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 Tuesday, July 31, 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, Deborah Cosimo, Jesse Davis, Kara Engstrom, Ron Johnson, Karen McDaniels, Lara Tomlin, David Zoltner,

Absent: Ben Clark, Sandy Kristoferson.

Staff: Larry Collister, Trey Lansford, Todd Hileman, Bryan Langley, Sarah Kuechler, Charlie Rosendahl, Jennifer Walters, Kelly Campbell

Special Speaker: Alan Bojorquez, Attorney

Regular Meeting

1. Items for Consideration

A. City Secretary, Jennifer Walters, called the meeting to order at 6:03 pm. Election of a temporary presiding officer. Jennifer Walters opened the floor for nominations for the temporary presiding chairperson. Jesse Davis nominated Ron Johnson. Ron Johnson nominated David Zoltner. Jesse Davis motioned to close the nomination, Karen McDaniels seconded the motion. Five ayes were received by hand vote for Ron Johnson. As this was a majority vote of the members present, the voting ended and Ron Johnson was elected temporary presiding chairperson.

**Presiding officer elected: Ron Johnson (by a vote of 5)**

B. Oath of Office conducted by Kelly Campbell, along with City of Denton Affirmation of Qualifications.

C. Receive nominations and hold an election of a chairperson and vice-chairperson for the Board of Ethics of the City of Denton, Texas.

Ron Johnson, Temporary Presiding Chairperson: I will open the floor for nominations for chairperson and vice-chairperson. Before that, how would you like to vote, written ballet or orally?

Jesse Davis: I suggest to take the nominations sequentially to keep it orderly. I nominate Mr. Johnson be the permanent chair.

David Zoltner: That was my suggestion as well.

Karen McDaniels: I nominate Mr. Zoltner.

RJohnson: Anyone else? Anymore nominations?

No response

RJohnson: Ok, in all honesty, I’m elated that you would put your confidence into someone you do not know, but my schedule would not handle being chair of this committee. The variances of my working schedule that could adversely impact being the chair.
Lara Tomlin: Could we open nominations then?

RJohnson: they are not closed

LTomlin: Ok, then I’d like to nominate Jesse Davis

RJohnson: Anymore nominations? Ok then nominations are closed. All in favor of Mr. Zoltner, indicate by raising your right hands. (3 hands) Ok, all in favor of Mr. Davis? (3 hands) Do I have 3 or 4?

JDavis: I did not cast a vote, I didn’t expect a tie, so I will vote for myself.

RJohnson: Ok, it is unanimous, Mr. Davis will be the new chairperson. And with that, he will inherit the election of the vice-chairperson.

JDavis: Stupendous.

Jesse Davis, Chairperson of the Board of Ethics for the City of Denton, Texas

JDavis: Thank you, Mr. Johnson. At this time, I will open up the floor for nominations for the position of vice-chairperson for the Board of Ethics. Is there any nominations for the position of vice-chairperson?

KMcDaniels: I would like to nominate Dr. Zoltner as vice-chairperson.

JDavis: Nomination for Dr. Zoltner. Any other nominations for vice-chairperson? Is there a motion to close nominations?

RJohnson: I so move.

JDavis: Is there a second to close nominations?

LTomlin: I second

JDavis: All those in favor of closing motions?

All ayes.

JDavis: All those in favor of electing Dr. David Zoltner as vice-chairperson of the Board of Ethics please signify by saying “aye.”

All ayes

JDavis: Any opposed?

No response

JDavis: Dr. Zoltner you are the vice-chairperson. I think our next item of business is to draw straws. That’s item D. on the agenda. Is there a prescribed method in which we should draw straws?

D. Draw straws to determine which three (3) members shall receive an initial term of one (1) year in order to stagger terms.

Charlie Rosendahl: Hi, good evening. I’m Charlie Rosendahl, a management analyst with the City of Denton. Per the ordinance, we will draw straws to determine which of the three members will have one
year terms, the three of seven, only limited to regular members. We have not described, Ms. Cosimo, what the alternate numbers procedures will be so I have four long straws and three short straws in my hand here and I’ll walk around to each of you and you’ll draw straws.

JDavis: In the traditional way.

CRosendahl: Mr. Davis, Ms. Tomlin and Mr. Zoltner for one year terms to begin.

JDavis: And you said, Davis, Tomlin and Zoltner?

CRosendahl: Yes, sir.

DZoltner: I have a question about that before we move on if possible. For those of us with a one year initial term, do the nominations go back to the original council member or do we trust the next council member next year that may have other plans and not know any of us?

Bryan Langley: I’m Bryan Langley, Assistant City Manager. It would go back to the full council. They would receive the nominations and make the appointments. Though the individual city council members have made the nominations to the Board of Ethics, but the full council does them. So it would go back to the original council member that made the nominations?

BLangley: They would have the nomination, but there could be other nominations that are made as well.

DZoltner: But it would not necessarily go back to a different council member for those three of us…

BLangley: There could be multiple nominations for three seats, you could have five nominations, for example, and then council would vote to make the appointments to the Board. Certainly the member that nominated you, if they were still on council, they could make that nomination again, but there could be nominations from other council members as well.

DZoltner: But at least the council member that nominated these three would have another opportunity to re-up that same individual?

BLangley: If they are still on the council, yes.

DZoltner: If they are still on the council, well, true. Ok, thank you.

JDavis: Any other questions on Item D., drawing of straws? Item E., receive training from attorney Alan… you’ll have to help me out.

E. Receive training from attorney Alan Bojorquez regarding information related to ethics in general, the City of Denton’s Ethics Ordinance, and the requirements of Board of Ethics members.

Exhibit 1 – AIS Training
Exhibit 2 – Ethics Ordinance

Alan Bojorquez: There’s no helping with that. (Laughter) Hello everyone, I’m Alan Bojorquez and I’m an attorney and the City’s advisor on adopting and implementing the Code of Ethics. The staff arranged for me to come today and provide some training. This is not the same training session that was done previously for all City officials that are covered by the Code of Ethics. Today’s training session is specific to you as the Board of Ethics. It talks about the methodology provided for in the Code of Ethics for essentially doing your duties and processing ethics complaints and advisory opinions as they come forward. So we’ll go through this power point in your materials, we’ll cover that. My second roll here tonight to walk through a draft for the Rules of Procedure for conducting your meetings and your hearings. So if it is ok with you, Mr. Chairman, we’ll get started.
JDavis: Sure, can you tell me, is it Bor-kez?

ABojorquez: Bor-quez. If you ask any of the people in my law firm, they’ll pronounce it in five different ways, don’t worry about it. What’s important about the particular code that the City Council adopted here in Denton, is that we spent almost ten meetings, ten workshops developing an ordinance that really tries to do three things. It tries to encourage ethical behavior. That is the overarching goal of this document. To encourage those that work for the City, are elected to the City or stepped forward and volunteered as you have, to conduct the public’s business with integrity. Second of all, this particular Code of Ethics tries to empower citizens and give them an avenue, a methodology for raising their questions or complaints in an organized manner. Finally, it’s designed to provide due process, because while we are trying to achieve a City Hall that citizens can trust and respect, we are also trying to handle these complaints in a manner that gives those that are accused an opportunity to be heard, provide their side of the story and have a fair adjudication of those complaints. So everything we’re going to cover and all the materials you’ve been given so far are going to hit on these three themes.

Now, something you don’t have in your packet yet is all the many forms, flow charts and check lists we have prepared on behalf of the City of Denton to help you and help the City Auditor’s office actually go through the process of matching these dates and details. There are sample letters, notifications, all of which are going to be given to you. This is just the first step in the educational process.

The Code of Ethics is paper, but it really involves people. Here are some of the key people in this roll: The City officials who are covered by it; the Complainant; the Accused; the City Auditor, which is really the primary staff position in Denton who is charged with supporting you in your work; the City Attorney’s office, which will be your legal advisor, unless of course the City Attorney designates outside special counsel; there is the chairperson, our duly elected one we have now; the Panel; and the Board of Ethics as a group, each of them serving different rolls. The fundamental thing you need to remember when starting this process when you have a complaint is that before anything can happen with it, it has to be in the proper form, which we have a form document prepared. It has to include the contents required by the Code of Ethics and then it has to be submitted in a timely manner. We’ll get into each of these points as I go forward. There is a life to a complaint. This Code of Ethics is designed to provide for a beginning, processing and then an end, with some sort of action taken, some sort of definitive conclusion brought to the process. There is a flow chart to help you understand at what point the complaint moves forward in the process.

Start at the beginning: Who can file a complaint? Any person can file a complaint. It’s not limited to City officials, registered voters, a residence of Denton, but any person. However they must have firsthand knowledge. This is not the sort of Code of Ethics you’ll see in other cities in Texas, where someone can essentially read a newspaper article and based on that, come down to City Hall and file an ethics complaint. They have to know, themselves, that certain things happen and that those series of events or omissions add up to a complaint under the Code of Ethics, and they have to do that within a timely manner. A proper complaint must be received on a proper form, so while it’s possible someone could just submit an email or fax, something to City Hall accusing a City official of some sort of misconduct, and the City would look into that, this will not trigger your work. Your work will be triggered when someone submits a complaint on the proper form. The form is going to be widely available. It will be on the website, by calling and asking for it, coming to City Hall to the City Auditor’s office and picking up a blank in person that they can fill out and submit later.

JDavis: Question, let’s say a well-meaning citizen or anyone else sends a fax or email saying that they think is going to fit the requirements of the complaint. Is there anything that prohibits a City official, City Auditor’s office, anyone from advising them, “The form is available on our website. I see what you’re trying to do here, but you need to go find the proper form.” Can they be directed that way by City staff or anyone else?
ABojorquez: No, there is nothing that would prevent that from occurring. But I will say, conversely, there is nothing in the Code that requires a City employee or official to do that. Under this document, those who want to file complaints that would trigger action with the Code of Ethics are charged with knowing the requirements of the complaint, getting the proper form and proceeding that way. But if they fall short because they sent in something less than that, City officials could point them in the right direction.

LTomlin: I also have a question. Within the Ethics Code, it talks about the fraud, waste or abuse hotline. So that’s separate then what we’ll be dealing with; am I correct in saying that?

ABojorquez: It is. The FAW Hotline preexist this Ordinance. The City’s process in dealing with those calls operates independence from this Ordinance. Where there is cross over is that the Code of Ethics in Denton basically requires that any City official whose aware that another City official or another person covered by the Code is violating the Code, they have an affirmative duty to come forward and report that. They can report it in one of two ways. They, too, can fill out an Ethics Complaint, and submit the proper form, or they can make a call to the FAW Hotline. If they choose that option, they can choose to remain anonymous. And then the City has that information and can decide what to do with that.

LTomlin: But we won’t see that because those are anonymous people and we have to have a complaint, right?

ABojorquez: That’s correct. The only time the FAW Hotline may come up in your world is if some City official, themselves has a complaint filed against them for not filing a complaint on someone else.

[Page 5 of PowerPoint 24:40] Upon receiving a complaint, the City Auditor’s office has to do something, so the clock starts to run against the City Auditor’s office to review that complaint within five business days to determine if it is administratively complete and timely. To be administratively complete, it is basically looking at the four corners of the document and seeing that the spaces are filled in. The complainant has provided the data that is required by the Code of Ethics. The City Auditor is not responsible for making any sort of determination on the merits of the complaint at any point in this process. That is not the Auditor’s job. This is just a completeness check as a paperwork exercise. If they can determine, based on the information contained in the document that it is untimely, that the complainant knew about it more than six months before they turned in the complaint, or that the allegation is more than two years for a City official, more than a year old for a former City official, then the City Auditor’s office can make the determination that it needs to be dismissed for those reasons and send that back to the Complainant. Mr. Johnson.

RJohnson: Is this the first point where a determination is made that there was firsthand knowledge?

ABojorquez: No.

RJohnson: When would be that determination?

ABojorquez: The first time which that would come up would be at the preliminary assessment, the next stage.

RJohnson: Ok, something you said that triggered something. You indicated that a City employee/someone covered by the Code of Ethics, who observed something, could report it either through a form or the hotline, right?

ABojorquez: Yes.
ABojorquez: That’s a great question, and we discussed that at length with the City Council when they made this choice. There’s going to be a record when the call came in to the FAW Hotline. So we have someone in their defense says I knew the City official was doing this. I reported it through the Hotline. I called in Thursday, the 12th at 5:00 p.m. that matches the records and will show that they met their duty. That’s the best way we could come up with to encourage reports but provide for some level of anonymity when it comes to the reporting.

RJohnson: Now if they chose to do it through the hotline to remain anonymous, then if someone else reported them for not reported it, how would that work?

