

Chapter 30 STANDARDS OF ETHICAL CONDUCT AND ETHICS COMMISSION¹

ARTICLE I. IN GENERAL

Sec. 30-1. Applicability.

This chapter shall be applicable to all elected and appointed officials and all employees of the city.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-2. Statement of intent and purpose.

- (a) *Intent.* The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. It is the intent of the city that all elected and appointed officials and all employees of the city adhere to high levels of ethical conduct, honesty, integrity and accountability to assure that the public has confidence in all aspects of city government and the city officials that exercise discretionary powers. These standards of ethical conduct are intended to uphold the public trust in the persons in positions of public responsibility who are acting for the benefit of the public. All elected and appointed officials and all employees of the city shall comply with both the letter and the spirit of the standards of ethical conduct and strive to avoid situations that create impropriety or the appearance of impropriety. The standards define and discourage certain actions that may create impropriety or the appearance of impropriety that undermine public trust in elected and appointed public officials and employees.
- (b) *Purpose.* The standards of ethical conduct should promote public confidence in the integrity of city officials; state principles of conduct and ethics which are to be applied in public service; inform the public of the standards to which their city officials are expected to adhere; and help motivate city officials and public employees to pursue productive conduct and ethical ideals which exceed minimum standards. The city council finds and declares as matters of public policy goals and objectives for all city employees and elected and appointed officials, the following:
 - (1) *Public trust.* In our democratic form of government, the conduct of officials and employees of the city must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
 - (2) *Standards.* To ensure propriety and to preserve public confidence, officials and employees of the city must have the benefit of specific standards to guide their conduct and disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.

¹Editor's note(s)—Ord. No. 2017-14, adopted December 11, 2017, repealed ch. 30, §§ 30-31—30-35 and 30-71—30-74 and enacted a ch. 30 as set out herein. Former ch. 30 pertained to similar subject matter and derived from the Code of 1981; an Ord. adopted July 13, 1998; and Ord. No. 2010-23, adopted August 23, 2010.

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- (3) *Public service.* In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officials and employees of the city should not be unduly circumscribed.
 - (4) *Performance of duty.* Elected city officials are obligated to uphold the fundamental legal principles of our system of government, as set forth in the United States Constitution, the state constitution, and the city Charter, as well as all applicable provisions of federal, state and local law and court decisions. They are bound to do so, and the failure to do so shall constitute malfeasance in office.
 - (5) *Fairness.* City officials and employees shall strive for the highest standard of fairness in all of their activities and shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
 - (6) *Use of private information.* In the course of their official responsibilities, city officials and employees are often privy to categories of information which are of a private nature and are legally protected from public disclosure. City officials and employees shall maintain the privacy of such information, and they shall not take advantage of such information for personal gain, or the personal gain of friends or family.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-3. Acknowledgment of policies; required disclosures, and required annual training.

In order for the mayor, councilmembers, mayoral and council appointees, and city employees to better serve the constituents of the city in an open, transparent fashion and to further be held accountable, the following actions shall be taken by each of the designated persons:

- (a) *Acknowledgment of policies.* Each elected and appointed official and all city employees shall be furnished copies of Chapter 30—Standards of Ethical Conduct and Ethics Commission, either electronically or, if requested, in hard copy, before entering upon the duties of their office or employment and shall sign a written acknowledgment of receipt of the copy. The documents shall be read, reviewed, and signed by all appointees by the time of their appointment or re-appointment.
- (b) *Financial disclosure report.* Any city employee or elected or appointed official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency (and any city official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the city agency on which he serves as an appointee) shall file a financial disclosure report with the ethics commission fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such financial disclosure report shall be a condition of commencing and continuing employment or appointed status with the city. The financial disclosure report shall be submitted by August 1 of each calendar year.
- (c) Disclosure of interest in legislation.
 - (1) A councilman who has a financial or other private interest in any legislation shall disclose on the records of the council or other appropriate authority the nature and extent of such interest. This provision shall not apply if the councilman disqualifies himself from voting on such legislation.
 - (2) Any other city official or employee who has a financial or other private interest in any legislation and who participates in discussion with or gives an official opinion to the council shall disclose on the records of the council or other appropriate authority the nature and extent of such interest.

