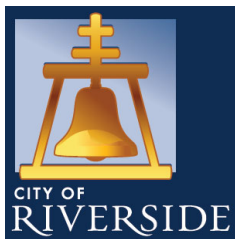


Attachment D



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

Code of Ethics and Conduct Annual Review

November 3, 2022

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RECOMMENDATIONS

That the Committee:

1. Continue review of the Code of Ethics and Conduct;
2. Consider the recommendations by the Board of Ethics on 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 a draft ordinance amending the Code of Ethics with the final recommendations of the ICGC and BOE.



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Discussion

On September 27, 2022, the Committee reviewed these threshold issues as outlined in the staff report:

1. Pre-hearing conference
2. Hearing

A recap of the threshold issues above will be provided following the review of the following threshold issues:

3. Appeals
4. Sanctions
5. Miscellaneous



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Threshold Issue - Appeals

3. Appeals
 - a. Can every decision be appealed?
 - b. What is the role of the BOE at the appeal?
 - c. Is an appeal appropriate?
 - d. Should any appeal be automatic?
 - e. What is a "de novo hearing"?



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Appeal Procedures

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.080(E)(11)	11. Other than as provided for above, no decision or ruling made by the hearing panel at the pre-hearing conference is appealable to the City Council pursuant to the appeal procedures section of this chapter until after there is a final decision by the hearing panel following a hearing on the complaint.	ISSUE: What is appealable? Should there be a separate process for appealing a decision at the pre-hearing conference?		
2.78.090(A)	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 by the hearing by the hearing panel and shall notify the parties in writing of the hearing date.	On February 15, 2022, the City Council approved the blue insertions by introduction on an ordinance not yet adopted.		
2.78.090(B)	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 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	If the hearing panel finds that a violation of the prohibited conduct did not occur, an appeal request should be in writing and submitted to City Clerk ISSUE: Should all BOE Hearing Panel (HP) findings (including findings that a violation did not occur) be automatically appealed?		



Appeal Procedures

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.090(D)	D. The record on appeal shall consist of a transcript of the hearing before the hearing panel, as well as all tangible evidence and testimony considered at the hearing. No new evidence will be received or considered by the City Council at the hearing on the appeal.	During 2020 Annual Review of the Code, the City Council requested a provision allowing participation by all parties. ISSUE: Should the complainant, respondent, and the BOE HP be given an opportunity to address the City Council during the appeal proceedings?		
2.78.090(E)	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 the same hearing panel convened in accord with Riverside Municipal Code section 2.80.040(B)(3a-1), except that a pre-hearing conference shall not be required. The hearing shall be conducted in accord with the hearing procedures set forth in the Riverside Municipal Code Section 2.78.080.	On February 15, 2022, the City Council approved the blue insertions by introduction on an ordinance not yet adopted. On August 4, 2022, the Board of Ethics recommended a language change to state that "the same hearing panel shall hear the de novo hearing." ISSUE: Should City Council be the body to oversee appeals? Who makes the final determination after a de novo hearing appeal?		



Threshold Issues

4. Sanctions

- a. Who imposes sanction?
- b. Possible referral to District Attorney?



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Sanctions

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.090(F)	If the City Council finds there is a violation of the Prohibited Conduct section of this chapter, then the City Council may determine sanctions in accordance with the enforcement and sanctions section of this chapter.	ISSUE: May the BOE recommend sanctions in accordance with 2.80? Possible referral to District Attorney?		



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Miscellaneous Threshold Issues

5. Miscellaneous

- a. Bias (disqualification based on Ward seat)
- b. Who has power to seek outside counsel: BOE or Hearing Panel?
- c. Role of staff in the process?
- d. Is the process too lengthy and time restrictive?
- e. Complaint procedures (Who can file? Define deemed complete?)
- f. Amendments to complaints



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Miscellaneous



RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.80.040(B)3(h)	3h. If a complaint concerns a City Councilmember, any member of the Board residing in that Councilmember's Ward shall be disqualified from participating on the hearing panel;	If the complaint concerns a councilmember, any member of the board residing in that Councilmember's Ward shall be disqualified from participating on the hearing panel. ISSUE: When the party(s) include all members of the City Council, then all BOE members are disqualified, and the complaint is automatically dismissed.		
Rules and Procedures		The City Clerk handles the complaints' administrative duties, i.e., review for completeness, notify all parties of proceedings, schedule proceedings, draft the statement of findings, etc. The City Attorney serves as a resource to those persons covered by the Code to assist them in understanding and abiding by the Code's provisions and issue any subpoenas, if necessary. ISSUE: Clearly identify and define staff's role in the complaint, pre-hearing conference, hearing, and appeal proceedings.		



