



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: APRIL 24, 2018**

FROM: CITY ATTORNEY'S OFFICE **WARDS: ALL**

SUBJECT: BOARD OF ETHICS RECOMMENDED REVISIONS TO RIVERSIDE MUNICIPAL CODE CHAPTER 2.78

ISSUE:

Amend Riverside Municipal Code (RMC) Chapter 2.78 to provide for a pre-hearing conference for Code of Ethics complaints.

RECOMMENDATIONS:

The Governmental Affairs Committee recommends that the City Council:

1. Amend Riverside Municipal Code Chapter 2.78 to include provisions for a pre-hearing conference; 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.

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 Board of Ethics on March 1, 2018, the recommendations of the sub-committee were considered and discussed. The Board of Ethics unanimously supported amending RMC Chapter 2.78 to include a pre-hearing conference where several preliminary matters would be considered, and including a provision that the claimant must make a showing that it is more likely than not that a potential violation of the Code of Ethics and Conduct had occurred.

Minor recommended changes are found in RMC 2.78.070 G. The more substantive changes are found in RMC 2.78.080. The substance of these changes include:

1. All parties are to attend the pre-hearing conference, but if any party is absent from the pre-

- hearing conference it will proceed as if the absent party were present;
2. The Hearing Panel will review the complaint to make sure it complies with the Code;
 3. If a majority of the Hearing Panel determines that the complaint does not comply with the Code, the complaint will be dismissed;
 4. The Hearing Panel shall facilitate settlement discussions between the parties. If the parties can informally resolve their differences, the complaint will be withdrawn by the claimant;
 5. The Hearing Panel will conduct a review of the submitted evidence to determine if it is relevant to the issues raised in the complaint. If a majority of the Hearing Panel determines any of the evidence is irrelevant to the issues raised in the complaint, that evidence will be deemed inadmissible at the hearing;
 6. The complainant will make an verbal showing that, if taken as true, the evidence and witness testimony more likely than not shows that there may be a potential violation of the Prohibited Conduct section of the Code;
 7. If a majority of the Hearing Panel finds that the complainant has failed to establish that the evidence and witness testimony, if taken as true, does not show that it is more likely than not that a violation of the Prohibited Section of the Code has occurred, the complaint will be dismissed;
 8. If necessary, a hearing date will be set;
 9. The Hearing Panel may discuss and act upon whether or not subpoenas are necessary to be issued; and
 10. The Hearing Panel may set time limits for the parties to present their evidence at the hearing.

On April 4, 2018, the Governmental Affairs Committee with Chair Melendrez, Vice-Chair Gardner, and Member Conder present, unanimously recommended the City Council approve the change to the Code of Ethics and Conduct as presented by the Board of Ethics.

FISCAL IMPACT:

None.

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

Concurs with:



ANDY MELENDREZ, Chair
Governmental Affairs Committee

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

Section 2: AUTHORITY. This ordinance is adopted pursuant to Article 11,

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

Section 2.78.0670 G is amended to read “The following conduct is prohibited

Section 2.78.0680 MB is amended to read “Violations of Federal, State, or

1 hearing on the merits are not formal judicial proceedings. The technical rules of evidence do not
2 apply.”

3 Section 2.78.0780 ~~GC~~ is amended to read “~~Within twenty (20) City business~~
4 ~~days of the City Clerk deeming the complaint complete, the City Clerk shall set the matter for hearing~~
5 ~~before a hearing panel of the Board of Ethics and notify the complainant and the public official against~~
6 ~~whom the complaint is filed of the date, time, and location of the hearing. The hearing date shall be~~
7 ~~within forty five (45) City business days of the complaint being deemed complete.~~The Chair of the
8 hearing panel of the Board of Ethics shall preside over the pre-hearing conference and hearing.”

