

BOARD OF ETHICS RULES AND PROCEDURES

SECTION 1 DEFINITIONS

As used here (Board of Ethics Rules and Procedures), the term “ethics laws” includes the SPI Code of Ethics, the SPI Code of Ethics Handbook and Chapter 171 and Chapter 176 of the Texas Local Government Code. The term “ethical violation” includes violations of any of these enactments.

SECTION 2 STRUCTURE OF THE BOARD OF ETHICS

- (a) In accordance with the City Home Rule Charter and South Padre Island Ordinance, an independent Board of Ethics has been established, which shall have the rules, procedures and duties specified here and other powers or duties prescribed by City Home Rule Charter and any applicable City Ordinance. City Council shall support the assistance of legal counsel to the Board of Ethics.
- (b) **Composition.** The Board of Ethics, as defined by the South Padre Island Home Rule Charter, shall consist of five (5) members. Each nominee must be confirmed by a majority of City Council members. Nomination and confirmation of Board members shall be conducted at open meetings of the City Council.
- (c) **Terms of Office.** Board appointments shall be in accordance with City of South Padre Home Rule Charter and City Ordinance. No member of the board shall serve for more than three consecutive full terms.
- (d) **Qualifications.** Members of the Board shall have good moral character and shall be residents of the city. No member of the Board shall be:
 - (1) a salaried city official or employee;
 - (2) an elected public official;
 - (3) a candidate for elected public office;
 - (4) an officer of a political party;
 - (5) a campaign treasurer, campaign manager, officer or other policy or decision-maker for the campaign of any candidate for elected public office;
 - (6) a campaign treasurer, campaign manager, officer or other policy or decision-maker as defined in the Texas Election Code;
 - (7) a member of any city board, committee or commission other than the Board of Ethics;
 - (8) a member of any board, committee or commission for which the position is appointed by City Council

Further, no member of the Board of Ethics shall have any convictions for a felony or a crime of moral turpitude, or shall have been found in violation of any provision of the city's Code of Ethics.

- (e) **Removal.** Members of the Board of Ethics may be removed from office by a majority vote of the City Council.
- (f) **Vacancies.** The City Council shall fill any vacancy on the Board of Ethics by a person who will serve the remainder of the unexpired term.
- (g) **Recusal.** A member of the Board of Ethics shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Board member may not participate in official action on any complaint:
 - (1) that the member initiated;
 - (2) during the pendency of an indictment charging the member

If the number of Board members who are recused from a case is so large that a Board of Ethics cannot be convened to consider the complaint, the City council shall nominate a sufficient number of *ad hoc* members so that the case can be heard. Ad hoc members of the Board of Ethics must be confirmed by a majority vote of the City Council and serve only for the case in question.

- (h) **Chair and Vice-Chair.** Each year, the Board shall meet and elect a chair and a vice-chair from among its members, who will serve one-year terms and may be re-elected. The chair or a majority of the Board may call a meeting of the Board. The chair shall preside at meetings of the Board of Ethics and perform other administrative duties. The vice-chair shall assume the duties of the chair in the event of absence of the Chair or a vacancy in that position.
- (i) **Reimbursement.** The members of the Board of Ethics shall not be compensated.

SECTION 3 JURISDICTION AND POWERS

- (a) **Jurisdiction.** The Board of Ethics shall have jurisdiction to investigate and make findings and conclusions concerning:
 - (1) an alleged violation of the ethics code enacted from time to time by ordinance;
 - (2) an alleged violation of local campaign finance regulations enacted from time to time by ordinance; and
 - (3) an alleged violation of the City Home Rule Charter, provided, however, that the Board of Ethics has jurisdiction.

The Board shall not consider any alleged violation that occurred more than two (2) years prior to the date of the filing of the complaint.