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Miscellaneous

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.070 (A,B,C,D,E)	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. 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.	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. ISSUE: Should the submission of complaints be limited to Riverside residents or business owners, excluding nonresidents?		
INSERTION AFTER 2.78.070(E)	The complainant may be permitted to submit one 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.	Board of Ethics recommends this insertion related to amendments to complaints.		






Miscellaneous

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
INSERTION AFTER 2.78.070 (F)	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	Board of Ethics recommends this insertion related to amendments to complaints.		
INSERTION AFTER 2.78.070 (F)	The acceptance of the amended complaint is not deemed to be a continuance	Board of Ethics recommends this insertion related to amendments to complaints.		



Miscellaneous

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.040 (C) Implementation	The City Attorney, or his or her designee, shall serve as a resource to those persons covered by this chapter to assist them in understanding and abiding by the provisions therein. Use of outside legal counsel in lieu of the City Attorney to advise the Board of Ethics and its hearing panels on specific matters shall be at the discretion of the Board of Ethics. If outside legal counsel is so desired, the City Attorney shall contract with the appropriate party(ies).	ISSUE: Who has the power to seek outside counsel?		
2.78.080(E)(7) Hearing Procedures	7. If it is determined by the hearing panel that it is more likely than not that there may be a potential violation of the prohibited conduct section of this chapter has occurred, then the City Clerk shall set a hearing date on the complaint within 20 City business days of the pre-hearing conference. The hearing date shall be within 45 City business days following the pre-hearing conference.	ISSUE: Is a Statement of Findings necessary for the pre-hearing conference only when the hearing panel finds it is not likely a violation occurred?		
2.78.090 (I) Appeal Procedures	No elected official who is either the complainant, or the subject of a complaint, filed pursuant to this chapter shall participate in the appeal of a decision of the hearing panel considering such complaint and must recuse himself or herself from participation.	During the 2020 annual review of the Code, the City Council recommended change "elected" to "public official."		



Miscellaneous

- What is the role of staff?
- Is the process too lengthy and time restrictive?



Recap of Pre-hearing Conference and Hearing Threshold Issues

On September 27, 2022, the Committee concluded:

1. Pre-hearing conference is necessary
2. Involvement of attorneys is not necessary
3. More formality to settlement discussions
4. Board of Ethics should review complaint for elements of sections violated and have ability to ask questions
5. Both parties should have the option to speak at the pre-hearing conference
6. Separate pre-hearing and hearing procedures

Issues not addressed under Pre-hearing and Hearing are highlighted on the following slides.



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Pre-hearing Conference Threshold Issues

1. Pre-hearing conference
 - a. Purpose
 - b. Attendance and participation of parties
 - c. Representation
 - d. Settlement facilitation
 - e. Subpoena power






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Pre-hearing Conference

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.080 (E)	<p>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:</p> <p>1. The hearing panel shall review the complaint to determine if it complies with all of the following to establish jurisdiction of the Board of Ethics:</p> <ul style="list-style-type: none"> a. The complaint procedures section of this chapter have been followed; b. The complaint is against a public official set forth in the scope section of this chapter; c. The complaint alleges a violation of one or more of the provisions of the prohibited conduct section of this chapter; and d. The complaint does not restate allegations of violations that were the subject of a previous complaint. 	<p>The hearing panel of the Board of Ethics shall conduct a pre-hearing conference before a hearing date is scheduled by the City Clerk.</p> <p>ISSUE: Is a pre-hearing conference necessary?</p> <p>Staff recommends the entire Board of Ethics conduct the pre-hearing conference during a regular meeting without recusal of members. If it is determined that more likely than not a violation occurred, the hearing panel would be drawn at this meeting.</p>		
2.78.080(B)(Q)	<p>B. The pre-hearing conference and hearing on the merits are not formal judicial proceedings. The technical rules of evidence do not apply.</p> <p>Q. Neither the complainant, nor the public official against whom a complaint is filed pursuant to this chapter, shall be represented at the hearing by an attorney. Although an attorney may be present and consulted at the hearing, the attorney shall not address the hearing panel or participate in any aspect of the hearing.</p>	<p>ISSUE: Should complainant and respondents attorneys be allowed to participate in the pre-hearing conference, hearing, and appeal proceedings?</p>		








