

REVISED

Date: 12-14-21
Item No.: 47

City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

DATE: DECEMBER 14, 2021

**FROM: INCLUSIVENESS, COMMUNITY ENGAGEMENT,
AND GOVERNMENTAL PROCESSES
COMMITTEE**

WARDS: ALL

SUBJECT: CODE OF ETHICS AND CONDUCT ANNUAL REVIEW

ISSUE:

Conduct an annual review of the effectiveness of the Code of Ethics and Conduct as required by Section 2.78.110 of the Riverside Municipal Code.

RECOMMENDATIONS:

The Inclusiveness, Community Engagement, and Governmental Processes Committee (ICGC) recommend that the City Council:

1. Conduct a public hearing for the annual review of the effectiveness of the Code of Ethics and Conduct as required by Section 2.78.110 of the Riverside Municipal Code;
2. Review recommendations by the Board of Ethics, with the concurrence of the ICGC, for amendments to the Code of Ethics and Conduct;
3. Consider request by the Board of Ethics, with the concurrence of the ICGC for a joint workshop with the City Council to review the Code of Ethics and Conduct; and
4. Amend the Code of Ethics and Conduct provisions in Riverside Municipal Code Chapters 2.78.080 and 2.78.090 as recommended by the Board of Ethics and staff as outlined in this report, including recommendations by the City Council during the annual review of the Code of Ethics and Conduct on December 15, 2020: and
5. Consider a future discussion on revising the entire complaint procedure and include the City Clerk and City Attorney.

BACKGROUND:

The Riverside Municipal Code (RMC) Chapters 2.78 and 2.80 provide that the Code of Ethics and Conduct be reviewed for its effectiveness on an annual basis. The RMC also requires that

Boards and Commissions place an item on their agenda to discuss recommendations for revisions to the code. Board and commission chairs and staff liaisons were reminded of their obligations to review the Code of Ethics and Conduct and invited to submit written comments to the Board of Ethics and/or City Council Inclusiveness, Community Engagement, and Governmental Processes Committee. Those able to discuss the matter offer no substantive recommendations for consideration at this time.

In addition, the city sought public input through outreach efforts and staff received no recommendations for ICGC consideration.

On August 4, 2021, and September 1, 2021, the ICGC received reports denoting the Board of Ethics recommendations on the following:

1. Clarification of which governing body has the final determination in the case of a dispute;
2. Clarification of the Sunshine Ordinance definition of “urgency”;
3. A review of the Code of Ethics and Conduct to consider whether or not the entire City Council is guilty of violating the Sunshine Ordinance when one councilmember violates the Sunshine Ordinance; and
4. A review of Section 2.78.090 - the appeal procedures
5. Review of the purpose, values, and scope of the Board of Ethics.
6. Determine who authors, reviews, and presents the hearing panel findings to the City Council.
7. The appeal and de novo hearing process.
8. The process for enforcing subpoena power.
9. The continuance procedures.

DISCUSSION:

On November 4, 2021, the Board of Ethics approved the following recommendations for presentation to the ICGC at their December 1, 2021 meeting, and authorized the Chair of the Board of Ethics to make a presentation to the ICGC:

1. PROPOSED CHANGES APPROVED BY THE BOARD OF ETHICS

Proposed changes for Approval of Statement of Findings:

2.78.080 - Hearing procedures.

* * *

E. The hearing panel of the Board of Ethics shall conduct a pre-hearing conference prior to a hearing date being set by the City Clerk. All parties are to attend the pre-hearing conference; however, the absence of any party at the pre-hearing conference shall not be grounds for a continuance and the pre-hearing conference shall proceed as if the absent party were present. The pre-hearing conference shall be conducted as follows:

* * *

8. *If it is determined by the hearing panel that the complainant has failed to show that it is more likely than not that there may be a potential violation of the prohibited conduct section of this chapter, the Chair of the hearing panel shall instruct the City Clerk to prepare a statement of findings for the hearing panel to adopt at the next regular meeting of the Board of Ethics. **Alternatively, the hearing panel may***

designate members of the hearing panel to prepare the findings. If members of the hearing panel prepare the findings, such findings shall be adopted at the next regular meeting of the Board of Ethics. This statement of findings shall be considered the final decision of the hearing panel and is immediately appealable to the City Council pursuant to the appeal procedures section of this chapter.

* * *

M. Upon the conclusion of evidence presented by the parties, the Chair shall facilitate verbal deliberations by the hearing panel.

