

**BOARD OF ETHICS  
BOARD MEETING  
DRAFT MEETING MINUTES  
February 20, 2019**

After determining that a quorum of the Board is present, The Board of Ethics of the City of Denton, Texas, convened in a Work Session on Wednesday, February 20, 2019 at 5:00 p.m. in the City Hall Conference Room at City Hall, 215 E. McKinney Street, Denton, Texas.

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

**STAFF PRESENT:** Umesh Dalal, City Auditor; Aaron Leal, City Attorney; Betsy Snodgrass, Administrative Assistant.

**COUNCIL MEMBERS:** Council Member Deb Armintor

**OTHERS:** Pati Haworth, Ryan Higgs, Ronald Johnson

Jesse Davis, Chair of the City of Denton Board of Ethics brought the meeting to order at: 5:10 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 began with a statement pertaining to amendments of the City of Denton Ethics Ordinance 18-757 in Section 2-277(i). "The Board of Ethics may recommend amendments to this Article. A recommendation from the Board of Ethics is not required for the City Council to exercise its discretion in amending this Article." Davis stated that the Board does not have power to effect the recommendations; it is the Board of Ethic's job to make recommendations for changes to the Ordinance and handed out a draft letter containing a bullet list of seven possible recommendations that he had written, with the assistance of Ethics Board member David Zoltner, for the Board to consider. Davis presented the draft of amendments (Draft) as a starting point for discussion and a framework to ask the City Council for guidance on general principles. Davis asked the Board for agreement on proceeding with the discussion of the seven recommendations. Ron Johnson and Karen McDaniels agreed.

Davis then asked for discussion on the seven items in the Draft as follows:

1. **Conflicts of Interest** – Davis asked if the Board wanted to include this item as a recommendation to City Council as the Draft recommended, or would the Board like to make any changes in the Draft wording. Don Cartwright asked for clarification on the recommendation and asked what items would be replaced in the Ethics Code as it

is already comprehensive. Davis agreed but suggested that there may be loopholes in the current code. San Marcos was used as an example for defining conflicts of interest as “likely to affect an economic interest”. McDaniels asked if the recommendation for Section 2-273(a) in the Code would include a new definition or if parts would be rewritten. She stated that it was a good starting point and asked if items “A-F” in Section 2-273(a)(3) in the Ethics Ordinance would remain in the definition of conflicting interest. Davis stated that they may want to start with a general recommendation to rewrite what would define an economic interest. There are a lot of different ways to change the wording. Davis added that making general recommendations and asking the City Council for guidance might be an option.

Johnson stated that the decision last week regarding whether Council Member Armintor and Council Member Meltzer could vote on a UNT polling location was the right decision, but it didn’t make a lot of sense. There was a lack of economic impact. He added that the first advisory opinion did not go far enough. Johnson felt a hypothetical example of what a conflicting interest means should be included in the recommendations. McDaniels agreed and stated that if the general public is reading the Code, there needs to be a clear understanding of what a conflicting interest is.

Cartwright stated that the Ordinance tried, with the “A-F” items listed under the definition of conflicting Interest, to give some examples of how that section of the Ordinance should be applied; should we add to that or replace items “A-F”?

Davis explained that “knowingly deliberating regarding a pending matter” as stated in the Code provides a framework. The code needs to define what a conflicting interest is; replacing a framework with a definition. Cartwright stated that there are many examples of conflicts of interest. We don’t have to list out conflict of interest examples if the definition is more general, i.e. “likely to effect economic interest”. Our current Code contains language unique to Denton. Davis asked the Board if the recommendations should include asking City Council if they want the Board to work on the conflicting interest definition. He agreed that more examples would be beneficial. The Code now is narrow in some respects and broad in others.

Johnson asked Davis how the Board should arrive at a decision on the draft recommendations. Davis suggested talking though them and voting at the end of the meeting on all of them or one at a time, whatever the Board deems appropriate.

McDaniels stated that she would like to discuss conflicts of interest further and would like to consider if there needs to be a direct conflict or can it be indirect to be considered a conflicting interest. The UNT conflict was more indirect. She asked if an “Arm’s length” guideline should apply or how close do you have to be to the issue.

Davis read from San Marcos definition of conflict of interest. McDaniels thought it might be a good one to present to the City Council. Lara Tomlin asked if the Board should recommend completely getting rid of the current definition or adding to it.

Davis stated that the current framework is not workable. “Likely to effect economic interest” may be better than defining monetary levels.