- (b) **Termination of City Official's Duties.** The termination of a city official's duties does not affect the jurisdiction of the Board of Ethics with respect to alleged violations occurring prior to the termination of official duties.
- (c) **Powers.** The Board of Ethics has the power:
- (1) to establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances pertaining to the Code of Ethics
 - (2) to meet as often as necessary to fulfill its responsibilities;
 - (3) to designate panels with the power to render advisory opinions to the Board;
 - (4) to request from the City Manager the assignment of staff necessary to carry out its duties;
 - (5) to review, index, maintain on file, and dispose of sworn complaints with the assistance of the City Secretary;
 - (6) to make notifications, extend deadlines, and conduct investigations, both on referral or complaint;
 - (7) to compel the production of sworn testimony, witnesses and evidence;
 - (8) to recommend cases for prosecution by appropriate authorities and agencies;
 - (9) to enforce its decisions by assessing administrative fines and other sanctions authorized by City Home Rule Charter or ordinance;
 - (10) to request the City Council to approve an independent legal counsel to advise and represent the Board, when appropriate or necessary to avoid a conflict of interest;
 - (11) to provide assistance in the training and education of city officials and employees with respect to their ethical responsibilities;
 - (12) to prepare an annual report and to recommend to the City Council needed or desirable changes in ordinances under its jurisdiction;
 - (13) to exercise such other powers and duties as may be established by ordinance.

SECTION 4 COMPLAINTS

- (a) **Filing.** Any person (including a member of the Board of Ethics acting personally or on behalf of the Board) who believes that there has been a violation of the Ethics Code may file a sworn complaint with the City Secretary to allege such violations. (See attachment #4 City of South Padre Island, Code of Ethics Complaint Form and affidavit). Complaints or allegations regarding City employees

shall be forwarded to the City Administrative Services Director for review and / or action. City employee actions/complaints shall not be brought before the Board of Ethics.

A complaint filed in good faith is qualifiedly privileged. Any person who knowingly makes a false statement in a complaint, or in proceedings before the Board of Ethics, is subject to criminal prosecution for perjury or civil liability for the tort of abuse of process.

Assistance. The City Secretary shall provide information to persons who inquire about the process for filing a complaint.

(b) **Form.** A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements: (Ethics Code Complaint Form #4)

- (1) the name of the complainant;
- (2) the street and mailing address and the telephone number of the complainant;
- (3) the name of each person complained about;
- (4) the position or title of each person complained about;
- (5) the nature of the alleged violation, including, if possible, the specific provision of the code of ethics or municipal campaign finance regulations alleged to have been violated;
- (6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
- (7) all documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. A complaint that is not sworn as required shall not be forwarded by the City Secretary to the Board of Ethics but shall be returned to the complainant.

The complaint must state on its face an allegation that, if true, constitutes a violation administered and enforced by the Board of Ethics.

All external complaints filed under this Code of Ethics will be received and recorded by the City Secretary and will be tracked or processed by the Board of Ethics

- (c) **Review by the Board of Ethics and Respondents.** A copy of a complaint shall be promptly forwarded by the City Secretary to the Board of Ethics (within 10 business days of receipt). If the complaint does not substantially comply with the filing requirements, the Board of Ethics shall return the complaint to the complainant with a letter explaining the defects in the complaint.
- (d) The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:
- (1) that, within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
 - (2) that failure to file a response does not preclude the Board of Ethics from adjudicating the complaint;
 - (3) that a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within seven (7) days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
 - (4) that the complainant(s) or respondent(s) may request a hearing, which may be denied, and;
 - (5) that city officials and employees have a duty to cooperate with the Board of Ethics.

Upon receipt, the City Secretary shall forward the response to the Board of Ethics.

