

**RULES OF PROCEDURE FOR CERTAIN EVIDENTIARY PROCEEDINGS
BEFORE THE CITY COUNCIL OF DALLAS, TEXAS
AS AMENDED, MARCH 5, 2003**

PRELIMINARY: These rules apply to any pending or future proceeding wherein the Council investigates, considers evidence, adjudicates applications for rates, consent to transfer of control, grants, renewals, or modifications of franchises or licenses, or other relief, or otherwise acts in a quasi-judicial capacity, as to an entity or other person as to which the Council asserts jurisdiction to set rates or consent to transfer of control, or require a license or franchise, or from which the City asserts the right to receive license, franchise, or other fees for use of the public right-of-way; and to any other proceeding to which the Council votes to apply these rules. If the Council applies these rules to a proceeding to which these rules do not otherwise apply, the City Attorney will provide reasonable notice to the parties. Despite the use of terms such as "evidentiary" in these rules, the rules of evidence do not apply to proceedings governed by these rules except as may be expressly provided herein.

1. The Council shall rule on the following issues. In Addition, the Council may pursuant to these rules delegate the power to investigate, and recommend findings of fact, conclusions of law, sanctions, orders, and other matters to appropriate persons for report back to the Council for action:

- 1.1. The admissibility of information (including claims of privilege);
- 1.2. All procedural questions whether arising under these rules or otherwise;
- 1.3. All other interlocutory questions including the suspension or modification of these rules or any portion hereof and the extent, if any, to which any such suspension or modification is to be retroactive.

2. Any member of the Council may at any time request the advice or other assistance of the City Attorney. The City Attorney and any assistant city attorney may both advise the Council and represent the City staff at any proceeding.

3. For good cause and upon such notice as is reasonable under the circumstances, the Council may suspend or modify these rules or any provision hereof as to any proceeding or any stage of, or issue in any proceeding, or apply these rules to matters to which they would not ordinarily apply.

- 3.1. Any such suspension, modification, or new application shall apply retroactively except to the extent necessary to avoid unfair surprise or unfair prejudice to a party.
- 3.2. Five calendar days notice is rebuttably presumed to be reasonable notice under this section. The City Attorney will serve the notice that the rules are applied to a proceeding upon all persons who would be parties to the proceeding if these rules applied.

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3A. Any applicant to the Council for the substantive relief that provides the reason for commencing a proceeding, any person with a concrete interest in the outcome of a proceeding, any person expressly entitled to participate in a proceeding under applicable federal or state law, or under any provision of the City's charter, code, ordinances, or these rules, and the City staff by and through the City Attorney is entitled on request to the Council to be designated a "party," except that City staff and any applicant are rebuttably presumed to be parties.

3A.1. Persons not entitled to be designated or presumed to be parties may request leave to appear and be heard on specified issues or at specified stages of a proceeding upon reasonable written notice to all parties. The Council may grant such request, in whole or in part and under such terms and conditions as may be appropriate to avoid prejudice to any party and to avoid unnecessary delay, expense, or complexity.

3A.2. Governmental units, individuals, and non-governmental organizations with an interest in a proceeding may request leave to appear and be heard on specific issues as non-parties, but the Council may designate lead participants to represent those with similar interests and may impose additional terms, conditions, and limits in the interests of efficiency and fairness to the parties.

3A.3. Non-parties who are permitted to appear and be heard are not entitled to examine witnesses, propound discovery, examine documents or things, be present at depositions, or introduce information without additional leave of the Council. The Council may limit them to written presentations only, and may otherwise limit the manner, scope, length, and duration of any permitted presentation.

3A.4 Anyone other than the City Attorney seeking any determination or action by the Council in respect of a pending proceeding, and any party responding to any such request, shall communicate that request or response to the Council by serving the same on the City Attorney, with notice to all parties. However, whenever these Rules provide that a paper be filed with the City Secretary with copies to all parties, no additional service upon the City Attorney or other parties shall be required and the filing with the City Secretary and copy to the City Attorney shall constitute a request under this paragraph 3A and its subparagraphs.

