

# Code of Ethics and Conduct Amendments Update

**Board of Ethics**

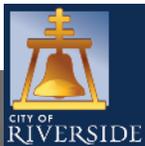
**May 4, 2023**

# Chapter 2.78 Code of Ethics Amendments

## 1. Facilitating Settlement Discussions

### 2.78.075 Pre-Conference Procedures.

3. The hearing panel shall facilitate settlement discussions between the parties. The settlement process can include, but is not limited to, the Board of Ethics taking a break during the pre-conference and allowing the complainant and the public official to confer privately to determine if a resolution can be reached. If the parties are unable to resolve their dispute, the pre-conference will then continue. Any proposed resolutions or offers of settlement that were not accepted will not be introduced as evidence nor considered as part of the complaint. If the parties reach a settlement, the parties shall report to the Board of Ethics that the complaint has been settled and that no hearing is necessary.



# Chapter 2.78 Code of Ethics Amendments

## 2. Added language clarifying presentations during the pre-conference and hearing proceedings are at the discretion of the parties to the complaint, not the hearing panel

4. The Board of Ethics ~~the hearing panel~~ shall review the submitted tangible evidence to determine if it is relevant to the issues raised in the complaint. If it is determined, by a majority vote, that any such evidence is irrelevant to the issues raised in the complaint, then such evidence will be deemed inadmissible at the hearing and shall be excluded.

5. The complainant ~~shall~~ **may** verbally present to the Board of Ethics any and all evidence, both tangible and testimonial, that will be presented at the hearing to prove the allegations in the complaint. **The public official will have the option or opportunity to present to the Board of Ethics any and all evidence, both tangible and testimonial, that will be presented at the hearing or address the evidence presented by the complainant, including** whether the complainant has shown that the evidence, if taken as true, more likely than not shows that there may be a potential violation of the Prohibited Conduct section of this chapter. **During the pre-conference, any member of the Board of Ethics may ask questions of the parties.**



# Chapter 2.78 Code of Ethics Amendments

## 3. Setting of time limits and expediting the hearing proceedings.

Suggested Changes to RMC: RMC 2.78 and 2.80 were revised:

- All non-compliant complaints to be administratively rejected,
- To allow the public official to address the BOE during the pre-conference,
- To allow the pre-conference to be conducted by the BOE
- To limit appeals and to limit de novo hearings after an appeal to one.



# Chapter 2.78 Code of Ethics Amendments

**4. Simplifying the hearing process which includes a pre-conference and hearing, followed potentially by an appeal and de novo hearing briefly outlined below:**

**A. Pre-conference** by hearing panel within 45 City business days of the complaint being deemed complete by the City Clerk. No later than 30 calendar days before the pre-conference, the City Clerk must draw a hearing panel disqualifying members by Ward residency when complaint involves an elected official.

1. Hearing panel reviews complaint to determine if it complies.
2. If so, hearing panel facilitates settlement discussion.
3. If no settlement is reached, hearing panel reviews evidence for relevance and deems irrelevant evidence as inadmissible.
4. Complainant presents evidence.
5. Hearing panel determines if more likely than not that there may be a potential violation. If so, forwards complaint to a hearing.



# Chapter 2.78 Code of Ethics Amendments

- B. **Hearing** within 45 City business days of the pre-conference
1. The hearing is not a formal judicial proceeding. Technical rules of evidence do not apply.
  2. Complainant presents evidence and has the burden of proof.
  3. Public official presents second.
  4. Parties may present rebuttal evidence.
  5. Hearing panel deliberates and makes findings.

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.



# Chapter 2.78 Code of Ethics Amendments

## 5. Appeals of the pre-conference decision should be allowed for instances of clear procedural errors, but not for substantive findings.

### 2.78.090 Appeals procedures.

- A. A decision by the hearing panel of the Board of Ethics may be appealed to the City Council by either party. A decision of the Board of Ethics at a pre-hearing may only be appealed if the appeal is based upon a clear procedural error ~~of law~~. 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 decision. The notice of appeal shall be in writing on a form provided by the City Clerk. The appealing party must specify on the appeal form the clear procedural error ~~of law~~ or abuse of discretion that was committed by the hearing panel. 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.

# Chapter 2.78 Code of Ethics Amendments

## 6. City Council makes a final determination on an appeal of a De Novo Hearing.

### 2.78.090 Appeal procedures.

- D. The City Council shall review the record of the hearing to determine whether the hearing panel committed a procedural ~~clear~~ error or an abuse of discretion based upon the record. The City Council may also question the complaining party, the public official or the chair or designee of the hearing panel. If no finding of clear procedural error ~~of law~~ or abuse of discretion 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 clear procedural error or abuse of discretion by the hearing panel, then that finding shall be clearly stated and the matter shall be referred 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* hearing shall be conducted before the same hearing panel, but no pre-conference shall be held, and the *de novo* hearing panel shall consider the clear procedural error ~~of law~~ or abuse of discretion identified by the City Council when issuing its findings. Any decision rendered by the *de novo* hearing panel may be appealed to the City Council. If the City Council finds that the *de novo* hearing panel committed clear procedural error or abuse of discretion, the City Council has the discretion to adopt the decision of the *de novo* hearing panel or issue their own decision. The City Council's decision will then be final and no longer subject to further hearing.

# Chapter 2.78 Code of Ethics Amendments

## 7. Use of attorneys by parties at the pre-conference and hearing – no change

### 2.78.080 Hearing procedures.

- DB. The ~~pre-hearing conference and~~ hearing on the merits are not formal judicial proceedings. The technical rules of evidence do not apply.
- RQ. 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.

# Chapter 2.78 Code of Ethics Amendments

## 8. Remove automatic disqualification based on residency.

Section 2.80.040, “Powers and Duties”, Section (h) **removed**:

h. If a complaint is against a City Councilmember, any member of the Board residing in that Councilmember's Ward shall be disqualified from participating on the hearing panel unless participation is required for a quorum; then members are chosen randomly.

# Recommendation

That the Board of Ethics receive and file the update on Ordinance No. 7632 adopted on April 11, 2023, amending Chapter 2.78 – Code of Ethics and 2.80 – Board of Ethics of the Riverside Municipal Code effective May 11, 2023.