9 Section 2.78.080 ~~E F~~ is amended to read “~~Only one (1) continuance of the~~
10 ~~hearing shall be granted by the City Clerk to each party. If a continuance is granted, the City Clerk~~
11 ~~shall give written notice to all parties of the new hearing date, time, and location within twenty (20)~~
12 ~~City business days of the granting of the continuance.~~The hearing panel of the Board of Ethics shall
13 conduct a pre-hearing conference prior to a hearing date being set by the City Clerk. All parties are
14 to attend the pre-hearing conference; however, the absence of any party at the pre-hearing conference
15 shall not be grounds for a continuance and the pre-hearing conference shall proceed as if the absent
16 party was present. The pre-hearing conference shall be conducted as follows:

- 17 1. The hearing panel shall review the complaint to determine if it complies with all of the
18 following:
 - 19 a. The Complaint Procedures section of this chapter have been followed;
 - 20 b. The complaint is against a public official set forth in the Scope section of this chapter;
 - 21 c. The complaint alleges a violation of one or more of the provisions of the Prohibited
22 Conduct section of this chapter; and
 - 23 d. The complaint does not restate allegations of violations that were the subject of a
24 previous complaint.
- 25 2. If a majority of the hearing panel determines that the complaint does not comply with all
26 of the provisions of subsection E 1 above, the Chair shall state the findings of deficiency
27 on the record and shall call for a vote of the hearing panel to dismiss the complaint without
28 a hearing. A roll call vote of the hearing panel shall be taken by the City Clerk who will

1 record the vote of each member of the hearing panel. The Chair of the hearing panel shall
2 instruct the City Clerk to prepare a Statement of Findings for the hearing panel to adopt at
3 the next regular meeting of the Board of Ethics. This Statement of Findings shall be
4 considered the final decision of the hearing panel and is immediately appealable to the City
5 Council pursuant to the Appeal Procedures section of this chapter. If a majority of the
6 hearing panel determines that the complaint complies with all of the provisions of
7 subsection E 1 above, then the pre-hearing conference shall proceed.

8 3. The hearing panel shall facilitate settlement discussions between the parties.

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

13 5. The complainant shall have ten (10) minutes to verbally present to the hearing panel any
14 and all evidence, both tangible and testimonial, that will be presented at the hearing to
15 prove the allegations in the complaint.

16 6. The hearing panel shall determine, by a majority vote, whether the complainant has shown
17 that the evidence, if taken as true, more likely than not establishes that there may be a
18 potential violation of the Prohibited Conduct section of this chapter.

19 7. If it is determined by the hearing panel that it is more likely than not that there may be a
20 potential violation of the Prohibited Conduct section of this chapter has occurred, then the
21 City Clerk shall set a hearing date on the complaint within twenty (20) City business days
22 of the pre-hearing conference. The hearing date shall be within forty-five (45) City
23 business days following the pre-hearing conference.

24 8. If it is determined by the hearing panel that the complainant has failed to establish that it is
25 more likely than not that there may be a potential violation of the Prohibited Conduct
26 section of this chapter, the Chair of the hearing panel shall instruct the City Clerk to prepare
27 a Statement of Findings for the hearing panel to adopt at the next regular meeting of the
28 Board of Ethics. This Statement of Findings shall be considered the final decision of the

1 hearing panel and is immediately appealable to the City Council pursuant to the Appeal
2 Procedures section of this chapter.

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

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

8 11. Other than is provided for above, no decision or ruling by the hearing panel at the pre-
9 hearing conference is appealable to the City Council pursuant to the Appeal Procedures
10 section of this chapter until after there is a final decision by the hearing panel following a
11 hearing on the complaint.”