ABojorquez: The Council made the choice that we should not have the possibility to bring complaints long after the act or the failure to act occurred. So there is a statute of limitations in Denton on ethic complaints, six months from the date that complainant was aware of the conduct or within two years from when the conduct occurred. For those who are no longer in City service, we referred to them as former City officials, there is that one year period that they remain subject to the ordinance, something for all of them to be aware of. Next is the determination about whether it is complete. If the complaint is complete, City Auditor must send written notification of the acceptance of that complaint to the complainant, the accused and to the office of the City Attorney. This is really the first step of the process where the City Attorney’s office is made aware that something is going on. Accepted complaints are provided to the chairperson of the Board of Ethics within five business days. That is important because that is what triggers the chairperson’s duties. The City Auditor passes and assigns the accepted complaints to the chairperson within those five business days. The chairperson then has the task of assigning the complaint to a panel, within five business days of the chairperson receiving the complaint. The panel is basically a subcommittee of this body. Panels are not standing subcommittees, they are rotating. At least one member of the panel is charged by the ordinance as being an attorney or a retired jurist. The panels are a subcommittee that really is meant to provide a pre-screening. We called it a preliminary assessment in this Code of Ethics. It is an opportunity for a group of less than the body of the whole to take an initial look of the complaint and see if it meets the requirements in to the Code going forward. This is called a preliminary assessment. The meetings of this three-person subcommittee, which we call a panel, must be conducted in compliance with the Open Meetings Act. So just like your regular Board meetings, just like today’s Board meeting, notice must be provided of what you are going to talk about at least 72 hours in advance. The public must be allowed to come and look and listen. You are not having a public hearing at this point, so there’s no opportunity for the public, the complainant or the accused to say anything, but they have a right to come, sit in the audience chairs and look and listen as the Open Meetings Act requires. And then finally, you are required to keep minutes of those meetings of the panel. That’s really the three main things that the Open Meetings Act requires and the Council in its effort to further transparency in Denton made that choice because normally subcommittees that are comprised of less than a quorum are not required to post agendas,
allow the public to come and keep minutes under the Open Meetings Act. But the City Council of Denton chose to go beyond what was required in State Law in that regard. When you have a panel meeting, you choose a presiding officer for that meeting. It is not a standing position, it is just someone to help organize the discussion, manage the flow of material being considered and to ultimately be able to report back as to what occurred as a result to their deliberations. Within ten business days, the panel must review the complaint on its face and determine whether it is actionable or if it is baseless. So you are not conducting a hearing, you are not taking evidence, you are not taking testimony. You are just looking at the complainant has turned in and you are deciding whether it is actionable, which means it moves forward in the process or if it is baseless, meaning it gets dismissed at that point. To be actionable, you have to look at the complaint and make a determination as a panel that if you assume that everything that the complainant has written is true, does it add up to anything? Does it add up to a violation under your Code of Ethics? And if so, then it moves forward, and that’s when you start looking at extra evidence you have, the opportunity to hear testimony and you get to deliberate as a full body. If it’s baseless, it is dismissed. An important point to make, which I think is a key attribute of the Code of Ethics which the City Council adopted is that not every action or inaction that a citizen might find egregious, offensive, objectionable, wrong, unethical, immoral, not every single one of those action or inactions is something that you as the Board of Ethics have jurisdiction over. You only have jurisdiction over those things listed in the Code of Ethics. An example I’ll give you from a large City in Texas, far, far away, is where complaints would come in against the Mayor and City Council of having meetings in the Mayor’s office with neighborhood groups on a Saturday, reporters are there, but some citizens said, “Gosh, those sit down discussions were a violation of the Open Meetings Act. So they would file ethic complaints against the Mayor and Council. When the Board of Ethics would look at these complaints, they would compare those complaints to the Code of Ethics in that town and realize there was nothing in the Code of Ethics that covered that sort of behavior. So in that town, there may be political consequences to what the Mayor and Council did. In fact there were legal consequences. The Texas Rangers came and investigated the Mayor and City Council to see if anything was wrong. The media was there. There was PR consequences, it was covered in the press and online. In the end, there were no ethics consequences to what they did, because nothing in the Code covered that sort behavior. So that is something I’d like for you to hold in your minds as you go through trying to implement this Code and that you have conversations with complainants, with citizens who may be very upset that an official of the City of Denton did something or failed to do something, and they come to you seeking justice. Come to you seeking some sort of action, whether it is a sanction or a reprimand or whatever. And there may be occasion where you may have to advise them that (you may feel their pain, you may even agree with them) you’re not in a position to take action because the Code doesn’t cover that. We only deal with what the Code covers. And so when someone has their ethics complaint dismissed because either they don’t have facts or firsthand knowledge, or in the end a full Board of Ethics hearing determines that the actions are not covered in the Code, well, that doesn’t mean they don’t have other actions outside this body. Mr. Zoltner? (36:10)

DZoltner: Could you back up just a couple of slides there? Back up to the preliminary stage for just a second. One thing that confused me a little bit when we were discussion this with Council, to comply with TOMA, at the preliminary stage, now the date, hour, place and subject of that meeting must be part of that posting. Do you see the name of the respondent or the accused as part of that preliminary posting?

ABojorquez: If the question is, should the name of the accused be on the agenda for the preliminary assessment by the Panel, then I think that is the safest course of action under the law. That’s my opinion. I word it that carefully worded lawyer way that makes people hate lawyers because I have colleagues that are City Attorneys of other Cities, that absolutely do not follow that practice and they disagree with me. So when you go to their Board of Ethics meeting, and you see the Board is looking at a complaint for the first time, they will refer to a complaint number, complaint number 2018-17 and unless you file an open records request, and they give you the complaint, otherwise, you and the press have no idea what that meeting is really about. Your question is wise question, but it touches on an area of law where really smart, experienced lawyers disagree. I would era on the side of caution and put the accused name
or as if any other personnel matter, if only one person occupies that position, you can put their title. The Open Meetings Act allows that. Otherwise, I think there needs to be some level of specificity. I’m glad you brought that question up. There was a lot of tension in Council as to how to do this. How do you balance the need to satisfy the Open Meetings Act, be transparent, provide due process, but at the same time not have the City of Denton, the operation of government, be a mechanism for defaming someone and ruining their good reputation. I think we all agree at the time we had those work sessions that someone’s name and reputation still has value and is something to be protected and the government should not be playing a role in defiling that name or reputation unless we have good reason and unless we are following a certain procedure. It is a balancing act; I think the Council achieved the best balance they could under the circumstances. I advised them, it was my opinion, as a lawyer that I don’t think subcommittees have to follow the Open Meetings Act, and there are ample Attorney General Opinions that support my position. But again, the tension became, how do we protect someone’s identity and their reputation but also be transparent? If we don’t follow the Open Meetings Act, how can we really tell the public that we are being a transparent municipality? So they made that choice to make these preliminary assessments and panel meetings subject to the Open Meetings Act, I think that was a wise choice. One of the downsides is that the accused’s name gets to appear on a public agenda even if there may be nothing to it. But knowing that, the Council made the rules kind of strict, made the requirements for the complaint kind of strict. We will get to the process where you may be called upon to consider whether a complaint is frivolous and whether an actual complainant is going to have sanctions filed against them for being frivolous. Of course, our Code also does not say that the City is going to take action for abuse of process, but individuals can. So if someone were to file a frivolous claim against a City official in Denton, there’s no merit to it, there was malice toward it, they disregarded the facts, don’t be surprised if the individual City official goes and files their own lawsuit. That does in fact happen, it is an outshoot of some of these ethics hearings, but we’ll try to avoid that the best we can. The other thing is, these complaints must be sworn and notarized, so anyone who comes in and lies on their complaint or when we get through discussing a hearing they lie while under oath in applied testimony, they then need to be concerned about perjury. That’s just sort of the balancing act we have to maintain when we go through this sort of endeavor.

JDavis: In those places where you have colleagues who advised you that you don’t need to worry about the accused name or anything other than the complaint number on the panel’s agenda, are those places where the panels are required under their City’s Code to comply with the Open Meetings Act? And they still hold that…

ABojorquez: Yes. They are putting up the agenda 72 hours. The public is allowed to come. Same as you have to comply with the Open Meetings Act, also carries with it you having the ability under the Open Meetings Act to go into executive session, closed door sessions, when you need to. Under the personnel exception, it covers officers or employees, or to confer with your legal counsel whether it’s the City Attorney’s office or it’s a special counsel. So, yes, you must follow the mandates of the Open Meetings Act, but you also get to have closed door deliberations as provided under the Open Meetings Act, and that is what those cities do. I only know of a couple of examples, but they just list the citation number on their agenda, they convene their meeting into open session, the public and media is there, and then they walk into a back room and have their executive sessions. So what the media and the public will see is their hearings and their deliberations.

JDavis: Did you have a question?

DZoltner: Yes, for clarity reasons, that I realize lawyers can take both sides of what the subject of that meeting is, was it your reading of this Council that they did expect the name of that respondent or accused be a part of that preliminary posting?

ABojorquez: My recollection of those work sessions was that they understood that would be the case. But I don’t remember there being a specific vote on that question.
DZoltner: That’s exactly why I’m asking.

ABojorquez: I don’t remember, we may have to go back see if we can resurrect the notes or minutes from those meetings. I don’t remember there being a vote on that point.

LTomlin: So does that mean we’ll have to deliberate about it as part of recommending Rules of Procedures?

ABojorquez: I think that you’re going to be able to deliberate that as part of your Rules of Procedure. I also think at some point my role as consultant and trainer ends and the City Attorney’s job kicks in. I have not had a single conversation with the City Attorney’s Office on this point. They’ve allowed us to run the course without burdening it with their opinion yet.

JDavis: We can take that question up then when we get to Procedures.

ABojorquez: Yes, that makes sense.

RJohnson: It just seems like a slippery slope to identify someone as a potential ethics violator before an assessment is made and before the complaint is out.

ABojorquez: I agree. I think that is a fair thing for you as a Board of Ethics to discuss. And when we get to the point of your procedural rules, I’ll remind you that you as a Board of Ethics needs to adopt your own procedural rules governing how your meetings and hearings will go but the City Council must sign off on those and they’ll be doing it through a resolution so it will be a formal action by the City Council so you and the Council will need to be in agreement at that point. (44:50) So the next point we’ll talk about is a public hearing. An actionable complaint, then on its face would trigger the Code of Ethics, is returned to the chairperson and at that point it is listed on an agenda for public hearing before the Board of Ethics. A hearing must be scheduled by the City Auditor. They are the one who actually picks the date and puts the notices together. If there is a panel determination of an actionable complaint or if there is an appeal because when the panel dismisses a complaint as being baseless, the complainant has a chance to appeal that dismissal to the Board of Ethics. Having this system of internal appeals is a deliberate part of how we try to provide due process under every ordinance. A hearing should be scheduled within 30 days if possible; that is what the Code says. It is my urging to you as a Board of Ethics, you’re the body that is going to be in charge of this going forward, but as a practitioner that’s advised several cities going through the process of handling ethic complaints, I can tell you that a value I have is that these things should be dealt with in a timely manner. When you have ethics complaints hanging over an individual person’s head, publicly for six months or a year, I think that’s an unfair burden for that person. I also think that if the City picks up that practice of letting complaints linger, it may have the practical downside of deterring people from public service. That was definitely something we discussed with the City Council on an ongoing basis is that we want to have rules that foster a culture of integrity at City Hall, we do not want to talk good people out of coming here to serve as staff, elected, or as volunteers on boards or commissions. So one thing I think that you need to do to be successful with Denton’s new Ethics Program, is make sure there is a timely hearing on these sorts of things. The purpose of a hearing is to determine if a violation occurred and if so, what is the appropriate sanction; to decide if an accepted complaint was erroneously dismissed or to decide if an accepted complaint is frivolous and you may not know that until you get up to the hearing.

LTomlin: I have a question about that. Maybe you can clarify this for me. I see it as a violation or it is frivolous. If it’s frivolous, it has no bases at all. What if someone made a complaint that they thought was true but it happens to not be true for whatever reason, are we still calling that frivolous?
ABojorquez: No. Just because you dismiss the complaint because it doesn’t meet the standards under the Code does not make it frivolous. There is a check list of about five or six factors at the end of the Code that are your specific guidance in deciding whether something is frivolous. And those factors can include things such as, is there evidence to say that the complainant and accused are adversaries? Was the complaint filed during an election cycle? There was a truth about this that was available and the complainant didn’t choose to include this in their complaint. There is a list of factors you’re to consider in deciding if something is frivolous. The fact that an accused comes forward, provides a defense and you choose to dismiss the complaint does not mean that the complaint itself was frivolous, that’s something separate.

RJohnson: Can you go back to the slide, “an Appeal; challenging a Panel’s dismissal of Baseless Complaint.” Now the next slide over, does the second bullet point there relate?

ABojorquez: Yes, and I’m sorry there’s not as much detail on these slides as there is in the Code of Ethics but if the panel dismisses the complaint, there is a timeline for the complainant to appeal that dismissal. The appeal is to the Board of Ethics as a whole. So you would have a separate hearing just on handling that appeal.

RJohnson: So the appeal can be based upon the fact that … are there any criteria other than the fact that it was dismissed that he/she is appealing?