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- (3) Any city employee or city officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency, shall file with the ethics commission a written statement fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this subchapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city.
 - (4) *Required annual training.* All city employees and elected and appointed officials shall undergo and receive annual training on the city's ethics policies and procedures.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-4. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Close relative means a person's parents, spouse, children (natural or adopted), and siblings of the whole and half-blood.

Commission and *ethics commission* mean the city ethics commission as established by this chapter.

Compensation means any money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by the official or employee, or by another.

Employee includes all persons who receive compensation as an employee of the city or a city agency, and shall not include persons that are elected or appointed to serve as mayor, city councilmember or a member of any city committee, commission or board, whether paid or unpaid.

Financial interest. A person has financial interest in a private enterprise if:

- (1) He has a legal or equitable ownership interest in the enterprise of more than ten percent (one percent or more in the case of a corporation the stock of which is regularly traded on an established securities market);
- (2) He is associated with the enterprise and received from the enterprise during the last calendar year, or might reasonably be expected to receive from the enterprise during the current or the next calendar year, income in excess of \$5,000.00 for services as an employee, officer, director, trustee, or independent contractor; or
- (3) He is a creditor of a private enterprise in an amount equal to ten percent or more of the debt of that enterprise (one percent or more in the case of a corporation the securities of which are regularly traded on an established securities market).

Matter means an application, petition, request, business dealing, contract, subcontract, or any other transaction of any sort with the city.

Official means any elected or appointed official of the city and all members of any committee, commission or board appointed by the mayor of the city or appointed by the city council.

Official responsibility means any direct administrative or operating authority at any level, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, recommend or otherwise direct action on behalf of the city.

Personal or private interest means an interest in a matter which tends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter.

Private enterprise means any activity conducted by any person, whether conducted for profit or not for profit, and includes the ownership of real or personal property. The term "private enterprise" does not include any activity of the city, of any political subdivision, or of any agency, authority, or instrumentality thereof.

Public official. All elected and appointed officials and all employees of the city.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-5—30-19. Reserved.

ARTICLE II. STANDARDS OF ETHICAL CONDUCT.

Sec. 30-20. Established.

High ethical standards among public officials and employees are essential to gain and maintain the confidence of the people, because such confidence is essential to the conduct of free government. Public officials and employees are agents of the people and hold office for the benefit of the public. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully and impartially the duties of their offices, regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach. These standards of ethical conduct are adopted in order to secure this desired high level of public trust, ensure the impartiality of public officials and employees, and impose standards of accountability.

(a) *General responsibilities of officials and employees.*

- (1) Officials and employees have the common obligation of serving the public. In performing their duties, they shall treat the public and each other with respect, concern, and responsiveness, recognizing that their common goal of exceptional public service can only be achieved by working together. Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent on resolving these disputes is money not spent on important public needs.
- (2) Officials and employees shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- (3) Officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- (4) Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
- (5) No official or employee may request or receive, and no person may offer any money, thing of value or promise thereof, other than any city pay received, that is conditioned upon or given in exchange for promised performance of an official act.

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- (b) *Appearance of violation.* Each city employee and official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is engaging in acts which are in violation of his public trust and which will not reflect unfavorably upon the city and its government.
- (c) *Private interest; gifts.* No city employee or official shall have any interest in any private enterprise, nor shall he incur any obligation of any nature which is in substantial conflict with the proper performance of his duties in the public interest. No city employee or official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:
- (1) Impairment of independence of judgment in the exercise of official duties;
 - (2) An undertaking to give preferential treatment to any person;
 - (3) The making of a governmental decision outside official channels; or
 - (4) Any adverse effect on the confidence of the public in the integrity of the government of the city.
- (d) *Interest in private enterprise.* No city employee or official shall acquire a financial interest in any private enterprise which he has reason to believe may be directly involved in decisions to be made by him in an official capacity on behalf of the city.
- (e) *Prohibitions relating to conflicts of interest.* No councilman or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter.
- (1) *Restrictions on exercise of official authority.*
 - a. *Prohibited participation.* No city employee or official may participate on behalf of the city in the review or disposition of any matter pending before the city in which he has a personal or private interest, provided that, upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his duties with respect to that matter.
 - b. *Impairment of judgment.* A person has an interest which tends to impair his independence of judgment in the performance of his duties with respect to any matter when:
 - i. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or
 - ii. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.
 - c. *Statutory responsibility.* In any case where a person has a statutory responsibility with respect to action or inaction on any matter where he has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person

