

PROCEDURES
of the
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BOARD OF ETHICS

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TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	DEFINITIONS	3
3.0	LOCATION, DATES AND TIMES OF MEETINGS	3
4.0	PREPARATION AND DISTRIBUTION OF AGENDAS FOR MEETINGS.....	4
5.0	CONDUCT OF MEETINGS	4
6.0	ADVISORY OPINIONS	5
7.0	INQUIRIES.....	6
8.0	HEARINGS	8

1.0 INTRODUCTION

- 1.1. Chapter 13 of the City Code creates a Board of Ethics and provides for membership and terms of members on the board.
- 1.2. Pursuant to § 13-5 G (3) of the City Code, the Board is authorized to prescribe and promulgate rules and regulations governing its own internal organization and procedures.
- 1.3. Pursuant to § 13-5 K of the City Code, upon written request of any person, the Board of Ethics may render written advisory opinions with respect to the interpretation or application of the Code of Ethics.
- 1.4. These procedures shall become effective upon their adoption by the Board.

2.0 DEFINITIONS

Except as provided otherwise herein, the definitions set forth in Chapter 13 of the City Code shall apply under these procedures:

- 2.1 “Advisory Opinion” means a written opinion of the Board of Ethics regarding an interpretation of the Code of Ethics upon the request of an officer or employee, or upon the request of any other person concerning his or her own action, in accordance with §§ 13-5 G and 13-5 K of the City Code.
- 2.2 “Board of Ethics” or “Board” means the board established pursuant to Chapter 13 of the City Code.
- 2.3 “Board Counsel” means the City Attorney or Assistant City Attorney assigned to provide legal advice and assistance to the Board of Ethics.
- 2.4 “Code of Ethics” means the provisions of Chapter 13 of the City Code.
- 2.5 “Inquiry” means a written, signed inquiry form alleging a violation of the Code of Ethics submitted to the Board of Ethics pursuant to § 13-5 I of the City Code.
- 2.6 “Complainant” means a person who submits a written inquiry.
- 2.7 “Respondent” means a person who is the subject of a written inquiry.

3.0 LOCATION, DATES AND TIMES OF MEETINGS

- 3.1 There shall be regular and special meetings of the Board of Ethics conducted consistent with the requirements of the Open Meetings Law.

- 3.2 Executive sessions may be conducted during a regular or special meeting as deemed necessary.
- 3.3 The City Attorney's office shall arrange for the posting of public notices of meetings of the Board in such locations as are reasonably calculated to inform the public who desire to attend the meetings.

4.0 PREPARATION AND DISTRIBUTION OF AGENDAS FOR MEETINGS

- 4.1 The chair of the Board of Ethics shall establish and distribute the proposed agenda for regular meetings of the Board.
- 4.2 To the extent practicable, the chair shall distribute the proposed agenda and relevant materials to the members of the Board of Ethics not less than three days prior to the date of the meeting at which the agenda will be considered. No item on an agenda shall be ineligible for consideration by the Board solely on the basis that the agenda and materials were distributed less than three days prior to the date of the meeting.

5.0 CONDUCT OF MEETINGS

- 5.1 Except as permitted under state law, meetings of the Board of Ethics shall be open public meetings.
- 5.2 The chair of the Board of Ethics shall preside at all regular and special meetings of the Board.
- 5.3 The chair shall take any appropriate action necessary to maintain order during the meeting. In the absence of the chair at a meeting of the Board of Ethics, a majority of the members of the Board present at the meeting shall designate an acting chair to serve until the chair is no longer absent. The acting chair shall have all authority otherwise granted to the chair.
- 5.4 Three of the five members of the Board of Ethics shall constitute a quorum for conducting proceedings for the Board and approving motions.
- 5.5 Proposed actions by the Board of Ethics shall be in the form of motions offered by a member of the Board.
- 5.6 Three affirmative votes shall be required to adopt a motion. The chair of the Board of Ethics shall be entitled to vote on motions. All votes of the Board shall be recorded as to the number of members in favor and the number opposed to the motion.

- 5.7 The Board shall cause draft meeting minutes to be prepared for its review. Upon approval of the Board, meeting minutes shall be considered final. The City Attorney shall maintain the official files of the meetings of the Board of Ethics. Minutes of the Board may also be available on the City's website.

6.0 ADVISORY OPINIONS

- 6.1 Any City official, City employee, or any other person with respect to his or her own action or contemplated action, may submit requests for advisory opinions from the Board of Ethics as to whether specified conduct violates the Code of Ethics. Requests for advisory opinions shall:

6.1.1 be in writing;

6.1.2 identify all pertinent facts and circumstances;

6.1.3 be signed; and

6.1.4 be directed to the chair of the Board of Ethics in a sealed envelope marked confidential.

- 6.2 Upon receipt of a written request for an advisory opinion, the chair shall acknowledge the request and notify the requester in writing of the meeting of the Board of Ethics at which the request may be discussed. *The Board will offer the requester the opportunity to discuss the matter further in executive session.*

- 6.3 The Board of Ethics shall consider requests for advisory opinions at a regular or special meeting. The Board shall determine whether requests are within the jurisdiction of the Board. The Board may defer or extend its deliberations pending the receipt of additional information. For requests that the Board determines are within its jurisdiction and for which the Board has sufficient information, the Board, in its sole discretion, shall determine whether or not it will issue an opinion. In determining whether to issue an opinion, the Board may consider the following general factors, in addition to specific factors related to a request:

6.3.1 would an opinion assist the requester and guide further conduct;

6.3.2 is the issue one of general application to others who are subject to the Code of Ethics;

6.3.3 has the Board previously issued an opinion on the issue or substantially the same issue; and

6.3.4 is the issue likely to be the subject of controversy or dispute.

