



City of Arts & Innovation

BOARD OF ETHICS

TO: BOARD OF ETHICS

DATE: JANUARY 5, 2023

**FROM: CITY ATTORNEY OFFICE AND
CITY CLERK'S OFFICE**

WARDS: ALL

SUBJECT: CODE OF ETHICS AND CONDUCT ANNUAL REVIEW

ISSUE:

Discuss the update on the City Council's annual review of the Code of Ethics and Conduct.

RECOMMENDATIONS:

That the Board of Ethics:

1. Discuss the update on the City Council's annual review of the Code of Ethics and Conduct.
2. Provide additional recommendations for revisions to the Code of Ethics and Conduct; and
3. Refer recommendations to the Inclusiveness, Community Engagement, and Governmental Processes Committee for consideration.

BACKGROUND:

During the last two years' annual reviews (2020 and 2021), the implementation of all approved revisions were placed on the table until final dispositions were determined for several Board of Ethics complaints that were either filed or under consideration by the Board of Ethics at the time of the annual review.

On July 7, 2022, the ICGC requested a joint meeting with an Ad Hoc committee of Board of Ethics members to review the Codes' complaint process and procedures.

On August 4, 2022, the Board of Ethics conducted its annual review and formed an Ad Hoc Committee comprised of Chair Stahovich and Members Foley, Huerta, and Newman as an alternate to meet with ICGC.

On September 27 and November 3, 2022, the ICGC and Board of Ethics Ad Hoc Committee reviewed Riverside Municipal Code Sections 2.78 and 2.80 focusing on the following areas:

1. Pre-hearing Conference
2. Hearing
3. Appeals
4. Sanctions
5. Miscellaneous

In conjunction with the areas listed above, the Committee collectively reviewed the recommendations of the last two years' annual reviews (2020 and 2021). This included the City Council ordinance introduced on February 15, 2022, amending Chapter 2.78 of the Riverside Municipal Code as a result of the 2021 COE review and the Board of Ethics subsequent proposed changes to the Complaint Procedures. These changes added the acceptance of amended complaints and affirmed that “de novo hearings” are to be heard by the same hearing panel to the extent possible.

In summary, during the Committee meeting discussions of September 27 and November 3, 2022, the Committee tentatively agreed upon the following recommendations:

1. Pre-hearing Conference

- The pre-hearing conference is necessary to vet frivolous complaints and should not be eliminated.
- Attorneys should not participate in the pre-hearing conference proceedings.
- Establish more formality to settlement discussions as an off the record discussion, if needed.
- The Board of Ethics Hearing Panel should review complaints for elements of sections allegedly violated and have an opportunity to ask questions at the pre-hearing conference.
- The public official should have the option or opportunity to speak at the pre-hearing conference.
- The Riverside Municipal Code - Code of Ethics and Conduct pre-hearing conference and hearing procedures should be separated and Sections 2.78.080 (N) and 2.78.080(O) amended.
- Any pre-hearing conference decision is not appealable.
- The “pre-hearing conference” be renamed as the “pre-conference.”
- Upon request by either party, one continuance may be granted by the Hearing Panel for extenuating circumstances and the Hearing Panel can grant continuances on their own motion.

2. Hearing

- Section 2.78 and 2.80.040 be amended to allow either the Board of Ethics or the Hearing Panel to seek outside counsel for hearings.
- Add language regarding amendments to complaints.
- Remove subpoena power from Section 2.80.040 – Board of Ethics Duties and Powers.
- One continuance may be granted by the Hearing Panel for extenuating circumstances.

3. Appeals

- The provision “automatically appealed” changed to “may be appealed.”
- Parties must identify a clear error of law or an abuse of discretion as part of their appeal.

- The hearing panel Chair or designee shall be present during City Council appeal proceedings to answer questions.
- If no appeal is filed after the determination of a violation, findings shall be adopted and referred to the City Council to impose sanctions.
- If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, a “de novo” hearing will be held before the same hearing panel, with no pre-conference, and the hearing panel shall correct the error of law or abuse of discretion identified by the City Council.

4. Sanctions

- If no appeal is filed after determination of a violation, a report shall be referred to City Council to impose sanctions.