3A.4.1. Promptly upon receipt of such request, the City Attorney shall seek any needed clarification of supporting information from the requester and, upon receipt of such information, promptly relay the request together with any responses from any other party, and any appropriate additional information or clarification to the Council with notice to the requester and to all parties; and

3A.4.2. The City Attorney shall add the request as an item on the Council's agenda within a reasonable time, subject to consultation with the City Manager and the Mayor as to schedule and agenda priorities of the

Council. Such considerations may also cause the agenda item to be deferred from time to time.

3A.4.3. If the City Attorney and the requester are able to resolve the request, or if the requester withdraws the request, the Council need not hear the agenda item relating to the request. The City Attorney shall notify all other parties and the Council of such resolution or withdrawal.

4. Parties and non-party participants each shall file a written notice of appearance with the City Secretary and serve the notice on all parties at the earliest practicable time.

4.1. Such notices shall include to the extent that such information exists, the filer's name, address, telephone number, FAX number, e-mail address, State Bar Number, represented persons' names, capacity (e.g., "attorney for applicant,"), and succinct indication of interest in the proceeding (e.g., "applicant," "adjacent property owner," "customer of applicant," "competitor of applicant"). If any categories of required information do not exist or do not apply, the notice shall so state.

5. Except to the extent otherwise expressly provided by law or by these rules, the following do not apply in a proceeding before the Council: The Texas Government Code; the Texas Rules of Evidence; the Texas Rules of Civil Procedure; the rules of any agency of the State of Texas.

6. Parties and other participants are entitled to claim privileges only to the extent permitted by the Texas Rules of Evidence at civil trials, and then only if and to the extent that, at the first opportunity immediately after assertedly privileged information is sought, is offered, or otherwise appears likely to be disclosed in a proceeding, the person claiming a privilege as to such information files with the City Secretary and serves on all parties a writing that:

6.1. Identifies each withheld document, communication, or other thing as to which the person asserts any privilege, and provides for each such document, communication, or thing (or portions thereof to the extent that a privilege is claimed for only some of a document or portion of a communication or other thing):

6.1.1. The specific privilege claimed and the legal basis for the claim;

6.1.1.1. The date(s) created;

6.1.1.2. The author(s);

6.1.1.3. The subject;

6.1.1.4. Name, title, employer, address, and telephone number of each person to whom the document was disseminated or to whom the communication was disclosed by any means; and

- 6.1.1.5. The approximate size of any document or thing (in pages, bytes, length of time or other meaningful measure).
- 6.2. A further condition for asserting and preserving any claim of privilege as to a document, communication, or other thing at a proceeding is that the person asserting the privilege file and provide to all parties any portion of such document, communication, or other thing as to which no privilege is claimed. This filing and service shall be at or before the earliest time scheduled for any production pursuant to the request that engendered the privilege claim, or as otherwise agreed by the parties or directed by the Council.
- 6.3. If the issue of privilege arises for the first time in a proceeding under circumstances making contemporaneous submission of the written foundation supporting the privilege infeasible, the asserted holder of a privilege may claim the privilege by orally stating, to the extent possible, the information called for in this rule. The holder of the privilege shall then file and serve the written foundation for privilege claims required by this rule within 24 hours after the commencement of such oral recitation, unless the Council otherwise directs.
- 6.4. Any party or other participant withholding any document or thing on the ground of privilege or otherwise, shall retain it unaltered and keep it available for in camera inspection until the Council's substantive actions in the proceeding have become final and nonappealable, or longer as may otherwise be required by law or by the Council.
7. The parties and other participants in a proceeding shall not agree to keep any information from public disclosure except to the extent permitted by the Texas Public Information Act and any other laws that may apply to the proceeding. Any such agreement or undertaking limiting or purporting to limit the availability to the public of any information related to a proceeding shall immediately be put in writing, served on all parties, and filed with the City Secretary, whether or not such agreement or undertaking may be enforceable.
8. No agreement varying any rule under these rules or any ruling of the Council or any of any delegee of any powers of the Council shall be enforceable unless and until it is written and signed by all parties to be bound and filed with the City Secretary. The Council may at any time disapprove any such agreement as contrary to law or public policy or for other good cause, but once having ruled on such agreement, may not change that ruling if the change would unfairly prejudice a party.
9. Only the City has the right to obtain information from another party in relation to a proceeding absent permission from the Council sought by filing a written request with the City Secretary, serving it on all other parties, explaining specific need for specified information.
- 9.1. To the extent that the City has authority to request information from another party:

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- 9.1.1. Other parties and participants shall respond to any request for information from the City within 10 business days.
- 9.1.2. It shall not be grounds for objection to a request for information from the City that a party or participant has previously provided the same or similar information to the City or that the requested information is available from another source.
- 9.1.3. All requests for information are presumed only to seek information and documents (including documents, things, computerized information, photographs, videotapes, and other information in any form) in the custody or control of the party or other participant from whom the information is sought. Originals of documents include nonconforming copies. Accurate copies of originals may be produced in lieu of copies if the originals are made available for inspection on reasonable notice, produced at any hearing or other proceeding upon reasonable notice, and retained as if they were being withheld as privileged.

10. The City, through the Office of the City Attorney, may by notice of deposition without tender of any fees compel any other Party to attend a deposition and answer oral questions upon oath and produce documents and things at a specified place and time in Dallas, Texas. Such depositions may be continued from day to day or other reasonable date until completed. No separate subpoena is required to compel document production by a party who is noticed for deposition. The notice may require a party that is not a natural person to designate one or more natural persons with knowledge to testify as representatives of the party about the subjects of deposition described in the notice. The notice shall be served within a reasonable time before the deposition, which usually shall be at least seven calendar days but which may be shorter, particularly, without limitation, if the party to be deposed has unreasonably delayed providing information or if a deposition on less than seven days notice is necessary to provide information or advice to the Council or if there are other time constraints justifying shorter notice.

11. No party or other participant may vary any definition, or timetable for responses, or other provision provided under these rules except with the written and signed agreement of all other parties filed with the City Secretary. Any such agreement is subject to review and disapproval in whole or in part by the Council, but shall be valid except to the extent expressly disapproved. If the Council disapproves of any such agreement in part, any party may withdraw from the remaining portion of the agreement, and the Council may issue such orders and may be necessary to avoid unfairness to any party.

12. The City Secretary shall assign a control number to each proceeding and maintain a separate file for each such control number. That file shall contain all documents and other things filed or issued in such proceeding, and such other documents or things as the Council may direct. The City Secretary shall stamp each such document with the date and time received in the Office of the City Secretary, and shall maintain a chronological index of the contents of each such file. Parties shall place the control number assigned by the City Secretary on the upper portion of the

first page of each document or thing filed in a proceeding. The City Secretary shall as soon as practicable provide a copy of each document filed in a proceeding to each Council Member who does not request otherwise.

13. Every paper filed in a proceeding other than as an exhibit shall be signed by at least one attorney of record in the attorney's individual name, or, if the party or other participant is not represented by an attorney, shall be signed by the party or participant. Each paper shall state the signer's address and telephone number, if any.

13.1. An unsigned paper other than an exhibit shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney, party, or other participant. By presenting to the Council (whether by signing, filing, submitting, or later advocating) any paper other than an exhibit, an attorney or unrepresented party or other unrepresented participant is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

13.1.1. it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

13.1.2. the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

13.1.3. the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

13.1.4. the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief formed after an inquiry reasonable under the circumstances.