may exercise responsibility with respect to such matter, provided that, promptly after becoming aware of such conflict of interest, he files a written statement with the ethics commission, fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

- (2) *Restrictions on representing another's interest before the city.*
 - a. *Prohibited.* No city employee or official may represent or otherwise assist any private enterprise with respect to any matter before the city.
 - b. *Exception.* This subsection shall not preclude any city employee or official from appearing before the city or otherwise assisting any private enterprise with respect to any matter in the exercise of his official duties.
- (3) *Restriction on contracting with the city.*
 - a. *Prohibited.* No city employee or official shall benefit from any contract with the city, nor solicit any contract, and shall not enter into any contract with the city (other than an employment contract).
 - b. *Ownership of enterprise.* No private enterprise in which a city employee or official has a legal or equitable ownership of more than ten percent (more than one percent in the case of a corporation the stock of which is regularly traded on an established securities market) shall enter into any contract with the city (other than an employment contract) unless such contract was made or let after public notice and competitive bidding.
- (f) *Postemployment restrictions.* No person who has served as a city employee or official shall represent or otherwise assist any private enterprise on any matter involving the city, for a period of two years after termination of his employment or elected or appointed status with the city, if he gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his official duties as a city employee or official, nor shall any former city employee or official disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.
- (g) *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the ethics commission under section 30-3(b), 30-73 or 30-74.
- (h) *Abuse of office.*
 - (1) *Political contributions.* No elected city official shall agree to sponsor legislation, or to influence in any manner the formulation or passage of legislation, in exchange for political contributions or promises thereof.
 - (2) *Substantial interest.* No elected city official shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he has a substantial interest. Any such interest shall be disclosed by said elected official prior to a vote on any such legislation, and said elected official shall vote "abstain" when called upon to vote.
 - (3) *Use of city property.* No city official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided for the use of such official or employee in the conduct of official business as a matter of municipal policy.
 - (4) *Personal gain.* No city official or employee shall utilize the influence of his office or position for personal pecuniary gain, or to avoid the legal consequences of his personal conduct.
- (i) *Criminal sanctions.*

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- (1) *Penalties.* Any person who knowingly or willfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine as provided for in Appendix F—Fees and Fines.
- (2) *Time limitations.* A prosecution for a violation of this section shall be subject to the time limitations of 11 Del. C. § 205.
- (j) *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into by any city agency in violation of this chapter shall be voidable by the city agency; provided that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the city agency shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the city agency involved has, or should have, knowledge of such violation.
- (k) *Private gain.* No city employee or official shall use his public office to secure unwarranted privileges, private advancement or gain.
- (l) *Confidential information; prohibited activity.* No city employee or official shall engage in any activity beyond the scope of his public position which might reasonably be expected to require or induce him to disclose confidential information acquired by him by reason of his public position.
- (m) *Disclosure of information.* No city employee or official shall, beyond the scope of his public position, disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.
- (n) *Ex parte communications.* No official or employee shall encourage, make or accept any ex parte or other unilateral application or communication that excludes the interests of other parties in a matter under consideration when such application or communication is designed to influence official decision or conduct of the official or other officials, employees or agencies in order to obtain a more favored treatment or special consideration to advance the personal or private interests of himself or herself or others. The purpose of this provision is to guarantee that all interested parties to any matter shall have equal opportunity to express and represent their interests.
- Any written ex parte communication received by an official or employee in matters where all interested parties should have equal opportunity for a hearing shall be made part of the record by the recipient.
- Any oral ex parte communication received under such conditions should be written down in substance by the recipient and also made a part of the record.
- A communication concerning only the status of a pending matter is not regarded as an ex parte communication.
- (o) *Sexual favors.* No city employee or official, in the course of his public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a city agency.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-21—30-70. Reserved.

