

HEARING RULES AND PROCEDURES

**BOARD OF ETHICS
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Adopted on May 3, 2018

Implementing City Council Action of July 24, 2018

Pursuant to Section 804 of the Charter of the City of Riverside (Charter), and pursuant to Section 2.78.080 of the Riverside Municipal Code (RMC), the Board of Ethics hereby adopts hearing rules and procedures for the conduct of hearings before a Hearing Panel of the Board of Ethics on complaints of violation of RMC Chapter 2.78, copies of which shall be kept on file in the Office of the City clerk, where they shall be made available for public inspection and posted on the City's website.

1. PURPOSE

The purpose of these rules and procedures is to establish a uniform set of guidelines to be followed in a hearing on a complaint alleging a violation of RMC Chapter 2.78. At the discretion of the Presiding Authority, and when warranted by good cause, deviation from these rules and procedures are permissible.

2. CONSISTENCY WITH RMC CHAPTER 2.78

These rules and procedures are to be interpreted consistent with the language set forth in RMC Chapter 2.78. In the event of a discrepancy or conflict between these rules and procedures and the language of RMC Chapter 2.78, the language of RMC Chapter 2.78 shall govern.

3. HEARING PANEL

A Hearing Panel shall be duly constituted from the members of the Board of Ethics pursuant to the procedures set forth in RMC Section 2.80.040.

4. DISQUALIFICATION

No member of the Board of Ethics who is either the complainant or the respondent in a complaint of a violation of RMC Chapter 2.78 shall sit as a member of a Hearing Panel considering such complaint and must recuse themselves from participating as a member of that Hearing Panel.

5. PRESIDING AUTHORITY

The Presiding Authority of a Hearing Panel shall be the Chair as determined pursuant to the procedures set forth in RMC Section 2.80.040.

6. ASSISTANCE OF LEGAL COUNSEL

Neither the complainant, nor the respondent shall be represented at the hearing by an attorney. Although an attorney may be present and consulted at the hearing, the attorney shall not address the Hearing Panel or participate in any aspect of the hearing.

7. PRE-HEARING CONFERENCE

- A. The Hearing Panel shall conduct a pre-hearing conference within forty-five (45) City business days of the complaint being deemed complete by the City Clerk.
- B. The pre-hearing conference shall be noticed as a special meeting of the Hearing Panel to occur on the same date and at the same time as a regular meeting of the Board of Ethics. The meeting will be convened by the Chair of the Hearing Panel immediately upon the conclusion of the regular meeting of the Board of Ethics.
- C. The pre-hearing conference is not a formal judicial proceeding and the rules of evidence shall not apply.
- D. The Chair of the Hearing Panel shall preside over the pre-hearing conference.
- E. The pre-hearing conference shall take place prior to a hearing date on the complaint being set by the City Clerk.
- F. All parties are to be present at the pre-hearing conference; however, the absence of any party shall not be grounds for continuing the pre-hearing conference and it shall proceed as if the absent party were present.
- G. The Hearing Panel shall review the complaint to determine if it complies with all of the provision of RMC 2.78.080 E1.
- H. If a majority of the Hearing Panel determines that the complaint does not comply with all of the provisions of RMC 2.78.080 E1, the Chair shall state the findings of deficiency on the record and call for a vote of the Hearing Panel to dismiss the complaint without a formal hearing based upon those findings of deficiency. The Chair shall then instruct the City Clerk to prepare a Statement of Findings for the Hearing Panel to adopt the Statement of Findings at the next regular meeting of the Board of Ethics.