14. The Council may issue orders ancillary to any proceeding.

14.1. Ancillary orders may include procedural, discovery, and evidentiary orders; and orders:

14.1.1. Finding a party or other participant in violation of any law of the United States or the State of Texas relating to the proceeding, of any rule or regulation of any federal or state agency relating to the proceeding, of any duty relating to the proceeding under the laws of the United States or of State of Texas including the law of torts;

14.1.2. Finding a party or other participant in violation of the City Charter, or of any City ordinance, franchise, or license, of any provision of these rules or

of other Council rules, of any order, directive, or ruling of the Council in the proceeding;

14.1.3. Finding a party or other person to have without justification obstructed, prolonged, or complicated a proceeding; and

14.1.4. Finding any person to have falsely made a certification to the Council.

14.2. Such ancillary order may impose sanctions for contempt (either to compel compliance with a Council order or process or to punish for contempt), and for unjustifiably obstructing, prolonging, or complicating a proceeding, disobeying any provision of a subpoena or notice of deposition or ancillary order, breaching an agreement entered in accordance with these rules, or making a false certification to the Council.

14.2.1. "Obstructing a proceeding" includes misleading the Council or any party in a proceeding by affirmative misrepresentation of a material fact, or by failure timely to correct a previous representation upon discovery that the previous representation was materially false when made or upon the discovery that intervening events render the past representation materially incomplete or materially false. Misrepresentation includes adducing information from any source or making argument knowing it to be materially false or materially misleading.

14.3. The Council may require any attorney or other individual to satisfy a sanction without reimbursement or assistance from any other parties, participants, or representatives, or those in privity with other parties, participants, or attorneys; or to disclose the source of any such reimbursement or other assistance.

14.4. To the extent, if any, that a court of competent jurisdiction finally determines that another governmental body has exclusive jurisdiction to adjudicate particular matters determined by an ancillary order, such ancillary order shall be deemed to be official findings of fact and opinion of the City, and any conclusion of law or adjudication shall, to the extent that it exceeds the Council's jurisdiction to adjudicate, be advisory only. Nothing herein limits the City's right to contest any assertion of exclusive jurisdiction by any other governmental body.

14.5. The Council may sever issues relating to possible issuance of any ancillary orders into one or more separate proceedings, each of which shall be a separate "ancillary case" apart from the proceeding from which it was severed, and from each other. The entire record of the original proceeding up to the time of severance is deemed also a part of the record of any such ancillary case, without prejudice to the Council striking irrelevant matter from the record of an ancillary case or supplementing the record of the ancillary case. Unless otherwise ordered, the record in a new case is not part of the record of the original proceeding.

- 14.6. Permissible sanctions may include, without limitation, in any combination, and without prejudice to any other remedies by the City or others:
 - 14.6.1. Orders to reimburse one or more other parties, including the City, for actual and reasonable expenses caused by the sanctioned conduct, including, without limitation, the expenses of investigation and of obtaining sanctions in respect of such conduct. Reimbursement for attorneys fees and other professional services fees arising from the work of City employees shall be measured by hourly rates prevailing in the City for similar work by professionals of like qualifications, experience, training, and education, without regard to the level of compensation paid to such persons by the City as employees.
 - 14.6.2. Orders barring or striking factual or legal allegations, and/or information.
 - 14.6.3. Orders imposing measures to require a contemnor to comply with Council orders or process or punishing for contempt in accordance with Charter chapter III § 12;
 - 14.6.4. Other Orders imposing monetary or other sanctions reasonably necessary to deter a party from future misconduct, to deter other potential parties in pending or future proceedings from similar misconduct, and to compensate any parties or other participants for damage caused by such misconduct; and
 - 14.6.5. Orders deeming applications for relief withdrawn.
- 14.7. Ancillary orders may contain findings of fact and conclusions of law.
- 14.8. Ancillary orders may be adopted as ordinances or resolutions of the Council under the procedures generally applicable to Council ordinances or resolutions.
- 14.9. Except in unusual cases requiring immediate action, no ancillary orders or resolutions or ordinances incorporating ancillary orders shall issue or be adopted without reasonable advance notice to all parties and to any other person who is the proposed subject of such order or ordinance, and a reasonable opportunity for such persons be to heard on the proposal.
 - 14.9.1. If circumstances preclude advance notice, then such person shall receive prompt post-action notice and the opportunity to be heard as soon as practical as to why such actions should not be rescinded or modified.
 - 14.9.2. The Council may within reason restrict the right any person to be heard as to such ancillary orders as to duration of any verbal presentation or as to length of any written presentation.