ABojorquez: It is essentially saying that the panel got it wrong, my complaint does meet the requirements to be a complaint, I did provide the necessary materials, they were timely, and if you assume my complaint is true, there is something specific in the Code that covers this such as accepting a prohibited gift. The appeal on the dismissal of the complaint is solely about whether or not the complaint met the requirements to go forward. It is not at all about the merits of the complaint itself, whether it is true or not. And whether there is a defense.

LTomlin: Do you find other cities, when it’s found baseless, do they usually appeal it? When I was reading the ordinance I would think that people would just appeal every time instead of moving forward.

ABojorquez: I don’t have any quantifiable data to share with you. Based on the stories I’ve heard and the experiences I’ve been through, once it’s been dismissed by the panel, most of those stay dismissed and there is no appeal. In part that is an education process for the complainants, by having their complaints dismissed they’ve learned something about what is required for complaints that they didn’t know beforehand. [Pg 20 of Power Point] The Panel’s preliminary assessment may be appealed before the Board of Ethics by either the complainant or the accused. The accused can say that, “no, the complaint was defective on its face, it doesn’t add up anything, and it should not be going forward.” When we get to the Rules of Procedure, there is a process I’m recommending you consider adopting to have preliminary hearings on procedural matters before you get to have evidentiary hearings on the substance of the complaint. If you go down that route, you may use that sort of methodology to cover these types of appeals where it is just on the procedures, the motions, especially if the accuses or complainant is represented by a lawyer, as they are allowed to be under your Code, you may have those sorts of preliminary matters and therefore want a process for preliminary hearings. We’ll talk more about that when we get to the Rules of Procedure. But you can have this appeal. You have to perfect notice of appeal, and it has to be within ten business days of the date of the notification that the complaint was dismissed. So again, very specific deadlines meant to provide some certainty in closing to various phases of this process. If the Board of Ethics determines at conclusion of hearing by simple majority vote that a complaint must be dismissed it can determine the complaint is baseless; alleged violation did not occur; accused relied on Advisory Opinion, or complainant failed to testify at hearing. That four point bullet list is short, but it really touches on a lot of things that are in your Code of Ethics. You may just determine that the facts that come forward during the hearing, under testimony and evidence do not support the complaint. That’s what the second violation point is. The next one is the Advisory Opinion.
(53:17) You as a Board of Ethics will be in a position to issue Advisory Opinions, and we'll talk more about that. It is a different process, a panel, a subcommittee of your Board, upon request to issue an advisory opinion to someone covered by this ordinance, who wants to hear upfront how you think the Code applies to what they're doing or not doing. The City Council made reliance on an Advisory Opinion an affirmative defense that they can raise, and if you find that they did rely in good faith on an Advisory Opinion that is a basis to dismiss the complaint. The final one is another point that's unique to Denton's Code of Ethics, something the Council discussed in great detail and there were strong consensus on is that the complainant must appear and actually testify at the hearing on the complaint. If they don't, that is grounds to dismiss the complaint. Timing becomes an issue. While it is possible for a complainant to be represented during a hearing by legal counsel, legal counsel cannot testify for them. They must be present. If they don't the complaint must be dismissed. (54:41) At the end of the hearings process, we talk about sanctions. I'll first mention to you what's not on the list. You as a member of the Board of Ethics, you do not have the power to remove someone from office. You do not have that authority. In Texas, an ethics violation does not affect the ability of an elected official to hold office. So there is nothing we could do or put into this particular Code of Ethics that would have granted you the authority to remove an employee, a volunteer on a board or commission or an elected City official. There is nothing in our Code of Ethics that says upon finding of suspected criminal behavior, the City shall file the necessary paperwork to have this prosecuted in the Municipal Court or the District Attorney's office. There is nothing in our Code that says the City upon recommendation of the Board of Ethics shall go file in Civil District Court seeking injunctive relief. Those are not things that were chosen as part of this. What were chosen are these five options in order of severity and the Code specifies which one is appropriate, based upon the findings of this Board. Including if you were to think it was intentional, accidental violation, word of consequences of this violation of your Code of Ethics. Was it a knowing violation? So they are listed as the least or the sanction you could issue is a letter of notification and then it gets more incrementally harsh, a letter of admonition, letter of reprimand, a recommendation of suspension, which would be something the City Manager's Office or the City Council would have to take action on, or a recommendation of ineligibility for those vendors that are covered by this Code, because while the Code covers the City officials fairly broadly it does touch on vendors when it comes to a vendor of the City, either giving or proposing to give a prohibited gift under our Code. That's the only point where it touches on those vendors and if you find that they violated this, you may be making a recommendation that those vendors not be eligible to apply for or receive City contracts for a period of time. Again, as one final effort to provide for due process, there is a form of appeal if the accused or a complainant is not satisfied with the actions of the Board of Ethics then he can ask the Board of Ethics to reconsider their ruling. That must be filed with the City Auditor within five business days and the request for reconsideration must be sent to the chairperson and also to the non-filing party. As the Code of Ethics says, the grounds for is that the Board did not consider information that the appellant had or has that was not presented or considered during the original hearing. So it is a fairly tough standard to have a reconsideration request granted, but there is that process. Otherwise, you are the end of the road. The buck stops with you. There is no appeal to the City Council. There is nothing provided in our Code about an appeal to a state court or a county court or any other court. This is it. So if someone thinks you got it wrong at a hearing and they have additional material for you to consider, their only avenue is to seek reconsideration. Once that window has passed, or once that option has been exhausted and ruled on by the chairperson, which is the sole trimming authority for reconsideration that complaint is over. If the chairperson finds in his sole discretion the request includes new evidence that was not submitted and the new evidence bears directly on the determination the chairperson must schedule a hearing within 30 business days. Failing that, the chairperson gets to dismiss the reconsideration request. It is not something that requires a vote. So we had a question on frivolous complaints? The Board would have to determine by a vote of 2/3 of its membership that the complaint was frivolous and if so they can impose one of the sanctions that were listed before. And so some key points I wanted to conclude this particular presentation with is a reminder of something we discussed often with the City Council and this principle affected I believe a lot of choices they made. Punishment is not the objective. The purpose of going through the 10 or so work sessions they had, the public hearings we had, the materials we considered from many cities across
the state, 18 different cities’ ordinances, parts of those ordinances were considered. The goal is not to set up a regulatory structure to catch people and punish them. The goal was compliance. We want to have more ethical decision making at City Hall. We want to enhance the public’s trust of those that are at City Hall. That is the purpose of all this. Fostering that culture of integrity is your mission and the mission of the entire Ethics Program that’s just been adopted for the City of Denton. As part of that, there is the regulatory aspect. We do have rules, we do have requirements. We have prohibitions and to make sure those rules are followed we have educational component and training component that’s required. I think yours is one of the best in Texas in terms of requiring training once someone comes on board with the City and then training once a year there after. That, I think, is going to yield better results than anything the Board of Ethics does in terms of hearings and punishments. But a full, well rounded, Ethic’s Program has that compliance portion, and that’s what you are here for. That’s what you were appointed for and that is what you are tasked with doing is to make sure that there is the compliant punishment part of our Code for those who don’t care about the rules, remain ignorant of the rules or just can’t seem to follow the rules. So you are a vital part of this, but it’s not the only part. And as the professional the City chose to have come in and guide them through this process, I will repeat what another Council and Staff have suffered through hearing me say is, Ethics is a conversation. Through the investment of time and effort that the voters put into amending your Charter, and the effort and time Staff and Council have put into developing this Code and this Program, I think that is all a great beginning to have a regular conversations among your Boards, your Commissions, your Committees, your Council, your Staff, your volunteers about what is the right thing to do. And sometimes that answer is not going to be in this Code of Ethics. I take a little pride in authorship in helping write what the Council chose to put in this document, but we didn’t cover everything. I don’t think it’s possible for any Code of Ethics to cover everything in every situation, but certainly the Council has communicated its values. It’s communicated its principles and its set the mechanism in place to help train on this and also to adjudicate when someone has gone astray. That’s the beginning of a great conversation. I think you are to be commended for stepping forward because this is not going to be easy and it is not going to be popular. If you are here to make friends, you’ve joined the wrong board or commission. You are basically acting as a judge and jury over someone’s conduct and behavior and something that is going to affect their political viability and also affect their standing in the community, their name and reputation. So I trust that all of you are serious individuals and I hope that the materials that we’ve prepared are going to help you along the way but there will be some decisions you will have to make procedurally and substantively as you go through this. So that is the end of the prepared remarks on processing your complaints. Questions? Break? (1:03:30)

LTomlin: Can we take a short break?

JDavis: Yes, but first are there any questions on this portion of the agenda item? Laura, do we have times for questions?

KMcDaniels: I’ll be really quick. I’m trying to wrap my head around the big picture of what’s happening here. I guess my first question is since this Ethics ruling has come into being and is now in the City of Denton, have there been any complaints?

ABojorquez: None have been filed yet. First thing we did after adoption is prepare the form so that it is available. None have been filed yet, there are rumors but nothing now.

KMcDaniels: Is there a copy of the form here or do we have to go online to look at it?

ABojorquez: I don’t know what the status of the form is yet.

CRosendahl: I can send that out to everyone or I can go make copies while on break.

ACTION ITEM: Provide members with a copy of the Complaint. Charlie took care of.
KMcDaniels: So, in trying to follow this through, you know this is new and like all things new in Denton, it takes a while for people to understand the process and how it works. I have a little bit of concern about the assumption that people would go online to find this form. And I don’t know that there is a better answer than the one that you supplied, but as an Ethics Board I would think that we would try to find some way that we could measure the success of what we are having. Part of that success would be getting people to know that we are here for them. That’s just a comment I have around that question of a little bit of concern I have about how this message is going to be delivered to the public.

LTomlin: I think I read about it in the DRC.

KMcDaniels: Yes, if it wasn’t for DRC what would we do? But there are a lot of people who don’t take it.

JDavis: Do you mind if I add a little commentary here? In my way of thinking, this Board, because we are going to have to decide the things we have to decide, I feel like we should be as far from that part of the process as we can. We are a deliberative and a judicative body. We can’t jump into the things that are going on in the community. We have to decide once they come to us. I feel like the City Auditor has a big role in communicating; the DRC has the power of the press to make things known, but at the same time, we can be visible as members of the community, and here is what I do, here is how I volunteer my time for my community, but it gets kind of sticky for us to be out there, “hey, just let me bring in my Kiwanis Club notice let them know I’m on the Board of Ethics. If you’ve got anything wrong, let us know, we’re here waiting on complaints. [Several talking] It’s kind of like a judge soliciting lawsuits letting everybody know, the courthouse is here if you’ve forgotten. You have to stay separate from that part.

KMcDaniels: No, I’m not in any way saying that we should do it. I want to say that it is a concern that this service is available to residents in Denton.

DCosimo: Question of access. If City staff are not incline to help someone that sends an email and direct them to the form, they are not required to do that, it is shutdown right there. I think that is a problem.

JDavis: As a Board, over the years, encounter those kinds of questions a lot, I think we need to refer them back to Council. If we run into something that is wrong or makes our job more difficult or isn’t getting us the complaints we think we ought to get, we can tell them as citizen and members of the City’s Board, we can tell them that their Code has an issue. I think it is really dangerous to be thinking too deeply about those things before we even have complaints, before we run up against that stuff. Personally, it’s not our job to get more complaints filed, it’s our job to decide on them once they are here. Any other questions?

DZoltner: Just one. I have to honor the fact that this City Council saw the value of having … for placing so much responsibility on a three member panels as opposed to a quorum of four of this seven. In a spirit of transparency, do you see any information going to a panel or being shared with a panel that would not be shared with the entire Board, whether or not they have anything to do with the complaint? Does that make any sense?

The way the process flows in the Code of Ethics, the complaints are not going to be sent to the entire Board until there is a hearing or a meeting set of the Board. It’s just going to be with the chairperson, that rotating there person panel, City Attorney’s Office and the City Auditor’s Office. So there is no process for that to occur. If it were to occur, it would be outside the ordinance’s process.
JDavis: Any other questions on this agenda item? Ok, why don’t we take a quick five minute break? 
Sixteen after?

5 min. break

JDavis: It is seven seventeen, we are coming back into session and pick up at item F, receive a report 
form Alan again, hold a discussion, and giving direction regarding the rules of procedure required by 
the ordinance.

