



City of Arts & Innovation

Inclusiveness, Community Engagement, and Governmental Processes Committee/Board of Ethics Ad Hoc Committee

TO: INCLUSIVENESS, COMMUNITY ENGAGEMENT, AND GOVERNMENTAL PROCESSES COMMITTEE AND BOARD OF ETHICS AD HOC COMMITTEE **DATE: NOVEMBER 3, 2022**

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

WARDS: ALL

ISSUE:

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

RECOMMENDATIONS:

That the Inclusiveness, Community Engagement, and Governmental Processes Committee (ICGC) and Board of Ethics Committee:

1. Continue review the Code of Ethics and Conduct;
2. Consider the recommendations by the Board of Ethics of August 4, 2022;
3. Consider the recommendations of the ICGC in the 2021 annual review of the Code of Ethics including the City Council recommendations of 2020; and
4. Direct staff to return to the Committee with draft ordinance amending RMC Chapter 2.78 with the final recommendations of the ICGC and Board of Ethics for recommendation to the City Council.

BACKGROUND:

Riverside Municipal Code (RMC) Chapters 2.78 and 2.80 provides for an annual review of the Code of Ethics and Conduct (COE) by community members, Boards and Commissions, the ICGC, and the City Council.

On February 15, 2022, the City Council introduced an Ordinance amending Chapter 2.78 of the Riverside Municipal Code (Code), as discussed by the City Council through its 2021, COE review. During the second reading of the Ordinance, on March 15, 2022, the City Council continued the adoption of the Ordinance to a later date which is still pending. (Attachment A)

In addition, during the last two years' annual reviews (2020 and 2021), the implementation of all approved revisions was tabled until after the final dispositions of several Board of Ethics complaints that were either filed or under consideration by the Board of Ethics at the time of the annual review (Attachment B).

Over the past several months, the Boards and Commissions discussed the Code and referred no substantive recommendations to the Board of Ethics for consideration.

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.

DISCUSSION:

On September 27, 2022, the Inclusiveness, Community Engagement, and Governmental Processes Committee and Board of Ethics Committee (Committee) reviewed the Pre-hearing Conference and Hearing threshold issues outlined in the presentation. In summary, the Committee concluded that (1) the pre-hearing conference is necessary to vet frivolous complaints; (2) attorneys are not a part of the pre-hearing conference proceedings; (3) more formality to settlement discussions off the record is needed; (4) the Board of Ethics should review complaint for elements of sections allegedly violated and have an opportunity to ask questions at the pre-hearing conference; (5) the official or subject of the complaint should have the option to speak at the pre-hearing conference; (6) 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 as outlined in the presentation. Additionally, the Committee expressed support of staff's recommendation to have the entire Board of Ethics conduct the pre-hearing conference during a regular meeting.

The following issues in the presentation under the Pre-Hearing Conference and Hearing sections are still pending discussion:

1. Who has subpoena power?
2. Are the findings of the pre-hearing conference appealable to the City Council?
3. Who grants a continuance and can a continuance be granted for the pre-hearing conference? Define "prior to the commencement of the hearing".
4. Who prepares Statement of Findings?
5. What is the deadline for the rescheduled hearing when a continuance is granted?

The Committee will continue reviewing the remaining threshold issues outlined in the presentation: Appeals, Sanctions and Miscellaneous. The Committee will take the totality of the discussions and conclusions to the issues raised and deliberate final recommendations.

The ICGC will meet on December 7, 2022, to consider the final recommendations for City Council for consideration during the public hearing on December 20, 2022.

To streamline the discussion for the 2022 annual review of the Code, staff identified five areas related to the complaint process and hearing procedures as listed below:

1. Pre-hearing Conference
 - a. Purpose
 - b. Attendance and participation of parties (Presentation of Evidence)
 - c. Representation
 - d. Settlement facilitation
 - e. Subpoena power

2. Hearing
 - a. Continuance (who grants? Can a Continuance be granted for the pre-hearing conference?)
 - b. Who prepares Statement of Findings and when do they get approved by the Board of Ethics?
 - c. Are rules too confusing for the public to understand?
3. Appeals
 - a. Can every decision be appealed?
 - b. What is the role of the Board of Ethics at the appeal?
 - c. Is an appeal appropriate?
 - d. Should any appeal be automatic?
 - e. What is a “de novo hearing”?
 - f. Who makes the final determination?
4. Sanctions
 - a. Who imposes penalty?
 - b. Possible referral to District Attorney?
5. Miscellaneous
 - a. Bias (disqualifications based on Ward seat)
 - b. Who has power to seek outside counsel: Board of Ethics or Hearing Panel?
 - c. Role of staff in the process?
 - d. Is the process too lengthy and time restrictive?
 - a. Complaint procedures (Who can file? Define deemed complete?)
 - b. Amendments to complaints

RMC Chapter 2.78 charted as Attachment C reflects the areas of the Code that have not been addressed in previous years in review of the Code as listed in the Background section of this report or pending revisions as recommended by the City Council or Board of Ethics.

The Presentation (Attachment D) captures the areas of the Code addressed in the five threshold issues.