ARTICLE III. ETHICS COMMISSION

Sec. 30-71. Established; composition; removal; terms of office; vacancies; chairperson; quorum; compensation; legal counsel.

- (a) *Established; composition; removal.* The city ethics commission is hereby established to administer and implement this chapter. The ethics commission shall consist of five members, all residents of the city, appointed by the mayor and confirmed by the city council. No member of the commission shall hold any elected or appointed office under the government of the United States or the state, county, or city. Members of the ethics commission may be removed by the mayor, with the concurrence of the city council, for substantial neglect of duty, gross misconduct in office or a violation of this chapter.
- (b) *Terms of office; vacancies.* A member of the ethics commission shall be appointed for a term of office of five years and until his successor has been appointed and has qualified. The members shall be appointed for staggered terms of office, and until their successors have been appointed. When a vacancy occurs in the membership of the ethics commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as the original appointment.
- (c) *Chairperson; quorum.* The ethics commission shall elect a chairperson from among its membership. Three members of the ethics commission shall constitute a quorum and, if a quorum is present, a vacancy on the ethics commission shall not impair the right of the remaining members to exercise all the powers of the ethics commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least three members; otherwise, the ethics commission may delegate authority to the chairperson to act for the ethics commission between meetings.
- (d) *Compensation.* Members of the ethics commission shall receive no compensation.
- (e) *Legal counsel.* The city solicitor shall provide legal counsel to the ethics commission and shall be the legal representative of the ethics commission in connection with its duties hereunder, on a case-by-case basis, or determine that outside counsel is needed and obtain such outside counsel for a particular matter.

(Ord. No. 2017-14, 12-11-2017; Ord. No. 2023-11, 11-13-2023)

Sec. 30-72. Powers and duties.

- (a) The powers and duties of the ethics commission shall be:
 - (1) *Standards of ethical conduct.* To recommend to the mayor and council, from time to time, such rules of conduct for public employees and officials as it shall deem appropriate.
 - (2) *Advisory opinions.* To issue written advisory opinions, upon the request of any city employee or official, as to the applicability of this chapter to any particular factual situation.
 - (3) *Referrals to solicitor.* To refer to the city solicitor for investigation any alleged violation of this chapter and, after notice and hearing, to recommend such disciplinary action as it may deem appropriate to such appropriate official or agency as the ethics commission shall determine, or to take such other disciplinary action as authorized by section 30-73(o) or other provisions of the city Charter or this Code. The ethics commission may dismiss, without reference to the city solicitor, any complaint which the ethics commission determines is frivolous or fails to state a violation.
 - (4) *Report of crimes.* To report to the appropriate federal, state or city authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding, whether advisory or disciplinary.

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- (5) *Records.* To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of sections 30-74 and 30-73(s).
 - (6) *Procedures.* To follow the procedural rules specified in section 30-73 and to establish such other procedural rules as shall be consistent with the rules prescribed therein.
 - (7) *Witnesses, evidence.* To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of books, papers, records or other evidence needed for the performance of the ethics commission's duties or exercise of its powers.
 - (8) *Assistance to city personnel.* To provide assistance to any city employee, official or agency in administering the provisions of this chapter.
 - (9) *Provide information.* To prepare any necessary reports and studies to advance the purpose of this chapter, to provide any necessary materials explaining the duties of individuals covered by this chapter, and to supply instructions and public information materials to facilitate compliance with, and enforcement of, this chapter.
 - (10) *Request city agencies for assistance.* To request appropriate city agencies to provide such professional assistance as it may require in the discharge of its duties.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-73. Rules of procedure; complaints; hearings; dispositions.