(e) **Frivolous Complaint.**

- (1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
- (2) By a vote of at least two-thirds of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.
- (3) In deciding if a complaint is frivolous, the Board will be guided by the Texas Rules of Civil Procedure and interpretations of that rule, and may also consider:
 - (A) the timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - (B) the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Board;

- (C) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - (D) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;
 - (E) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
 - (F) any evidence of the complainant's motives in filing the complaint.
- (4) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:
 - (A) an explanation of why the complaint against a respondent appears to be frivolous; and
 - (B) the date, time, and place of the hearing to be held under this section.
 - (5) Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the Board of Ethics shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.
 - (6) By a record vote of at least two-thirds of those present after the hearing under subsection (5) of this section, the Board of Ethics may determine that a complainant filed a frivolous complaint and may recommend sanctions against that complainant.

(f) Sanctions for Filing Frivolous Complaints.

- (1) Before imposing a sanction for filing a frivolous complaint, the Board of Ethics 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; and
 - (C) any other matters that justice may require.
- (2) The Board of Ethics may impose the following sanctions:
 - (A) imposition of attorneys' fees incurred by the respondent of the frivolous complaint;
 - (B) any other sanction permitted by law.

- (3) The Board of Ethics may notify the appropriate agency for their action. This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.
- (g) **Confidentiality.** *Ex parte* communications by members of the Board of Ethics are prohibited
- (1) The Board of Ethics shall not communicate any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.
 - (2) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or Board of Ethics proceeding.
 - (3) Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act.

SECTION 5 HEARINGS

At any hearing held by the Board of Ethics during the investigation or disposition of a complaint, the following rules apply:

- (a) **General Rules.** All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the Board of Ethics. The Board may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless 4 out of 5 members of the Board so finds by a preponderance of the evidence.
- (b) **Evidence.** The Board of Ethics shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The board shall further abide by the following:
 - (1) The board shall hear evidence relevant to the allegations; and
 - (2) The board shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (c) **The Person Charged (Respondent).** The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the board. The time permitted for presentation will be at the discretion of the Board of Ethics.
- (d) **The Complainant.** The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the board. Witnesses may not be presented by the complainant, except with the permission of the board. The time permitted for presentation will be at the discretion of the Board of Ethics.

SECTION 6 DISPOSITION

(a) **Written Opinion.** The board of Ethics shall issue a decision within ninety (90) days after the filing of a complaint. This deadline may be extended by any amount of time granted to a respondent pursuant to respondent's request for additional time to respond or to attend proceedings. The Board of Ethics shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall recommend either:

- (1) dismiss the complaint; or
- (2) upon finding that there that there has been a violation of the ethics laws
 - (A) impose sanctions in accordance with these regulations; or
 - (B) recommend criminal prosecution and/or civil remedies, in accordance with this Rule; or
 - (C) state why no remedial action is imposed or recommended.

If the board determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Board of Ethics to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(b) **Notification.** Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint and any member of the Board of Ethics who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the City Secretary, who shall make it available as authorized by law.

(c) **Recommendations.** A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency. (note: Civil remedies covered in subsection (f) below)

(d) **Similar Charges Barred.** If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the Board of Ethics shall not entertain any other similar complaint based on substantially the same evidence.

(e) **Factors Relevant to Sanctions.**

(1) **General Violations (Non-Reporting Violations).** In deciding whether to recommend or impose, in the case of a violation of the ethics law, criminal prosecution and/or civil remedies, the Board of Ethics shall take into account relevant considerations, including, but not limited to, the following:

- (a) the culpability of the person charged in the complaint;
- (b) the harm to public or private interests resulting from the violation;

- (c) the necessity of preserving public confidence in the conduct of local government;
- (d) whether there is evidence of a pattern of disregard for ethical obligations; and
- (e) whether remedial action has been taken that will mitigate the adverse effect of the violation.

To impose or recommend sanctions for a first violation of the ethics code other than a letter of notification, a letter of admonition or a referral to training, the Board of Ethics must find by a preponderance of the evidence that the person acted knowingly, unless otherwise provided by this code.