BOARD OF ETHICS COE RECOMMENDATIONS:

The Board of Ethics proposed changes to Section 2.78.070 Complaint Procedures as follows:

2.78.070 Complaint procedures

- A. Only alleged violations of the Prohibited Conduct section of this chapter shall be grounds for a complaint against any public official pursuant to this chapter.*
- B. Complaints shall be submitted on forms available from the City Clerk.*
- C. Complaints and all required information and tangible evidence shall be filed with the City Clerk.*
- D. Complaints shall include, but not be limited to, all of the following:*
 - 1. Name, address, telephone number and email address, if available, of the complainant;*
 - 2. Name and position of the public official against whom the complaint is made;*

3. Date of the alleged violation;
4. The date the complainant became aware of the alleged violation;
5. The specific provision of the Prohibited Conduct section of this chapter alleged to be violated;
6. Description of the specific facts of the alleged violation;
7. The names, addresses, telephone numbers and email addresses, if known, of each person the complainant intends to call as a witness at the hearing;
8. Copies of any and all documents, photographs, recordings or other tangible materials to be introduced and considered at the hearing; and
9. Signed under penalty of perjury of the laws of the State of California.

E. Complaints shall be filed with the City Clerk within 180 calendar days of discovery of an alleged violation of this chapter, but in no event shall the complaint be filed later than three years from the date of the alleged violation. Discovery is defined as when the complainant knew or reasonably should have known of the alleged violation through the exercise of reasonable diligence.

F. The complainant may be permitted to submit one (1) revised complaint to only add additional allegations of prohibited conduct. This updated complaint must be submitted to the City Clerk following the established policies and procedures within thirty (30) days of the original complaint being filed with the Clerk and within the 180 calendar days of discovery of an alleged violation of this chapter. The only amendment may be the addition of additional allegations of violations of prohibited conduct.

FG. Upon filing of the complaint the City Clerk shall review the complaint for completeness only. If the complaint is deemed incomplete the City Clerk shall notify the complainant in writing within ten City business days as to the deficiencies. A complaint shall not be deemed filed until the City Clerk accepts it as complete.

H. If an amended complaint is submitted to the City Clerk within the 30-day time frame, the City Clerk reviews the amended complaint for completeness only. The time frames established in the RMC for actions by the City Clerk, Hearing Panel and Ethics Board will be reset using the date that the amended complaint has been accepted and determined to be complete.

I. The acceptance of the amended complaint is not deemed to be a continuance.

GJ. Within 20 City business days of the City Clerk deeming the complaint complete, the City Clerk shall set the matter for a pre-hearing conference before a hearing panel of the Board of Ethics and notify in writing the complainant and the public official against whom the complaint is filed of the date, time, and location of the pre-hearing conference. The pre-hearing conference date shall be within 45 City business days of the complaint being deemed complete.

HK. The City Clerk shall provide a copy of the complaint and all required information and tangible evidence, without charge, to the public official against whom the complaint is made within ten City business days after the complaint is deemed complete.

IL. The public official against whom the complaint is made shall file the following with the City Clerk no later than 20 calendar days prior to the date set for the hearing:

1. A written reply to the complaint;

2. *Copies of any and all documents, photographs, recordings or other tangible materials to be introduced and considered at the hearing; and*

3. *The names, addresses, telephone numbers and email addresses, if known, of any person the public official intends to call as a witness at the hearing.*

JM. *The City Clerk shall provide a copy of the written reply and all required information and tangible evidence, without charge, to the complainant no later than ten City business days after receipt of the foregoing from the public official against whom the complaint is made.*

Additionally, the Board of Ethics recommends a revision to the ordinance introduced by the City Council on February 15, 2022, noting in Section 2.78.090.E that “*the de novo hearing shall be conducted **by the same** hearing panel.*”

The Board of Ethics conducted a comparison of Codes or similar processes of other agencies provided as Attachment E.

STAFF COE RECOMMENDATIONS:

Staff proposes that all complaints be placed on the Board of Ethics meeting agenda upon the City Clerk deeming complaints complete, according to the Sunshine Ordinance, for a pre-hearing conference by the entire Board of Ethics without recusal of any members.

Then, if the Board of Ethics should determine whether it is more likely than not that a violation of prohibited conduct occurred. If yes, the Board of Ethics can decide if it wishes to exercise its discretion for the use of outside counsel, and the City Clerk would then conduct a drawing of the Board of Ethics members to establish a Hearing Panel during the same regular meeting. This recommendation will simplify and condense the complaint process and part of the hearing procedures.

Staff also recommends reconsidering whether it is necessary to disqualify any member due to bias according to Ward's seat appointment when the public official subject to the complaint is a councilmember or appointed by the Mayor. Disqualifying member(s) of the same Ward when the subject of the complaint is a council member(s) reduces the number of members that can potentially serve on a hearing panel and increases the risk of not being able to establish a quorum for a hearing.

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

Attachments:

- A. 2-15-22 City Council Ordinance
- B. 2020 and 2021 Annual Review of the Code City Council Recommendations
- C. RMC 2.78 Code of Ethics and Conduct
- D. Presentation
- E. BOE Agency Comparison Chart