



City of Arts & Innovation

# Governmental Affairs Committee Memorandum

**TO: GOVERNMENTAL AFFAIRS COMMITTEE      DATE: JUNE 6, 2018**  
**FROM: BOARD OF ETHICS      WARDS: ALL**  
**SUBJECT: BOARD OF ETHICS RECOMMENDED REVISIONS TO RIVERSIDE MUNICIPAL  
CODE CHAPTER 2.78**

## **ISSUE:**

The Board of Ethics, at its May 3, 2018, regular meeting, unanimously recommended further changes to Riverside Municipal Code (RMC) Chapter 2.78 to further define the scope of examination of witnesses and the presentation of rebuttal evidence.

## **RECOMMENDATIONS:**

That the Governmental Affairs Committee review, discuss, and recommend that the City Council:

1. Amend Riverside Municipal Code Chapter 2.78 to further define the scope of examination of witnesses and the presentation of rebuttal evidence; and
2. Introduce and adopt the attached ordinance.

## **LEGISLATIVE HISTORY/BACKGROUND:**

On December 5, 2017, the City Council amended Chapter 2.78 upon the recommendation of the Governmental Affairs Committee and following the annual review of the Code of Ethics and Conduct by the Board of Ethics. At that meeting, several Councilmembers recommended that the Board of Ethics consider further revisions to the Code of Ethics and Conduct including a process to review complaints prior to a hearing on the merits. Additionally, several Councilmembers recommended that the Board address the manner and scope for the examination of witnesses and the presentation of rebuttal evidence.

At the January and February regular meetings of the Board of Ethics several options for a pre-hearing vetting process were discussed and considered. An *ad hoc* sub-committee was established to further explore options and bring back recommendations to the Board for consideration.

At the regular meeting of the City Council on April 24, 2018, the City Council adopted revisions to RMC Chapter 2.78 to provide for a pre-hearing conference.

At the regular meeting of the Board of Ethics on May 3, 2018, the Board reviewed, discussed, and unanimously recommends to the Governmental Affairs Committee to further amend RMC Chapter 2.78 to further define the examination of witnesses and the presentation of rebuttal evidence by the parties.

Section 2.78.080 is amended by adding a new paragraph J to read "Neither party shall be allowed to examine the other party as part of their presentation of evidence. However, a party may cross-examine the other party as to any matters directly testified to by that party during their presentation of evidence. Cross-examination is limited to only those matters testified to by the party or witness during their presentation of evidence."

Section 2.78.080 J is re-numbered to read "2.78.080 K."

Section 2.78.080 is amended by adding a new paragraph L to read "The parties may present rebuttal evidence. The complainant may present rebuttal evidence to the public official's evidence following the completion of the presentation of evidence by the public official. The public official may offer rebuttal evidence to the complainant's evidence during the public official's presentation of evidence. The public official may also present evidence to rebut the complainant's rebuttal evidence. Rebuttal evidence must be evidence directly or indirectly refuting the evidence introduced by the other party."

Section 2.78.080 L is renumbered to read "2.78.080 M."

Section 2.78.080 M is renumbered to read "2.78.080 N."

Section 2.78.080 N is renumbered to read "2.78.080 O."

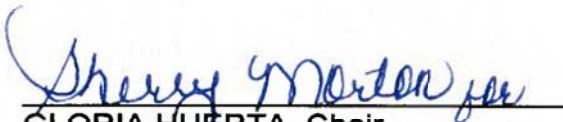
Section 2.78.080 O is renumbered to read "2.78.080 P."

Section 2.78.080 P is renumbered to read "2.78.080 Q."

**FISCAL IMPACT:**

None.

Submitted by:

  
GLORIA HUERTA, Chair  
Board of Ethics

Approved as to form: Robert L. Hansen, Assistant City Attorney

Attachment: Proposed ordinance amending RMC 2.78

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

The City Council of the City of Riverside does ordain as follows:

Section 1: PURPOSE. Section 202 of The Charter of the City of Riverside mandates that the City of Riverside shall adopt 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 City Council adopted Ordinance No. 7328 on April 5, 2016, thereby adopting the Code of Ethics and Conduct, Riverside Municipal Code (RMC) Chapter 2.78. The City Council now desires to amend the Code of Ethics and Conduct by ordinance.

Section 2: AUTHORITY. This ordinance is adopted pursuant to Article 11, sections 5(a) and 7 of the California Constitution and Sections 200 and 202 of The Charter of the City of Riverside.

