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## Sec. 2-568. Ethical rules of conduct.

- (a) Definitions. The following words, terms and phrases, when used in this Section, Section 2-569 and in Section 9 of the Charter Article IV, shall have the following meanings:
- (1) *Attempt to influence or influence*, as it pertains to this Section, shall mean take any action intended to impact, shape, control, sway, bias or prejudice.
  - (2) *Benefit* shall mean an advantage or gain.
  - (3) *Board and commission member* shall mean a member of any appointive board or commission of the City.
  - (4) *Confidential information or information received in confidence* shall mean:
    - a. Information contained in any writing that may properly be withheld from public inspection under the provisions of the Colorado Open Records Act and that is marked "confidential" when provided to the officer or employee;
    - b. All information exchanged or discussed in any executive session properly convened under § 2-31 or 2-71 of the Code, except to the extent that such information is also contained in a public record available to the general public under the provisions of the Colorado Open Records Act; or
    - c. All communications between attorneys representing the City and officers or employees of the City that are subject to the attorney-client privilege, whether oral or written, unless the privilege has been waived.
  - (5) *Councilmember* shall mean a member of the City Council.
  - (6) *Different in kind from that experienced by the general public* shall mean of a different type or nature not shared by the public generally and that is not merely different in degree from that experienced by the public generally.
  - (7) *Direct* shall mean resulting immediately and proximately from the circumstances and not from an intervening cause.
  - (8) *Detriment* shall mean disadvantage, injury, damage or loss.
  - (9) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

*Financial interest* means any interest equated with money or its equivalent. Financial interest shall not include:

    - a. the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;
    - b. the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;
    - c. the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;
    - d. the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;

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- e. the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;
  - f. the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;
  - g. the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or
  - h. the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.
- (10) *Officer or employee* shall mean any person holding a position by election, appointment or employment in the service of the City, whether part-time or full-time, including any member of the City Council and any member of any authority, board, committee or commission of the City, other than an authority that is:
- a. Established under the provisions of the Colorado Revised Statutes;
  - b. Governed by state statutory rules of ethical conduct; and
  - c. Expressly exempted from the provisions of Article IV of the City Charter by ordinance of the City Council.
- (11) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:
- Personal interest* means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. *Personal interest* shall not include:
- a. the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;
  - b. the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or
  - c. the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.
- (12) *Public body* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:
- Public body* means the Council or any authority, board, committee, commission, service area, department or office of the city.
- (13) *Public services* shall mean city services provided to or made available for the public's benefit.
- (14) *Purchases from the city*, as described in Section 9(b)(2) of Charter Article IV, shall not include payments by an employee to the city pursuant to an agreement for housing in which such employee is required to live as a condition of employment with the city.

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- (15) *Related entity* shall mean any corporation, limited liability company, partnership, sole proprietorship, joint venture, trust, estate, foundation, association, business, company or any other organization, whether or not operated for profit, with respect to which an officer or employee, or a relative of the same, has a substantial ownership interest in, is employed by, is an agent for or otherwise represents in any legal capacity.
- (16) *Relative* shall have the meaning given to this word in Section 9(a) of Charter Article IV, which states:  
*Relative* means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.
- (17) *Routine City matter* shall mean a usual and ordinary registration, reservation, or other request or application, within a program or for public services or City approval, such as a registration for a recreation class, reservation of a park shelter, request for standard utility services or application for a building permit, development approval or variance, or an appeal, provided that the same is carried out using a routine process or system or in a manner consistent with standard practices.
- (18) *Similarly situated citizens* shall mean citizens in like circumstances having comparable legal rights and obligations.
- (19) *Substantial* shall mean more than nominal in value, degree, amount or extent.
- (b) Notwithstanding the provisions of § 1-15 of the Code, an alleged violation of the provisions of this Section by a member of the City Council shall not be prosecuted in the Municipal Court as a misdemeanor criminal offense but shall instead be referred to the Ethics Review Board for an advisory opinion and recommendation under the provisions of § 2-569.
- (c) Rules of conduct.
- (1) Use and disclosure of confidential information. The following rules shall apply to the use and disclosure of confidential information by officers and employees of the City. In the event of any conflict among these provisions, the more specific provision shall take precedence over the more general provision.
- No use for personal gain. No officer or employee shall knowingly use information received in confidence as an officer or employee to advance the financial or personal interests of the officer or employee or others.
  - Disclosure of confidential information, generally. No officer or employee shall knowingly disclose any confidential information to any person who is not an officer or employee or to an officer or employee whose official duties are unrelated to the subject matter of the confidential information or to maintaining an official record of such information on behalf of the City, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.
  - Disclosure of confidential information provided to the City Council. All information received in confidence by the City Council shall remain confidential, and no officer or employee shall knowingly disclose any such confidential information to any person to whom such information was not originally distributed by City staff unless and until the City Council has, by majority vote, consented to its release, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices.
  - Disclosure of information discussed in executive session. No officer or employee shall knowingly disclose any confidential information discussed in an executive session to any person who was not present during such discussion, other than members of such body who were unable to attend the executive session, without the prior knowledge and consent of the body holding such