- (2) **Reporting Requirement Violations.** To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the ethics code or the municipal campaign finance regulations, the Board of Ethics must determine by a preponderance of the evidence that the person knowingly:
 - (a) failed to file the report on time; or
 - (b) failed to include in the report information that is required to be included; or
 - (c) submitted inaccurate or false information.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the office of the City Secretary or the Board of Ethics may be considered evidence of a knowing failure to comply with reporting requirements.

Upon finding a second or subsequent untimely, incomplete or inaccurate submission of reports within a two year period of time, the Board of Ethics may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

- (f) **Civil Sanctions for Ethics Code Violations.** The following civil remedies may be recommended or imposed by the Board of Ethics which finds that the Ethics Code has been violated:

- (1) **Disciplinary Action.** City officials who violate this code or who engage in conduct that violates the Ethics Code may be notified, warned, reprimanded, suspended, or removed from office by a person or body authorized by City Code to impose such remedies. Disciplinary action under this Section may be imposed in addition to any other penalty or remedy contained in the Ethics Code or any other law.
- (2) **Suit for Damages or Injunctive Relief.** This code of ethics has been enacted not only to further the policy stated in Section 1-1 (Statement of Purpose), but to protect the City of South Padre Island and any other person from any losses or increased costs, incurred by the City or other person as a result of the violation of these provisions. It is the intent of the City that this ethics code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such

forms of redress should be available in addition to any other penalty or remedy contained in this code of ethics or any other law. The Board of Ethics may refer a violation of the ethics code to the City Council for consideration of a suit by the city for damages or injunctive relief.

(3) **Disqualification from Contracting.**

- (a) If the Board of Ethics finds that any person (including business entities and non-profit entities) has intentionally or knowingly violated any provision of the Ethics Code, or has intentionally or knowingly assisted another person in violating any provision of the Ethics Code, or has violated a provision or assisted another in a violation that the person should have known was a violation of the Ethics Code, the Board of Ethics may recommend to the City Council that the person be prohibited from entering into any contract with the city for a period not to exceed two (2) years.

An entity or nonprofit entity may also be disqualified from contracting based on the conduct of an employee or agent in violation of this code.

- (b) It is a violation of this code of ethics:

- (1) for a person debarred from entering into a contract with the city or attempt to enter into a contract with the city during the period of disqualification from contracting; or
- (2) for a city official to knowingly assist a violation of Subsection (b)(1) of this rule.

- (c) Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.

- (4) **Recommendation to Void or Ratify Contract.** If the Board of Ethics finds that there has been an intentional or knowing violation of any provision of the Ethics Code, or that a person has committed a violation that he or she should have known was a violation of the code that is related to the awarding of a contract, the Board of Ethics must vote on whether to recommend to the City Council that the contract be ratified or voided. Such action shall not affect the imposition of any penalty or remedy contained in this code of ethics or any other law.

- (5) **Letter of Notification.** The Board of Ethics may issue to any person, whether or not an official of the city, when the board finds that a violation of the code of ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations.

- (6) **Letter of Admonition.** The Board of Ethics may issue to any person, whether or not an official of the city, a letter of admonition when the board finds that the violation of the code of ethics was minor and/or may have been unintentional or inadvertent.

- (7) **Letter of Reprimand.** The Board of Ethics may issue to any person, whether or not an official of the city, a letter of reprimand when the board finds that the person has intentionally or knowingly violated the code of ethics.
- (8) **Referral to Ethics Training.** Upon finding of violation of the ethics code, the Board of Ethics may require a city official to attend ethics code training.
- (g) **Criminal Prosecution.** The Board of Ethics may recommend to the appropriate law enforcement agency criminal prosecution under this section or under Chapter 171 or 176 of the Texas Local Government Law. Prosecution of any person by the City for a violation of this ethics code shall not be undertaken until a complaint is disposed of in accordance with Section 6. However, the absence of a recommendation to prosecute from the Board of Ethics to the City Council shall not preclude the City Council from exercising their discretion to prosecute a violation of this ethics code. Any person who files a false sworn statement under Division 6 (Financial Disclosure / Complaint) is subject to criminal prosecution for perjury under the laws of the State of Texas.
- (h) **Reconsideration.** Within 5 business days of receiving the final opinion of the Board of Ethics, the complainant or respondent may request the Board of Ethics to reconsider its decision. The request must be filed with the Office of the City Secretary. Within fifteen (15) days after filing with the City Secretary, the Board of Ethics shall review the request for reconsideration. If a majority of the Board concludes reconsideration is warranted, the board may then order further proceedings in accordance with the provisions of this code.
- (i) **Appeals.** A decision of the Board of Ethics is final unless the person aggrieved by the decision appeals to the state district court in Cameron County no later than thirty days after the date the Board renders a decision.