Section 3: RMC Chapter 2.78 is hereby amended as follows:

Section 2.78.080 is amended by adding a new paragraph J to read “Neither party shall be allowed to examine the other party as part of their presentation of evidence. However, a party may cross-examine the other party as to any matters directly testified to by that party during their presentation of evidence. Cross-examination is limited to only those matters testified to by the party or witness during their presentation of evidence.”

Section 2.78.080 J is re-numbered to read “2.78.080 K.”

Section 2.78.080 is amended by adding a new paragraph L to read “The parties may present rebuttal evidence. The complainant may present rebuttal evidence to the public official’s evidence following the completion of the presentation of evidence by the public official. The public official may offer rebuttal evidence to the complainant’s evidence during the public official’s presentation of evidence. The public official may also present evidence to rebut the complainant’s rebuttal evidence. Rebuttal evidence must be evidence directly or indirectly refuting the evidence introduced by the other party.”

Section 2.78.080 L is renumbered to read “2.78.080 M.”

Section 2.78.080 M is renumbered to read “2.78.080 N.”

Section 2.78.080 N is renumbered to read “2.78.080 O.”

Section 2.78.080 O is renumbered to read “2.78.080 P.”

Section 2.78.080 P is renumbered to read “2.78.080 Q.”

Section 4: Redline version of Chapter 2.78 showing the above changes:

## **“Chapter 2.78**

### **CODE OF ETHICS AND CONDUCT**

#### **Sections:**

**2.78.010 Establishment of the Code of Ethics and Conduct.**

**2.78.020 Purpose.**

**2.78.030 Scope.**

**2.78.040 Implementation.**

**2.78.050 Core Values.**

**2.78.060 Prohibited Conduct.**

**2.78.070 Complaint Procedures.**

**2.78.080 Hearing Procedures.**

**2.78.090 Appeal Procedures.**

**2.78.100 Enforcement and Sanctions.**

**2.78.110 Monitoring and Oversight.**

**2.78.120 Severability.**

**Section 2.78.010 Establishment of the Code of Ethics and Conduct.**

Pursuant to Article 11, sections 5(a) and 7 of the California Constitution and Sections 200 and 202 of The Charter of the City of Riverside, there is hereby established by the City Council of the City of Riverside a Code of Ethics and Conduct for the Mayor, members of the City Council, and all members of appointed boards,

1 commissions and committees which shall assure public confidence in the integrity of  
2 local government and its effective and fair operation.

3 **Section 2.78.020 Purpose.**

4 The purpose of this Code of Ethics and Conduct is to achieve fair, ethical, and  
5 accountable local government for the City of Riverside. The people of the City of  
6 Riverside expect their public officials to comply with both the letter and the spirit of  
7 the laws of the United States of America, the State of California, the Charter of the City  
8 of Riverside, the Riverside Municipal Code, and established policies of the City of  
9 Riverside affecting the operations of local government. In addition, public officials are  
10 expected to comply with the provisions of this Code of Ethics and Conduct established  
11 pursuant to the expressed will of the people. All persons covered by this Code of Ethics  
12 and Conduct shall aspire to meet the highest ethical standards in the conduct of their  
13 responsibility as a public official of the City of Riverside.

14 This Code of Ethics and Conduct is divided into two areas: Core Values and  
15 Prohibited Conduct. The Core Values are intended to provide a set of principles from  
16 which public officials of the City of Riverside can draw upon to assist them in  
17 conducting the public's business. As such, the Core Values are directory in nature and  
18 not subject to the complaint procedures set forth herein. The Prohibited Conduct are  
19 actions that public officials of the City of Riverside shall not engage in, and, as such,  
20 are subject to the complaint procedures set forth herein.

21 **Section 2.78.030 Scope.**

22 The provisions of this chapter shall apply to the Mayor, members of the City  
23 Council, and to all members of the boards, commissions, and committees appointed by  
24 the City Council, the Mayor, or the Mayor and City Council, including any *ad hoc*  
25 committees (collectively referred to herein as "public officials.") The provisions of  
26 this chapter shall also apply to all members of committees appointed by individual  
27 members of the City Council, Mayor, the City Manager or by Department Heads.

28 Further, the provisions of this chapter shall apply to the Mayor and Members  
of the City Council at all times during their term of office as elected officials of the  
City of Riverside. However, the provisions of this chapter shall apply to all members

1 of the boards, commissions, and committees only while they are acting in their official  
2 capacities or affecting the discharge of their duties.