- I. If a majority of the Hearing Panel determines that the complaint complies with all of the provisions of RMC 2.78.080 E1, then the pre-hearing conference shall continue.
- J. The Hearing Panel shall facilitate settlement discussions between the parties to determine if a resolution of the issues raised in the complaint can be settled without the need for a formal hearing. If the issues can be resolved among the parties, then upon completion of the terms of the settlement the complaint shall be dismissed by the complainant and no hearing will be scheduled. If the parties cannot resolve their dispute informally, the pre-hearing conference shall continue.
- K. The Hearing Panel shall review all submitted tangible evidence to determine if it is relevant to the issues raised in the complaint. If it is determined by a majority of the Hearing Panel that any evidence is irrelevant to issues raised in the complaint, then such evidence will be deemed inadmissible at the hearing and shall be excluded.
- L. The complainant shall then have ten (10) minutes to verbally present to the Hearing Panel any and all evidence, both tangible and testimonial, that the complainant intends to use at the hearing to prove a violation of the Prohibited Conduct section of the Code of Ethics. This presentation is for the complainant to convince the Hearing Panel that the complaint has merit and that a formal hearing is necessary. The complainant shall summarize any witness testimony the complainant intends to introduce at the hearing and explain how that testimony tends to prove a violation of the Prohibited Conduct section of the Code of Ethics. In addition, the complainant shall explain to the Hearing Panel how the tangible evidence tends to prove a violation of the Prohibited Conduct section of the Code of Ethics.
- M. The Hearing Panel is to assume that all representations of evidence by the complainant are true for the limited purpose of determining whether the complainant has shown that it is more likely than not that a violation of the Prohibited Conduct section of the Code of Ethics has occurred.
- N. If it is determined by a majority of the Hearing Panel that it is more likely than not that there may be a potential violation of the Prohibited Conduct section of the Code of Ethics, then the City Clerk shall set a hearing date on the complaint.
- O. If it is determined by a majority of the Hearing Panel that the complainant has failed to establish that it is more likely than not that there may be a potential violation of the Prohibited Conduct section of the Code of Ethics,

the Chair 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.

- P. The Hearing Panel may discuss and act upon any subpoenas the Hearing Panel determines, by a super majority vote, are necessary to be issued for a meaningful hearing or decision pursuant to RMC 2.80.040 A5 and B5.
- Q. The Hearing Panel may set time limits for the parties to adhere to in presenting their evidence at the hearing.

8. CONTINUANCES

- A. The City Clerk may grant one (1) continuance to each party upon a showing that either the party is unavailable to attend the hearing for good cause, or a witness identified in the complaint or reply is unavailable to attend the hearing.
- B. For good cause shown and upon a majority vote, the Hearing Panel may continue a hearing before the introduction of any evidence.

9. PRE-HEARING EXCHANGE OF EVIDENCE

- A. All evidence, including witness information, to be introduced by the complainant at the hearing must be filed with the complaint alleging a violation of RMC Chapter 2.78.
- B. All evidence, including witness information, to be introduced by the respondent at the hearing must be filed with the City Clerk's Office no later than twenty (20) calendar days prior to the date set for the hearing.
- C. No evidence, including witnesses, shall be allowed into evidence at the hearing except where a majority of the Hearing Panel finds by majority vote that the discovery of such evidence or witness came to the awareness of the proponent after the filing of the complaint or reply and that the proponent disclosed such evidence or witness information to the City Clerk as soon as practicable after becoming aware of the evidence or witness.

10. BURDEN OF PROOF

The complainant shall have the burden of proving by a preponderance of evidence a violation of RMC Section 2.78.060 by the respondent. Preponderance of evidence means evidence that is more convincing and, therefore, more probable in truth and accuracy.

