



Council Chambers at City Hall
2221 N. Phillips Ranch Road
Granite Shoals, TX 78654
www.graniteshoals.org

NOTICE OF AGENDA
ETHICS REVIEW COMMISSION
ETHICS REVIEW COMMISSION PRELIMINARY HEARING

WEDNESDAY, APRIL 12, 2023 AT 6:00 PM

AGENDA

Notice is hereby given of a meeting of the Ethics Review Commission of Granite Shoals, Texas to be held on the above-mentioned date, and location for the purpose of considering the following agenda items. All agenda items are subject to action. The Commission reserves the right to meet in closed session on any agenda item should the need arise and is applicable pursuant to authorization by Title 5, Chapter 551, or the Texas Government Code.

From your tablet, desktop, or phone: Join Zoom Meeting
<https://us02web.zoom.us/j/85302687631>
Meeting ID: 853 0268 7631
Passcode: 933103

1. Call to Order

- 2. Public Comments** *At this time, any person with business before the Commission not scheduled on the agenda may speak. No formal action can be taken on these items at this meeting. No discussion or deliberation can occur. Anyone wishing to speak under this agenda item must complete a Comment Card and submit to the City Secretary prior to addressing the Commission.*

3. Meeting Minutes

- 3.a Consider approval of meeting minutes from December 13, 2022
[Ethics Review Commission MINUTES 12 13 2022.pdf](#)

4. Regular Items

- 4.a Preliminary Hearing to review, discuss, and determine possible action regarding a citizen complaint filed March 17, 2023.

- The purpose of the preliminary hearing is to determine, at the conclusion of the hearing, if there are reasonable grounds to believe that a violation of the ethics ordinance has occurred. The Commission reserves the right to meet in closed session on any agenda item should the need arise and is applicable pursuant to authorization by

Title 5, Chapter 551, or the Texas Government Code.

5. **Executive Session (closed to the public)** Under Texas Government Code Section 551.071, the Commission may go into executive session to consult with the city attorney to seek or receive legal advice.
6. **Future Agenda Items**
7. **Adjournment**

Certification

I certify that the foregoing agenda has been posted at Granite Shoals City Hall, 2221 N. Phillips Ranch Road, both on the indoor bulletin board and outdoor notice boards of City Hall which are accessible to the public at all times, and the city website at www.graniteshoals.org April 6, 2023, on or before 6:00 PM and shall remain there continuously from such time until after this meeting is adjourned which begins on April 12, 2023, at 6:00 PM. Requests for accommodations or interpretive services must be made 8 hours prior to this meeting. Please contact the City Secretary at (830) 598-2424 for further information.

Dawn Wright ~ City Secretary

The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by Texas Government Code Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), 551.087 (economic development), and/or 418.183 (homeland security).

V.T.C.A., Penal Code § 42.05, § 42.05. Disrupting Meeting or Procession

(a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor. Credits: Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994. V. T. C. A., Penal Code § 42.05, TX PENAL § 42.05 - Current through the end of the 2015 Regular Session of the 84th Legislature.

Pursuant to Section 551.045 of the Texas Government Code, reserves the right of City Council to hear emergency items when there is imminent threat to public health and safety.





**ETHICS REVIEW COMMISSION FINAL HEARING
TUESDAY, DECEMBER 13, 2022 – 4:30 PM
CITY COUNCIL ROOM
2221 N. PHILLIPS RANCH ROAD**

MINUTES

Notice is hereby given of a meeting of the Ethics Review Commission of Granite Shoals, Texas to be held on the above-mentioned date, and location for the purpose of considering the following agenda items. All agenda items are subject to action. The Commission reserves the right to meet in closed session on any agenda item should the need arise and is applicable pursuant to authorization by Title 5, Chapter 551, or the Texas Government Code.

Virtual Meeting Details

Join Zoom Meeting

<https://us02web.zoom.us/j/86262048889>

Meeting ID: 862 6204 8889

Passcode: 720857

1. Call to Order

Call to Order at 4:35PM

Attendance:

Mark Morren

Jeff Kahl

Seth Smith

Peggy Smith

Susan Neville

Josh Katz

- 2. Citizen Comments** *At this time, any person with business before the Commission not scheduled on the agenda may speak. No formal action can be taken on these items at this meeting. No discussion or deliberation can occur. Anyone wishing to speak under this agenda item must complete a Comment Card and submit to the City Secretary prior to addressing the Commission.*

No comments submitted.