- (a) Any person, either personally or on behalf of an organization or governmental body, may file a sworn complaint for the ethics commission with the city clerk. The complaint must be in writing, be signed, and show the address of the person who submitted it. The complaint must state that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true. The complaint must describe the facts that constitute the violation of the standards of ethical conduct in sufficient detail so that the ethics commission and the person who is the subject of the complaint can reasonably be expected to understand the nature of any offense that is being alleged. The commission may request any additional information deemed necessary to screen the complaint or to render a decision. No complaints shall be accepted or considered which relate to actions that took place more than one year prior to the date of filing. The individual filing the sworn complaint has 60 days from the date that the issue is brought to his or her attention to file a complaint.
- (b) After the sworn complaint has been filed, none of the parties or their representatives may communicate on an ex parte basis with any commission members pertaining to the complaint. All communications pertaining to the complaint shall be submitted to the city clerk.
- (c) Within seven days of receiving a sworn complaint the city clerk shall send copies of the complaint to each member of the ethics commission, the city solicitor, and the official or officials against whom such complaint has been filed. Hereinafter, the complaining party shall be referred to as the "complainant" and the official against whom a complaint has been lodged shall be referred to as the "respondent."
- (d) The commission recognizes that distribution to the public of a sworn complaint prior to screening by the commission as required below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the public release of the complaint is prohibited until the screening process has been completed. The commission shall consult in confidence to screen the complaint within 14 days of receiving the complaint. The commission may immediately dismiss a complaint if:
 - (1) It has no jurisdiction; or

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- (2) The alleged violation, if true, would not constitute a violation of the standards of ethical conduct; or
 - (3) The alleged violation is a minor or de minimis violation; or
 - (4) The complaint is, on its face, frivolous, groundless, or brought for purposes of harassment; or
 - (5) The matter has become moot because the person who is the subject of the complaint is no longer an officer, official or employee; or
 - (6) The respondent had obtained an advisory opinion under section 30-74(c) permitting the conduct; or
 - (7) The appointing authority of the respondent has already taken action as a result of finding a violation and the commission believes the action was appropriate.
- (e) In issues regarding standards of ethical conduct violations, the enforcement process is intended to be corrective rather than remedial unless the violation is a repeated offense. In the event the ethics commission determines a standards of ethical conduct violation has occurred, and it is minor in nature, with the concurrence of the complainant and the subject of the sworn complaint, the commission may dispense with the hearing process and conduct a more informal mediation process in lieu of a hearing.
 - (f) If the sworn complaint is not dismissed or otherwise resolved pursuant to subsection 30-73(d), the city clerk shall promptly contact the members of the ethics commission, the city solicitor, the complainant, and the respondent in order to ascertain a date and time when a hearing can be convened on such complaint. As soon as a date and time have been agreed upon for a hearing before the ethics commission, the city clerk shall send written notice of such scheduling and a copy of the rules of procedure to the complainant and to the respondent. No copies of the complaint shall be provided to any other parties before the respondent receives the complaint. The city solicitor shall be the prosecuting attorney in all disciplinary proceedings before the ethics commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of this chapter.
 - (g) The commission may dismiss a complaint if the complainant does not appear at the hearing and if, in the opinion of the commission, it would be unfair to the respondent not to have the opportunity to examine the complainant.
 - (h) As promptly as possible after the close of the hearing, the commission shall deliberate to determine if the allegations have been proven by clear and convincing evidence. Only ethics commission members who have been present for the hearing may participate in the deliberations, and any findings and recommendations must be adopted by a majority of the commission. The commission may consider, when making findings and recommendations, the severity of the offense, the presence or absence of any intention to conceal, deceive, or mislead, whether the violation was deliberate, negligent or inadvertent, and whether the incident was isolated or part of a pattern.
 - (i) Within seven days of the conclusion of deliberations, the commission shall issue an order setting forth its findings and recommendations. In the alternative, the commission where it deems it appropriate, may issue an advisory opinion in lieu of making findings and recommendations.
 - (j) If the respondent is an employee, the commission may, if it determines corrective action is necessary, notify the city manager or the council president and recommend that action be taken, including discipline.
 - (k) If the respondent is a city official, the commission may propose actions to the city council that are appropriate to the finding as specified in section 30-73(o).
 - (l) The commission shall send a written copy of its findings and recommendations to the respondent and the complainant.