Davis noted that an economic interest is not always needed for a violation to occur. Johnson added that a definition should be recommended by the Board. Davis stated that the State law also has a definition of “likely to effect economic interest”.

Davis added that the goal of the Ethics Code is that the Ethics Board would not have a lot to do and asked if the Board thinks the conflicts of interest provisions are good as written or need amending. Cartwright noted that the definition in the Ordinance had only been tested one time and it may be too early to assess. The three complaints regarding small area plans did not come close to a violation as there was no pending matter. The Board agreed that the UNT issue tested the Code’s definition of conflicts of interest.

Cartwright suggested moving on to the other recommendations. Davis stated that he believes the conflicts of interest definition in the Ordinance could be better written but maybe not right away. McDaniels suggested that the Board move on to a couple of easy recommendations first and then come back to defining conflicting interest. All agreed.

2. **Respondent** - Davis moved on to the second item listed in the Draft recommendations – replacing the word accused with respondent. All agreed to this change.
3. **Complaint Service** - The next item was stated by Davis – whether the accused should receive a copy of the complaint. Tomlin asked why it was determined that the accused should not receive a copy. Davis stated that in the Ordinance Section 2-279 (i) the accused gets notice when the complaint is accepted. The confidentiality was intended to protect the accused. All agreed that accused should receive a copy of the complaint when it is deemed administratively complete.
4. **Whistleblower Protection** - Davis moved on to the next item – Whistleblower Protection. There are other protections within City Policies for City employees but there are none specific to the Ethics Ordinance. Davis stated that there are also Federal and State protections. All agreed that there should be a recommendation to City Council to include a section on Whistleblower Protection in an amendment to the Ethics Ordinance.
5. **Nomination of Board Members** - The fifth item brought up by Davis was - Nomination of Board Members. The Draft suggests that nominations might come from outside of City Council such as Chamber of Commerce or the Denton County Bar Association. When an advisory opinion is needed, or complaint is submitted, there are Rules of Procedure that recommend when Board members should recuse themselves based upon which City Council member nominated them to serve on the Board. Tomlin stated that she is against nominations from other groups. They may have more at stake

and are not subject to the Ethics ordinance. She did not see a problem in City Council nominations.

McDaniels asked how that would work logistically and Davis stated that he was unsure. He was not aware of any other City that uses outside entities to nominate Board members. Davis agreed with Tomlin. McDaniels asked why the Council appointed the Board to begin with. Davis stated that the Council appoints other boards and commissions. Johnson added that having Council recommend Ethic's Board members was not perfect, but the other options would be less perfect. All agreed to remove this item from the list of recommendations.

6. **Training Requirement** - Davis stated the next topic for discussion – Ethics Training. He felt the Ordinance is not specific enough as to the type of training that should be provided. The Code states that the City Auditor approves the training and curriculum. The Code provides for training at orientation, annual training and training for exiting City Officials. Davis stated that Zoltner believed the Code is not specific enough. The City Council had previous training with Alan Bojorquez, but there has been no further direction recommended by the City Council as to what the training should cover.

McDaniels asked Umesh Dalal what he would need for the desired training; she suggested more training on what might trigger a complaint. Dalal stated that the Bojorquez training was limited. He asked if the Board would like topics in a public environment as to what Ethics is or how the training section of the Code should work. Davis added that Zoltner wanted to see more general training. Dalal stated that the purpose of training on the front end is to educate people so that they understand the rules and maybe fewer complaints would occur. There will be a better understanding of what can trigger a complaint. Dalal added that better training will benefit the Board.

Johnson mentioned that there are commercial training packages available for ethics training. Dalal stated that they might not fit our Ethics Ordinance. The training would have to be customized to our Ordinance. Davis concurred that the training should be about the City's Ethics Code.

McDaniels doesn't think we currently do a good job with ethics training and suggested that online training can be easy and fun. She recommended putting the question of what should be included in training in front of the City Council. Dalal agreed and stated that the City Council should be asked what their expectations are for training. All agreed that a training recommendation should be presented to Council. McDaniels liked the Draft wording as it is.

Cartwright asked Dalal if the City is compliant with training currently, and does the training cover all employees? Dalal replied that we are compliant, and the training required by the Ethics Code is for Public Officials. Bojorquez's presentation is used on the City's website as approved training. Dalal suggested the Board inquire as to what the expectation is of City Council. Cartwright asked if it should be for every city employee. Dalal stated the training is for public officials as defined in the Ethics

Ordinance. He added that the confidentiality provision doesn't include examples of violations. Davis stated that Council members should know where their boundaries are. Johnson added that the Council needs to state what the intent of the training needs to be. Davis suggested adding specific topics on what must be included in training.

