



BOARD OF ETHICS

City of Arts & Innovation

TO: BOARD OF ETHICS MEMBERS

DATE: MAY ,4 2023

FROM: CITY CLERK'S OFFICE

WARDS: ALL

SUBJECT: UPDATE ON ADOPTION OF ORDINANCE NO. 7632 AMENDING CHAPTERS 2.78 – CODE OF ETHICS AND 2.80 - BOARD OF ETHICS OF THE RIVERSIDE MUNICIPAL CODE TO MAKE CERTAIN CHANGES TO THE CITY'S CODE OF ETHICS AND CONDUCT

ISSUE:

Receive and file the update on adopted Ordinance No. 7632 amending Riverside Municipal Code Chapters 2.78 – Code of Ethics and 2.80 – Board of Ethics resulting from the annual review of the effectiveness of the Code of Ethics and Conduct.

RECOMMENDATION:

That the Board of Ethics receive and file the update on the adopted Ordinance amending Chapter 2.78 – Code of Ethics and 2.80 – Board of Ethics of the Riverside Municipal Code effective May 11, 2023.

BACKGROUND:

Riverside Municipal Code (RMC) Chapters 2.78 and 2.80 provides for an annual review of the Code of Ethics and Conduct (COE) by community members, Boards and Commissions, the ICGC, and the City Council.

During the last two years' annual reviews (2020 and 2021), the implementation of all approved revisions were tabled until after the final dispositions of several Board of Ethics complaints that were either filed or under consideration by the Board of Ethics at the time of the annual review.

On July 7, 2022, the ICGC requested a joint meeting with an Ad Hoc committee of Board of Ethics members to review the Codes' complaint process and procedures.

On August 4, 2022, the Board of Ethics conducted its annual review and formed an Ad Hoc Committee comprised of Chair Stahovich and Members Foley, Huerta, and Newman as an alternate to meet with ICGC.

On September 27 and November 3, 2022, the ICGC and Board of Ethics Ad Hoc Committee reviewed Riverside Municipal Code Sections 2.78 and 2.80 focusing on the following areas:

1. Pre-hearing Conference
2. Hearing
3. Appeals
4. Sanctions
5. Miscellaneous

In conjunction with the areas listed above, the Committee collectively reviewed the recommendations of the last two years' annual reviews (2020 and 2021). This included the City Council ordinance introduced on February 15, 2022, amending Chapter 2.78 of the Riverside Municipal Code as a result of the 2021 COE review and the Board of Ethics subsequent proposed changes to the Complaint Procedures. These changes added the acceptance of amended complaints and affirmed that “de novo hearings” are to be heard by the same hearing panel to the extent possible.

In summary, during the Committee meeting discussions of September 27 and November 3, 2022, the Committee tentatively agreed upon the following recommendations:

1. Pre-hearing Conference

- The pre-hearing conference is necessary to vet frivolous complaints and should not be eliminated.
- Attorneys should not participate in the pre-hearing conference proceedings.
- Establish more formality to settlement discussions as an off the record discussion, if needed.
- The Board of Ethics Hearing Panel should review complaints for elements of sections allegedly violated and have an opportunity to ask questions at the pre-hearing conference.
- The public official should have the option or opportunity to speak at the pre-hearing conference.
- The Riverside Municipal Code - Code of Ethics and Conduct pre-hearing conference and hearing procedures should be separated and Sections 2.78.080 (N) and 2.78.080(O) amended.
- Any pre-hearing conference decision is not appealable.
- The “pre-hearing conference” be renamed as the “pre-conference.”
- Upon request by either party, one continuance may be granted by the Hearing Panel for extenuating circumstances and the Hearing Panel can grant continuances on their own motion.