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- (m) *Proceeding relating to member.* A member of the ethics commission shall be ineligible to participate, as a member of the ethics commission, in any ethics commission proceeding relating to his conduct. A member of the ethics commission who has been found by the ethics commission to have violated this chapter shall be ineligible to serve again as a member of the ethics commission.
- (n) *Self-disqualification.* A member of the ethics commission may disqualify himself from participating in any investigation of the conduct of any person upon submission, in writing and under oath, of an affidavit or disqualification stating that he cannot render an impartial and unbiased decision in the case in which he seeks to disqualify himself.
- (o) *Actions by ethics commission.* With respect to any violation with which a person has been charged and which the ethics commission has determined as proved, the ethics commission may take any one or more of the following actions:
- (1) *Reprimand.* Issue a written reprimand or censure of that person's conduct.
 - (2) *Discipline.* With respect to a city employee, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by this chapter, but within the limits of the constitution, the laws of the state, the Charter of the city, and ordinances and existing collective bargaining agreements.
 - (3) *Recommend removal.* With respect to an appointed official, recommend that appropriate action be taken to remove the official from the appointed position.
 - (4) *Recommend fine.* With respect to an elected city official, recommend that such official be fined in an amount recommended by the ethics commission.
- (p) *Rights of person charged.* In any proceeding before the ethics commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of his defense.
- (q) *Exculpatory information.* In any proceeding before the ethics commission, if the city solicitor or ethics commission at any time receives any exculpatory information concerning an alleged violation against any person, it shall forthwith make such information available to such person.
- (r) *Subpoenas.* Any person charged with a violation of this chapter may apply to the ethics commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on his behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.
- (s) *Confidentiality of proceedings.*
- (1) *City employee.* All proceedings before the ethics commission relating to a violation of this chapter by a city employee shall be maintained confidential by the ethics commission, unless:
 - a. Public disclosure is requested, in writing, by the person charged; or
 - b. The ethics commission determines after a hearing that a violation has occurred.
 - (2) *City official.* All proceedings before the ethics commission relating to a violation of this chapter by a city official, appointed or elected, shall be maintained confidential by the ethics commission, unless:
 - a. Public disclosure is requested, in writing, by the person charged; or
 - b. The ethics commission determines after a hearing that a violation has occurred.

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- (t) *Appeals; public inspection.* Notwithstanding the confidentiality requirements of subsections (s)(1) and (2) of this section, the ethics commission shall make available for public inspection the record of all proceedings relating to any decision of the ethics commission which is appealed to the superior court and the ethics commission shall report to appropriate federal, state and/or city authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.
 - (u) *Confidentiality procedures.* The chairperson of the ethics commission shall, with the approval of the ethics commission, establish such procedures as, in the chairperson's judgment, may be necessary to prevent the disclosure of any record of any proceedings or other information received by the ethics commission, except as permitted by this chapter.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-74. Waivers of restrictions and advisory opinions.

- (a) *Authority of ethics commission.* Notwithstanding the provisions of section 30-20, upon the written request of any city agency or of any individual who is or was a city employee or city official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.
- (b) *Waiver information confidential; exceptions.* Any application for a waiver, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:
 - (1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;
 - (2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;
 - (3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention; and
 - (4) *Public record.* In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.
- (c) *Advisory opinion authorized.* Upon the written request of any city employee or official, the ethics commission may issue an advisory opinion as to the applicability of this chapter to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.
- (d) *Advisory opinion confidential; exceptions.* Any application for an advisory opinion, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:
 - (1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;
 - (2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this article; and

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- (3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention.

(Ord. No. 2017-14, 12-11-2017)

Sec. 30-75. Judicial review.

In the event that the ethics commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to the superior court of any such finding, and of any sanctions imposed with respect thereto, by filing a notice of appeal with the superior court within 30 days of the final action by the ethics commission in a particular case. The appeal shall be on the record without a trial de novo. If the court determines that the record is insufficient for its review, it shall remand the case to the ethics commission for further proceedings on the record. The court's review, in the absence of actual fraud, shall be limited to a determination of whether the ethics commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

(Ord. No. 2017-14, 12-11-2017)