3. Consider approval of meeting minutes from November 21, 2022

- On page 5 there is a typo. "E" needs to be stricken from the minutes.
 - Motion to accept the minutes with the suggested correction was made by Jeff Kahl and seconded by Seth Smith.
 - No further discussion.
 - Voting was unanimous.

Ethics Review Minutes 11-21-2022

4. Hold public hearing on ethics complaint against Councilman Phil Ort pursuant to Code of Ordinances Section 2-172(b)

1. *Open public hearing*
2. *Public discussion*
3. *Close public hearing*

- Public Hearing Opened at 4:47 PM
 - No public discussion.
 - Josh Katz reviewed the guidelines for executive sessions.
 - Public Hearing Closed at 4:49 PM

5. Discuss, consider, and possibly take action to determine whether a violation of the Ethics Ordinance has occurred.

The committee read aloud the following:

I. BACKGROUND

The final hearing on the ethics complaint filed by Ms. Bushart against Councilman Ort is scheduled for December 13. The City Attorney serves legal counsel to the Ethics Review Commission (the “Commission”) and must advise the Commission and take part in its proceedings. See Code of Ordinances Section 2-170(a). At the preliminary hearing that took place on November 21, 2022, the Commission found that there were reasonable grounds to believe that a violation of the ethics ordinance (Chapter 2, Article VI of the Code of Ordinances) had occurred for each of Ms. Bushart’s complaints against City Councilman Phil Ort.

The purpose of this memorandum is to summarize some issues related to the procedure for the final hearing. The City Attorney is directed by the Code of Ordinances not to advise the

Commission on the merits of the complaint. See Section 2-170(c)

II. FINAL HEARING

Section 2-172(b) of the Code governs final hearings. It states:

- (1) A final hearing shall be held as expeditiously as possible following the determination by the commission that there are reasonable grounds to believe that a violation of this article has occurred, but in no event shall it be held more than 30 days after said determination. The commission may grant two postponements, not to exceed 15 days each, upon the request of the city official or city employee named in the complaint.
- (2) If a complaint proceeds to a final hearing, the commission may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records, or other evidence needed for the performance of the commission's duties or exercise of its powers, including its powers of investigation.
- (3) The issue at a final hearing is whether a violation of this article has occurred. The commission shall make its determination based on the evidence in the record. All witnesses shall make their statements under oath. If the commission determines that a violation has occurred, it shall state its findings in writing, identify the particular provision(s) of this article which have been violated, and within five working days deliver a copy of the findings to the complainant, the person named in the complaint, and the city secretary. The city secretary shall deliver a copy of the findings to the city council, the city manager and the city attorney.

As this section of the Code of Ordinances states, at the final hearing, the Commission may swear in any witnesses it wishes to hear from and consider any evidence in the record, including their testimony and any written evidence, which primarily will be the complaint itself and the City's ethics ordinance.

III. Open Meetings Act

The Texas Open Meetings Act ("TOMA") applies to Commission proceedings. The agenda for the meeting will be posted at least 72 hours in advance of any meeting or hearing, and the public may attend.

In general, the Commission's discussion and deliberation must take place in public or "regular" session during its meetings. However, several exceptions to TOMA allow the Commission to adjourn into executive session, where the public is not allowed to attend. The choice of whether or

not to go into executive session belongs to the Commission, and not a member of the public or a party to an ethics complaint. Importantly, while the Commission can discuss issues in executive session (if allowed by the particular exception), it may not take any action. Any action taken must be in regular session.

Under Texas Government Code Section 551.071, the Commission may go into executive session to consult with the city attorney. The purpose of this category of executive session is for the Commission to seek or receive legal advice. The Commission cannot conduct its hearing or have its deliberation under this type of executive session.

Texas Government Code Section 551.074 also allows the Commission to go into executive session “to hear a complaint or charge against an officer or an employee.” If the Commission chooses, it can adjourn into this type of executive session to conduct the final hearing. However, under subsection (b) of this section, the officer or employee who is the subject of the hearing must be given the option to request that the hearing occur in public instead. So, if the Commission wishes to adjourn into executive session under Section 551.074, it must first ask Mr. Ort if he prefers the final hearing to occur in public or regular session, and if Mr. Ort requests that it be public, the Commission may not hold its hearing in executive session under this provision of TOMA.