12 Section 2.78.080 ~~HF~~ is amended to read “~~If a majority of the hearing panel of~~
13 ~~the Board of Ethics determines that the complaint does not comply with all of the provisions of~~
14 ~~subsection G above, the Chair shall state the findings of deficiency on the record and shall call for a~~
15 ~~vote of the hearing panel to dismiss the complaint without a hearing. A roll call vote of the hearing~~
16 ~~panel shall be taken by the City Clerk who will record the vote of each member of the hearing panel.~~
17 ~~If a majority of the hearing panel determines that the complaint complies with all of the provisions of~~
18 ~~subsection G above, then a hearing on the merits of the complaint shall proceed.~~Prior to the
19 commencement of the hearing, either party may ask the City Clerk for a continuance of the hearing on
20 eith of the following grounds:

21 1. The unavailability of the party at the hearing due to illness or other reason acceptable to
22 the City Clerk; or

23 2. The unavailability of a witness identified in the complaint or reply.”
24

25 Section 2.78.09~~80~~ ~~AG~~ is amended to read “~~A decision by the hearing panel~~
26 ~~finding a violation of the Prohibited Conduct section of this chapter shall be automatically appealed~~
27 ~~to the City Council. The City Clerk shall place the appeal on the agenda of a regular meeting of the~~
28 ~~City Council within thirty (30) City business days of the hearing by the hearing panel and shall notify~~
~~the parties in writing of the hearing date.~~Only one (1) continuance of the hearing shall be granted by

1 the City Clerk to each party. If a continuance is granted, the City Clerk shall give written notice to all
2 parties of the new hearing date, time, and location within twenty (20) City business days of the granting
3 of the continuance.”

4 Section 2.78.0980 BH is deleted~~amended to read “A decision by the hearing~~
5 ~~panel of the Board of Ethics not finding a violation of the Prohibited Conduct section of this chapter~~
6 ~~may be appealed to the City Council by either party. The appeal shall be taken by filing a written~~
7 ~~notice of appeal with the City Clerk within ten (10) City business days following the date of the hearing~~
8 ~~by the hearing panel. The notice of appeal shall be in writing on a form provided by the City Clerk.~~
9 ~~The City Clerk shall place the appeal on the agenda for a regular meeting of the City Council within~~
10 ~~thirty (30) City business days of the filing of the notice of appeal. The City Clerk shall notify the~~
11 ~~parties in writing of the hearing date.”~~

12 Section 2.78.08110 DI is renumbered~~amended~~ to read “2.78.080 H~~Prior to the~~
13 ~~end of each year, the Chairperson of the Governmental Affairs Committee shall present a report to the~~
14 ~~City Council which shall include the recommendations of the Board of Ethics, the other boards and~~
15 ~~commissions, and the Governmental Affairs Committee. The City Council shall hold a public hearing~~
16 ~~on its evening agenda at a regularly scheduled meeting, and shall review the report and make an~~
17 ~~independent evaluation of the effectiveness of this chapter and discuss and direct the City Attorney to~~
18 ~~make any changes to this chapter it deems appropriate.”~~

19 Section 2.78.080 J is renumbered to read “2.78.080 I.”

20 Section 2.78.080 K is renumbered to read “2.78.080 J.”

21 Section 2.78.080 L is renumbered to read “2.78.080 K.”

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

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

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

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

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

28 **“Chapter 2.78**

1 CODE OF ETHICS AND CONDUCT

2 **Sections:**

3 **2.78.010 Establishment of the Code of Ethics and Conduct.**

4 **2.78.020 Purpose.**

5 **2.78.030 Scope.**

6 **2.78.040 Implementation.**

7 **2.78.050 Core Values.**

8 **2.78.060 Prohibited Conduct.**

9 **2.78.070 Complaint Procedures.**

10 **2.78.080 Hearing Procedures.**

11 **2.78.090 Appeal Procedures.**

12 **2.78.100 Enforcement and Sanctions.**

13 **2.78.110 Monitoring and Oversight.**

14 **2.78.120 Severability.**

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

16 Pursuant to Article 11, sections 5(a) and 7 of the California Constitution and
17 Sections 200 and 202 of The Charter of the City of Riverside, there is hereby
18 established by the City Council of the City of Riverside a Code of Ethics and Conduct
19 for the Mayor, members of the City Council, and all members of appointed boards,
20 commissions and committees which shall assure public confidence in the integrity of
21 local government and its effective and fair operation.

