickly, it's just a question of getting  
611 the panel together and getting the opinion back. And they may need their time, if it is a particularly  
612 sticky issue may need more time to talk about it.  
613

614 DCartwright: It says they have 30 days to give that opinion, do you think that should be shorter  
615 then?  
616

617 DCosimo: I do.  
618

619 ABorjorquez: If I can share some insight on this one. As a municipal lawyer who is hired to  
620 represent an entity, and sometimes the Charter will say, "you represent the entity and you advise  
621 people in their official capacity," it's always an interesting challenge when people come to you as  
622 though you are their lawyer. It's always fun for me when a councilmember comes to you and says  
623 well I want an opinion that your City Attorney is a conflict of interest; well what's your story? Well,  
624 I own this property that the City is voting to zone, extend pipes to, do a public improvement district  
625 on, but I am a member of the family who's trust goes over this three times removed and it's my  
626 sister who is the trustee, my hands off, and you go through this and you have to remind them  
627 sometimes that what the real answer is that sounds complicated. If you want a good answer, you  
628 need to hire your own lawyer, at your own expense, force them to write something on letterhead,  
629 sign it, and try to follow their advice. In my experience of 23 years of municipal lawyering they  
630 never want to do that. They never want to spend that money; they never have their own lawyer or  
631 want to engage them on this sort of thing because they are not an ethics expert. So they come to the  
632 City Attorney's Office as a catch all advisor on everything legal and ethical. Some City Attorney's  
633 Offices do that, some feel some tension between what \_\_\_\_\_ (?) [4-1:03:43] but I really

represent the entity here and gosh do I also represent the boards that you go before such as the Board of Ethics when you're a City Attorney. So I think some large organizations could have a ombudsman or somebody in their office that does advise those officials. This is our chance to help the Council and staff craft something that fits Denton. I don't think it is going to be perfect, most city ethics ordinance's that I've reviewed don't have an Advisory Opinion roll. You're just sort of on your own. That's ok. The Council wanted to have something and they came up with this. Depending on who the City Attorney actually engages to be special counsel on the side, their dockets, their to-do lists may let them turn things around quickly or they may not. You'll just have to learn from that process. I appreciate this discussion and the input you have and what you think is appropriate for Denton.

KM: if someone is concerned enough to ask the question, I would think they would want a good question. I think I'd wait to get the right answer.

KMcDaniels: If someone is concerned enough to ask the question, then I would think they would want a have a good answer. They would want to know that it had been explored and it was either in their best interest or they found out that they shouldn't do it. For that, me personally, I'd be willing to wait to get the right answer. I wouldn't wait till the last minute to approach and ask if it was ethical or not. I would expect that it would go through the right processes to get a fair and suitable answer.

DCosimo: If there's time. [4-1:06:24] There's not always time. Sometimes it needs expediting there. What are the options there? It was creating an obstacle then that's a problem.

LTomlin: There's not really anything we can change, David pointed out it's in the ordinance.

JDavis: We could probably go shorter than the ordinance, but then it creates a question of consistency. I mean we probably have the ability to impose a shorter deadline on ourselves, but then it makes it inconsistent with what the ordinance says. Don't want anyone to rely on that one way or the other to their detriment. I'm ok with the 30 days, with the idea that we're going to work as quickly as we can, like the special counsel who has their own docket to handle, but we've got our own schedules, people who travel, people that work, people that have babies, so it may be difficult to convene a 3 member panel quickly. Might be able to do it next week, but not this week. So the 30 days would be ok if we try to be as expeditious as possible. Any strong feelings one way or the other? Would you be ok with the 30 days?

DCosimo: Well it say within 30 days, which could be 5 days, so it's within 30 days. It was just an observation, more of a concern.

JDavis: Built into that to are the complaint requirements, so after the Auditor gets the requests, Auditor decides panel or special counsel, Panel chair convenes a panel, Panel says I can meet on Tuesday a week and a half from now, we notice the meeting... so there could be some time built into that. It could push a little out anyway.

DCartwright: On six you have an extra "the."

JDavis: Anything else?

KMcDaniels: We need to go through this and try it before we start changing too many things.

683  
684 JDavis: We are standing on some shoulders here for sure. Ben you said you were good?

685  
686 BClark: Yes sir.

687  
688 JDavis: Don, do you have any other thoughts or concerns?

689  
690 DCartwright: No I don't.

691  
692 JDavis: Does anybody else have anything, whether it's typos or any other big issues?

693  
694 DZoltner: I do have one other I had forgotten and before we move on here and this is... so far  
695 everything seems to be complaint driven. I missed part of what Mr. Dalal said, I think we should  
696 be thinking about some regularly scheduled meeting. I know San Marcos and others will meet  
697 annually, at least one time a year to review changes in the State ethics and so, under B. Meetings,  
698 Called meetings, Board meetings shall be annual and or shall be called by the Chairperson,  
699 something in there that we are going to get together on some scheduled basis even if as infrequent  
700 as annually. To review, to see if there is anything in this Code that needs to be tweaked, we are  
701 hitting things right now that might need to be talked about. So I would hate for this to be just a  
702 totally complaint driven process. If it's twice a year, I'm good with that, or I don't know what other  
703 people feel about that, but I would just hate for this to just go from complaint to complaint, without  
704 the ability to step back and look at the State, look at what we've done, look at what's been dismissed,  
705 just do it on a regular basis.

706  
707 LTomlin: If there are issues that come up, could the Chairperson or three people just request a  
708 meeting?