2. Hearing

- Section 2.78 and 2.80.040 be amended to allow either the Board of Ethics or the Hearing Panel to seek outside counsel for hearings.
- Add language regarding amendments to complaints.
- Remove subpoena power from Section 2.80.040 – Board of Ethics Duties and Powers.
- One continuance may be granted by the Hearing Panel for extenuating circumstances.
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3. Appeals

- The provision “automatically appealed” changed to “may be appealed.”
- Parties must identify a clear error of law or an abuse of discretion as part of their appeal.
- The hearing panel Chair or designee shall be present during City Council appeal proceedings to answer questions.
- If no appeal is filed after the determination of a violation, findings shall be adopted and referred to the City Council to impose sanctions.
- If there is a finding by the City Council of a clear error or an abuse of discretion by the hearing panel, a “de novo” hearing will be held before the same hearing panel, with no pre-hearing conference, and the hearing panel shall correct the error of law or abuse of discretion identified by the City Council.

4. Sanctions

- If no appeal is filed after determination of a violation, a report shall be referred to City Council to impose sanctions.

5. Miscellaneous

- Complaints should be limited to City of Riverside residents and business owners unless the prohibited conduct occurred outside City limits and the complainant is a witness to the misconduct. The complainant must identify the specific statute violated under Section 2.78.070(M).
- Change the Section 2.80.040 provision from “if a complaint concerns a City Council member” to “if a complaint is against a City Council member.”
- Section 2.80.040 of Board of Ethics - add language to allow for smaller composition of a hearing panel if necessary.
- Section 2.78.090(I) - Replace “elected official” with “public official.”

The Board of Ethics met on December 1, 2022, to review the recommendations and forwarded additional recommendations for changes to the ICGC.

On December 7, 2022, the Inclusiveness, Community Engagement and Governmental Processes Committee, with Chair Cervantes, Vice Chair Perry and Member Conder present, unanimously accepted the revisions to the Code of Ethics by the Board of Ethics and the ICGC and recommended that the City Council consider the proposed changes and forward recommendations to ICGC to continue deliberation of the Code of Ethics at a later meeting date.

On December 20, 2022, the City Council directed the ICGC to continue deliberations on the proposed amendments to the Code of Ethics and Conduct and return to the City Council in March 2023 with final recommendations.

Additionally, the City Council discussed the following issues described below in procedural order within the RMC Section 2.78 to be addressed:

1. The need for Mediation training and determine the facilitator in settlement discussions
2. Add language clarifying that presentations during the pre-hearing conference and hearing proceedings are at the discretion of the parties to the complaint, not the hearing panel
3. Setting time limits and expediting the hearing proceedings
4. Use of attorneys by parties at the pre- conference and hearing
5. Appeals of the pre-hearing conference should be allowed for instances of procedural errors, but not for substantive findings

6. Determine “offramps” for a complaint after an appeal; can the decision by the Hearing Panel after a “de novo” hearing be appealed to the City Council?
7. Simplifying the hearing process

On January 4, 2023, the ICGC unanimously voted to schedule a joint special meeting with the Board of Ethics Ad Hoc Committee to continue review of the Code of Ethics. The ICGC also requested staff provide options for discussion.

On February 1, 2023, the ICGC held a joint special meeting with the Board of Ethics Ad Hoc Committee to continue the review of the Code of Ethics. At that meeting, the following further recommended changes to the Code of Ethics were approved:

1. Remove automatic disqualification based on residency

Disqualification of member(s) of the same Ward when the subject of the complaint is a councilmember(s) reduces the number of members that can potentially serve on a hearing panel and increases the risk of not establishing a quorum for the hearing (which is a minimum of five members and an alternate) and further delay the hearing process. Members may recuse themselves, citing personal conflict if necessary.

Suggested Change to RMC: Eliminate Section 2.80.040(B)3(h) that disqualifies any member of the Board that resides in the Councilmembers’ Ward subject to the complaint.

2. Pre-hearing conference proceedings conducted by the Board of Ethics, not a hearing panel

This option proposes that all complaints deemed complete by the City Clerk are placed on the next regular Board of Ethics meeting agenda, in accordance with the Sunshine Ordinance. The Board of Ethics would conduct the pre-hearing conference without recusal of any members.