- 6.4 If the Board of Ethics determines the subject of a request for an advisory opinion is not within the jurisdiction of the Board, or if the Board determines it will not issue an opinion based on the facts before it, the Board Counsel shall prepare a letter for issuance by the chair explaining the Board's determination to the requester.
- 6.5 If the Board of Ethics determines additional information about the request is needed, the Board Counsel shall prepare a letter for issuance by the chair to the requester explaining the need for additional information and providing a reasonable estimate of when and if the Board may again consider the request.
- 6.6 If the Board of Ethics determines what response should be included in an advisory opinion, the Board Counsel shall prepare a draft advisory opinion for review by the Board.
- 6.7 Upon approval by the Board of Ethics of a draft advisory opinion, the chair shall sign the advisory opinion on behalf of the Board.
- 6.8 The City Attorney's office shall forward a copy of the advisory opinion to the requester.
- 6.9 The City Attorney's office shall maintain administrative files for each advisory opinion and compilation of all advisory opinions.
- 6.10 To the extent resources are available, the chair shall post on the Web site of the Board of Ethics a summarized version of each advisory opinion reformulated to maintain the confidentiality of the requester.

7.0 INQUIRIES

- 7.1 Any person may file an inquiry alleging a violation of the Code of Ethics. In addition, the Board of Ethics may investigate a potential violation of the Code on its own initiative.
- 7.2 Except for investigations initiated by the Board of Ethics, all inquiries alleging a violation of the Code of Ethics shall be submitted in writing to the attention of the chair of the Board of Ethics. Any inquiry shall be in a sealed envelope marked confidential, and shall be signed by the complainant.
- 7.3 If the complainant wishes to remain confidential, he or she must state so in the written inquiry and include a justification therefore. The Board thereupon may

determine on its own initiative that a violation of the Code of Ethics may exist and proceed to conduct an inquiry, or may determine to take no further action.

- 7.4 Within twenty (20) business days after the first regular meeting of the Board of Ethics following either the receipt of a inquiry or the initiation of an inquiry by the Board, the Board shall notify, in writing, the person alleged to have violated the Code of Ethics that it is conducting an inquiry pursuant to § 13-5 I of the Code of Ethics. Such written notification shall include a summary of the inquiry.
- 7.5 The results of the inquiry shall be reduced to written findings of fact, and the finding shall be made that either there is or is not reasonable cause for believing that the respondent has violated one or more of the provisions of the Code of Ethics.
- 7.6 If a finding is made that there is no reasonable cause, within ten (10) business days of the Board's approval of the finding, said finding shall be served or mailed, by certified mail, return receipt requested, to the complainant, except in the case of an inquiry initiated by the Board, and the respondent, and a copy shall be maintained by the City Attorney.
- 7.7 If the finding is made that reasonable cause exists to believe that the respondent has violated one or more of the provisions of the Code of Ethics, the Board Counsel shall prepare for the Board's approval an order to that effect. Within ten (10) business days of the Board's approval of the order, a copy shall be personally served or mailed, by certified mail, return receipt requested, to the respondent, and the original thereof filed with the City Attorney. Such reasonable cause order shall include:
 - 7.7.1 a finding that one or more violations of the Code of Ethics has occurred;
 - 7.7.2 the factual basis for such finding; and
 - 7.7.3 a notice informing the respondent that the respondent has the right to request, within twenty (20) business days of the service of the order upon the respondent, a hearing to be held in accordance with § 13-5 J of the Code of Ethics.
- 7.8 If the respondent does not request a hearing within twenty (20) business days of service of the order upon the respondent, the Board Counsel shall provide a copy of the reasonable cause order to the complainant, except in the case of an inquiry initiated by the Board, and the respondent's appointing authority, or in the case of elected officers, to the City Council. Such order shall thereupon be deemed final but shall not make any recommendation as to the appropriate disciplinary action.

7.9 The Board is not permitted to take action against any members of the Board of Ethics. Any inquiries regarding Board members shall be referred to the City Council pursuant to § 13-5 J (3) of the Code of Ethics.

8.0 HEARINGS

8.1 Any respondent aggrieved by an order issued pursuant to § 7.7 above may seek a hearing contesting the findings by submitting a written request therefore to the chair of the Board of Ethics within twenty (20) business days of the service of the order upon the respondent. The request shall specify with particularity any findings being contested.

8.2 Upon a respondent's request for a hearing, or if the Board determines that disciplinary action is warranted, the Board may hold a hearing in accordance with the procedures of Article 3 of the State Administrative Procedure Act or, pursuant to § 13-5 J (1) of the Code of Ethics, may refer the matter to the appointing authority, person or body authorized by law to impose disciplinary sanctions respecting the respondent.

8.3 In a hearing by the Board of Ethics, the Board may appoint the City Attorney or another designated attorney to present the charges of violation, and may appoint a presiding officer for the conduct of the hearing. There shall be a verbatim record and the presiding officer shall have the power to administer oaths and affirmations, issue subpoenas and compel attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records relevant or material to the hearing. The burden of proof shall be upon the appointed attorney and the Board's decision shall be based upon a preponderance of the evidence. Such hearing shall be conducted within a reasonable time after receipt of the request for hearing. Written notice of the time and place of the hearing shall be given at least ten (10) business days prior to the date of the hearing to the parties.

8.4 Within a reasonable time following review of the evidence submitted, the Board shall enter written findings and conclusions affirming, modifying or reversing the order.

8.5 A copy of the Board's decision shall be served or mailed, by certified mail, return receipt requested, to the respondent, and the original thereof retained by the Board Counsel. The Board shall provide copies of its decision to the respondent's appointing authority, or in the case of elected officers, to the City Council for appropriate action as authorized by law.