

**BOARD OF ETHICS
WORK SESSION**

**MEETING MINUTES
January 16, 2019**

After determining that a quorum of the Board was present, the Board of Ethics of the City of Denton, Texas, convened in a Work Session on Wednesday, January 16, 2019, at 5:37 p.m. in the City Council Work Sessions Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Jesse Davis, Chair; Ron Johnson, Karen McDaniels, David Zoltner, Don Cartwright, Lara Tomlin and Deborah Cosimo.

STAFF PRESENT: Umesh Dalal, City Auditor; Trey Lansford, Deputy City Attorney; Betsy Snodgrass, Administrative Assistant.

Jesse Davis, Chair of the City of Denton Board of Ethics, brought the meeting to order at 5:37 p.m.

ITEM FOR CONSIDERATION

1. Receive a report, hold a discussion, and consider potential recommendations to the City Council for amendments to the Ethics Ordinance, pursuant to Denton Ethics Ordinance Section 2-277(i).

Davis opened with a statement that this meeting is being held to consider potential changes to the City Ethics Ordinance (Ordinance). He stated that he met with David Zoltner to discuss possible changes to the current Ethics Ordinance with the goal of making it more succinct and meaningful. Davis stated the Ethics Board has had three Complaints filed and has convened one Advisory Panel since its creation.

A discussion then took place regarding the content and timing of future Board of Ethics (Board) meetings. Davis stated that the Board should not be drafting legislation but should be providing recommendations. He asked if meetings to discuss the recommendations for amendments to the Ethics Ordinance would be more valuable in smaller sub-committees to better define potential recommendations. Davis asked the Board how they felt about monthly meetings, or should they hold meetings as needed.

Lara Tomlin recommended working individually and in groups as needs arise. The focus of the groups should be complaints rather than Ordinance amendments.

Don Cartwright stated that the Chair or Vice Chair should call meetings as needed.

Ron Johnson asked for clarification regarding the purpose of sub-committees and if it would be their intent to draft possible language changes in the Ordinance for the Board to consider.

Davis agreed that one option of the sub-committee would be to discuss language and asked if the Board members present would prefer the use of sub-committees or a monthly meeting of the Board. He stated that sub-committees could make ideas more concrete and bring them back to the full Board for discussion.

David Zoltner acknowledged the time commitment and stated that most Ethics Boards or Commissions in other Texas Cities meet on a monthly basis. Since the Rules and Procedures were adopted, some items have been accomplished but others have not and should be addressed with required discussion.

Karen McDaniels mentioned that she may be traveling a lot and meeting once a month may be difficult for her.

Deborah Cosimo felt meeting once a month sends a message that what they are doing is important. She stated that monthly meetings keep a grounding in Ethics and provide training.

Davis pointed out that the Board should not be inventing work and agreed that considering recommendations to the current Ethics Ordinance is a worthwhile use of time. There was a consensus that changes are needed and require discussion with potential recommendations. He suggested drafting some ideas in an open conversation and the possibility of meeting in a smaller group without a quorum to provide concrete recommendations. An informal small group would require no more than four Board members. Davis then opened up the discussion on the following:

Should the accused receive a copy of the complaint against them and if so, should there be a preliminary or full hearing before it is conveyed? Under current Ethics Board Confidentiality Rules, the accused cannot receive copy of the complaint.

Johnson stated that he thought it would be a good idea for the accused to receive a copy of the complaint.

Davis pointed out that the accused does not know the content of the complaint and it might already be out in the newspaper.

Cosimo stated that the fairness aspect should be considered and that maybe the Board should look at the complaint first before making the decision to give the accused a copy.

Cartwright asked if the accused should receive only the complaint or include any backup.

Davis answered that the accused would only receive the Complaint Form.

Zoltner then brought up the possibility of a settlement option and giving the accused a copy of the complaint “out of fairness” as is done in other Municipalities. The settlement option provides for the accused to receive the complaint and may lead to the accused receiving a Letter of Notification as settlement.

Johnson commented that employees of the City are notified of the content of any charges against them, why should it be any different for a Public-Sector Official.

McDaniels commented that the complainant may think a bit deeper and be more careful in presenting their complaint, if they know the accused will receive it.

Davis asked for agreement that the accused should get copy of the complaint.

All were in agreement.

Davis then brought up the settlement option for discussion and that the culture of the Ethics Ordinance should not be punitive. The City Council had previously expressed that the Ethics Board should not be set up like a Court of Law.

Davis advised that the Ethics Board is currently set up like a court. It uses the language “accused” versus “respondent”. It is currently an adversarial process. The City should have an ethical culture as a goal. The burden of proof currently rests with the complainant; they provide witnesses and evidence. The complainant may not have the ability to prosecute, even if it is a valid complaint.

Zoltner stated that the requirement for the complainant to testify needs to go. The Board of Ethics should investigate the complaint. It is wrong to ask the complainant to prosecute.