22 **Section 2.78.020 Purpose.**

23 The purpose of this Code of Ethics and Conduct is to achieve fair, ethical, and
24 accountable local government for the City of Riverside. The people of the City of
25 Riverside expect their public officials to comply with both the letter and the spirit of
26 the laws of the United States of America, the State of California, the Charter of the City
27 of Riverside, the Riverside Municipal Code, and established policies of the City of
28 Riverside affecting the operations of local government. In addition, public officials are

1 expected to comply with the provisions of this Code of Ethics and Conduct established
2 pursuant to the expressed will of the people. All persons covered by this Code of Ethics
3 and Conduct shall aspire to meet the highest ethical standards in the conduct of their
4 responsibility as a public official of the City of Riverside.

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

12 **Section 2.78.030 Scope.**

13 The provisions of this chapter shall apply to the Mayor, members of the City
14 Council, and to all members of the boards, commissions, and committees appointed by
15 the City Council, the Mayor, or the Mayor and City Council, including any *ad hoc*
16 committees (collectively referred to herein as "public officials.") The provisions of
17 this chapter shall also apply to all members of committees appointed by individual
18 members of the City Council, Mayor, the City Manager or by Department Heads.

19 Further, the provisions of this chapter shall apply to the Mayor and Members
20 of the City Council at all times during their term of office as elected officials of the
21 City of Riverside. However, the provisions of this chapter shall apply to all members
22 of the boards, commissions, and committees only while they are acting in their official
23 capacities or affecting the discharge of their duties.

24 **Section 2.78.040 Implementation.**

25 To achieve the objectives of this chapter, the following mechanisms shall be
26 followed.

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

B. Within ninety (90) days of taking office, all new public officials shall

1 be provided a training session which shall clarify the provisions and application of this
2 chapter. These sessions shall be coordinated by the City Clerk with assistance from the
3 City Manager and City Attorney.

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

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

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

15 **Section 2.78.050 Core Values.**

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

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

20 The public officials of the City of Riverside shall aspire to operate the City
21 government and exercise their responsibilities in a manner which creates trust in their
22 decisions and the manner of delivery of programs through the local government. The
23 public officials shall aspire to create a transparent decision making process by
24 providing easy access to all public information about actual or potential conflicts
25 between their private interests and their public responsibilities. The public officials
26 shall aspire to make themselves available to the people of the city to hear and
27 understand their concerns. They shall aspire to make every effort to ensure that they
28 have accurate information to guide their decisions and to share all public information
with the community to ensure the community understands the basis of the officials' decisions.

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

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

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

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

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

16 The public officials of the City of Riverside shall aspire to recognize and affirm
17 the value of all persons, families, and communities within the City of Riverside. They
18 will encourage full participation of all persons and groups, be aware and observe
19 important celebrations and events which reflect the values of the City's diverse
20 population, and provide assistance for those who find it difficult to participate due to
21 language barriers or disabilities.

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

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

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

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

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

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

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

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

13 **Section 2.78.060 Prohibited Conduct.**

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

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

18 Public officials of the City of Riverside shall not use their official title or
19 position for personal gain. Personal gain includes, but is not limited to, situations
20 wherein a public official solicits or accepts items of value in consideration of their
21 official title or position. This does not include obtaining benefits that are otherwise
22 permitted or authorized by law. Therefore, acceptance of gifts shall otherwise be
23 consistent with the requirements and limitations allowable by law. Public officials shall
24 refrain from the following: (a) accepting gifts or favors that may compromise
25 independent judgment or give the appearance of compromised judgment; (b) using
26 official title for matters other than the official conduct of their office; and (c) engaging
27 in decisions which would affect the level of compensation received for service except
28 as otherwise required or allowed by law.

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

Public officials of the City of Riverside shall not use or divulge confidential or

1 privileged information obtained in the course of their official duties for their own
2 personal gain, financial or otherwise, or for the gain of others, in a manner contrary to
3 the public interest or in violation of any law.