IV. Sanctions and Violations

At the conclusion of the final hearing, the Commission must determine whether it believes a violation has occurred, then issue its findings in writing, identifying which provision(s) of the ethics ordinance it finds have been violated. Section 2-172(b).

If the Commission finds a violation has occurred, it has the authority to issue sanctions. It may also receive additional testimony or statements before adopting sanctions, but it isn’t required to do so. Section 2-173(a).

The Commission can, on its own, impose the following sanctions pursuant to Section 2-173(b):

- (1) A letter of notification is an appropriate sanction when the violation is clearly unintentional. The letter of notification shall advise the city official or city employee of any steps to be taken to avoid future violations.
- (2) A letter of admonition is the appropriate sanction when the commission finds the violation is minor.
- (3) A letter of reprimand is the appropriate sanction when the commission finds a serious violation has been committed.
- (4) A letter of censure is the appropriate sanction when the commission finds that a serious violation has occurred, or more than one serious violation or repeated serious violations of this

article have been committed.

A copy of the sanction letter adopted by the Commission must be sent to City Council. Section 2-173(c).

The Ethics Ordinance also states in Section 2-173(d) that “when the seriousness of the violation warrants, the commission may recommend to the city council the suspension or removal from office of any official serving in a city-appointed position.” However, this does not appear to be a power that state law grants to the Ethics Commission or City Council.

- Josh Katz clarified the law and powers of the City Council and the Ethics Commission.
- Seth Smith stated that evidence has been received and reviewed.
 - No further testimony was received.
 - Seth Smith listed the proposed violations.

■ TX Government Code:

Section 552.021

Section 552.004

Section 552.228

Section 552.223(a)(b)(c)

Granite Shoals Code of Ordinances:

Sec. 2-167 (a)(3)

Sec. 2-175 (c)

Sec. 2-168 (a)(1)b

- Motion was made by Jeff Kahl that violations listed have occurred.
 - Seconded by Seth Smith
 - Ms. Bushart asked the committee concerning the second page of the complaint.
 - Seth Smith noted the code of ordinances listed as being:

Sec. 1-10

Sec. 1-11(c)

Sec. 2-175 (c)

- Amended motion was made by Seth Smith to add ordinances as listed above to the initial

motion.

- Seconded by Jeff Kahl.
- No further discussions
- Voting was unanimous. Motion carried.
- Ms. Bushart asked the commission when they received the complaint and feels that it was not properly reviewed.
 - Mark Morren stated that they are addressing it today and the commission is doing everything they can to address this issue to the best of their ability.

6. Discuss, consider, and possibly determine appropriate sanctions if the Commission determines that a violation has occurred.

- Jeff Kahl made a motion to approve a letter of censure as the appropriate sanction as listed in Section 2-173(a)(4).
 - Mark Morren seconded the motion.
 - Seth Smith asked if Mr. Ort had responded to any of these matters.
 - Peggy Smith confirmed that no response has been received at this time.
 - Ms. Bushart asked about the items in the complaint that the commission does not have jurisdiction over and who would be responsible to submit these to the district attorney.
 - Josh Katz responded that this is of public record and an investigation is underway from a previous complaint. Any member of the public can make a referral to the District Attorney. Ms. Bushart asked if the city could make that referral.
 - Mr. Katz explained that it would have to become an agenda item before the City Council and clarified the roles of the city ethics ordinance and criminal violations and the procedures of each.
 - Jeff Kahl asked if the Commission can make recommendations to the City Council on the next steps of the proceedings.
 - Mr. Katz stated that the council will make their decisions based on the information received and input from the city attorney and the city manager.
 - Ms. Bushart thanked the commission for their service and considerations for confidentiality for future complaints.
 - Discussions continued on the processes that were used.
 - Voting was unanimous and the motion carried.
- The Commission will have five business days to compose the letter of censure.

7. Future Agenda Items

- No future agenda items were discussed.

8. Adjournment

- Mark Morren moved to adjourn.
 - Seconded by Jeff Kahl.
 - Meeting adjourned at 5:30 PM

9. Resources

Texas Government Code and Granite Shoals Ordinances

10. **CERTIFICATION**

I, Mark Morren, certify that the above minutes are true and correct from the Ethics Review Commission hearing of December 13, 2022.

Mark Morren - Committee Chair _____

Attest:

Dawn Wright, City Secretary _____