F. Receive a 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 of City Council.

Exhibit 1 – AIS Rules of Procedure
Exhibit 2 – Draft Rules of Procedure

ABojorquez: (2-0:0:28) So what you have is Draft E and like so many other aspects of your Code of 
Ethics it reflects some choices that other Cities have made that I thought looked workable for you. So 
I’ve placed some provisions of your Code of Ethics into this documents, then used this document to fill 
in some of the procedural holes. ‘I’ll restate, at some point you must adopt Rules of Procedure, it’s 
required by the Code of Ethics, but it is subject to the approval of the City Council. So there’s two parts 
to that. One my challenges as a drafter of this document was deciding how much to put in here that’s 
already covered by your Code of Ethics. So I didn’t want to just copy and paste and have really long 
set of procedural rules that was duplicative but sometimes I thought the rules wouldn’t make sense 
without some of that language. So what you see here is solely my choices and my recommendations 
for your consideration. This has not been blessed by Council and has not been blessed by Staff, they 
got a review of it but it’s not as though Staff has approved this. So this is your chance to go through it 
with me one time, offer some questions, comments, suggestions, if you’d like me to modify it, then I 
will go through and make some changes to it. I don’t have an assistant here, but I’m going to trust the 
recording or borrow someone else here to take notes, we can tweak this before it goes to City Council. 
I think we were discussing August 21st? The August 21st City Council meeting as the meeting in which 
we will put a draft of Rules of Procedures in front of the Council in hopes that they will approve 
them. And that deadline is important because the City’s overall goal is to have this process fully up and running 
and functional by September 1st. So we’re on pretty short deadlines here. (2-0:2:37) First we (A. 
General) will talk about (1) Confidentiality. If in reading the Code or this section you feel it is highly nuanced, you are welcome. This is another area where we were trying to balance the need to protect the 
accused who are innocent until proven guilty while also being transparent and complying with Texas 
Law. You will see specifically, until an item is put on the agenda, then we are going to take the position 
at the City of Denton that it is not public information and that would mean that if an Open Records 
request comes in before then, the City would have the ability to seek the Attorney General’s ruling on 
how to deal with that request. Once it is on an agenda, the topic is public and the materials supporting 
that agenda item would normally be public for sure the complaint and any attachments that are given 
for that.

JDavis: The way that you’ve drafted that last part of that section one, “placed on an agenda,” is that 
tended to communicate what your opinion you shared earlier, once it hits an agenda, panel hearing, 
preliminary hearing, full board, once it hits an agenda, the complaint is no longer confidential, names 
should be released?

ABojorquez: That’s what I think a tribunal of the Attorney General’s Office would conclude if they 
were asked that question. There are certain things with the Open Record’s Act, for those who’ve dealt 
with it, you understand, it is a fairly complex statute with an even more complex set of cases and AG 
opinions that try to interpret it. A rule that I’ve extracted from my knowledge of the statute is that once 
something has been decided, then it is a public document, with few exceptions. I don’t know what
exception would apply that would allow us to withhold things. We have certain specific exceptions regarding different personnel matters, different legal matters, there’s the deliver process exception for legislative bodies. All of those create this series of exceptions and rulings that usually someone well versed in the statute has to be engaged to the side. We just made that policy choice we are going to treat this as a confidential information until this point. If the Attorney General’s office or a court disagrees with us, we will of course abide by that information. Otherwise, we’re not going to let someone file a complaint today, someone else files an Open Records request tomorrow and we had it over and it’s in the media. What the complainant does with their data is completely up to them, we have no control over that. It may end up in the public’s sphere, and that will be what it is. My concern as a lawyer guiding the City is to exercise caution, to urge caution, and the city being used as an implement in smearing someone’s reputation until we’ve at least gone through some sort of initial review.

JDavis: Mr. Johnson, did you have a question?

RJohnson: Well, my question is the same as yours, basically what constitutes an agenda, and basically, I understood what you said in terms of the heading of the committee of three, having noticed of their meeting, however, it’s kind of a ridiculous until it’s dismissed or put on the agenda. Well, dismissed only takes place only after it is put on an agenda. Is that not true?

ABojorquez: There is one other occasion where it is dismissed and that’s early in the process when the City Auditor has found deficiencies, and the complainant doesn’t cure the deficiencies within the ten days, then it is automatically dismissed.

DCartwright: That’s not under public record, I mean that’s not open at all?

ABojorquez: Once it is dismissed, it would be public record. That’s part of the challenge and that’s why the Council didn’t go into this process lightly. Most of the documents that have ever been submitted to City Hall by anyone for anything are public records. Our City Secretary’s office must keep under the Records Retention Act, and that we must then provide under the Public Information Act. And there is only so much confidentiality we can provide, even to someone wrongly accused, by having an Ethic Ordinance that actually has some teeth built into it and a process for deciding what the truth is and whether someone has violated the Code or not, we are generating paper that ultimately we will have to release to the public someday.

LTomlin: So when it is meant by briefing the Board regardless of whether we have confidentiality before that it will be public record who the complaint is about. And so if actionable, it will be, when it comes to the whole Board, their names going to be out there.

RJohnson: Public record before that. Public record when the 3 panel of the Board meets cause we have to publish the agenda. Is that correct?

ABojorquez: Correct.

LTomlin: I was going on the assumption if we were to recommend, up to City Council ultimately, but if we’re to recommend to keep it confidential, the 3 person panel. That’s where I was going.

JDavis: Just to clarify, the way it is written now, in your interpretation, includes that it will not be confidential once it hit that three person panel, as you advised us earlier. So if we want to recommend to City Council that is what happens, we don’t need to do anything to change the document, if we want to recommend that is not what happens, we need to recommend a change towards the draft.

ABojorquez: Yes, and this provision reflects what is in the Code, and so the Code would have to be changed. That gives me reason to bring up that point, as hard as the Council worked on this, as
deliberate they were about it, and as much as I tried to advise them expert advice, I’m not going to tell
you for a moment that the Code of Ethics are perfect, or that these procedural rules are going to help
you adequately address everything that comes your way. So there may be an instinct as you go through
this process of implementing things that you want to make modifications. My suggestion to you is to
keep a running list, then maybe after three months, or six months, depending on how much activity there
is, there may be a reason to revisit the Code of Ethics and make some amendments to it or amend
whatever procedural rules that you’ve adopted. But I am going to urge you to resist the impulse to just
come back to Council every month or every meeting trying to fix something. Instead, take the ordinance
for a spin, see how the public responds, and see how workable you think these rules are. And if we
need to make adjustments then by all means, let’s go before Council and recommend some changes.
They may be in agreement with you at that point. But just keep a list of things you disagree with or
think are not workable or wise or did we miss something? Then eventually, you as a Board of Ethics
can have that discussion and then make a recommendation to the City Council about some
modifications. But I’m just asking you to wait a few months and see how it goes. And this may be one
of those points the issue of Confidentiality might be something you want more input on.

DZoltner: (2-0:11:10) For whatever it’s worth, from a spectator’s standpoint, I don’t know where the
subject first came up, but I think the whole subject of three member panels was presented initially with
the assumption or the understanding that it would not have to comply with the Open Meetings Act,
being a three member panel versus a quorum of four. That didn’t last very long with the Council and I
think they were the ones to cut back away from that, that’s kind of my understanding. When the Council,
by consensus, said we’re going to comply with TOMA at every stage. The panels could have been
deleted at that point, but it was carried forward. I kind of think that was the Council’s wish, I could be
wrong. Like Alan mentioned, that is something that could certainly be discussed over time, not by the
31st of August, but that is something that could be discussed. But for now, complying with TOMA is
kind of their wish.

JDavis: Sure, and I guess, my only question was if there was someone who disagreed with Alan’s
assessment of how the agenda needs to be worded for those meetings that this is the place. We had that
conversation earlier so this would be the place to continue it or when we get to the point where were
either making a recommendation or adopting these for a recommendation or making amendments to it,
that is the place we need to be if that’s something we want to do, I’m not saying we ought to.

ABojorquez: Another part that’s kind of a preliminary matter to make sure we discuss that the Council
did put something…Oh, I’m sorry.

DCosimo: I have a more mundane comment that having dealt with documents like this. I think that a
living document that is tied to an ordinance, that where ever the ordinance is the source for the
information, it should be cited in the procedural document that way if part of the ordinance is changed,
it can be easily found and changed in the procedures.

ABojorquez: I think that is a good idea.

JDavis: So, if we can proceed this way then, let’s have Alan make his presentation, and ask him
questions as he goes, but when it comes for time to make changes we’ll have a motion to adopt these
and then there will be an amendment to these as part of that motion process, if that makes sense. That
someone could move to might make a change or move to adopt these as they are and make changes as
that goes, that way were not having a vote here or having a vote there, but make the changes as a whole
at the end of the document, if that makes sense.

ABojorquez: The next is the Ex Parte communications and the prohibition on that. It is an effort to
keep the record pure, avoid influencing witnesses and those sorts of things. There is a prohibition in
the Code, the complainant or the accused talking directly with you, the members of the Board of Ethics
outside of meetings or hearings. Also any known witnesses. The accused and complainant are not supposed to be trying to influence witnesses themselves. They are supposed to be leaving that to the public hearings and the public meetings. So that is another reason you do have some staff through the City Attorney’s office and the City Auditor’s office for documents and information to flow and not directly to Board members themselves. When it comes to meetings, the meetings are to be called by the Chairperson, or upon request by three members or by the City Auditor. Those are the three groups who are allowed to actually call a meeting. Provide the process for an active chairperson to call the meeting to order, announce the time, state whether a quorum is present, reminding you the quorum is going to be four. This is for board meetings, reminding you that the Open Meeting Act applies, and comment regarding adjournment, purely procedural.

JDavis: I have a question on B-1. The inclusion of the City Auditor calling meetings there, is that out of Code? The City Auditor can convene the Board?

ABojorquez: It is. And one reason that was done is because of the timelines that are in the Code and not knowing if the Chairperson might be on vacation and not able to reach the Vice-Chairperson. That’s why that was put in there. In talking about Advisory Opinions, the Code of Ethics, as I mentioned, allows people that are covered by the Code of Ethics primarily City officials, to seek an advisory opinion upfront about what they should or should not do in conformance with the Code. By doing so and relying on it, it give them an affirmative defense whenever a complaint is filed against them for that behavior. The motivation to provide for this is to get City officials use to looking at the Code and asking questions about the Code in a proactive measure, not just in a responsive manner. You want them asking questions and thinking about the Code, but you also want to be able to give them an answer in as timely a manner as possible. Sometimes it might just not be possible. It might not be possible to convene a panel of the Board of Ethics, have them deliberate and issue an opinion in time to help that City official. But we try, and in doing that we are sending it to panel of the Board of Ethics versus the full blown Board of Ethics. The panel will be selected by the Auditor. They will just pick three members on a rotating basis and send the question to them. The panel will have to meet under the Open Meetings Act, it will have to be noticed in addition to the Open Meetings Act agenda, notice to the City official who has requested it, at least five days prior to that meeting. What I put here in this scenario where you have a choice but these were not set up under the Ordinance to be hearings. These are just meetings, and meeting is open but there really is nothing provided for in the ordinance with regards to testimony or evidence, so I put in your procedural rules is that the requesting City official or any other person can attend, but there’s no public comments, there’s no testimony.

JDavis: So it’s just a conversation among the members of that panel about the question they have in front of them?

ABojorquez: That’s right. The purpose of tonight’s meeting was to familiarize yourselves with the Code of Ethics, your role in adjudicating and implementing it and these procedural rules. We’re not here to rehash or second guess the City Council’s decisions, but I don’t mind sharing with you along the way that different Cities do it differently. In some Cities, it is outside special counsel that issue advisory opinions. In other Cities, it is the City Attorney’s office that issues the advisory opinions. Most Cities that have the Code of Ethics don’t provide for advisory opinions at all. But this was a process, an option that the City Council chose.

LTomlin: Question? If the three person panel doesn’t come to a consensus, I don’t remember reading this in the Code.

ABojorquez: There is not. If you are not able to issue an opinion, then there is no advisory opinion, and the City official just has to move on. And of course, nothing precludes someone covered by this Code from making their own determination, hiring their own lawyer, seeking their own counselors outside this process, which is what I think a smart person would do, I clearly think that is good for a
wise City official to do, but, in addition to all those things that everyone always has available to them, the Council has provided this option.

J Davis: (19:21) I have another question on C. Advisory Opinion before we move on. You don’t have the section on Advisory Opinions off the top of your head do you?

A Bojorquez: It’s Section 2-278.

J Davis: There you go. So, Section (a) of that says that the “…the City Auditor, who shall assign the request to a Panel or Special Counsel,” Could that not also be interpreted to mean that the City Auditor assigns it to a panel, but not necessarily that the City Auditor decides who is on that panel, he refers it, assigns it out to a panel, my question is, and maybe you can help me out from the work sessions and stuff, what the Council’s thinking was in having the City Auditor determine the makeup of the panel that does the Advisory Opinion, as opposed to the Board itself setting who that panel is going to be. In every other respect, the Board is very independent in its deliberations and decisions from City Staff, but in this sense, the City Auditor, a member of the City Staff, can pick who the Advisory Opinion is going to come from.

A Bojorquez: Fair question. The only consideration in Council’s mind at the time they deliberated this was speed. Timing. How quickly can we get three people together to answer a question and give someone guidance. And the discussion was in this instance having a Chairperson decide the panel might take a couple days longer and we want to encourage people to seek advisory opinions. That’s why that choice was made. You’re right, in other regards the Council has tried to be independent from what this group does and Staff definitely has tried to be independent from this, but that is why that choice was made.

J Davis: Does rotating basis have a particular meaning or a particular way in which the City Auditor is going to understand that means they are supposed to rotate folks or is it alphabetically?