5. Miscellaneous

- Complaints should be limited to City of Riverside residents and business owners unless the prohibited conduct occurred outside City limits and the complainant is a witness to the misconduct. The complainant must identify the specific statute violated under Section 2.78.070(M).
- Change the Section 2.80.040 provision from “if a complaint concerns a City Council member” to “if a complaint is against a City Council member.”
- Section 2.80.040 of Board of Ethics - add language to allow for smaller composition of a hearing panel if necessary.
- Section 2.78.090(I) - Replace “elected official” with “public official.”

Subsequently, the Board of Ethics met on December 1, 2022, to review the recommendations and forwarded additional recommendations for changes to the ICGC.

On December 7, 2022, the Inclusiveness, Community Engagement and Governmental Processes Committee, with Chair Cervantes, Vice Chair Perry and Member Conder present, unanimously accepted the revisions to the Code of Ethics by the Board of Ethics and the ICGC and recommended that the City Council consider the proposed changes and forward recommendations to ICGC to continue deliberation of the Code of Ethics at a later meeting date.

DISCUSSION:

On December 20, 2022, the City Council directed the ICGC to continue deliberations on the proposed amendments to the Code of Ethics and Conduct and return to the City Council in March 2023.

Additionally, the City Council discussed the following issues described below in procedural order within the RMC Section 2.78 to be addressed by the ICGC:

1. Mediation training and determine who is the facilitator in settlement discussions (Pre-Conference Procedures)
2. Presentations during the pre-conference and hearing proceedings are at the discretion of the parties to the complaint not the hearing panel (Pre-conference and Hearing Procedures)
3. Use of attorneys by parties at the pre-conference and hearing (Hearing Procedures)
4. Appeals of the pre-hearing conference should be allowed for instances of procedural errors, but not for substantive findings (Appeals Procedures)

5. Discussion as to whether City Council makes a final determination on an appeal of a De Novo Hearing (Appeals Procedures)
6. Set time limits and expediting the hearing proceedings
7. Simplifying the hearing process

The ICGC will meet on January 4, 2023, to address the issues listed above. The ICGC may consider scheduling a joint meeting with the Board of Ethics Ad Hoc Committee to further discuss the proposed revisions prior to forwarding final recommendations to the City Council in March 2023.

STRATEGIC PLAN ALIGNMENT:

The annual review of the effectiveness of the Code of Ethics and Conduct contributes to the following City Council's Envision 2025 Strategic Plan Priorities and Goals:

Community Well-Being – Ensuring safe and inclusive neighborhoods where everyone can thrive with the following:

Goal 2.4 Support programs and innovations that enhance community safety, encourage neighborhood engagement, and build public trust: and,

High Performing Government – Providing world class public service that is efficient, accessible, and responsible to all, with the following goal:

Goal 5.3 - Enhance communication and collaboration with community members to improve transparency, build public trust, and encourage shared decision-making.

The Board of Ethics and the ICGC reviewing and bringing forth recommendations for revisions to the Code of Ethics and Conduct aligns with the Envision 2025 Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside's annual review of the Code of Ethics and Conduct is transparent, the involvement of the City Boards and Commissions and public input creates sound policy, and inclusive community engagement builds community trust.
2. **Equity** – Outreach efforts were taken to encourage community input which consisted of website displays and community group flyers and posters throughout the City advising the public members how to provide recommendations for consideration allowing for a fair and unbiased revision process.
3. **Fiscal Responsibility** – Riverside is a prudent steward of public funds and ensures responsible management of the City's financial resources while providing quality public services to all. The City Clerk's Office annual budget includes funding to support the annual code review and outreach efforts.
4. **Innovation** –. Riverside's annual review of the Code of Ethics and Conduct through collaborative partnerships. Adaptive processes bring new perspectives and ideas, helping to meet the Board of Ethics ever-changing needs for implementing the Code of Ethics and Conduct.

5. **Sustainability & Resiliency** – Riverside is committed to meeting the present needs without compromising the needs of the future and ensuring the City's capacity to persevere, adapt and grow during fluctuating times alike. It is essential to review the Code of Ethics and Conduct annually to maintain sustainable and resilient processes and monitor promoting innovation for a more sustainable future.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared by: Donesia Gause, City Clerk

Approved as to form: Phaedra A. Norton, City Attorney

Attachment:

1. Redlined Proposed Revisions to RMC 2.78 and 2.80