The Board of Ethics would determine whether it is more likely than not that a violation of prohibited conduct occurred. If yes, the Board of Ethics would determine whether to exercise its discretion for the use of outside counsel and the City Clerk would then conduct a random drawing of the Board of Ethics members to establish a Hearing Panel during the same regular meeting. This option simplifies the proceedings and condenses the timing of the complaint hearing process by approximately two months.

Suggested Change to RMC: Section 2.78.075, “Pre-Conference Procedures” was amended to provide that the pre-conference is held by the Board of Ethics and if the complaint is not dismissed by the Board of Ethics, a hearing panel is then selected for a hearing.

3. Eliminate facilitating settlement discussions from the pre-hearing conference

Consider eliminating this step in the pre-hearing conference in order to expedite proceedings. The parties are not prohibited from meeting prior to or after the pre-hearing conference to discuss a resolution. The parties may be hesitant to be candid about the merits of their position if the facilitator of the settlement discussions is the member of the hearing panel.

Suggested Change to RMC: RMC Section 2.78.075(D)(3) was revised to provide that during the pre-conference, the BOE will take a break and allow the parties to confer privately. Any proposed resolutions or offers of settlement will not be introduced as evidence nor

considered as part of a formal ethics complaint. If the parties reach a settlement, the parties shall report to the Board of Ethics that the complaint has been settled and that no hearing is necessary.

4. Allow the City Clerk and the Board of Ethics Chair to reject, administratively, complaints which are not correctly filled out.

The current COE states the City Clerk shall review for “completeness only.” Outside of the City Clerk notifying the complainant of deficiencies such as missing information on the complaint form, the COE does not provide the City Clerk the authority to reject claims. For example, the complaint does not meet the statute of limitations or the complaint is not filed against a City of Riverside public official. Moreover, with the proposed changes to the RMC, complaining parties are required to provide very specific information about alleged violations of the prohibited conduct section of the Code of Ethics. The process may be expedited if deficient claims can be administratively dismissed by the City Clerk and the BOE chair without the need for a pre-hearing conference.

Suggested Change to RMC: A new section (F) was added to Section 2.78.070 to allow the City Clerk, with the approval of the BOE chair, to reject non-compliant complaints. Other revisions were made to the COE to reflect this change/

The following issues were also addressed:

1. The need for Mediation training and determine the facilitator in settlement discussions

Suggested Change to RMC: RMC Section 2.78.075(D)(3) was revised to provide that during the pre-conference, the BOE will take a break and allow the parties to confer privately. Any proposed resolutions or offers of settlement will not be introduced as evidence nor considered as part of a formal ethics complaint. If the parties reach a settlement, the parties shall report to the Board of Ethics that the complaint has been settled and that no hearing is necessary.

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

Suggested Change to RMC: RMC section 2.78.075(D)(5) was amended to provide that a presentation during the pre-conference is optional and at the discretion of the parties to the complaint; RMC Section 2.78.080(I)(J)(K) and (M) already provide that such presentations at the hearing are optional and at the discretion of the parties to the complaint.

3. Setting time limits and expediting the hearing proceedings

Suggested Change to RMC: Section 2.78.075, “Pre-Conference Procedures” was amended to provide that the pre-conference is held by the Board of Ethics and a new section (F) was added to Section 2.78.070 to allow the City Clerk, with the approval of the BOE chair, to reject non-compliant complaints.

4. Use of attorneys by parties at the pre-conference and hearing

Suggested Change to RMC: No changes made; attorneys not allowed.

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

Suggested Change to RMC: RMC Section 2.78.075(D)(11) and 2.78.090(A) were revised to provide that only appeals based upon clear error of law committed by the Board of Ethics at a pre-conference may be appealed.

6. Determine “offramps” for a complaint after an appeal; can the decision by the Hearing Panel after a “de novo” hearing be appealed to the City Council?