3 **Section 2.78.040 Implementation.**

4 To achieve the objectives of this chapter, the following mechanisms shall be  
5 followed.

6 A. All public officials upon election or re-election, appointment or re-  
7 appointment, shall be given a copy of this chapter and required to affirm in writing that  
8 they have received a copy of this chapter and understand its provisions.

9 B. Within ninety (90) days of taking office, all new public officials shall  
10 be provided a training session which shall clarify the provisions and application of this  
11 chapter. These sessions shall be coordinated by the City Clerk with assistance from the  
12 City Manager and City Attorney.

13 C. The City Attorney, or his or her designee, shall serve as a resource to  
14 those persons covered by this chapter to assist them in understanding and abiding by  
15 the provisions therein. Use of outside legal counsel in lieu of the City Attorney to  
16 advise the Board of Ethics and its hearing panels on specific matters shall be at the  
17 discretion of the Board of Ethics. If outside legal counsel is so desired, the City  
18 Attorney shall contract with the appropriate party(ies).

19 D. All bodies whose members are covered by this chapter shall adopt rules  
20 of procedure which include the provisions of this chapter.

21 E. The chair of each board, commission or committee covered by this  
22 chapter is responsible to provide appropriate guidance to members of their respective  
23 bodies and, if need be, communicate concerns to the Board of Ethics.

24 **Section 2.78.050 Core Values.**

25 The people of the City of Riverside share a set of core values that constitute the  
26 guiding principles for the establishment of this chapter. These core values are  
27 expressed in the following aspirations:

28 A. To strive to create a government that is trusted by everyone.

The public officials of the City of Riverside shall aspire to operate the City  
government and exercise their responsibilities in a manner which creates trust in their

1 decisions and the manner of delivery of programs through the local government. The  
2 public officials shall aspire to create a transparent decision making process by  
3 providing easy access to all public information about actual or potential conflicts  
4 between their private interests and their public responsibilities. The public officials  
5 shall aspire to make themselves available to the people of the city to hear and  
6 understand their concerns. They shall aspire to make every effort to ensure that they  
7 have accurate information to guide their decisions and to share all public information  
8 with the community to ensure the community understands the basis of the officials'  
9 decisions.

10 B. To strive to make decisions that are unbiased, fair, and honest.

11 The public officials of the City of Riverside shall aspire to ensure that their  
12 decisions are unbiased, fair, and honest. They shall strive to avoid participation in all  
13 decisions which create a real or perceived conflict of interest and to disclose any  
14 personal interest that could be perceived to be in conflict with the fair and impartial  
exercise of their responsibilities.

15 C. To strive to ensure that everyone is treated with respect and in a just and fair  
16 manner.

17 The public officials of the City of Riverside have a responsibility to make  
18 extraordinary attempts to treat all people in a manner which would be considered just  
19 and fair. They shall strive to value and encourage input from members of the  
20 community and encourage open and free discussion of public issues. They shall strive  
21 to have all persons treated with respect as they come before the body on which they  
22 serve. They shall aspire to create an atmosphere of genuine interest in the point of view  
23 expressed by members of the community even if it differs from their own.

24 D. To strive to create a community that affirms the value of diversity.

25 The public officials of the City of Riverside shall aspire to recognize and affirm  
26 the value of all persons, families, and communities within the City of Riverside. They  
27 will encourage full participation of all persons and groups, be aware and observe  
28 important celebrations and events which reflect the values of the City's diverse  
population, and provide assistance for those who find it difficult to participate due to

1 language barriers or disabilities.

2 E. To strive to ensure that all public decisions are well informed, independent, and  
3 in the best interests of the City of Riverside.

4 The public officials of the City of Riverside will encourage and support research  
5 and information gathering from verifiable sources. They will seek to ensure that  
6 information provided by the City Government to the public is accurate and clear. They  
7 will ensure that all information utilized in the decision making process, except that  
8 which by law is confidential, will be shared with the public.

9 F. To strive to maintain a nonpartisan and civic minded local government.

10 The public officials of the City of Riverside shall affirm the value of a  
11 nonpartisan council-manager form of government.

12 G. To strive to ensure that all public officials are adequately prepared for the duties  
13 of their office.

14 The public officials of the City of Riverside shall commit to participation in all  
15 orientation and training sessions which are presented to ensure full preparation for the  
16 exercise of their public duties.