4 C. Use of City Resources for Non-City Purposes Prohibited.

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

10 D. Advocacy of Private Interests of Third Parties in Certain Circumstances
11 Prohibited.

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

17 E. Endorsements for Compensation Prohibited.

18 No public official of the City of Riverside shall endorse or recommend, for
19 compensation, any commercial product or service in the name of the City or in their
20 official capacity within the jurisdictional boundaries of the City without prior approval
21 of a City Council policy.

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

23 No public official of the City of Riverside shall violate Government Code
24 Sections 87100, *et seq.*, or any of its related or successor statutes, from time to time
25 amended, regulating financial interests and governmental decisions made by public
26 officials. If an ethics complaint is filed alleging a violation of this subsection, the City
27 recognizes that the Fair Political Practices Commission (FPPC) is the primary
28 enforcement authority of the Political Reform Act and that its decisions should be given
great weight. As such, if a complaint is pending before the FPPC raising the same or

1 similar violations based upon the same or similar facts, then the Board of Ethics may
2 defer action on such allegation until completion of the FPPC action. If a complaint has
3 not been filed with the FPPC raising the same or similar violations based upon the same
4 or similar facts, then the hearing panel of the Board of Ethics, upon a four-fifths (4/5)
5 vote, may file a complaint with the FPPC and defer action on a complaint filed pursuant
6 to this chapter until a final action by the FPPC. A ruling on the merits by the FPPC
7 may be accepted by the Board of Ethics as a finding on the ethics complaint filed with
8 the City.

9 G. Certain Political Activity Prohibited.

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

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

17 No public official of the City of Riverside shall display campaign materials in
18 or on any City-owned or provided vehicle under their control or operated by that
19 official. In addition, no public official shall transport, store, or otherwise have any
20 campaign materials located within any City-owned or provided vehicle under their
21 control or operated by that official. Campaign materials include, but are not limited to,
22 bumper stickers, signs, brochures, informational documents, buttons or other similar
23 items.

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

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

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

1 Prohibited.

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

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

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

13 L. Attempts to Coerce Official Duties Prohibited.

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

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

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

22 **Section 2.78.070 Complaint Procedures.**

23 A. Only alleged violations of the Prohibited Conduct section of this chapter shall
24 be grounds for a complaint against any public official pursuant to this chapter.

25 B. Complaints shall be submitted on forms available from the City Clerk.

26 C. Complaints and all required information and tangible evidence shall be filed
27 with the City Clerk.

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

G. Within twenty (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 forty-five (45) City business days of the complaint being deemed complete.

H. 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

1 the complaint is made within ten (10) City business days after the complaint is deemed
2 complete.

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

- 6 1. A written reply to the complaint;
- 7 2. Copies of any and all documents, photographs, recordings or other
8 tangible materials to be introduced and considered at the hearing; and
- 9 3. The names, addresses, telephone numbers and email addresses, if
10 known, of any person the public official intends to call as a witness at
11 the hearing.

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

16 **Section 2.78.080 Hearing Procedures.**

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

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

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

23 D. No witnesses, documents, photographs, recordings or other tangible materials,
24 other than those submitted with the complaint or reply, shall be introduced at the
25 hearing or considered by the hearing panel. However, witnesses, documents,
26 photographs, recordings and other tangible evidence may be introduced and considered
27 upon a finding by a majority of the hearing panel that the discovery of such evidence
28 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

1 after becoming aware of its existence. Any witnesses, documents, photographs,
2 recordings and other tangible evidence subpoenaed by the hearing panel shall also be
3 introduced and considered.

