



# Board of Ethics

*City of Arts & Innovation*

**TO: BOARD OF ETHICS**

**DATE: February 5, 2026**

**FROM: CITY ATTORNEY'S OFFICE**

**WARDS: ALL**

**SUBJECT: REVIEW AND PROVIDE INPUT ON PROPOSED REVISIONS TO RIVERSIDE MUNICIPAL CODE CHAPTER 2.78, THE CODE OF ETHICS AND CONDUCT, REGARDING DIGITAL COMMUNICATIONS AND MISCONDUCT**

## **ISSUE:**

Review and provide input on proposed revisions to Riverside Municipal Code Chapter 2.78, the Code of Ethics and Conduct, to address digital communications and misconduct, as requested by the City Council at the December 9, 2025 public hearing.

## **RECOMMENDATIONS:**

That the Board of Ethics review and provide input on proposed revisions to Sections 2.78.050 and 2.78.060 of the Riverside Municipal Code Chapter 2.78, the Code of Ethics and Conduct, to address digital communications and misconduct, as requested by the City Council at the December 9, 2025 public hearing.

## **LEGISLATIVE HISTORY/BACKGROUND:**

Charter Section 202 requires the adoption of a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees to assure public confidence in the integrity of local government and its effective and fair operation. The first Code of Ethics and Conduct, adopted by a Resolution of the City Council on July 1, 2005, was amended several times.

On April 5, 2016, Ordinance No. 7328 was adopted adding Chapters 2.78 and 2.80 to the Riverside Municipal Code, adopting a revised Code of Ethics and Conduct, and establishing the Board of Ethics (BOE). RMC Section 2.78.110 provides for annual monitoring and oversight culminating in review by the Governmental Processes Committee (GPC) and a public hearing before the City Council.

During this year's review process, an additional Core Value and additional Prohibited Conduct item were recommended for addition to RMC chapter 2.78 as follows:

1. Under "RMC 2.78.050 - Core Values", add "I" regarding digital communications to read:
  - I. **Digital communication must reflect the City's commitment to impartiality, fairness, and**

integrity. Online activity, messages or actions should not create, or appear to create, bias, partisanship, a conflict of interest, or predisposition on pending City matters.

2. Under “RMC 2.78.060 - Prohibited conduct”, add “O” regarding digital misconduct prohibited to read:

O. Digital misconduct prohibited. Those subject to this code are prohibited from engaging in digital misconduct. Online activity or messages that create, or appear to create, bias, partisanship, a conflict of interest, or predisposition on pending City matters are strictly prohibited. Any violation of prohibited conduct under this code shall encompass online activity while representing your appointed or elected position.

On November 18, 2025, the GPC reviewed the Board of Ethics recommendations and forwarded the item to the City Council for a public hearing. The GPC additionally requested the City Attorney’s Office to review the proposed digital misconduct language for First Amendment issues. After reviewing the proposed language, the City Attorney’s Office has raised concern that the proposed language may trigger First Amendment challenges, may be duplicative of other sections of the Code of Ethics and could be too broad. The City Attorney’s Office recommended potential revisions to the language and also that the proposed sections be referred back to the Board of Ethics and GPC for further discussion.

On December 9, 2025, the City Council held a public hearing for its annual review of the Code of Ethics. At the conclusion of the public hearing, the City Council adopted certain revisions to the Code of Ethics and referred the proposed digital misconduct revisions back to Board of Ethics and GPC.

## **DISCUSSION**

The following is a list of issues that the Board of Ethics should consider in providing input on the proposed revisions to Riverside Municipal Code Chapter 2.78, the Code of Ethics and Conduct, to address digital communications and misconduct.

### Overlap and Overly Broad

The proposed revisions may be duplicative of other sections of the Code of Ethics and could be too broad:

- (1) “Conflicts of Interest”: Duplicative of Section 2.78.060.F - Prohibited conduct, “Violation of Government Code §§ 87100 et seq., prohibited” addresses conflicts of interests and provides that the Board of Ethics should either defer action if a complaint is already pending before the Fair Political Practices Commission (“FPPC”) or file their own complaint with the FPPC. This reference should be deleted from the digital misconduct section, to avoid duplication of another section.
- (2) “Pending City matters” could cause confusion and should be clarified to only apply to those matters that are within the subject matter jurisdiction of public official and are quasi-judicial in nature. “Quasi-judicial” is defined in RMC 2.78.060.K, “Prohibited Conduct”, as “any proceeding which may affect the legal rights, duties or privileges of any party to the proceeding and requires the public official to objectively determine facts and draw conclusions from those facts as the basis of

an official action.” An example of this is an appeal that is held before a board, commission or the City Council. Without this limitation, the language is at risk of being too broad and could prohibit protected First Amendment speech.