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Pre-hearing Conference

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.080 (D)	<p>D. No witnesses, documents, photographs, recordings or other tangible materials, other than those submitted with the complaint or reply, shall be introduced at the hearing or considered by the hearing panel. However, witnesses, documents, photographs, recordings and other tangible evidence may be introduced and considered upon a finding by a majority of the hearing panel that the discovery of such evidence came to the awareness of the proponent after the filing of the complaint or reply and that the proponent disclosed such information to the City Clerk as soon as practicable after becoming aware of its existence. Any witnesses, documents, photographs, recordings and other tangible evidence subpoenaed by the hearing panel shall also be introduced and considered.</p>	<p>The hearing panel of the Board of Ethics shall conduct a pre-hearing conference before a hearing date is scheduled by the City Clerk.</p> <p>ISSUE: Who has subpoena power?</p>		
2.78.080(E)(3)	<p>3. The hearing panel shall facilitate settlement discussions between the parties.</p>	<p>ISSUE: Who facilitates a settlement?</p>		
2.78.080(E)(5)	<p>5. The complainant shall verbally present to the hearing panel any and all evidence, both tangible and testimonial, that will be presented at the hearing to prove the allegations in the complaint.</p>	<p>ISSUE: What is the participation of the public official subject to the complaint?</p>		




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Pre-hearing Conference

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.080(E)(8)	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. <u>Alternatively, the hearing panel may designate members of the hearing panel to prepare the findings. If memers of the hearing panel prepare the findings, such findings shall be adopted at the next regular meeting of the Board of Ethics.</u> 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.	On February 15, 2022, the City Council approved the blue insertions by introduction on an ordinance not yet adopted. ISSUE: Is the intention for the pre-hearing conference findings to be appealable to the City Council?		






Hearing Threshold Issues

2. Hearing

- a. Continuance (Who grants? Can a continuance be granted for the pre-hearing conference?)
- b. Who prepares Statement of Findings? When do they get approved by the Board of Ethics?
- c. Are rules too confusing for the public to understand?



Hearing

RMC SECTION	RMC LANGUAGE	ISSUE	BOARD OF ETHICS	CITY COUNCIL
2.78.070 (I)	I. 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.	A reply is not required for the pre-hearing conference if participation of the public official is not required or expected. ISSUE: This provision follows 'pre-hearing' procedures as stated in 2.78.070 but would be more appropriately placed under 2.78.080 hearing procedures to avoid ambiguity.		
2.78.080(F)	F. Prior to the commencement of the hearing, either party may ask the City Clerk for a continuance of the hearing on either of the following grounds: 1. The unavailability of the party at the hearing due to illness or other reason acceptable to the City Clerk; or 2. The unavailability of a witness identified in the complaint or reply.	The City Clerk grants a continuance. ISSUE: Define "prior to the commencement"? Should Board of Ethics approve continuances? Can a continuance be requested for a pre-hearing conference?		
2.78.080(G)	Only one continuance of the hearing shall be granted by the City Clerk to each party. If a continuance is granted, the City Clerk shall give written notice to all parties of the new hearing date, time, and location within 20 City business days of the granting of the continuance.	Code does not specify a timeframe by when the hearing must be rescheduled. ISSUE: What is the deadline for the rescheduled hearing?		

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Recommendations from 2020 and 2021 Annual Review of the Code of Ethics

1. Add provision to allow both parties and Chair of Board of Ethics to participate in the appeals process
2. Automatic appeal when Hearing Panel finds no violation
3. Add language to explain legal recourse of parties during hearing proceedings
4. Define City Attorney's role to Hearing Panel
5. Amend Section 2.78.090(i) to change "elected official" to "public official"
6. Add language to establish final authority of the City Council to have final resolve on appeals
7. City Council introduced Ordinance on February 15, 2022 - BOE recommends revision to Section 2.78.090.E that *"the de novo hearing shall be conducted **by the same** hearing panel."*

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