17 H. To strive to ensure that appointed members of boards, commissions and  
18 committees attend regularly scheduled meetings.

19 Appointed members of boards, commissions and committees of the City of  
20 Riverside shall make a diligent effort to attend all regularly scheduled meetings of their  
21 respective board, commission or committee.

## 22 **Section 2.78.060 Prohibited Conduct.**

23 The following conduct is prohibited and shall be subject to the complaint  
24 procedures established in this chapter. It may be unethical for any public official to  
25 engage in one or more of the following prohibited actions:

26 A. Use of Official Title or Position for Personal Gain Prohibited.

27 Public officials of the City of Riverside shall not use their official title or  
28 position for personal gain. Personal gain includes, but is not limited to, situations  
wherein a public official solicits or accepts items of value in consideration of their  
official title or position. This does not include obtaining benefits that are otherwise

1 permitted or authorized by law. Therefore, acceptance of gifts shall otherwise be  
2 consistent with the requirements and limitations allowable by law. Public officials shall  
3 refrain from the following: (a) accepting gifts or favors that may compromise  
4 independent judgment or give the appearance of compromised judgment; (b) using  
5 official title for matters other than the official conduct of their office; and (c) engaging  
6 in decisions which would affect the level of compensation received for service except  
7 as otherwise required or allowed by law.

8 **B. Use or Divulgence of Confidential or Privileged Information Prohibited.**

9 Public officials of the City of Riverside shall not use or divulge confidential or  
10 privileged information obtained in the course of their official duties for their own  
11 personal gain, financial or otherwise, or for the gain of others, in a manner contrary to  
12 the public interest or in violation of any law.

13 **C. Use of City Resources for Non-City Purposes Prohibited.**

14 Public officials of the City of Riverside shall not use or permit the use of City  
15 resources including, but not limited to, funds, seals or logos, time, personnel, supplies,  
16 equipment, identification cards/badges, or facilities for unapproved non-City activities,  
17 except when available to the general public, provided for by administrative rules,  
18 regulations, or policies, or approved by a majority of the City Council.

19 **D. Advocacy of Private Interests of Third Parties in Certain Circumstances**  
20 **Prohibited.**

21 No elected official of the City of Riverside shall appear on behalf of the private  
22 interests of third parties before the City Council; nor shall any appointed member of a  
23 board, commission or committee of the City of Riverside appear before their own body  
24 on behalf of the private interests of third parties, except for limited exceptions as  
25 provided for in the California Fair Political Practices Commission Regulations or  
26 otherwise by law.

27 **E. Endorsements for Compensation Prohibited.**

28 No public official of the City of Riverside shall endorse or recommend, for  
compensation, any commercial product or service in the name of the City or in their  
official capacity within the jurisdictional boundaries of the City without prior approval

1 of a City Council policy.

2 F. Violation of Government Code Sections 87100 *et seq.*, Prohibited.

3 No public official of the City of Riverside shall violate Government Code  
4 Sections 87100, *et seq.*, or any of its related or successor statutes, from time to time  
5 amended, regulating financial interests and governmental decisions made by public  
6 officials. If an ethics complaint is filed alleging a violation of this subsection, the City  
7 recognizes that the Fair Political Practices Commission (FPPC) is the primary  
8 enforcement authority of the Political Reform Act and that its decisions should be given  
9 great weight. As such, if a complaint is pending before the FPPC raising the same or  
10 similar violations based upon the same or similar facts, then the Board of Ethics may  
11 defer action on such allegation until completion of the FPPC action. If a complaint has  
12 not been filed with the FPPC raising the same or similar violations based upon the same  
13 or similar facts, then the hearing panel of the Board of Ethics, upon a four-fifths (4/5)  
14 vote, may file a complaint with the FPPC and defer action on a complaint filed pursuant  
15 to this chapter until a final action by the FPPC. A ruling on the merits by the FPPC  
16 may be accepted by the Board of Ethics as a finding on the ethics complaint filed with  
the City.

17 G. Certain Political Activity Prohibited.

18 No public official of the City of Riverside shall coerce, or attempt to coerce,  
19 any of their subordinates or any other City employee to participate in an election  
20 campaign, contribute to a candidate or political committee, engage in any other political  
21 activity relating to a particular party, candidate, or issue, or to refrain from engaging in  
22 any lawful political activity. A general statement encouraging another person to vote  
23 does not violate this provision.