Zoltner stated his dislike for the language in the Ethics Ordinance. That the complaint will be thrown out and dismissed if the complainant does not testify, is grossly unfair.

Tomlin added that the Ordinance states that the Board is not an investigative body and she believes the complainant may be less likely to file a frivolous complaint, if the Ordinance stays as written.

Johnson stated that he couldn’t see any situation where the accused wouldn’t want to question the complainant.

Davis stated that this topic would benefit from more thought and discussion on both sides. He suggested moving on to the next topic.

All were in agreement.

Davis announced the next topic, Burden of Proof.

McDaniels asked Zoltner if the Board were tasked with the Burden of Proof, instead of the complainant, would it not appear as if the Board would be choosing sides.

Zoltner and Cosimo agreed that the Ethics Board needs to maintain fairness and neutrality in its investigations.

Davis brought up the next topic for discussion, Conflict of Interest.

The current definition under the Board of Ethics Ordinance does not directly say that it is a violation to vote on something when having a conflicting interest, although it eventually does get to it. The current Ethics Ordinance definition of Conflict of Interest is not directional and has loopholes. Local Government Code 171 has a different standard for economic interest and it is not clear to City Officials what they should be following. The Ethics Ordinance is inviting loopholes and there are a lot of things not covered.

Zoltner stated that it is not difficult to get around the monetary thresholds stated in the current Ethics Ordinance regarding Conflicts of Interest. There is not a clear understanding of what a conflict is.

Davis asked the group if this is a topic worthy of more conversation and all agreed. He stated that the City Council may find the Conflict of Interest requirements unclear and may want to ask an attorney or the Board of Ethics for an Advisory Opinion.

Zoltner stated that the Conflicts of Interest subject is the center piece to the Ordinance and brought up the fact that there are other Texas Cities that have very good ethics codes. It would not be necessary to go back to “ground 0” to improve ours. Council previously had the impression that the Ethics Ordinance had to be built from the ground up.

Cartwright expressed his approval for how the Advisory Committee handled and ruled on the past complaints using good “common sense”.

Zoltner stated that everyone has conflicts and brought up the suggestion to strike the word “Accused” and change it to “Respondent” in all language of the current Ordinance.

Cosimo and Cartwright were in agreement with changing to the Respondent language.

McDaniels directed a statement to Davis that she liked the three questions previously provided by Davis that gave some guidance when considering complaints. Davis will try to include written guidelines going forward.

Johnson asked Zoltner if he felt that the decisions on the prior Complaints would have changed if the Ordinance language regarding Conflict of Interest were improved.

Zoltner stated that it would not have changed the decisions.

Davis stated that all of the issues discussed cannot fit into one box and they will have to be broken out separately.

Davis suggested moving on to the topic of training.

Davis asked the Board to define what kind of training they believe is currently required of the City Officials and Board of Ethics.

Umesh Dalal, City Auditor, was asked what type of training has been completed so far.

Dalal stated that this is a new requirement and asked if the focus should be training on the Ethics Ordinance only or Ethics in general. He is required to give training under the Ordinance. Human Resources gives limited training.

Zoltner suggested that there are training modules on the City website. Training should provide an understanding of Conflict of Interest and should be preventative medicine.

Davis stated that Human Resources does provide some basic Ethics training. He believes that training should be on the Ethics Ordinance for all City Council members and suggested that the Board should have more general ethics training.

Zoltner shared with the Committee a copy of a twenty-six-page document titled "Local Government Ethics in a Nutshell" The document stating that it was a very good summary of many Texas Ethics Ordinances.

Dalal stated that he has read it, but it covers ethics very broadly compared to our Ordinance. He sees the Local Government Ethics Code as the outer parameter and the City Ethics Ordinance as the inner parameter; it is narrower.

Davis brought up that other departments are not trained on the Ethics Ordinance.

Dalal added that Alan Bojorquez had previously given some training to City Council.

McDaniels suggested online courses as a good source for training

Davis asked if there were any other topics that the Board would like to cover.

Johnson suggested Reconsideration. He believes that errors in an original investigation or process should be grounds for Reconsideration.

Davis agreed. New evidence would be grounds for a new complaint.

Zoltner proposed whistleblower protection as another recommendation that should be included in the City's Ethics Ordinance.

Cartwright asked the Board if they should set a date for the next meeting.

Davis suggested February 20 for a next meeting date and stated that he would like to meet before that date with Zoltner and anyone else who would like to attend in a small group.

Davis expressed his concern regarding Open Meeting violations adding that he would like to see the Ethics Board make smaller recommendations and not bundle too many together for Council consideration. He suggested a Joint Work Session with the City Council members to discuss recommendations at some point.

Zoltner suggested getting on the agenda on a regular cycle, as the City Council has many time commitments.

McDaniels stated that it was important to prioritize any recommendations considered.

Davis asked that Board members to leave February 20 open on their calendars but did not set this date as a firm meeting.

Meeting was adjourned at 7:24 pm.