4 ~~E. Prior to the commencement of the hearing, either party may ask the City~~
5 ~~Clerk for a continuance of the hearing on either of the following~~
6 ~~grounds:~~

7 ~~1. The unavailability of the party at the hearing due to illness or other~~
8 ~~reason acceptable to the City Clerk; or~~

9 ~~2. The unavailability of a witness identified in the complaint or reply;~~

10 ~~F. Only one (1) continuance of the hearing shall be granted by the City Clerk to~~
11 ~~each party. If a continuance is granted, the City Clerk shall give written notice to all~~
12 ~~parties of the new hearing date, time, and location within twenty (20) City business~~
13 ~~days of the granting of the continuance.~~

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

20 ~~G.~~ 1. The hearing panel shall review~~of~~ the complaint to determine if
21 it complies with all of the following to establish jurisdiction of the Board
22 of Ethics:

23 ~~1.a.~~ a. The Complaint Procedures section of this chapter have been
24 followed;

25 ~~2.b.~~ b. The complaint is against a public official set forth in the Scope
26 section of this chapter;

27 ~~3.c.~~ c. The complaint alleges a violation of one or more of the
28 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.

- 1 2. If a majority of the hearing panel of the Board of Ethics determines that
2 the complaint does not comply with all of the provisions of subsection
3 GE 1 above, the Chair shall state the findings of deficiency on the record
4 and shall call for a vote of the hearing panel to dismiss the complaint
5 without a hearing. A roll call vote of the hearing panel shall be taken
6 by the City Clerk who will record the vote of each member of the
7 hearing panel. The Chair of the hearing panel shall instruct the City
8 Clerk to prepare a Statement of Findings for the hearing panel to adopt
9 at the next regular meeting of the Board of Ethics. This Statement of
10 Findings shall be considered the final decision of the hearing panel and
11 is immediately appealable to the City Council pursuant to the Appeal
12 Procedures section of this chapter. If a majority of the hearing panel
13 determines that the complaint complies with all of the provisions of
14 subsection GE 1 above, then a hearing on the merits of the pre-
15 hearingcomplaint conference shall proceed.
16 3. The hearing panel shall facilitate settlement discussions between the
17 parties.
18 4. The hearing panel shall review the submitted tangible evidence to
19 determine if it is relevant to the issues raised in the complaint. If it is
20 determined, by a majority vote, that any such evidence is irrelevant to
21 the issues raised in the complaint, then such evidence will be deemed
22 inadmissible at the hearing and shall be excluded.
23 5. The complainant shall have ten (10) minutes to verbally present to the
24 hearing panel any and all evidence, both tangible and testimonial, that
25 will be presented at the hearing to prove the allegations in the complaint.
26 6. The hearing panel shall determine, by a majority vote, whether the
27 complainant has shown that the evidence, if taken as true, more likely
28 than not establishes that there may be a potential violation of the
 Prohibited Conduct section of this chapter.
 7. If it is determined by the hearing panel that it is more likely than not that

1 that there may be a potential violation of the Prohibited Conduct section
2 of this chapter has occurred, then the City Clerk shall set a hearing date
3 on the complaint within twenty (20) City business days of the pre-
4 hearing conference. The hearing date shall be within forty-five (45)
5 City business days following the pre-hearing conference.

6 8. If it is determined by the hearing panel that the complainant has failed
7 to establish that it is more likely than not that there may be a potential
8 violation of the Prohibited Conduct section of this chapter, the Chair of
9 the hearing panel shall instruct the City Clerk to prepare a Statement of
10 Findings for the hearing panel to adopt at the next regular meeting of
11 the Board of Ethics. This Statement of Findings shall be considered the
12 final decision of the hearing panel and is immediately appealable to the
13 City Council pursuant to the Appeal Procedures section of this chapter.

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

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

19 4. 11. Other than as provided for above, no decision or ruling made by the
20 hearing panel at the pre-hearing conference is appealable to the City Council pursuant
21 to the Appeal Procedures section of this chapter until after there is a final decision by
22 the hearing panel following a hearing on the complaint.

23 F. Prior to the commencement of the hearing, either party may ask the City Clerk
24 for a continuance of the hearing on either of the following grounds:

25 1. The unavailability of the party at the hearing due to illness or other
26 reason acceptable to the City Clerk; or

27 2. The unavailability of a witness identified in the complaint or reply.

28 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

1 days of the granting of the continuance.