24 H. Display of Campaign Materials in or on City Vehicles Prohibited.

25 No public official of the City of Riverside shall display campaign materials in  
26 or on any City-owned or provided vehicle under their control or operated by that  
27 official. In addition, no public official shall transport, store, or otherwise have any  
28 campaign materials located within any City-owned or provided vehicle under their  
control or operated by that official. Campaign materials include, but are not limited to,

1 bumper stickers, signs, brochures, informational documents, buttons or other similar  
2 items.

3 I. Knowingly Assisting Another Public Official in Violating This Code of Ethics  
4 and Conduct Prohibited.

5 No public official of the City of Riverside shall knowingly assist another public  
6 official in violating the Prohibited Conduct section of this chapter, nor shall they  
7 engage any other person to assist them in any conduct that would constitute a violation  
8 of the Prohibited Conduct section of this chapter.

9 J. Negotiation for Employment with Any Party Having a Matter Pending  
10 Prohibited.

11 No public official of the City of Riverside shall negotiate for employment with  
12 any third party at the same time that third party has a matter pending before the City  
13 Council, boards, commissions, committees, or City departments and upon which the  
14 public official must act or make a recommendation.

15 K. Ex Parte Contact in Quasi-Judicial Matters Prohibited.

16 No appointed official of the City of Riverside shall contact any elected official  
17 on any matter of a quasi-judicial nature before the City Council in which the appointed  
18 official participated. A quasi-judicial matter is any proceeding which may affect the  
19 legal rights, duties or privileges of any party to the proceeding and requires the public  
20 official to objectively determine facts and draw conclusions from those facts as the  
21 basis of an official action.

22 L. Attempts to Coerce Official Duties Prohibited.

23 No elected official of the City of Riverside shall coerce, or attempt to coerce,  
24 any other public official in the performance of their official duties.

25 M. Violations of Federal, State, or Local Law Prohibited.

26 No public official of the City of Riverside shall intentionally or repeatedly  
27 violate the Charter of the City of Riverside, the Riverside Municipal Code, or any  
28 established policies of the City of Riverside affecting the operations of local  
government, or be convicted of violation of any state or federal law pertaining to the  
office which they hold.

**Section 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 (3) 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. 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 (10) City business days as to the deficiencies. A

1 complaint shall not be deemed filed until the City Clerk accepts it as complete.

2 G. Within twenty (20) City business days of the City Clerk deeming the complaint  
3 complete, the City Clerk shall set the matter for a pre-hearing conference before a  
4 hearing panel of the Board of Ethics and notify in writing the complainant and the  
5 public official against whom the complaint is filed of the date, time, and location of the  
6 pre-hearing conference. The pre-hearing conference date shall be within forty-five (45)  
7 City business days of the complaint being deemed complete.

8 H. The City Clerk shall provide a copy of the complaint and all required  
9 information and tangible evidence, without charge, to the public official against whom  
10 the complaint is made within ten (10) City business days after the complaint is deemed  
11 complete.

12 I. The public official against whom the complaint is made shall file the following  
13 with the City Clerk no later than twenty (20) calendar days prior to the date set for the  
14 hearing:

- 15 1. A written reply to the complaint;
- 16 2. Copies of any and all documents, photographs, recordings or other  
17 tangible materials to be introduced and considered at the hearing; and
- 18 3. The names, addresses, telephone numbers and email addresses, if  
19 known, of any person the public official intends to call as a witness at  
20 the hearing.

21 ~~I.J.~~ The City Clerk shall provide a copy of the written reply and all required  
22 information and tangible evidence, without charge, to the complainant no later than ten  
23 (10) City business days after receipt of the foregoing from the public official against  
24 whom the complaint is made.

#### 25 **Section 2.78.080 Hearing Procedures.**

26 A. The Board of Ethics shall have the authority to adopt hearing procedures not in  
27 conflict with this chapter. In addition to any hearing procedures adopted by the Board  
28 of Ethics, the following hearing procedures shall also apply.

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

1 C. The Chair of the hearing panel of the Board of Ethics shall preside over the pre-  
2 hearing conference and hearing.