N. All findings shall be **approved** by a majority vote of the hearing panel and recorded by the City Clerk. **The hearing panel may approve such findings at the conclusion of the hearing and direct the City Clerk to prepare the findings or designate members of the hearing panel to prepare the findings. If members of the hearing panel prepare the findings, the hearing panel must consider and approve such findings within 30 days after the hearing, at a subsequent meeting of the hearing panel.**

O. Within five City business days following the hearing **and the approval of the findings**, the City Clerk shall notify all parties in writing of the decision of the hearing panel and the appeal procedures.

2.78.090 - Appeal procedures.

A. 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 **approval of the findings** ~~hearing~~ by the hearing panel and shall notify the parties in writing of the hearing date.

B. A decision by the hearing panel of the Board of Ethics not finding a violation of the Prohibited Conduct section of this chapter may be appealed to the City Council by either party. The appeal shall be taken by filing a written notice of appeal with the City Clerk within ten City business days following the **approval of the statement of findings** ~~date of the hearing~~ by the hearing panel. The notice of appeal shall be in writing on a form provided by the City Clerk. The City Clerk shall place the appeal on the agenda for a regular meeting of the City Council within 30 City business days of the filing of the notice of appeal. The City Clerk shall notify the parties in writing of the hearing date.

Proposed changes for De Novo Hearing:

2.78.070- Appeal procedures.

E. 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. **The de novo re-hearing shall be conducted before a hearing**

panel convened in accord with Riverside Municipal Code section 2.80.040.B.3(a)-(j), except that a pre-hearing conference shall not be required. The hearing shall be conducted in accord with the hearing procedures set forth in Riverside Municipal Code section 2.78.080.

The Board of Ethics will continue to review the irregularities in the City of Riverside policy and bring recommendations to the City Council throughout the year.

3. RECOMMENDATION FOR A JOINT BOARD OF ETHICS/CITY COUNCIL MEETING

The Board of Ethics voted unanimously to request the City Council host a joint workshop with the Board of Ethics to review the Code of Ethics and Conduct to discuss the recommended changes.

On December 1, 2021, the ICGC received a presentation from the Board of Ethics Chair Nelson outlining recommended changes to the Code of Ethics and Conduct (Code). The ICGC, with all committee members present, unanimously recommended that the City Council amend the Code of Ethics and Conduct provisions in Riverside Municipal Code Chapters 2.78.080 and 2.78.090 as described in this report and consider the option of having a future discussion on revising the complaint procedure process but also want to include the City Clerk and City Attorney in that conversation based on their experience.

4. RECOMMENDATIONS OF THE INCLUSIVENESS, COMMUNITY ENGAGEMENT, AND GOVERNMENTAL PROCESSES COMMITTEE

Additionally, the ICGC recommended that the City Council address amendments to the Code requested by the City Council during the annual review of the Code on December 15, 2020, as listed below:

1. Add a provision to the Code that would allow the Complainant; the Chair of the Board of Ethics Hearing Panel, and the person subject of the complaint to participate in the appeals process to address questions by the City Council;
2. Amend Provision 2.78.090(b) to include an automatic appeal to the City Council when the Board of Ethics denies complaints, similar to if the BOE determined there was a violation;
3. Request the City Attorney to add language in Provision 2.78.090(i) that will allow elected officials to speak and make comments during the appeal proceedings;
4. Add language in the Code explaining the legal recourse the parties may have during the hearing proceedings;
5. Defining the City Attorney's (staff) role in guiding the Hearing Panel discussion; and
6. Evaluate whether the need for a pre-hearing is necessary.
7. Amend Provision 2.78.090(i) to change "elected official" to "public official."

Lastly, the ICGC referred staff's recommendation to consider amending Code Section 2.78.090(e) - Appeal Procedures - Adding language establishing authority for the final resolve when the City Council determines that the hearing panel committed a clear error or an abuse of discretion based upon the record during the de novo hearing by the Board of Ethics Hearing Panel.

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.

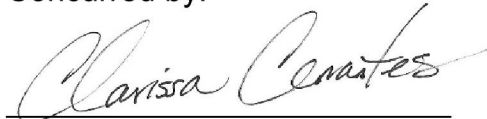
FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared by: Donesia Gause, City Clerk

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

Concurred by:

A handwritten signature in cursive script, reading "Clarissa Cervantes", written in black ink. The signature is positioned above a horizontal line.

CLARISSA CERVANTES
Chair

Attachment:

1. RMC Code of Ethics and Conduct