2 ~~H. If a majority of the hearing panel of the Board of Ethics determines that the~~
3 ~~complaint does not comply with all of the provisions of subsection G above, the Chair~~
4 ~~shall state the findings of deficiency on the record and shall call for a vote of the hearing~~
5 ~~panel to dismiss the complaint without a hearing. A roll call vote of the hearing panel~~
6 ~~shall be taken by the City Clerk who will record the vote of each member of the hearing~~
7 ~~panel. If a majority of the hearing panel determines that the complaint complies with~~
8 ~~all of the provisions of subsection G above, then a hearing on the merits of the~~
9 ~~complaint shall proceed.~~

10 I.H. The complainant shall have the burden of proof by a preponderance of the
11 evidence to establish a violation of the Prohibited Conduct section of this chapter.
12 Preponderance of evidence means evidence that is more convincing and, therefore,
13 more probable in truth and accuracy. The complainant shall proceed first. The
14 complainant may, but is not required to, make an opening and closing statement,
15 examine and cross-examine witnesses, reference particular tangible evidence submitted
16 with the complaint or reply, and introduce rebuttal evidence. The complainant shall
17 have a maximum of fifteen (15) minutes to make both an opening and closing
18 statement, if desired. The apportionment of the maximum total time of fifteen (15)
minutes shall be at the sole discretion of the complainant.

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

26 K.J. During the hearing, any member of the hearing panel of the Board of Ethics
27 may ask questions of the parties or witnesses.

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

1 M.L. All findings shall be by a majority vote of the hearing panel and recorded by
2 the City Clerk.

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

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

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

14 **Section 2.78.090 Appeal Procedures.**

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

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

28 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.

D. The record on appeal shall consist of a transcript of the hearing before the

1 hearing panel, as well as all tangible evidence and testimony considered at the hearing.
2 No new evidence will be received or considered by the City Council at the hearing on
3 the appeal.

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

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

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

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

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

Section 2.78.100 Enforcement and Sanctions.

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

27 A. Elected Officials.

28 1. Public censure.

B. Appointed Officials of Boards, Commissions and Committees.

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

Section 2.78.110 Monitoring and Oversight.

- A. Prior to the end of July of each year, the boards and commissions shall agendize and discuss at a regular meeting this Code of Ethics and Conduct and submit to the Board of Ethics any recommendations for the Board's consideration.
- B. Prior to the end of August of each year, the Board of Ethics shall agendize and discuss at a regular meeting the effectiveness of this Code of Ethics and Conduct, recommendations of the other boards and commissions, and submit to the Governmental Affairs Committee its recommendations.
- C. Prior to the end of September of each year, the Governmental Affairs Committee shall agendize and discuss at a regular meeting the effectiveness of this Code of Ethics and Conduct and the recommendations of the Board of Ethics and other boards and commissions, and instruct the City Manager to present a report to the City Council for its discussion and consideration.
- D. Prior to the end of each year, the City Manager shall present a report to the City Council which shall include the recommendations of the Board of Ethics, the other boards and commissions, and the Governmental Affairs Committee. The City Council shall hold a public hearing on its evening agenda at a regularly scheduled meeting, and shall review the report and make an independent evaluation of the effectiveness of this chapter and discuss and direct the City Attorney to make any changes to this chapter it deems appropriate.

Section 2.78.120 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or

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

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

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

16 ADOPTED by the City Council this _____ day of _____, 20____.

17
18 _____
19 Mayor of the City of Riverside

20 Attest:

21 _____
22 City Clerk of the City of Riverside

23 I, Colleen J. Nicol, City Clerk of the City of Riverside, California, hereby certify that the
24 foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the
25 _____ day of _____, 20____, and that thereafter the said ordinance was duly and
26 regularly adopted at a meeting of the City Council on the _____ day of _____, 20____,
27 by the following vote, to wit:

28 Ayes:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Noes:

Absent:

Abstain:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the
City of Riverside, California, this _____ day of _____, 20____.

City Clerk of the City of Riverside