

CITY OF SAN MARCOS

ETHICS REVIEW COMMISSION

RULES OF PROCEDURE FOR HEARINGS

HEARING

In accordance with Section 2-444 of the City Code of Ordinances, if the Commission determines that the complaint is in proper form and alleges sufficient facts to constitute a prima facie violation of a provision of the Ethics Code or a state conflict of interest law, the Commission shall schedule a hearing on the complaint **at least 30 working days** after the Commission makes its determination. The following rules of procedures will be used to govern a hearing on a complaint. The rules will allow for the presentation of evidence by the complainant and the person accused, and cross examination of witnesses. The hearing shall be held in accordance with the Open Meetings Act.

EVIDENCE AND WITNESSES

Physical evidence (documents, photographs, exhibits, etc.) must be submitted **at least 15 working days** before the hearing to all parties and the Ethics Review Commission.

The Ethics Review Commission may call city employees as witnesses. The complainant and the person accused may also call any witnesses with relevant knowledge of the matter before the Commission. The witnesses **must** have personal knowledge directly related to the circumstances of the charges. Character witnesses or witnesses without personal knowledge are not acceptable and will not be permitted to testify. The Chair, or the Recording Secretary, will administer oaths to persons who testify at the hearing.

If the Commission decides to call City witnesses, it must notify them **at least 10 working days** before the hearing and the Recording Secretary shall notify such witnesses. If complainant or the person accused wish to call witnesses, they must provide the names to the Recording Secretary **at least 10 working days** before the hearing. If the complainant or the person accused wish to call non-city witnesses, then it is their responsibility to notify such witnesses to appear at the hearing. Witness identity submitted to the Recording Secretary must include the following information:

1. Name of Witness
2. Telephone Number of Witness
3. Email of Witness
4. Department and Supervisor of Witness
5. Brief description of relevant testimony to be offered by the Witness

PLACING WITNESSES UNDER THE RULE

Upon request by either party or the Chair of the Commission, the witnesses on both sides shall be sworn and removed from the hearing room so they cannot hear the testimony as delivered by any other witness in the case. Both the complainant and the person accused may stay in the hearing room, regardless if they are later called to testify.

Witnesses under the rule shall be instructed that they are not to converse with each other or with any other person about the case, other than the attorneys or representatives in the case.

REPRESENTATION

The person accused of a violation, and the person or persons alleging the violation, may be represented at the hearing by any person of their choice, including an attorney. Only one person will act on behalf of each side in the presentation of the case before the Commission.

HEARING PROCEDURES

The format for hearings on alleged violations of the Code of Ethics will be as follows:

- (1) Introduction of hearing by Chair and having all parties introduce themselves for the record. Attorney representing the Commission shall outline the nature of allegation, ordinance provisions involved, and issues to be determined by the Commission.
- (2) Presentation of evidence by complainant of violation (including testimony, witnesses, documents, tangible items). Witnesses may be cross-examined by accused person or representative and members of the Commission.
- (3) Presentation of evidence by accused person (including testimony, witnesses, documents, tangible items). Witnesses may be cross-examined by complainant or representative and members of the Commission.
- (4) Commission may request the testimony of any witness or evidence they deem relevant to the hearing.
- (5) Rebuttal presentation of evidence by complainant.
- (6) Rebuttal presentation of evidence by accused person.
- (7) Summation remarks by person alleging violation or representative.
- (8) Summation remarks by accused person or representative.

SUMMATION

The complainant and the person accused or their representatives will have a maximum **of ten (10) minutes** to summarize.

DELIBERATIONS

The Commission may recess into Executive Session to determine, by a preponderance of the evidence, whether any of the alleged Code of Ethics rule violations were committed. Once the Commission has adequately discussed the matter in Executive Session, the Commission must then reconvene the hearing into Open Session and render the determination in Open Session. If the commission determines at the conclusion of a hearing that a violation has occurred, it may impose or recommend any of the sanctions authorized by Section 2-444 (e) of the City Code of Ordinances. If the Commission determines that a good cause for continuance exists, the hearing may be continued to a future date.

DECORUM

Both the complainant and the person accused and representatives must be respectful to Commissioners, witnesses and each other. No person present shall be permitted to indulge in

personalities, use language personally offensive, and question motives of the Commissioners or charge deliberate misrepresentation. IT IS IMPERATIVE THAT THE CHAIRPERSON MAINTAIN ORDER AT ALL TIMES. THE CHAIRPERSON MUST NOT PERMIT DEBATE OR COMMENTS FROM ANY PERSON WHO HAS NOT BEEN RECOGNIZED. INTERRUPTIONS MUST BE SILENCED BY VOICE, USE OF THE GAVEL OR OTHER MEANS, AND, IN THE EVENT OF ANY PERSON'S FAILURE TO HEED THE DIRECTIONS OF THE CHAIRPERSON, THE OFFICER MAY HAVE THAT INDIVIDUAL REMOVED FROM THE ROOM.

All cell phones must be either turned off or on the vibrate mode and there will be no loud talking while witnesses are testifying.