3 D. No witnesses, documents, photographs, recordings or other tangible materials,  
4 other than those submitted with the complaint or reply, shall be introduced at the  
5 hearing or considered by the hearing panel. However, witnesses, documents,  
6 photographs, recordings and other tangible evidence may be introduced and considered  
7 upon a finding by a majority of the hearing panel that the discovery of such evidence  
8 came to the awareness of the proponent after the filing of the complaint or reply and  
9 that the proponent disclosed such information to the City Clerk as soon as practicable  
10 after becoming aware of its existence. Any witnesses, documents, photographs,  
11 recordings and other tangible evidence subpoenaed by the hearing panel shall also be  
12 introduced and considered.

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

- 19 1. The hearing panel shall review the complaint to determine if it complies  
20 with all of the following to establish jurisdiction of the Board of Ethics:
  - 21 a. The Complaint Procedures section of this chapter have been  
22 followed;
  - 23 b. The complaint is against a public official set forth in the Scope  
24 section of this chapter;
  - 25 c. The complaint alleges a violation of one or more of the  
26 provisions of the Prohibited Conduct section of this chapter; and
  - 27 d. The complaint does not restate allegations of violations that  
28 were the subject of a previous complaint.
2. If a majority of the hearing panel determines that the complaint does not  
comply with all of the provisions of subsection E 1 above, the Chair

1 shall state the findings of deficiency on the record and shall call for a  
2 vote of the hearing panel to dismiss the complaint without a hearing. A  
3 roll call vote of the hearing panel shall be taken by the City Clerk who  
4 will record the vote of each member of the hearing panel. The Chair of  
5 the hearing panel shall instruct the City Clerk to prepare a Statement of  
6 Findings for the hearing panel to adopt at the next regular meeting of  
7 the Board of Ethics. This Statement of Findings shall be considered the  
8 final decision of the hearing panel and is immediately appealable to the  
9 City Council pursuant to the Appeal Procedures section of this chapter.  
10 If a majority of the hearing panel determines that the complaint complies  
11 with all of the provisions of subsection E 1 above, then the pre-hearing  
12 conference shall proceed.

- 13 3. The hearing panel shall facilitate settlement discussions between the  
14 parties.
- 15 4. The hearing panel shall review the submitted tangible evidence to  
16 determine if it is relevant to the issues raised in the complaint. If it is  
17 determined, by a majority vote, that any such evidence is irrelevant to  
18 the issues raised in the complaint, then such evidence will be deemed  
19 inadmissible at the hearing and shall be excluded.
- 20 5. The complainant shall verbally present to the hearing panel any and all  
21 evidence, both tangible and testimonial, that will be presented at the  
22 hearing to prove the allegations in the complaint.
- 23 6. The hearing panel shall determine, by a majority vote, whether the  
24 complainant has shown that the evidence, if taken as true, more likely  
25 than not shows that there may be a potential violation of the Prohibited  
26 Conduct section of this chapter.
- 27 7. If it is determined by the hearing panel that it is more likely than not that  
28 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 twenty (20) City business days of the pre-hearing

conference. The hearing date shall be within forty-five (45) City business days following the pre-hearing conference.

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. 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.

9. The hearing panel may discuss and act upon whether or not any subpoenas are necessary to be issued by the hearing panel pursuant to Riverside Municipal Code section 2.80.040 A5 and B5.

10. The hearing panel may set time limits for the parties to present their evidence at the hearing on the complaint.

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.

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.

G. Only one (1) 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 twenty (20) City business days of the granting of the continuance.

H. The complainant shall have the burden of proof by a preponderance of the evidence to establish a violation of the Prohibited Conduct section of this chapter.

1 Preponderance of evidence means evidence that is more convincing and, therefore,  
2 more probable in truth and accuracy. The complainant shall proceed first. The  
3 complainant may, but is not required to, make an opening and closing statement,  
4 examine and cross-examine witnesses, reference particular tangible evidence submitted  
5 with the complaint or reply, and introduce rebuttal evidence. The complainant shall  
6 have a maximum of fifteen (15) minutes to make both an opening and closing  
7 statement, if desired. The apportionment of the maximum total time of fifteen (15)  
8 minutes shall be at the sole discretion of the complainant.

9 I. The public official shall proceed second. The public official may, but is not  
10 required to make an opening and closing statement, examine and cross-examine  
11 witnesses, reference particular tangible evidence submitted with the complaint or reply,  
12 and introduce rebuttal evidence. The public official shall have a maximum of fifteen  
13 (15) minutes to make both an opening and closing statement, if desired. The  
14 apportionment of the maximum total time of fifteen (15) minutes shall be at the sole  
discretion of the public official.