A Bojorquez: No, there was nothing provided for in the Ordinance or the rules I’ve sent you. The point was not to have standing panels, but to have different members starting at different times. There’s no more discussions or decisions put in beyond that.

L Tomlin: I think the panel kind of hearing, there has to be a lawyer. On the advisory opinion, does there have to be a lawyer on the three person too?

A Bojorquez: By definition, each panel has at least one lawyer or retired jurist on it.

J Davis: If either one of those things I asked about, is a concern for this Board, could we not recommend some procedure that here is the process by which the City Auditor ought to rotate the panel, or the City Auditor will assign it to a panel that is required under the Code but that panel is to be designed in some way within the Board itself either by the Chair or putting ourselves on three member panel lists or something like that.

A Bojorquez: I think that could be done. There’s nothing I can recall from Council’s deliberations that would be opposed to that methodology and I have no reason to think the City Auditor’s office would be concerned about that. So I think that is an option for us moving forward. The next section (2-0:23:30) discusses Preliminary Assessments, in this case as the Chairperson just pointed out as an example, is where the Chairperson designates the three Board members that will serve on the panel. The panel is called by the Chairperson. The panel has to comply with the Open Meetings Act. There is the same notice requirements and the same participation rules, which is the public or any of the parties can attend but they are not allow to speak at this point, they are just allowed to listen and watch and again the scope of the preliminary assessment is just to determine is the complaint actionable or baseless. I summarize
what the basis is for those determinations in this section. Then we get into the more substantive part of your duties which is dealing with hearings. I put upfront an option for you to consider having a process for preliminary hearings. Those of you who are lawyers or dealt with the legal system are familiar with the process that Courts will often have a preliminary hearing to deal with all the motions that the various parties have filed on procedural points, on substantive points and you may want to get that out of the way before you actually call an evidentiary hearing. You may ultimately choose that those will all be part of the same gathering, a preliminary hearing at 6:00 and then you’re going to have an evidentiary hearing at 7:00. That is your choice. I do think it is wise to have some sort procedure for preliminary hearing. That is an example of something that was not addressed in the Code of Ethics. At some point, I think the Council decided, and I was there with them, that if we tried to legislate every part of this process through the Code of Ethics, we’d still be there talking about it. So to move forward, certain things were put off until this process with the option of procedural rules. Another reason why it would be wise to address some of these procedural points in a preliminary hearing, it of course probably will not have as much as attention in the public as with an evidentiary hearing, because you won’t have to cover certain things such as subpoenas. Subpoenas are a sticky point and as a lawyer, I think it is a complicated factor. Normally I would not extend to a Board of Ethics willingly the power to subpoena. The power to demand that someone show up with or without documents. I think that is a fairly extraordinary thing that should be reserved for civil courts, criminal courts, D.A.’s, that sorts of things, not groups of citizen volunteers, but sometimes it happens. In this case, it’s got to happen in some form in Denton because the voters told us to. That was specifically something that was put in the Charter amendment last November that mandated that the Council adopt a Code of Ethics with a Board of Ethics and address the power of subpoena. We have that in here. That is not something you will find in most City Codes. It’s not something I recommended, but something we need to address because the voters want that in here. So one thing we can address in these procedural rules that the Council did not address would be what the scope of the subpoena is going to be. Some examples that were thrown out during the Council’s deliberations in drafting the Code of Ethics is does that mean we are going to allow a complainant to obtain a subpoena through the Board of Ethics, to go to the local bank and get two years’ worth of some City volunteer’s bank records. I think the concept of doing that was something that nobody sitting around the table voiced their support or excitement about. How you feel about it is a mystery to me, we’ve never met before tonight. But what I put in here was that the subpoena is from this Board, not from a complainant or the accused and the subpoena is for City officials compelling City officials to bring forth data, documents or for themselves to show up and appear before this body. So that is a decision point for you. I have no official feedback on that point from City Staff at this point nor am I going to have any conversations with City Council members at that point. It is something that I thought would satisfy the mandate of the Charter and give this body the tools that you need to go forward to do your duty. If you or others disagree, then certainly we can have that conversation.

LTomlin: I kind of had a thought about that, so you are subpoenaing a City official and a lot of this is like fiduciary stuff, does that mean we would subpoena bank records from someone and then that would become public information? How does that all work? It seems like there might be some confidentiality issues, especially when the preliminary hearing we haven’t even decided whether anything wrong has been done, any violation of the Ethics has occurred.

ABojorquez: I think that it could mean that. I think if Open Records requests were filed, then the City would have to review that material under the usual rules that apply to the Public Information Act and probably the City redacting much of that and seeking A.G. decisions. That is what my recommendation would be is to treat all that material that is submitted in that way. Part of the problem is going to be how does that get used as evidence for exchange for month of partners?? (2:0:29:39) So what if you do subpoena those bank records the City official brings them in submits them to you in compliance with the request. The other parties are seeing that material. What controls do we have over let’s say a complainant taking that material, photocopying that material, release that material, and I don’t know that we would have any control over that. I think that the subpoena challenge that the voters gave us in November is a serious one. I don’t know that what I’ve suggested here is the end of that inquiry or that
discussion. It is my hope that giving this power to you, then you as a Board will use that power sparingly and with caution, because I think it is very easy to get in deep on that point.

LTomlin: I’m an attorney, and there are subpoenas like in criminal cases. But this kind of a subpoena, if they don’t comply, what’s the repercussion for that?

ABojorquez: There is nothing specific addressing that.

DCosimo: The question of garden of proof came up for me, because if the complainant has the burden of proof why would the Board be asking for more information through subpoena.

ABojorquez: The Council was determined to comply with the Charter Amendment, but there was a lot of discomfort about how far was this going to go. The Council was very united in putting the burden on the complainant who has actual not personal knowledge to come forward with specific allegations and facts to support those allegations. It is possible that the complainant or the accused could come to you and ask you to decide to issue a subpoena, and then you’d have a choice to do that or not, but under the spirit of the ordinance, I don’t know why you would.

JDavis: So the way the Code has it, it leaves it open by just saying, “There’s subpoena power.” It exists with no further clarification. But the way you have it written here is writing out your recommendation that it be narrowly tailored to do very specific things, basically a request to staff for information. Asking the City official to produce data, come and testify, whatever, and not a bank and not an employer, external of the City.

ABojorquez: That is my recommendation for your consideration and ultimately the Councils consideration, yes.

LTomlin: Based on this conversation, like you were saying it’s the complainant’s burden, sounds to me like subpoena power is a rare thing, we should do it just in circumstances where they really need it?

DZoltner: Would it be a black hole if we ever considered actually identifying documents or naming items? You mentioned the scope of the subpoena, is that way off limits to comply with the Charter Amendment, that’s a fairly general terms.

ABojorquez: You’re asking if we can in the procedural rules specify the types of documents that are being subpoenaed? I think the answer is yes, we could do that. I think that’s a good idea.

DZoltner: That’s a black hole, rather than an open ended subpoena power, wow.

ABojorquez: So, Mr. Chairman, when we get to the end and discuss modifications, we will address that. Then you would move on to an evidentiary hearing, viewing the complaint at that point. You would allow witnesses to attend and testify, admit evidence, make determinations. Provide some guidance regarding scheduling and calling hearings, much of that reflects what’s in the Code of Ethics. Reminding you from the Code of Ethics what the purpose of those hearings are. Outlining for the Chairperson what their duties are in terms of calling it to order and that sort of thing. I want to take this opportunity to remind everyone that the Chair is entitled to vote. Unlike some boards and commissions, he can also vote.

JDavis: When is abstention otherwise required by law?

ABojorquez: Honestly, you as a member of the Board of Ethics, have a conflicting interest as we’ve defined it in our Code, you’re going to have to do the same disclosure and abstention that any other City official would do on any other board or before the City Council. It’s my opinion that you can choose
to abstain whenever your own personal code of ethics tells you that’s what you’ve got to do. There are no rules in our Code or procedural rules that obligate you to participate or obligate you to vote. There are some rules elsewhere that say you must vote one way or the other unless you have a conflict of interest under this Code or under State Law, but that is not in here in part because I don’t think those kinds of rules are enforceable. You need to abstain when you have a conflicting interest, you are also allowed to abstain when you think it is right. You may choose to do so if, for example, you have very close relationships with someone that has come before you which may not trigger conflicting interest but it may infringe upon your ability to be objective or neutral, or if the public were aware of this relationship it might bring some sort of tank on these proceedings, but that is a personal choice for each of you.

DZoltner: I don’t know if I have an opinion here, but I do know Austin and I believe San Marcos actually has specific recusal provisions for the Board as part of their ordinance, so that might be something we might discuss at some point, rather than to leave it up to your personal stance of ethics do we actually include recusal provisions for the Board.

JDavis: I was going to kind of save that for the end, the general commentary but Mayor Watts brought up a couple of different times in the last couple of work sessions on appointing this Board, when are these folks supposed to recuse themselves, where is that written down? Some other Council members I think had questions along those lines. And then specifically, I think one of his questions was one let’s say I appoint this person to the Board, and here I am appearing before the Board as an accused or complainant, should the person who I as a Council member nominated, should they recuse themselves? Is there anything that requires them to recuse themselves? I have a feeling that it’s a question that is going to come up when these go to the Council, when are we required to recuse ourselves, when should we recuse ourselves? And maybe a little bit more…

DZoltner: … And that’s not part of our Code as it is now written, I believe and in terms of public trust, to have a Board member dismiss the charges against the Council member that appointed them doesn’t go a long way to foster public trust, so we may want to revisit that at some point.

ABojorquez: And those are legitimate questions to have. You can make whatever recommendations you deem appropriate. I’ll tell you that you were not appointed by individual City Council members. That is not the case. You were appointed by the City Council as a body of the whole. There may have been individual City Council members who made their individual recommendations, I understand that, but that is an important distinction. In some other Cities Code of Ethics it provides that each Council member has “their” representative on the Board. That Council member is the only person that can recommend someone and it’s just with the consent of the body versus being appointed by the body. It may seem like a slight difference but I think it’s important procedurally because those other Code of Ethics will say that a Board member who is appointed by a Council member cannot participate deliberations regarding that appointing or that designating or that nominating Council member. That is not what our rules say, that is not what’s in our Code. So if that is something you would want to recommend or perhaps Mayor Watts has questions about that, that’s legitimate to bring up for future modifications, but that’s not covered in our Code. If you’re going to recuse yourself, you’re doing so because the Code requires you to because you have conflicting interests or your own sense of ethics requires it. Maybe you do think that the Council member who nominated me has been accused it would call these proceedings into question if I participate in it so that is my reason for backing off, or maybe the accused Council member wants you to back off for the same reason, they want it to be viewed as a fair and objective process. Our Code doesn’t require that.

RJohnson: During the conducting of the hearing, the witness’ testimony, the complainant and the accused have the right to call witnesses, right?

ABojorquez: They have a right to bring their witnesses there to testify, yes.
RJohnson: Where do the test of relevancy come in or is there one, or is that after they start testifying?
It is my experience is I’ve had a lot of witness lists submitted with 15 people on it, and after I applied
the relevancy test only about four testified. So do we have the ability to determine that before the
testimony?

ABojorquez: There is nothing written in the ordinance that would address that. There is nothing specific
on that point in the rules that I provided you. But if the complainant submitted their witness list and the
accused wanted to challenge that for relevancy and they were to make some sort of procedural motion
these rules would allow you to have that preliminary hearing as a Board of Ethics to decide those sorts
of things. I did not provide you with any standards for determining things like relevancy. And I did
not do that in part because it is uncommon to have that in a Board of Ethics at the municipal level and
also at some point your rules of procedure are going to look like the Texas Rules of Civil Procedure or
the Texas Rules of Criminal Procedure. We can certainly do that, at the first draft that was presented
to you, I chose not to get into that level of debt(?? 2-0:41:59).

LTomlin: I saw on number 22 (Reliability of Evidence) something on relevancy. I actually had
questions on that. I guess it’s just whatever we think is reasonable is what the person relies on?

ABojorquez: At this point. We can certainly flush this out some more.

JDavis: I guess you have, on number 16, it’s kind of along the same subject, even though we are
jumping around, on 16 you have the ability for the opposing party to make objects, specifically on
exhibits, but even if we don’t specifically say that someone can object during testimony, it says, “…all
parties may offer such evidence as is relevant and material…” then especially those people represented
by attorneys may object to relevance in the middle of evidence, the middle of the questioning and
answers, they can object to the question saying that is just not relevant and then we as a Board have to
rule on that objection.

ABojorquez: Yes, if you want to allow that sort of objection to take place during testimony, which we
are used to doing in a court setting, you can allow here or we can prohibit here. Not every aspect of
these procedural rules follow what you would see in a legal tribunal. For example, there is no cross
examination.

LTomlin: I have a question about that with regards to due process. If they can’t cross examine, they
just got to sit there and hope we don’t believe what they are saying, is that what we’re going for?

ABojorquez: Or they can put on their own case or they can question the validity or right ability of
evidence in their closing, so there is a procedure for them to do that before you. I didn’t include cross
examination in an effort to try and simplify, but we can certainly provide for that if that is what you
want your hearings to look like.