(3) “Bias” in a quasi-judicial proceeding is covered by the Section 2.78.060.N - Prohibited conduct, “*Convictions of federal or state law affecting their office prohibited.*” A quasi-judicial matter is any proceeding which may affect the legal rights, duties or privileges of any party to the proceeding and requires the public official to objectively determine facts and draw conclusions from those facts as the basis of an official action. Public officials must be impartial in a quasi-judicial proceeding. Other types of proceedings, do not have the same legal requirement of impartiality. Applying the digital misconduct revision to all proceedings would expand this impartiality requirement and limit public officials’ use of digital communications accordingly.

### First Amendment Concerns

After reviewing the proposed revisions, the City Attorney’s Office has raised concern that the proposed language may trigger First Amendment challenges. As a general matter, the First Amendment prohibits the government from subjecting individuals to retaliatory actions after the fact for having engaged in protected speech. Use of social media and other forms of digital communication is a form of potentially protected speech. Public officials, both elected and appointed, retain their First Amendment right to free speech in their private capacity. Any restrictions on digital communications should be limited official conduct and avoid punishment for speech in a person’s private capacity.

Whether a government action has infringed on a person’s First Amendment right to free speech is a complex fact-specific analysis. For *appointed* public officials, such as board and commission members, the analysis will depend on whether the individual was speaking in their official or private capacity and whether the matter was one of public concern. An adverse action by the City, such as the imposition of one of the sanctions listed in RMC section 2.78.100, could infringe on the appointed public official’s First Amendment right regardless of the type of punishment.

Courts have given the government more leeway when it comes to the private speech of *elected* public officials, such as the Council members and the Mayor. However, Courts have held the only permissible sanction to be censure. Other types of sanctions could violate the First Amendment.

In summary, First Amendment legal standards are different for appointed vs. elected public officials. An appointed public official has more legal protection for their private speech, but punishment for an elected official’s speech is limited to public censure. The result is that First Amendment protections and ultimately the proposed revisions to the Code of Ethics will apply differently to appointed vs. elected officials. This difference could cause confusion for public officials in determining proper conduct and could make enforcing the Ethics Code for digital misconduct difficult.

### Potential Revisions to the Proposed Language

Given the significant overlap between other violations of the RMC and the complexities surrounding the First Amendment protections, the CAO has several possible recommendations.

1. To avoid any First Amendment concerns, the City could limit the revision to the Core Values in section 2.78.050, with the revised language recommended below, and forego the addition to the Prohibited Conduct in section 2.78.060.
  - a. Core Values set the expectations for the conduct of public officials. Core Values are aspirational and not subject to the sanctions listed in section 2.78.100. Without

the sanctions, the Core Values would not violate the First Amendment rights of the public official, but maintains the value statement of integrity in digital conduct.

2. Alternatively, revise the language in the Prohibited Conduct sections to protect private speech, remove duplicative sections, be consistent with other section of the Code of Ethics and limit the potential sanctions to censure only, as other sanctions could violate the First Amendment.

Revise “RMC 2.78.050 - Core Values”, adding “I” regarding digital communications with the bold underlined text recommended by GPC to read:

- I. Digital communication must reflect the City’s commitment to impartiality, fairness, and integrity. Online activity, messages or actions should not create, or appear to create, bias, partisanship, ~~a conflict of interest~~, or predisposition on pending City matters **that fall within the subject matter jurisdiction of the public office and are quasi-judicial proceedings**.

Revise “RMC 2.78.060 - Prohibited conduct”, adding “O” regarding digital misconduct prohibited with the bold underlined text to read:

- O. Digital misconduct prohibited. Those subject to this code are prohibited from engaging in digital misconduct, **while acting in an official capacity**. Online activity or messages that create, or appear to create, bias, partisanship, ~~a conflict of interest~~, or predisposition on pending City matters **that fall within the subject matter jurisdiction of the public office and are quasi-judicial proceedings** are strictly prohibited. Any violation of prohibited conduct under this code shall ~~encompass~~ **be limited to** online activity while representing ~~you're the~~ **the public official's** appointed or elected position **using official City accounts**. **Sanctions for this paragraph shall be limited to censure only.**

The City Attorney’s Office will return to the Governmental Processes Committee with the Board of Ethics recommendations before presenting to the City Council.

#### **FISCAL IMPACT:**

There is no fiscal impact associated with the annual review.

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