15 ~~I.J.~~ Neither party shall be allowed to examine the other party as part of their  
16 presentation of evidence. However, a party may cross-examine the other party as to  
17 any matters directly testified to by that party during their presentation of evidence.  
18 Cross-examination is limited to only those matters testified to by the party or witness  
19 during their presentation of evidence.

20 K. During the hearing, any member of the hearing panel of the Board of Ethics  
21 may ask questions of the parties or witnesses.

22 ~~J.L.~~ The parties may present rebuttal evidence. The complainant may present  
23 rebuttal to the public official's evidence following the completion of the presentation  
24 of evidence by the public official. The public official may offer rebuttal evidence to  
25 the complainant's evidence during the public official's presentation of evidence. The  
26 public official may also present evidence to rebut the complainant's rebuttal evidence.  
27 Rebuttal evidence must be evidence directly or indirectly refuting the evidence  
28 introduced by the other party.

~~K.M.~~ Upon the conclusion of evidence presented by the parties, the Chair shall

1 facilitate verbal deliberations by the hearing panel.

2 ~~L.N.~~ All findings shall be by a majority vote of the hearing panel and recorded by  
3 the City Clerk.

4 ~~M.O.~~ Within five (5) City business days following the hearing, the City Clerk shall  
5 notify all parties in writing of the decision of the hearing panel and the appeal  
6 procedures.

7 ~~N.P.~~ No member of the Board of Ethics who is either the complainant, or the subject  
8 of a complaint filed pursuant to this chapter, shall sit as a member of the hearing panel  
9 considering such complaint and must recuse himself or herself as a member of that  
10 panel.

11 ~~O.Q.~~ Neither the complainant, nor the public official against whom a complaint is  
12 filed pursuant to this chapter, shall be represented at the hearing by an attorney.  
13 Although an attorney may be present and consulted at the hearing, the attorney shall  
14 not address the hearing panel or participate in any aspect of the hearing.

15 **Section 2.78.090 Appeal Procedures.**

16 A. A decision by the hearing panel finding a violation of the Prohibited Conduct  
17 section of this chapter shall be automatically appealed to the City Council. The City  
18 Clerk shall place the appeal on the agenda of a regular meeting of the City Council  
19 within thirty (30) City business days of the hearing by the hearing panel and shall notify  
20 the parties in writing of the hearing date.

21 B. A decision by the hearing panel of the Board of Ethics not finding a violation  
22 of the Prohibited Conduct section of this chapter may be appealed to the City Council  
23 by either party. The appeal shall be taken by filing a written notice of appeal with the  
24 City Clerk within ten (10) City business days following the date of the hearing by the  
25 hearing panel. The notice of appeal shall be in writing on a form provided by the City  
26 Clerk. The City Clerk shall place the appeal on the agenda for a regular meeting of the  
27 City Council within thirty (30) City business days of the filing of the notice of appeal.  
28 The City Clerk shall notify the parties in writing of the hearing date.

C. If there is no appeal of the decision by the hearing panel, then the decision of  
the hearing panel shall become final and there shall be no further right to appeal.

1 D. The record on appeal shall consist of a transcript of the hearing before the  
2 hearing panel, as well as all tangible evidence and testimony considered at the hearing.  
3 No new evidence will be received or considered by the City Council at the hearing on  
4 the appeal.

5 E. The City Council shall review the record of the hearing to determine whether  
6 the hearing panel committed a clear error or an abuse of discretion based upon the  
7 record. If no such finding is made by a majority of the City Council, then the City  
8 Council shall adopt the decision of the hearing panel as the findings of the City Council  
9 on appeal. If there is a finding by the City Council of a clear error or an abuse of  
10 discretion by the hearing panel, then that finding shall be clearly stated and the matter  
11 shall be referred back to the Board of Ethics for a *de novo* (new) re-hearing of the matter  
12 in light of the findings on appeal.

13 F. If the City Council finds there is a violation of the Prohibited Conduct section  
14 of this chapter, then the City Council may determine sanctions in accordance with the  
15 Enforcement and Sanctions section of this chapter.

16 G. The City Clerk shall notify both parties in writing of the findings and  
17 determination of the City Council on the appeal. The findings and determination of the  
18 City Council is final and there is no further right to appeal.