LTomlin: Do other Cities hold hearings like that, do they have cross examinations? Or do they just
have one side and then the other?

ABojorquez: It’s all over the place, and most of them do not have procedural rules this detailed. I’ll tell
you that I’ve seen very few Ethics Hearings at this level that contained a lot of the cross examinations
and what not opening, closings. It’s more one side presents their case and sits down. Then the other
side presents their side and they sit down. And it’s never clear who really is prosecuting the case, is the
City prosecuting the case? Is the complainant prosecuting the case? So we tried to answer some of
those questions in this one. I tried to borrow some of this not so much from court settings as from best
practices I’ve observed in areas such as Zoning Boards of Adjustments or Boards of Adjustments or
Boards of Zoning and Appeals, whatever different Cities call that. When those are actually also under State Law very much acting as a tribunal and the sides are putting on evidence, this sort of follows what I’ve seen work effectively there. If you would allow cross examination I think you can, but it just complicates and makes things longer.

LTomlin: Ok, then I guess we’d have to change the 30 minute rule on that, if we want to do that.

ABojorquez: Sure, and if by the end of tonight you want to see those sorts of things in there, I’ll be happy to provide you with draft language.

KMcdaniel: I’m so glad you said that, though because I am probably one of the few people in this room that is not an attorney. I envision more like debt and residences, you know, people who have what they view as a justifiable complaint that they want to bring it to. I didn’t envision that we would be like judge and jury here, you know, I thought we would just be handling like what’s logical, what’s fair and what’s legal. Most people that would come to this I can’t imagine are going to be showing up with their attorneys and things like that. People just want a place for their grievances. What has been the experience so far?

ABojorquez: It differs town to town. I think in most instances probably there are not lawyers involved. But I can cite from personal experience a City of 10,000 people where a Council member filed a complaint on another Council member. The Board of Ethics has some tight rules but have zero rules of procedure. The rule on Ex Parte communication was that no one could talk to anyone. (laughter) The complainant and the accused were not allowed talk to anyone and there was no Staffing assigned. I draw from this experience more than from some of my others because the accused Council member, I don’t work for that City, they hired me to defend them. So it was exciting for me as a lawyer, I’m a City Attorney by trade, that’s my profession, to go into another community and immediately start picking apart their entire Code of Ethics and their procedural parts. My motions to dismiss the case were based both on fairness and justice sorts of arguments, but also on a dozen procedural points. And ultimately the Board of Ethics met and without conducting a single hearing and a public meeting, they moved to dismiss the charges. The City of that town voted to reimburse the defendant Council member for their attorneys’ fees. And so somehow I was eventually paid for by that City’s tax payers. I think they sort of accepted that is the cost of having that system there. I think they agreed that complaint, that issue, was very vague and frivolous, and the Council member should not have go through that, because their Code did not cover the conduct that was being criticized. I bring that up to say that is a town of 10,000 people. So a town of 10,000 people, a Council member is going to hire a lawyer to defend his good name. There is a town I know of 3,000 people where a citizen filed a complaint on the Mayor. The Mayor not only hired a lawyer, but the lawyer hired me as an expert witness. So I’m getting paid expert witness fees to go in and speak to the Board of Ethics of a town of 3,000 people to say the Code doesn’t apply to this procedurally, the complainant goofed up and for 30 minutes I got to pick apart their Code and complaint.

KMcdaniel: So here we are of what, a hundred, almost 200,000 people now?

ABojorquez: And it’s wise for you to think that these sorts of things could happen to you, but the City Council, that had at least a couple of lawyers on it, and one lawyer is a Mayor, did not want our Code of Ethics to be too lawyerly. So we tried to cut out the legalese when we could. We tried to provide the straightforward procedures when we could. I think you’re still going to have that. You’re going to have citizens of Denton who think somebody did something wrong and unethical and want it to receive a hearing and then we are going to have people who involve lawyers, particularly on the defense side. It’s wise for you to be prepared for that to happen. The level to which you allow it to get to function like a court of law is going to be up to you. These procedural rules are going to be an indicator of that.

JDavis: Does that help answer your question?
KMcDaniels: It makes me feel uncomfortable, but it does answer my question and I do understand it. I would certainly hope that we have ethical City Council people. We are giving a lot of examples about Council members and Mayors and stuff, but I just think this is just like somebody got a citation from Planning and Zoning or something about some things, I never thought it would be against City officials. People in this town who are ethically raised, they have good strong ethics have positions in this town.

JDavis: Kind of like Alan was saying, seems like the Council has spent a lot of time thinking about what you are talking about. How legalistic is the process and how is it not. How is it more like a City Ombudsman, you know you just kind of crawl the line and say something’s wrong and someone needs to fix it. It seems like we are the judicative side of that. We have to decide things. You can’t decide things without process and procedure. And we have to at some point kick out the frivolous complaints and the complaints that don’t comply with just being able to fill out a form, because if you just open it up...if we were the tip line like we were talking about, as opposed to the Board of Ethics, we’d meet every day, all day long and not really ever accomplish anything.

DCosimo: So if two people are at odds and they both walk in here knowing what attorneys charge an hour, are we really the right venue for them to battle out their differences?

LTomlin: According to the City Charter and Council. And based on the evidence they present. That’s the part that kind of got me. When I look at harassment and discrimination in use of position and what if we come back based upon the evidence presented, what if it was a baseless complaint, but further down the line it has a lot of substance to it, that the Board didn’t have the information at the time it was decided that the complaint was baseless.

JDavis: Well, none of this is exclusive of if you are hiring attorneys to defend you in front of the City Board of Ethics, well then you can hire them to file a lawsuit or defend your wrongful termination or any of those kinds of things. I understand your concern about being really legalistic and procedure driven but we also have a really narrow area we are over and it is complaint driven. We aren’t needed till a complaint shows up and we have to have procedures to deal with those complaints as they come through the pipeline.

DCosimo: Is there anything in here that says we don’t have to hear a particular one? That maybe it belongs in a different place, like a courtroom?

DZoltner: We are there now. We are not that town of 3,000 where it is personal grievances. This is all about conflicts of interests. Institutional ethics and personal ethics that you are talking about are two different things. So, I know what you are talking about, but I think this Code is very specific. This field is very striped now like it has never been before. There have been instances in the past where the public could legitimately question whether a Council member sitting there, there or there, did cross a line.

DCosimo: Which is why were are here.

DZoltner: Which is why were are here. This is not about personal grievances, so-and-so did not talk to me in the grocery store. That’s not why we’re here. This is all about conflicts of interests. Institutional ethics. And there’s nothing intuitive about institutional versus personal ethics. So there’s kind of a learning curve here for me and for all of us, I think. Knowing what this Code actually says and what it doesn’t say.

DCosimo: Thank you.

JDavis: Back at six or seven…
ABojorquez: The Chairperson’s duties at a hearing shall call to order, calling for the announcement for
the appearance of the parties, and this is a short one, but important to note, if the complainant is not
present, the Chairperson shall dismiss the complaint, close the hearing and it is over. That is a part that
the Council felt very strongly about.

JDavis: But the Board can also, on its own motion consider the opinions.

ABojorquez: Yes.

JDavis: So if somebody doesn’t show up, the Board on its own motion can say, we can hear this on a
different day, we’ll call it on a different agenda, so we don’t have to do that.

ABojorquez: There is the issue of procedural motions. Ideally if you have had preliminary hearings,
you had a chance to address most of those already. But you have an added provision for the day of, at
the actual hearing, procedural motions and deal with those upfront. I left a blank in there, suggesting a
deadline of at least four days before the Evidentiary Hearing that have all procedural motions have filed
in advance so you’ll know what they will before you show up.

LTomlin: So going back to preliminary motions, is there anything in there about when it is or is it just
up to the Board when to have preliminary hearings?

ABojorquez: That’s up to the Board and the Chairperson can call that or the Auditor or the three
members of the Board.

JDavis: The last paragraph of number 8 there, “in addition to other procedural board,” how should that
read there.

LTomlin: Matters?

ABojorquez: Yes, there’s the language about the Board may consider a request to reset. In Section
nine, dealing with evidence, suggesting there be some deadline for the Board of Ethics to request parties
to submit their evidence in a form of identities of their witnesses or witness list, describing what they
will be testifying about and any sworn statements about documentary evidence that shall be considered
and be submitted to the City Auditor, and again, I suggest like four days.

JDavis: That first blank you have in that section, would you recommend four days there also?

ABojorquez: Just to be consistent, that makes sense if you think that is enough time.

LTomlin: I think it would be helpful to have it before so we’re not making a decision the night of before
the hearing.

DCosimo: Is it four days or four working days?

ABojorquez: Is four calendar days for most, so I recommend we be consistent with that but we can
increase it if you like?

JDavis: Let’s put a pin in that and come back when we are actually making changes.

RJohnson: Does the Auditor then distribute the evidence and witness list to the parties?

ABojorquez: Yes, and we can certainly add that in there. Now we come back to the issue of Subpoenas
and get a little more into that. I thought it was worthwhile to have a section on that point. I tried to
underscore the broader point that subpoenas should be narrow and focused and if we were to do something along the lines in which Mr. Zoltner recommended, we could specifically identify documents that we thought would be covered by the subpoena power. This language could be tightened up even further depending on what you think is necessary for subpoenas and what you think the City Council might be interested in.

JDavis: So this contemplates that someone could request, not the Board on its own motion necessarily, but someone could request a subpoena for a particular thing or a particular document?

ABojorquez: Is that something the Board is support about or something that is misplaced?

RJohnson: That would include either the complainant or the accused wanting to have a specific person there to testify, and they can’t compel that person be there, especially if that person is a City employee, other than by subpoena, right?

ABojorquez: Yes, and that is why I put it in there because the scope just covered City officials, it seemed reasonable to me.

LTomlin: So under this, they can request it and we make a determination whether…

ABojorquez: Which would be addressed ideally at a preliminary hearing if you have one.

JDavis: This kind of addresses what Deborah was asking about earlier, in what instanced would the Board need to subpoena some things. I can imagine after looking at the complaint, and say it would be nice to have further information and that we just subpoena our own, but it is much more likely the complainant or accused would know this is the information for the Board to hear. It seems like if you are going to have subpoena power, it has to be requested by someone other than the Board, otherwise you’re not giving action to the requirement that there be a subpoena, it just sits there, which we could do also if we don’t want people to request subpoenas.

LTomlin: I think this way they can request and we can make the determination. Sometimes it might be helpful and we might want that.

ABojorquez: Procedural points, number 11, about labeling and marking exhibits. This just provides some order. Number 12, decorum rule shouldn’t have to be stated, but let’s go ahead and state it. You’re going to have a Chairperson with an iron gavel, I assume, so whether it’s written here or not, it will be enforced. Of course all witnesses have to be administered the oath and provide sworn testimony or they don’t get to testify. This just makes sense, and is typical in any other court proceeding, the complainant gets to speak first and offer up their evidence first. The accused then provides their evidence and their response, this provides for rebuttals. This just provides the timeline for opening statements being 10 minutes.

JDavis: Is 10 minutes kind of standard or is that derived for any particular… it feels like if all of your evidence can only be 30 minutes can you use a third again that time to present the evidence you’re about to present that should be already be laid out to some degree in your complaint. I mean do you get 10 minutes to go on about what you’ve already written down someplace and given a list of that witness on and you’re only going to have 30 minutes to present or is that 10 minutes a free standard across the board?

ABojorquez: I don’t know that there is a standard, so I put 10 minutes as a place holder. If you like five minutes better, we can certainly do that, or something less. It’s up to you.

JDavis: Does anyone feel strongly about 10 minutes versus 5 minutes?
LTomlin: I was thinking about a little less, when you’re talking about the whole…

DCartwright: It’s just their opening statement, and if they needed more time they could possibly even request it and the Chairman of the committee might grant it. If they are not repeating themselves and giving information, I don’t see any reason that they wouldn’t be able to grant more time and if they don’t use the 10 minutes, then that’s fine.

JDavis: And the 30 minutes can be modified too. So if a big complaint walks in the door and the parties or the Board decides to give them more time, then we could adjust it to help them too.

ABojorquez: So we can put five or 10 minutes down, yes the Chair will have discretion to extend these time periods. Number 17, discusses witness testimony. There can be a proper, I specifically built into this, this was my choice and you do not have to support this, but there should not be any cross examination unless the Chair provides for that.

JDavis: I don’t know if you through about this, but one benefit to that is there is no one with a stopwatch starting and stopping deciding how much of your 30 minutes you use or people using up their 30 minutes asking cross questions that they could just as well ask calling them as a witness later on.

LTomlin: I have a question, have you through about the authentication of evidence? Like they are bringing us all these documents, I guess it’s up to us to just believe them?

ABojorquez: Yes I thought about it and yes it’s up to you.

DCartwright: We are going to have to determine ourselves what we are going to believe.

LTomlin: So, the standard of proof, is it? What is our standard of proof?

JDavis: Looks like it just says “Board decides, Board decides” throughout the Code.

