



City of Arts & Innovation

Inclusiveness, Community Engagement and Governmental Processes Committee

TO: **INCLUSIVENESS, COMMUNITY ENGAGEMENT AND GOVERNMENTAL PROCESSES COMMITTEE MEMBERS** **DATE:** August 4, 2021

FROM: **BOARD OF ETHICS** **WARDS:** ALL

SUBJECT: **CODE OF ETHICS AND CONDUCT HEARING PROCESS**

ISSUE:

Review of Code of Ethics and Conduct hearing process.

RECOMMENDATIONS

That the Inclusiveness, Community Engagement and Governmental Processes Committee recommend that City Council:

1. Review Board Purpose, Values and Scope;
2. Review and clarify the authoring and presentation of findings to the City Council.
3. Review and clarify the automatic review of findings.
4. Review and amend the code to properly define the appeals process and meaning of De Nova Hearing
5. Clarify the process to enforce subpoena power.
6. Continuance process

BACKGROUND

The Hearing Panel may discuss and act upon any subpoenas the Hearing Panel determines, by a super majority vote, are necessary to be issued for a meaningful hearing or decision pursuant to RMC 2.80.040 A5 and B5.

CONTINUANCES

- A. The City Clerk may grant one (1) continuance to each party upon a showing that either the party is unavailable to attend the hearing for good cause, or a witness identified in the complaint or reply is unavailable to attend the hearing.
- B. For good cause shown and upon a majority vote, the Hearing Panel may continue a hearing before the introduction of any evidence.

WRITTEN STATEMENT OF FINDINGS AND DECISION

A Written Statement of Findings and Decision setting forth the final decision of the Hearing Panel shall be prepared and placed on the agenda for the next regularly scheduled meeting of the Board of Ethics that is at least fourteen (14) calendar days after the date of the final decision by the Hearing Panel for a vote by the members of that Hearing Panel only. Upon a majority vote by the members of the Hearing Panel, the Statement of Findings and Decision shall be the final decision of that Hearing Panel.

SUBPOENAS

Subpoenas may be issued by the Hearing Panel for the attendance of witnesses or the production of books, papers or documents where the Hearing Panel determines it necessary for a meaningful hearing or decision by four (4) or more affirmative votes.

Issue subpoenas compelling the attendance of witnesses or the production of books, papers or documents on any complaint before the Board of Ethics where a super majority (four affirmative votes) of the hearing panel determines it necessary for a meaningful hearing or decision on complaints of violations of RMC Chapter 2.78;

Jurisdiction

A hearing panel, once established, shall be the sole hearing body to conduct hearings and render decisions with findings on the complaint for which the panel was convened;

Issue a decision with findings, including recommendations for sanctions, if any, to the City Council for all complaints determined by the hearing panel of the Board to be a violation of RMC Chapter 2.78;

Determine when outside legal counsel shall be used to advise the Board of Ethics or a hearing panel in the place of the City Attorney.

The Board of Ethics shall have the authority to adopt hearing procedures not in conflict with this chapter. In addition to any hearing procedures adopted by the Board of Ethics, the following hearing procedures shall also apply.

Appeal

A decision by the hearing panel finding a violation of the Prohibited Conduct section of this chapter shall be automatically appealed to the City Council. The City Clerk shall place the appeal on the agenda of a regular meeting of the City Council within 30 City business days of the hearing by the hearing panel and shall notify the parties in writing of the hearing date.

The City Council shall review the record of the hearing to determine whether the hearing panel committed a **clear error or an abuse of discretion based upon the record**. If no such finding is made by a majority of the City Council, then the City Council shall adopt the decision of the hearing panel as the findings of the City Council on appeal. If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, then that finding shall be clearly stated and the matter shall be referred back to the Board of Ethics for a de novo (new) re-hearing of the matter in light of the findings on appeal.

DISCUSSION

Quasi-judicial hearings are subject to Federal and State due process, the federal hearing requirement of Code of Civil Procedure section 1094.5 and additional requirements to hearings. Relying on these authorities the entire process including appeals must be fair and administrative decision makers must be impartial.

Rules, procedures must be clear, consistent irrespective of disposition of case. Adequate notice must be used to notify all parties. All are entitled to: the Right to Be Heard, A Fair Tribunal, A Fair Decision and transparent and consistent application of the code.

FISCAL IMPACT

There is no fiscal impact associated with this report.

Prepared by:


Chair Keith Nelson, Board of Ethics

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Attachments:

1. RMC 2.78
2. Hearing Procedures