McDaniels stated that all City employees need Ethics training and that supervisors possibly could do one-hour trainings. The Council needs to decide. Davis added that the employees should know that the Ethics Ordinance exists and should be aware of violations. Aaron Leal stated that all new employees receive ethics training at orientation. All agreed to recommend to City Council that they address a more specific definition of Ethics Training in the Ordinance. All agreed to the wording change to include all city employees.

7. **Settlement Option** - Davis moved on to the next topic - including a Settlement Option in the Ethics Ordinance. As the Ordinance is written now, a stern letter is the only option for a sanction. Tomlin asked who would be chosen as a mediator in the case of a settlement option, and would the public see this as sweeping it under the rug.

Davis stated that in prior discussions with Zoltner, Zoltner suggested that a settlement option under dispositions available might be a possibility where the violation was unintentional.

Johnson expressed concern that the process predisposes that the complainant prosecutes, the respondent defends, and the Code does not identify when a settlement might happen. Jesse agreed that a settlement option might already exist in the Code's current framework. The Code does not identify what occurs when a complaint is accepted. Tomlin agreed. McDaniels stated that she would like to see things settled amicably in all cases. Tomlin stated that it might be a citizen vs a City Official and a power dynamic could exist. All agreed that the Settlement Option would not be included in the recommendations to City Council.

Before returning to the item for discussion of Conflicting Interest, Davis stated that Dalal had spoken to him before the beginning of the meeting and brought up the subject of the need for quick Advisory Opinions due to City Council's time constraints before a Council meeting. Council Members may not know that they have a conflict until they see the agenda. A Council Member may need an immediate advisory opinion and there may not be enough time. The Code provides that Dalal can go to Special Counsel for an advisory opinion in an emergency. Davis stated that Zoltner brought up informal opinions from Special Counsel in previous discussions. The City Attorney does not want to be issuing advisory opinions. Dalal stated that the Special Counsel should be asked for an informal opinion if the request is at the last minute. Tomlin inquired as to how many of these informal opinions currently take place.

Leal stated that the old process was to contact the City Attorney's Office. He estimated there are four or five informal opinions every month, but that he had not been comfortable giving them as he is a City Official. Cartwright asked if these informal opinions can be relied upon by Council Members. Leal stated no. Davis added that in the Ethic's Ordinance, the City

Auditor assigns questions to an Ethics Panel or Special Counsel depending on the situation. Davis read that there is no differentiation between Special Counsel and a Panel Advisory Opinion in the Code. Davis mentioned that Zoltner was concerned about the informal vs. formal opinion. McDaniels asked if council could get the agenda earlier. Leal stated that there is so much that goes into it. There are many staff members working on it. Leal suggested using Special Counsel for informal opinions going forward. Tomlin asked if Special Counsel has ever given an Advisory Opinion. Dalal said that so far it has not been necessary as there was time to convene a panel and Leal has been giving emergency opinions. Tomlin mentioned the cost of Special Counsel. Leal added that there is always the option for a Council Member to ask for a delay. Dalal stated that it ties into the training requirement. The more City Officials learn in training, the better they understand the requirements and the fewer number of advisory opinions there should be. Davis stated that he is OK with the way the Code is currently written and asked for agreement on leaving the Advisory Opinion section of the Ethics Code as written as it does not exclude Special Counsel from giving informal opinions. All agreed.

Davis then returned to the discussion of Conflicting Interest. Johnson suggested adding it to the list of recommendations and letting City Council decide on the wording; let Council make the determination. Especially if the history indicates problems, it might get to a point where Council wonders why recommendations for changes were not presented to them. Davis agreed that conflicting interest is the heart of the Ethics Code and improvement is needed. An improved definition would help to educate the public as to what conflict of interest means. Davis stated that the definition should fall more in line with State law and more in line with the general public's understanding of conflict of interest. Cartwright added that a change in the definition might not get done if it is not defined by the Board. Johnson recommended that the responsibility for the definition of conflict of interest should lie with the Ethics Board. Tomlin suggested more meetings to come up with an appropriate definition. Davis asked if the Board should ask Council if they would like the Ethics Board to work on it. Tomlin agreed. McDaniels stated that we should keep it on the list and let the City Council turn it back to us if they want us to draft the amended definition. All agreed.

Davis asked for a motion to include items 1, 2, 3, 4, and 6 as amended. McDaniels motioned and Johnson seconded. The Draft recommendations were unanimously approved as amended.

Meeting adjourned at 6:41 PM.