ABojorquez: A violation occurred is placed on the complainant, it is the complainant that has the obligation to put forth evidence, including testimony, supporting the complaint. The complainant is required to testify at the hearing. A complainant’s failure to testify at a hearing shall be grounds for dismissal. That is all that the Council gave us in terms of the burden of proof. We discussed various burdens of proof from other settings and there was concern on the Council whether or not a configuration of whoever would be the eventual Board of Ethics or the complainants or the public would understand those preponderance of evidence would be the likely choice and a decision was made not to go there. And so it is just a question of does the majority of the Board think that a violation occurred as stated in the complaint, yes or no, and it doesn’t get any more judicial in nature than that. Do you think it happened as alleged, and if so to what degree. That is what you are left with. And that was a conscience choice.

JDavis: That was deliberate by the City Council.

KMcDaniel: Can we go back to this time think for a minute? So the first part in number 15, their initial statement they have 10 minutes. And then they have a total time of 30 minutes, right? That’s the time limitation to present their witnesses and testimony. And then they have five minutes of the closing. So everyone gets 45 minutes, is that what you are thinking?

ABojorquez: That is correct.
KMcdaniel: Having said that, I think having that 10 minutes up front is … I don’t think it will be used wisely by the person, maybe that’s a better way to put it. Maybe a little less would be better so that they will know they only have this amount of time so I better get going.

ABojorquez: I think there is some support for that, so when we get to the very end and we start discussing what changes to make to this, I know I’m supportive of whittling that 10 minutes down to five. I think you are right. Now it is just a place holder, there’s nothing magical about that number. We discussed legal representation earlier. Council specifically said that either party may be represented by a lawyer if they choose to do so. There is no cross examination, that’s an error on my part. The point I’m trying to get at, the complainant has to testify. But the complainant does not have to be the one to question their own witnesses that they’ve offered, so if they bring a lawyer into the room and they say the lawyer will be conducted the direct examination, they can’t be going back and forth between them like they are taking turns or tag-teaming the witnesses. That’s what I was trying to convey. I’ll fix that.

JDavis: We’ve kind of talked about time limitations so let’s go down to Closing Statements. Are there places where there is an opportunity for a rebuttal by the complainant, say two minutes or something by the complainant, or that just adding more time for us to talk about the same things we’ve all read and heard about?

ABojorquez: I think I provided upfront for an opening for each party and then a rebuttal by the complainant.

JDavis: So if they have time left in their 30 minutes they can present additional evidence, but in closing statement do they get two extra minutes? I was just curious if other places do that, if it is helpful or useful or if it is just adding more time.

LTomlin: The initial person could reserve part for the statement.

DCosimo: So they could divide their time up as they want to use it.

ABojorquez: So perhaps I should add something that just the complainant shall reserve some of their time for the rebuttal.

LTomlin: I think it should be just the complainant.

ABojorquez: On the expedition, the closing shall be declared by the Chair. Again, the reasonably prudent standard in terms of reliability of evidence and in conducting one’s own affairs and that’s relying by other Cities Code. Reminder that the burden of proof is on the complainant. The complainant has to testify. The determinations, I put in here, by default, shall all be voice votes, unless a member of the Board requests that there be a roll call vote. This last part, at some point in the hearing you still have the ability to determine that this should not have been accepted at the beginning. It is possible that an error was made or facts were not understood when this first hit the City Auditor’s desk, and so you have a right to base your determination on that.

JDavis: Like when they testify and say, “I knew about this years ago.”

ABojorquez: Exactly. They may just think they are compliant. This part on alternate members is worth discussing. The only time a super majority is required, is if this Board decides this complaint is frivolous, so we’ve built in a high standard to do that. Provided specific guidance for making that determination. I think it would be everyone’s hope that we have a full Board of Ethics to conduct these sorts of hearings, but a quorum is four. Four out of seven, so there is no real guidance offered in the Code of Ethics as to when alternates must be here. Obviously if a member of the Board of Ethics is
absent for some reason, sick, vacation, whatever just can’t show up, then they have to let the City
Auditor’s office know that within 24 hours of being notified of the agenda of a hearing. We have three
alternates, have been or will be selected by the City Council. There is no particular procedures provided
for in the Code as to when which alternate will be called up, in any particular order, it is random. It
could be alphabetical, City Council could name Alternate One, Alternate Two and Alternate Three. So
the people can understand when they may be on deck because a hearing is coming up. It could be that
the Chairperson is given the authority to pick an alternate when necessary. For sure, we want to utilize
our alternates when we need to make a quorum. Continually putting off hearings because you can’t get
a quorum looks bad. There’s the old justice delayed, justice denied maxim. I just think as a rule, it is a
good idea to have as full of a Board as possible when you have these sorts of hearing come forward.
That’s one thought I’m willing to recommend is to say for simplicity sake, we are putting that burden
on the Chairperson, the chairperson can handle that, unless you have another recommendation you’d
like to make.

JDavis: Any questions on that last point?

DCosimos: So we are going to come together as this committee on a case by case, it’s not that there are
five cases are going to come all at once, one by one?

JDavis: So, in practical fact, probably one by one, unless there is a bunch because we have time limits.
It’s possible we could hear five, six, ten cases all in one night. More likely, just because of time limits,
they will trickle in and we’ll pick them up as they come, unless this gets to be real popular thing to do
in the City of Denton.

DCartwright: I don’t see where there is a time limit where we render our decision and is there going to
be any discussion among the panel members after the parties have closed, among ourselves. Is that
going to be open to everyone or how would we handle any type of discussion on the decision and when
is it required for us to give the results, our decision?

ABojorquez: That’s a really good question, not covered in the procedural rules. The Code says you,
the Board of Ethics shall render your decision within ten business days. As simple vote is all that is
required from those present to decide at the hearing if a violation occurred. And within 10 business
days you may impose a sanction or recommend a sanction as listed in the Code. So that is your deadline.
You can make those decisions at the end of the hearing, but we gave the 10 days in case the night has
gotten late and you want to come back and have your deliberations at another time. Of course you’ll
have to post your agenda 72 hours in advance and go through that again, and so that is where the 10 day
window came up. But I think you’re right, we should add a section at the end on deliberations and
reminding everyone the 10 day deadlines in the procedural rules, that is a logical addition.

JDavis: (2-1:18:35) Was it your position earlier that certain deliberations, depending on who the
deliberation involves could be done in Executive Session or should be done in Executive Session?

ABojorquez: It is my position that when it comes to City officials that they are personnel or officers of
the City. The personnel exception to the Open Meetings Act allows for deliberations in Executive
Session on employees and officers. Now that doesn’t mean decisions get to be made. There are no
final decisions made in Executive Session under the law, but you can have conversations. You can
consult with City Attorney or special counsel behind closed doors, but then you would have to come
out in the open to have your decisions and your votes.

JDavis: If we are already putting together language on deliberations, should that be included, that
deliberations should be … are you inviting that it should happen in Executive Session, or are you
thinking, in your experience, kind of decide on a case by case basis, this is one we should hash out in
front of everybody? In any case, we have to come out and vote in front of God and everybody. Do you have a recommendation of whether all, some or no deliberation should be done in Executive Session?

ABojorquez: Yes, I believe that all, some or none should be done in Executive Session. [Laughter] I think it is case specific. I’m a fan of Executive Sessions when necessary to receive legal advice. When necessary to avoid unduly embarrassing someone. I do believe that those of us that sign up to serve the public through City Hall are opening up ourselves to having our laundry aired in public, and that’s just sort of the downside. Fortunately for me, as a career government lawyer, there are plenty of upsides. Every chance I get in drafting rules, I draft them in a way that preserves the options for the Board. You, for example, as Chairperson could say at this point, “I’d like the Board of Ethics to go into Executive Session,” and you all get up and walk into your meeting room. Or someone says, “Actually, I think we need to stay in Open Session,” and then ok, well, you call a procedural vote. That happens sometimes. You go with the will of the majority of the body that’s present. If the body doesn’t feel strongly one way or the other, then typically they refer to what the Chairperson wants to do. Sometimes there is no need to go into Executive Session. It takes too much time. Just makes a long meeting in this. For others, going into Executive Session at that point is going to really upset the audience members. That really becomes a case by case decision. I see Boards and City Councils wrestle with that all the time.

[Several speak at once]: It’s something we can use, but we don’t have to?

ABojorquez: Yes, I think it is a very worthwhile tool. I think Boards, Councils and Commissions that use it too much risk being vulnerable to criticism of not being transparent. So it’s all part of that balancing act.

DZoltner: I assume there has to be some formality for that Executive Session other than “We’re done talking in public.” In other words, if the City Attorney was there, and were trying to decide the legal advice between one or two sanctions, for example, that would be grounds for an Executive Session, I guess, if our City Attorney were assisting us?

ABojorquez: Under the Open Meetings Act, I believe this Board is allowed to go into Executive Session at any time or at any point to either one, talk to their attorney, be that the City Attorney or if special counsel has been designated. To either ask questions or give comments to the attorney. That’s an option that is provided, or you can go into Executive Session under the personnel exception where officers and employees to discuss the complaint that is filed against them. There is no limitation in the Texas Open Meetings Act on the range of things a governing body can discuss under the personnel exception if they are going back there to discuss an officer or an employee.

DZoltner: An individual rather than a class of employees.

ABojorquez: You’re correct. I don’t think our Code would sustain a complaint against the entire Police Department or the entire Public Works Department. You’re not allowed to go into Executive Session, personnel and talk about entire classification, its specific human being, and in this case, it would be the accused. Therefore, you have pretty broad ability to go back and do that, you just can’t make decisions back there. You can’t receive evidence back there because required by ordinance and you can’t make decisions back there because State Law says so.

DZoltner: But 071 or 074 would cover just about anything that we would have to talk about after…probably.

ABojorquez: I believe so, yes, and that’s my opinion. Again, I love lawyers who give disclaimers while they are talking, but my job is not necessarily to advise you as you go through this, I’ve not been designated special council to you, but for sure your City Attorney’s Office is in this. I have not gone
through this on purpose, we have not been interacting with each other on how they feel about issues
such as that, they’ve let me work independently at this point.

RJohnson: Going through the Burden of Proof, the public sector employment as well as service had
quite a few more regulatory debt trade requirements than the private sector service. Complainant’s that
are pro se typically are unsophisticated in making their points. The complainant makes the allegation
and says he’s guilty of violation A, and has the evidence for violation A. However, violation B and C
are also involved too. But he doesn’t know about B and C, only about A. So he presents his evidence
on A, the Board doesn’t find it credible and move to end it. However, there might be credible evidence
on B and C that wasn’t presented because B and C wasn’t part of the complaint. What does the Board
do in that event?

ABojorquez: That was addressed somewhere, I’m looking where…

JDavis: I’m assuming the answer is not find an answer for ex parte and tell him what he did wrong, tell
him how to refile. [Laughter]

DZoltner: B and C would be in violation of the Codes, separate but still in violation of the Code.

DCosimo: But it’s only coming before our group for this one thing. The other stuff isn’t relevant unless
that’s brought forward.

RJohnson: Right, we as a Board can only make a decision on A. But if the Board knows about B and
C, what obligation does the Board have or do we have an obligation?

LTomlin: I think it’s in the ordinance that we could file a complaints but then, I think it would get a bit
messy.

ABojorquez: You’re correct, I knew it was in here, took me a minutes to find it. It’s Section 279, of
the ordinance, Complaints. The persons who may submit complaints includes but are not limited to
members of the Board of Ethics. So you can file a complaint at the outset if you become personally
aware of behavior that violates the Code. I believe you could file a complaint if you learn something
during the course of the hearing. At that point, you become the complainant and no longer part of the
Board of Ethics, but I think that possibility is provided for. I think the Chairperson is right, I wouldn’t
want members of the Board going and coaching the complainant afterwards, that would be an Ex Parte
problem. Certainly you could have conversations with others at City Hall. Again, the goal of all this is
not to play “gotcha!” It definitely is one to further conversations and build up that culture of ethical
compliance and nothing about this stops that. So you may not be able to act on B and C because the
complainant didn’t plead B and C, and this Code clearly puts the burden on the complainant. That
doesn’t stop other people from having conversations and trying to get folks to mend the error of their
ways at least going forward if not punishing for what they did in their past.

JDavis: There are some aspects of the Code that A may be pretty broad, and may wrap in aspects of B
and C. It might not be quite as bright line as all that. Might be an opportunity to rule on some of those
things.

DCartwright: If the allegations is found true by the Board, when do they have any kind of discussion
about the punishments can be, is that handled in Ex Parte, or is it handled…

ABojorquez: It’s handled at the conclusion of the hearing. It can be in an open or a closed session.
DCartwright: An open discussion on... because finding if it’s true, I think everyone here will hear the same facts and we aren’t going to argue amongst ourselves like a jury would, but the punishment, I can see how, I think it’s called punishment, what we’re going to do, there could be a lot of discussion.