19 H. Complaints, replies, supporting documentation, transcripts of hearings, notices  
20 of appeal, and all decisions thereon shall be public records and retained by the City  
21 Clerk for a period of at least two (2) years.

22 I. No elected official who is either the complainant, or the subject of a complaint,  
23 filed pursuant to this chapter shall participate in the appeal of a decision of the hearing  
24 panel considering such complaint and must recuse himself or herself from participation.

**Section 2.78.100 Enforcement and Sanctions.**

25 Upon a finding by a majority of the City Council that any public official  
26 violated any provision of the Prohibited Conduct section of this chapter, the City  
27 Council may impose any of the following sanctions:

A. Elected Officials.

1. Public censure.

1           B. Appointed Officials of Boards, Commissions and Committees.

- 2                 1. Referral to the Board, Commission or Committee of which the
- 3                         appointed official is a member for public censure;
- 4                 2. Public censure by the Mayor and City Council; or
- 5                 3. Removal from office by a majority of the Mayor and City Council.
- 6           C. No public official who is either the complainant, or the subject of a complaint,
- 7                         filed pursuant to this chapter shall participate in any deliberations or decision
- 8                         concerning any sanctions to be imposed pursuant to such complaint.

9           **Section 2.78.110         Monitoring and Oversight.**

- 10           A. Prior to the end of July of each year, the boards and commissions shall agendize
- 11                         and discuss at a regular meeting this Code of Ethics and Conduct and submit to the
- 12                         Board of Ethics any recommendations for the Board's consideration.
- 13           B. Prior to the end of August of each year, the Board of Ethics shall agendize and
- 14                         discuss at a regular meeting the effectiveness of this Code of Ethics and Conduct,
- 15                         recommendations of the other boards and commissions, and submit to the
- 16                         Governmental Affairs Committee its recommendations.
- 17           C. Prior to the end of September of each year, the Governmental Affairs
- 18                         Committee shall agendize and discuss at a regular meeting the effectiveness of this
- 19                         Code of Ethics and Conduct and the recommendations of the Board of Ethics and other
- 20                         boards and commissions, and instruct the City Manager to present a report to the City
- 21                         Council for its discussion and consideration.
- 22           D. Prior to the end of each year, the City Manager shall present a report to the City
- 23                         Council which shall include the recommendations of the Board of Ethics, the other
- 24                         boards and commissions, and the Governmental Affairs Committee. The City Council
- 25                         shall hold a public hearing on its evening agenda at a regularly scheduled meeting, and
- 26                         shall review the report and make an independent evaluation of the effectiveness of this
- 27                         chapter and discuss and direct the City Attorney to make any changes to this chapter it
- 28                         deems appropriate.

**Section 2.78.120         Severability.**

1 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase  
2 in this chapter or any part thereof is for any reason held to be unconstitutional or  
3 invalid or ineffective by any court of competent jurisdiction, such decision shall not  
4 affect the validity or effectiveness of the remaining portions of this chapter or any  
5 part thereof. The City Council hereby declares that it would have passed each section,  
6 subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of  
7 the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences,  
8 clauses, or phrases be declared unconstitutional, or invalid, or ineffective.”

9 Section 5: The City Council has reviewed the matter and, based upon the facts and  
10 information contained in the staff reports, administrative record, and written and oral testimony,  
11 hereby finds that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2), 15060(c)(3)  
12 and/or 15061(b)(3) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter  
13 3, in that it will not result in a direct or reasonably foreseeable indirect physical change in the  
14 environment nor have a significant impact on the environment.

15 Section 6: The City Clerk shall certify to the adoption of this ordinance and cause publication  
16 once in a newspaper of general circulation in accordance with Section 414 of the Charter of the City  
17 of Riverside. This ordinance shall become effective on the 30th day after the date of its adoption.

18 ADOPTED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

19  
20 \_\_\_\_\_  
21 Mayor of the City of Riverside

22 Attest:

23 \_\_\_\_\_  
24 City Clerk of the City of Riverside

25 I, Colleen J. Nicol, City Clerk of the City of Riverside, California, hereby certify that the  
26 foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the  
27 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that thereafter the said ordinance was duly and  
28

1 regularly adopted at a meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
2 by the following vote, to wit:

3 Ayes:

4 Noes:

5 Absent:

6 Abstain:

7  
8 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the  
9 City of Riverside, California, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

10  
11 \_\_\_\_\_  
12 City Clerk of the City of Riverside  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28