- 14.9.3. Any party may rebut any assertion in a presentation respecting a proposed or issued ancillary order or ordinance upon reasonable advance notice to all parties and participants in the proceeding and to the subject or proposed subject of any such order or ordinance, with the permission of the Council, who may reasonably limit any such rebuttal presentation in the interests of fairness, efficiency, and relevance.
- 14.10. Once final and appealable, such ancillary orders are appealable only to a district court of this state located in Dallas County except that an order imposing civil contempt sanctions is not appealable. Ancillary orders are final when adopted except that if an ancillary order imposes sanctions without advance notice and opportunity to be heard to the person sanctioned, the order shall not become final until the seventh calendar day after adoption, and shall so state. Judicial review on such appeal shall be upon the substantial evidence standard. Any appeal in an ancillary case is perfected by filing a written petition with the City Secretary and with the district court. There is no appeal from a non-final ancillary order. There is no appeal from a final ancillary order until the Council has finally disposed of all issues in the case in which the ancillary order was issued. However, in the interests of justice the Council may sever all issues related to a final ancillary order to create a new ancillary case relating solely to that order, thus rendering the severed ancillary order appealable. An appeal from an ancillary order, or in an ancillary case, is untimely, and ancillary orders become non-appealable, unless a notice of appeal has been filed with the City Secretary and the Dallas District Clerk within ten business days after the date the ancillary order becomes final. Except to the extent otherwise ordered by the Council, an appeal in an ancillary case does not stay proceedings in any other ancillary case or in any proceeding.
- 14.11. Instead of or in addition to issuing any ancillary order, the Council may direct any City officer or employee to investigate, and to report findings of fact, conclusions of law, and recommendations based on such investigation to the Council. The Council may, if not prohibited by law, but need not, delay final Council action in a proceeding to await the results of any such investigation. The Council may adopt any such proposed findings of fact, conclusions of law, and recommendations in one or more ancillary orders.
- 14.12. Instead of or in addition to issuing any ancillary order that incorporates measures respecting burden of proof or pleadings, such as, without limitation, presuming that withheld information would be adverse to a party failing to provide the information or deeming an application withdrawn for failure to cooperate in discovery, the Council may base its substantive decisions on similar considerations.
15. The Council may delegate any powers to investigate, to obtain information, including taking sworn testimony and requiring submission of sworn written materials, to propose for adoption by the Council findings of fact, conclusions of law, recommendations, rulings, and orders to the City Manager or the City Attorney; and either of whom may further delegate any or

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all of such delegated tasks, except that delegated functions shall not be performed by persons who are not officers or employees of the city except with the express written approval of the Council.

16. If a time for appealing from the final action of the Council in any proceeding is not otherwise provided, any appeal must be perfected within 30 calendar days from the Council's adoption of an action disposing of all issues in a proceeding.

16.1. If the 30th day falls on a day when the City Secretary's Office is not open, the deadline for filing such appeal is the first day that the City Secretary's Office reopens for business. If a method of appeal is not otherwise provided, an appeal is perfected by filing a written notice petition with the City Secretary and with the appellate court or agency having jurisdiction of the appeal.

16.2. Unless otherwise ordered by the Council, the filing of an appeal in any proceeding does not stay any other proceeding or ancillary case.

16.3. If jurisdiction of an appeal from any final order in any proceeding is not otherwise provided, exclusive jurisdiction is in a district court of this State sitting in Dallas County, Texas.

16.4. If the scope of any appeal from any final order in any proceeding is not otherwise provided, the appellate court or agency shall apply the substantial evidence standard.

16.5. There is no requirement for a motion for rehearing under these rules. Any motion for rehearing or other motion filed after a Council order becomes final does not stay or enlarge time for perfecting an appeal except as may be provided by other applicable law.

17. Any judicial decision invalidating any provision of these rules shall not invalidate the remaining provisions of these rules, which shall remain in full force and effect.