JDavis: That could go down in any number of ways. Someone could, as soon as we render an opinion, someone could say that they move that the Board render a letter of admonition. Then we gave discussion on that motion, that motion seconded, discussion or someone could just launch into discussion as to what could happen next. That could happen any number of ways. Are there Cities that are set up as to how that is to happen next or do most leave it open to the Board to decide or care to decide how that part of the deliberation goes forward?

ABojorquez: Most leave it up to the Board.

DCartwright: I like the idea of the Chairman as king if there is any motions for punishment, do we call it punishment or something else?

[Several say at once] Sanctions

JDavis: So it’s your recommendation is to leave it more general, that the Board can take it up as it sees fit, individual cases. Sometimes it will be really clear and somebody is going to have that motion ready to go, other times maybe there is more discussion oriented path.

ABojorquez: Yes, and I’d be inclined to leave you with that discretion unless you find in all your experiences that it is just too cumbersome.

JDavis: And we can ask the City Council to update these procedures as well.

ABojorquez: In going back to Mr. Johnson’s comment a moment ago, if you look the actual requirements for a complaint in Section 2-279, (c)(5), requires them to give the nature of the alleged violation, including (whenever possible) the specific provision of this Article alleged to have been violated. So the wording of the Code itself anticipates sometimes they may not be able to say A, B or C. But they are giving you a specific set of facts, they are giving you some evidence, and you may be the body deciding if this violates our Code and if so, what section, so that may come to bear on this scenario you mentioned. We discussed this, this was something the Council debated, do we say that in your complaint you list the section or sections that were violated, and if you don’t, you’re out of here. They debated that and we settled on this is the language. We are asking them to give us the specific section, point to what you think was violated, but if you don’t have it, we’re going to proceed anyway.

JDavis: Are there any other general questions on the document as a whole? Earlier I mentioned, I talked in terms of motion, amendment and discussions on those things. Based upon our conversation thus far, that seems premature. Give me feedback on this. It seems we have asked for a lot of language and a lot of things we’re not going to be, at a quarter to nine at night, go through and edit line by line, and we also have a of discussion with the City Council. I’m interested in your suggestions as how to proceed. It seems like maybe we should give Alan our thoughts and consensus on these things we’ve discussed as opposed to chapter and verse, here is how we want it to read just at this exact moment. Does that make sense? A consensus of what we want it to be and then he has some language to help us out with.

DCosimo: I have a question, I don’t think that it’s in there, in the ordinance, Nepotism is kind of stuck at the end, and I wonder if that is a prohibition or why is it in there?

ABojorquez: It’s stuck at the end because it was one of the last things we talked about. Nepotism is covered already by State Law, but the Charter amendment required that the Code of Ethics also address
it. So Council did and made it more stringent than State Law and that is why it is in there and at the
end. It was in your Charter before, part of the repeal that occurred in November. The Charter revision
that was adopted required that we address it. If we don’t have a motion and a vote tonight on these
procedural rules, that’s fine. I think the consequence of that is that you’re going to have to have another
meeting well in advance of what the Council does on the 21st, is that right?

BLangley: Yes.

ABojorquez: So that’s fine, if that is what you choose to do, that means you’re going to have a meeting
in the first three weeks of August.

JDavis: Here’s my question for you or Bryan, so the proposed timeline, exhibit 3, proposed timeline.
Exhibit 3 – Proposed Board of Ethics Timeline
So we’ve got July 31st – review and revise draft rules of procedures, which we’ve been working on.
August 7th – City Council would discuss the rules and procedures and then another meeting, already
contemplating the week of the 14th, to discuss the changes related to Council’s discussion. Is that
necessarily required that we have a motion and a vote, or can we give Alan some direction and say by
consensus this is what we think ought to be updated. The Council then gives their direction, based on
that kind of consensus document. Then it’s going to come back to us anyway for a final
recommendation of Council and then their discuss and adopted based on our final recommendation. So
do we have to motion back and forth, between the two bodies or can we work by consensus now and
then do a motion towards the end?

BLangley: This was a tentative schedule that we had put together several weeks ago just trying to
outline the process that we would get to be live and have all the rules and procedures in place by
September 1st. One of the things I’d like to have is Alan available to present to the Council. He’s not
available to present till the 21st. That is something that will change the schedule just in and of itself.
My recommendation to you is that you get the rules as you see them set, draft them as you see them,
then take them to Council. Vote to approve those, formal motion, and then we take them forward to the
Council. Not necessarily having work sessions back and forth between this committee and the Council.
Make your recommendations, we take them to the Council, they can choose to act on them or modify
them as they see fit.

JDavis: So you’re recommending or requesting that we make a recommendation to Council tonight
on…

BLangley: Either tonight or we bring it back to subsequent meeting. We didn’t know how the
discussion would go, if you’d be comfortable making that recommendation tonight or you felt like there
were substantial changes that you’d like to see, we can come back with a redline version of that in
another meeting, let you look at that and then you could make a motion at that time. It’s really at the
Board’s pleasure how you want to do it. Certainly, if you want to do that tonight with some direction,
changes that you’d like to see, we will be happy to take that forward but if you want to also see the
changes, we can do that too, just up to you.

JDavis: There’s a lot of little things that we could change quickly, but we also asked for some things
like language, adding citations to the Code, how are panels selected? Things that we may or may not
be able to fully articulate. And if you’ve got language in your back pocket, from other Cities, then
maybe that is something we can do tonight. What is your sense of moving forward? Do you think that
we are ready to put a recommendation together tonight? Or do you think you’re more willing to come
back another time after we give Alan some direction and he brings us another document?

DCosimo: About how many items do we have? Less than ten?
JDavis: So, Alan’s been making some notes, by my count we asked for language on recusal, when we should recuse ourselves, adding citations to the Code whenever applicable. We asked for language for Panels and alternates, how panels should be picked and what rotating basis means. We changed board to matters on section eight. Talked about days and deadlines under section nine. We penciled in four days but didn’t come to a decision. We didn’t come to a decision on any of this stuff, we just talked about it. We had questions in section nine about adding language for the Auditor to distribute those things that are filed, things that get filed with the Auditor and how they get those out to us. We had a discussion about time limit in section 15. We had a discussion about closing statement times and rebuttal in section 20. We had a general discussion about deliberations. I don’t know that we asked for any specific language on deliberations, just some clarifications. Alan, did I miss anything?

ABojorquez: (2-1:40:24) (several talking)...there are things on my list, and of those, probably about three of them are ones where we have a consensus or recommendation from the Board. The issue on recusal, I understood what you wanted on that, and the language I bring you back on that. If you want openings to be five minutes or three minutes that’s just a decision point. Most of what you listed off I have adequate language to prepare a draft and forward it onto Council, with just a couple of those points are matters for you to discuss and vote on. So do you want to plow through those handful tonight and be done with it? Or do you want another draft and another meeting?

DZoltner: Well, I personally have no problem with bringing this up again. I’d really like to have some time to think about what we’ve heard tonight. Maybe I missed it but the scope of subpoenas could be an entire meeting by itself. We haven’t even scratched the surface. I was listening for that and that is a huge topic right there that we haven’t.

LTomlin: I just had to step out, and while I hate to say let’s add a meeting, I feel like we need to add a meeting.

JDavis: I’ll use recusal as an example, we could, tonight, there could be a motion from the floor to adopt as presented, we could have amendments to change this word, change that word, and we go all the way through that process, and then at some point, if we want recusal language in there, just as an example, there’d be an amendment to that motion to add in recusal language, TBD. That would then go forward to City Council with whatever the TBD that Alan fills in, that’s not to say we wouldn’t like it but that’s to say it wouldn’t come back to us before that goes to Council there’s no recommendation. Does that make sense? So, unless we had that recusal language in front of us, we’d have to be comfortable sending it with “we recommend you adopt it” with whatever Alan wants to add. I don’t know if we’re comfortable doing that or rather add an additional meeting.

DCartwright: I’d rather have an additional meeting. This is the first time I’ve seen it tonight, and I haven’t been to any of the prior meetings of the Council or work sessions or anything.

JDavis: In your defense Don, we got this draft yesterday by email. Not to sound like a lawyer, but it is a lot to consider. It sounds like we’re asking for an additional meeting, I’m not advocating one way or the other, but it sounds like we need to make clear to Alan what we need different in the next draft and then at our next meeting consider that draft the more complete draft he is going to bring back to us.

LTomlin: I think if we have another meeting, it don’t think it will be as long as this one.

DZoltner: If we need a motion, I’m going to make it. We have another meeting to consider the changes, suggestions that are going back to Alan and a draft “B” or whatever we are calling this.

JDavis: Is there a second to that?

LTomlin: I’ll second.
JDavis: Is there any discussion? Is the motion clear to everyone?

DCartwright: Will he work on the draft on the things that we’ve suggested tonight already, will that be available for us at the next meeting, so we won’t be sitting at the same place that we are right now?

ABojorquez: Yes, I’ll take these points. I will prepare language for the things that you indicated that you wanted. Examples of what I think is where you are headed, the easy fix we made and you will have that in advance of the next meeting so you can review it in advance and discuss about specifics when you have your next meeting.

JDavis: Alan, before we vote on that motion, is there anything that we’ve asked about that wasn’t clear, or didn’t seem to be clear consensus about or that you need more direction from us on?

ABojorquez: I don’t think so. The only thing that is little bit vague is the subpoena language, but I think I know where you’re headed and I’ll find some good language to suggest.

JDavis: Any other discussion on the motion? Those in favor of the motion on having an additional meeting and considering a second draft at that time, say aye.

[Several said “aye”]

JDavis: Any opposed? [Silence] Then that motion carries. If there is no objection, that moves us out of Agenda item F and into Agenda item G, which would be holding a discussion about a future meeting. [Laughter] On our agenda, it appears as giving staff direction regarding the scheduling of future Board of Ethics meeting. What kind of direction does staff have?

G. Hold a discussion and give staff direction regarding the scheduling of future Board of Ethics meetings.

BLangley: What we would like to do is bring this back to you, bring back a redline version of the Rules of Procedure and have you look at those with the items to approve those. I’m asking Alan to check his schedule. We need to have him back up here for that so he can present those to you and if there are any questions about the language and to walk you through it. Give us just a moment and we’ll have a couple of days.

JDavis: Ok, five minute break.

[Members break] 9:05pm

JDavis: We are back in session at 9:13pm, we had a question for staff about available dates and that involves Alan’s available dates as well and Bryan do you have a best date for us?

A. Scheduling of next meeting(s).

BLangley: We support August 13th would be the best date for us. That would allow you to come back, look at the language, we’ll have a redlined to you, have a discussion about it, hopefully provide a recommend it to the Council that date, then we bring it forward to the Council on the 21st. Alan is also available on August 20th if the 13th does not work for you. But if that were to be the case, we would not be able to present that to the Counsel on the 21st, there’s just not enough time. I don’t want to surprise them with the language, I want them to have it in advance, just like you want to see it in advance, so I’d have to push their approval date back to the 28th. Their process is to have everything approved by September 1st. It would still be possible, but if they had any changes, questions or any issues, they wouldn’t be able to make that. My preference is to try and make that August 13th date, if that works for
the Board and then that would keep us on that schedule to be ready for the 1st. So, Monday, August 13th, at 6:00 p.m.

LTomlin: The 13th would be good for me, the 21st is getting too close to my due date.

JDavis: Do we have a general consensus on the 13th then? [It was affirmed]

ABojorquez: We’ll have the documents to you in advance, so if someone cannot attend the meeting on the 13th, you are still free to send me your comments, suggestions, questions and I’ll share that with staff and make sure those are represented at the meeting so if that helps for anyone who will miss the meeting on the 13th.

JDavis: And I guess staff will communicate that to everyone on the Board, even those who were not here tonight, we’ll be noticed in the same way?

BLangley: We’ll send out an email with all the information.

JDavis: Any other questions or comments on item G? [No response] Section 2, and concluding items?

3. Concluding Items.

RJohnson: It might be good to have each other’s contact information.

JDavis: I would agree with that. Are there any best practices with regards to Board members sending group emails?

TLansford: We cannot recommend you send group emails because that would be a TOMA violation. But we can get a roster of all of you together.

JDavis: Is there any other standard advice you give other boards and commissions regarding how they use each other’s contact information. How many of them are allowed to be on an email before it becomes a problem?

TLansford: Well, you can’t have quorum if you want to email, and we cannot recommend that you purposefully do one less than a quorum to intentionally skirt TOMA because that could also be considered a violation that you’re intentionally trying to do it. You can contact by email to note you will not be there, you can contact the Chair of the Chair notes he is not going to be there, he can contact other to let them know he is not going to be there.

JDavis: Does that make sense to everyone. Does anyone have any questions about communicating with each other outside of meetings? Some of us have been on boards so its habit. That’s a great idea, we can do a roster, make it available?

BLangley: Yes.

JDavis: With that is there a motion to adjourn? Laura. Is there a second? I’m going to give this one to Dr. Zoltner. All those in favor? [Unanimous] We are adjourned.

4. Adjourn. (Committee Chairperson) 9:18pm

Minutes taken by Kelly Campbell