11. INTRODUCTION OF EVIDENCE

- A. Technical rules of evidence do not apply. Any relevant evidence, as determined by the Hearing Panel at the pre-hearing conference, shall be admitted. The Hearing Panel shall be the sole determiners of the weight to be given to all admitted evidence. The Chair shall have the authority to exclude evidence if it is duplicative, or if its admission will necessitate undue consumption of time.
- B. Oral evidence shall be taken only under oath. The oath shall be administered by the City Clerk or their designee.
- C. Each party shall have these rights:
 - (1) To call and examine witnesses;
 - (2) To introduce evidence as determined by the Hearing Panel at the pre-hearing conference;
 - (3) To cross-examine opposing witnesses on any matter relevant to the issues covered in the direct examination; and
 - (4) To impeach any witness regardless of which party first called the witness to testify.
- D. 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.
- E. A party may re-direct and re-cross witnesses, subject only to the limitations imposed by the Chair.
- F. A party may present rebuttal evidence. The complainant may present rebuttal to the public official's evidence following the completion of the public official's presentation of evidence. The public official may present rebuttal to the complainant's evidence during the public official's presentation of evidence. The public official may also rebut the complainant's rebuttal evidence following the complainant's presentation of rebuttal evidence. Rebuttal evidence must be evidence directly or indirectly refuting the evidence presented by the other party.
- G. The Chair shall be the final decision maker concerning any objections raised by the parties.

12. CHRONOLOGY OF THE HEARING

- A. The Chair shall call the matter for hearing and asks the parties to identify themselves.
- B. The City Clerk, or their designee, shall administer the oath to all witnesses who will be offering testimony before the Hearing Panel. No testimony will be received by the Hearing Panel without the witness first having been administered the oath.
- C. Prior to opening statements, each party will have five (5) minutes to address any technical or procedural issues with the Chair. The Chair shall have the authority to determine these issues in any reasonable manner that does not conflict with these rules or Chapter 2.78. The Chair's decision on these issues shall be final.
- D. The parties shall have a maximum total of fifteen (15) minutes to make both their opening and closing statements. The parties shall have sole discretion as to how they apportion their time between their opening and closing statements.
- E. The complainant shall make their opening statement first. The respondent may then make their opening statement, or reserve making their opening statement until after the complainant concludes their case.
- F. The complainant shall present their case first.
- G. Upon the conclusion of the complainant's case, the respondent may make their opening statement, if reserved, and then shall present their case.
- H. After the initial presentation of evidence by both parties, the parties, beginning with the complainant, may introduce evidence in rebuttal. Such rebuttal evidence shall be limited to matters raised in the presentation of the complainant's or respondent's case, and no new matters may be raised.
- I. If the parties reserved time for a closing statement, each party may make a closing statement beginning with the complainant.
- J. Upon the conclusion of closing statements, if any, the Chair shall facilitate discussion and deliberations by the hearing Panel.

- K. The final decision of the Hearing Panel shall be made by a formal motion with a second and approved by a majority vote of the Hearing Panel.

13. WRITTEN STATEMENT OF FINDINGS AND DECISION

A Written Statement of Findings and Decision setting forth the final decision of the Hearing Panel shall be prepared and placed on the agenda for the next regularly scheduled meeting of the Board of Ethics that is at least fourteen (14) calendar days after the date of the final decision by the Hearing Panel for a vote by the members of that Hearing Panel only. Upon a majority vote by the members of the Hearing Panel, the Statement of Findings and Decision shall be the final decision of that Hearing Panel.

14. COMPLAINTS TO BE HEARD SEPARATELY

- A. Complaints of violation of Chapter 2.78 against one (1) or more elected officials named in the same or separate complaint forms shall be considered to be separate complaints against each elected official. Each complaint shall be heard separately on its own merits against each elected official before separately convened Hearing Panels of the Board of Ethics.
- B. Complaints of violation of Chapter 2.78 against one (1) or more appointed officials named in the same or separate complaint forms shall be considered to be separate complaints against each appointed official. Upon concurrence by the complainant and each named appointed official, the complaints shall be heard by one hearing panel of the Board of Ethics at the same hearing. Otherwise, each complaint shall be heard separately against each appointed official before separately convened Hearing Panels of the Board of Ethics.

15. SUBPOENAS

Subpoenas may be issued by the Hearing Panel for the attendance of witnesses or the production of books, papers or documents where the Hearing Panel determines it necessary for a meaningful hearing or decision by four (4) or more affirmative votes.