709  
710 DZoltner: Well, obviously, sure, some annual, or some regularly scheduled, even if infrequent, to  
711 just look at the State, and I think that it's even mandated in the San Marco's ethic code that they are  
712 required to review their ethics code every year. And if there are any changes to be recommended to  
713 the Council, that's when they do it. They are mandated to meet once a year. To get from totally  
714 complaint driven to a little bit more... this is getting back to what you were saying about creating  
715 that ethical culture, not just complaint to complaint. But actually looking at the big picture in the  
716 ordinance.

717  
718 DCartwright: Under the code it talks about the Auditor has to set up training for the people of the  
719 City at least once a year and we're officials of the City being on this Board, so we would qualify  
720 under that to be required to receive training once a year.

721  
722 JDavis: There's that and then there's also some members of the Board have some familiarity with  
723 Open Meetings Act some don't, and there's other things that would be useful to be trained on,  
724 especially as new people are appointed and each of us at some point will rotate off the board, and if  
725 there is no complaint for three years, and then as folks rotate off and the next time we sit together in  
726 the room with all new people, and half of them have no idea what is going on because they've never  
727 been on a Board before but they were nominated. David what would you think about Board meeting  
728 shall be called by the Chairperson at least annually or upon the request...

729  
730 DZoltner: I would make a motion that some regularly scheduled meeting to review the statutes of  
731 the State, review the past year, just annually, and I would leave that up to Mr. Dalal. Maybe he has

other ideas about how often, but I think an annual meeting would send a message to the Council that we're not just complaint driven. This is a big picture toward an ethical environment.

JDavis: What about just putting that at end or City Auditor after everybody who is allowed to call a meeting, say, "at least annually."

DZoltner: Yeah, whatever, that works, fine. I just want to meet at least once a year.

JDavis: Anybody else free strongly about that one way or the other?

LTomlin: I don't think the ordinance tells us to meet once a year. I thought that if there was a need for the meeting then the Chairperson or three people can come together and say we need to revise these procedural rolls, we should have a meeting. But having a meeting just to have a meeting, I don't know.

JDavis: That's not a bad point, but that makes a lot of sense. One of the reasons this Board attracted me is because it is complaint based and there's not a every 2<sup>nd</sup> Tuesday, there you are meeting, which, may or may not need to occur. But if it's at least annually, then we are now at least a few weeks further along into that year than we were before, and also if there is an annual training requirement, that would satisfy that. Seems like we'd have to meet annually for practical reasons anyway, so we're not giving up too much by holding ourselves to meeting annually.

DCosimo: If the meeting is annual and includes the training that would kill two birds with one stone. I think that an annual meeting would be very important. For those of you who are attorneys you are steep in this the whole time, but for the rest of us, we are not so for those of us who are not attorneys to have that training on Open Meetings Act, I think that is critical, and other issues that may arise out of this Board.

JDavis: Are you ok with that Laura?

LTomlin: I'm ok with whatever the Board decides. I'm only on for a year anyway.

JDavis: Anybody else have strong feelings about that one way or the other?

KMcDaniels: I would request that whoever decides that there needs to be an annual meeting and wants to call it, give us a lot of notice. A lot of us are busy during the year and some are not around, so more than 30 days' notice would be real helpful for me.

JDavis: Mr. Dalal, how are the training that are conducted for other City officials handled? Is there a time of the year when a bunch of training is going on? Or is it more departmental, when it is just for the department, and they have to be here on such a day?

UDalal: It's all mixed up. Again, I don't know if it is done by departmental training, per se. Certain departments have some professional obligations where they would need some training, and some other departments would have some type of procedural training. So it's all mix up, no rhythm or reason.

JDavis: So, let's say we are sitting here in August, and we've decided as a Board that we need to meet annually, it wouldn't be too much to ask next year, either in June or July to request that the City Auditor's office do a training for us in August, to satisfy at least our annually requirement?



UDalal: Sure.

ABorjorquez: So you would like me to add that to section B, under meetings? Are you wanting just to say that there shall be an annual meeting? Or are you wanting to specify the purpose of the meeting is to cover A, B, C, 1, 2, 3?

JDavis: I think just leaving it general at least after the words City Auditor, change the period to a comma, and say, "at least annually." If we've had complaint after complaint after complaint and we've met a bunch that year, then I think we can decide amongst ourselves it's time to have another meeting to see how things are going, or time for our training. I think just in general. How do you all feel? Anything else? We've covered a lot of ground. Do we have a motion then to recommend the Rules of Procedure for conducted meetings and hearings as amended to City Council?

JDavis: So the motion from Dr. Zoltner and Ben is our seconded.

LTomlin: And just to clarify, that's just what we've talked about tonight, not just amended.

JDavis: We have a motion and a second, all those in favor?

(all in favor)

JDavis: Any opposed? Motion carries unanimously. This brings us to the last agenda item. Anything that is ordered under a concluding item, most business of the Board has to be noticed. I have one, thank you all for being conscientious for caring and showing up. And for the record, Alan has done a great job. Thank you Alan.

## 2. CONCLUDING ITEMS

Respond to inquiries from the Board of Ethics or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting. And provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizens; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

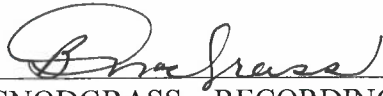
A. Scheduling of next meeting(s).

3. Adjourn. (Committee Chairperson) 7:24pm

Minutes taken by Kelly Campbell

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LARA TOMLIN  
CHAIR – BOARD OF ETHICS  
CITY OF DENTON, TEXAS

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BETSY SNODGRASS – RECORDING SECRETARY

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843 MINUTES APPROVED ON June 12, 2019  
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