Suggested Change to RMC: Section 2.78.090(D) was revised to provide that only one *de novo* hearing is allowed; if the hearing panel again commits a clear error of law or abuse of discretion, the City Council has the discretion to either adopt the decision of the hearing panel or issue their own decision, which shall be final and no longer subject to a *de novo* hearing.

7. Simplifying the hearing process

Suggested Change to RMC: RMC Chapters 2.78 and 2.80 were revised to all non-compliant complaints to be administratively rejected, to simplify the pre-conference, to allow the public official to address the BOE during the pre-conference, to allow the pre-conference to be conducted by the BOE, to limit appeals and to limit *de novo* hearings after an appeal to one.

Staff also recommended certain non-substantive changes, to remove grammatical errors and inconsistencies, in both RMC Chapters 2.78 and 2.80, as set forth in the proposed ordinance.

DISCUSSION:

On March 28, 2023, the City Council held a public hearing to review the recommended amendments by the Inclusiveness, Community Engagement and Governmental Processes Committee and Board of Ethics Ad Hoc Committee as outlined in the proposed ordinance (Attachment 1). Following discussion, the City Council, with Councilmembers Edwards, Cervantes, Conder, Perry, and Councilwoman Plascencia voting aye and Councilmembers Fierro and Hemenway voting no, approved the introduction of the proposed Ordinance amending Chapter 2.78 - Code of Ethics and 2.80 – Board of Ethics of the Riverside Municipal Code (RMC) to make certain changes to the Code of Ethics and added the following revisions: (a) RMC 2.78.070.E to read “Complaints shall be filed with the City Clerk no later than one year from the date of the alleged violation.”; (b) language changed from “accord” to “accordance” throughout; and (c) RMC 2.78.090 – language changed from “clear error of law” to “clear procedural errors.”

Subsequently, on April 11, 2023, the City Council adopted Ordinance No. 7632 to be effective 30 days after adoption.

STRATEGIC PLAN ALIGNMENT:

The annual review of the effectiveness of the Code of Ethics and Conduct contributes to the following City Council’s Envision 2025 Strategic Plan Priorities and Goals:

Community Well-Being – Ensuring safe and inclusive neighborhoods where everyone can thrive with the following:

Goal 2.4 Support programs and innovations that enhance community safety, encourage neighborhood engagement, and build public trust: and,

High Performing Government – Providing world class public service that is efficient, accessible, and responsible to all, with the following goal:

Goal 5.3 - Enhance communication and collaboration with community members to improve transparency, build public trust, and encourage shared decision-making.

The Board of Ethics and the ICGC reviewing and bringing forth recommendations for revisions to the Code of Ethics and Conduct aligns with the Envision 2025 Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside’s annual review of the Code of Ethics and Conduct is transparent, the involvement of the City Boards and Commissions and public input creates sound policy, and inclusive community engagement builds community trust.
2. **Equity** – Outreach efforts were taken to encourage community input which consisted of website displays and community group flyers and posters throughout the City advising the public members how to provide recommendations for consideration allowing for a fair and unbiased revision process.
3. **Fiscal Responsibility** – Riverside is a prudent steward of public funds and ensures responsible management of the City’s financial resources while providing quality public services to all. The City Clerk’s Office annual budget includes funding to support the annual code review and outreach efforts.
4. **Innovation** – Riverside’s annual review of the Code of Ethics and Conduct through collaborative partnerships. Adaptive processes bring new perspectives and ideas, helping to meet the Board of Ethics ever-changing needs for implementing the Code of Ethics and Conduct.
5. **Sustainability & Resiliency** – Riverside is committed to meeting the present needs without compromising the needs of the future and ensuring the City’s capacity to persevere, adapt and grow during fluctuating times alike. It is essential to review the Code of Ethics and Conduct annually to maintain sustainable and resilient processes and monitor promoting innovation for a more sustainable future.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared by: Donesia Gause, City Clerk

Approved as to form: Phaedra A. Norton, City Attorney

Attachment:

1. Introduced Ordinance with redlined Proposed Revisions to RMC 2.78 and 2.80
2. Ordinance Adopted