If the decision of the Board of Ethics is not supported by substantial evidence, the District Court may reverse or affirm the Board's decision in whole or in part, or may modify the Board's decision if substantial rights of the aggrieved person have been prejudiced. Costs of an appeal may not be assessed against the City of South Padre Island.

SECTION 7 PETITION FOR DECLARATORY RULING

Any city official against whom public allegations of ethics or campaign finance violations have been made in the media or elsewhere shall have the right to file a sworn statement with the City Secretary affirming his or her innocence, and to request the Board of Ethics to investigate and make known its findings, and make any relevant recommendations concerning the issue.

SECTION 8 ADVISORY OPINIONS

(a) **Advisory Opinions Issued by the Ethics Review Board**

(1) **Ethics Code Inquiries**

- (A) By writing filed with the City Secretary, any person may request an advisory opinion with respect to the interpretation of the ethics laws, but only with respect to whether proposed action by that person would violate the ethics laws. The City Secretary shall promptly transmit all requests for advisory opinions to the chair of the Board of Ethics.
- (B) Within thirty (30) days of receipt by the chair of the Board of Ethics for a request of an advisory opinion, the Board, acting *en banc*, shall issue a written advisory opinion. During the preparation of the opinion, the Board may consult with other appropriate persons. An advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. A copy of the opinion shall be indexed and kept by the City Secretary as part of Ethics records. In addition, copies of the opinion shall be forwarded by the City Secretary to the person who requested the opinion and to the members of the Board of Ethics. The City Secretary shall make the opinion available as a public record for a period of no less than three (3) years.

- (2) **Opinions Initiated by the Board.** On its own initiative, the Board of Ethics, acting as the full board may issue a written advisory opinion with respect to the interpretation of the ethics laws as they apply to persons other than city officials and employees if a majority of the Board determines that an opinion would be in the public interest or in the interest of such person or persons subject to the provisions of the ethics laws. Such an opinion may not include the name of any individual who may be affected by the opinion. A copy of any such opinion shall be indexed and kept by the City Secretary as part of the Board of Ethics records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the Board of Ethics, or his or her designate to the City Secretary. The City Secretary shall make the opinion available as a public record and shall promptly post the opinion for a period of no less than one (1) year on the Internet via the City of South Padre Island homepage.

- (3) **Reliance.** If a person reasonably and in good faith acts in reliance on an advisory opinion issued by the Board of Ethics, that fact may be considered by the Board of Ethics in adjudicating a complaint filed against that person, but does not by itself bar the finding of a violation should additional information be made available.

SECTION 9 ANNUAL REPORT

The Board of Ethics shall prepare and submit an annual report to the Mayor and City Council detailing the activities of the Board during the prior year. The format for the report shall be designed to maximize public and private understanding of the Board's operations, and shall include a summary of the content of ethics opinions issued by the Board and on file with the City Secretary. The report may recommend changes to the text or administration of this code of ethics. The City Secretary shall post the report on the city's webpage.

SECTION 10 PUBLIC RECORDS AND OPEN MEETINGS

Meetings and other proceedings of the Board of Ethics will be conducted in compliance with the Texas Open Meetings Act. Requests for records will be handled in compliance with the Texas Public Information Act.