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executive session, unless such disclosure is reasonably necessary to protect the City from the gross mismanagement of public funds, the abuse of governmental authority, or illegal or unethical practices. In the event that a matter discussed in executive session comes before the City Council or a board or commission of the City for formal action at an open meeting, or if such formal action is anticipated, nothing herein shall be construed as prohibiting a member of the body that will be taking such formal action from stating his or her position or opinion with regard to the matter, as long as such statements do not divulge confidential information received from others during the executive session.

- e. Certain distribution and discussion by City Manager and City Attorney permitted. Notwithstanding the provisions of Subparagraphs c. and d. above, the City Manager and City Attorney may further distribute confidential information provided to the City Council and may disclose confidential information discussed in any executive session of the City Council, or of a Council committee, to such staff members and/or board and commission members as they may consider reasonably necessary to enable them to fully advise the City Council or to implement any direction given by the City Council or to advise other officers and employees of the City whose official duties are related to the subject matter of the confidential information or to maintaining a record of the same on behalf of the City.
  - f. No disclosure of confidential information to officer or employee having conflict of interest. No officer or employee who has filed a statement of conflict of interest with the City Clerk under Article IV, Section 9 of the Charter, or who has been determined by the City Council under the provisions of Subparagraph g. below to have a conflict of interest, shall knowingly elicit, accept or inspect any confidential information pertaining to the subject matter of such conflict of interest, nor shall any such officer or employee attend or participate in an executive session of the City Council, or of a Council committee or board or commission of the City, pertaining to said subject matter.
  - g. The City Council may determine that a Councilmember shall not receive confidential information or attend executive sessions on a particular topic if the City Council first determines that said Councilmember has a conflict of interest in the subject matter of such confidential information and/or executive session. Any such determination by the City Council shall be made only after the City Council has received an advisory opinion and recommendation of the Ethics Review Board on the question, rendered in accordance with the provisions of § 2-569.
- (2) With respect to any matter regarding which a Councilmember has declared a conflict of interest, said Councilmember is prohibited from discussing with, or otherwise attempting in any capacity to influence, directly or indirectly, any City officer or employee, and from representing any person or interest before the City Council or any board or commission of the City or in dealing with any City officer or employee, except that such Councilmember may represent with any City employee or before the City Council or a board or commission of the City his or her own interest or that of a relative provided said Councilmember does not violate Section 2-568(c)(5) or (c)(6).
- (3) In any action in which a member of a City board or commission ("member") declares a conflict of interest or is prohibited from participation pursuant to subsection (7) below, or for any other reason, such member shall not communicate to or attempt to influence such board or commission regarding such item, in any capacity, except that:
- a. the member may communicate with said board or commission to protect a strictly personal interest, in the same or similar ways in which the public is permitted to communicate with the board or commission.
  - b. the member may prepare materials on behalf of another for a project in the normal course of business or operation, so long as the purpose of those materials is not directly and substantially

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related to advocacy before said member's board or commission. Those materials may be included in materials submitted by another to said member's board or commission so long as they fall within this exception. For illustrative purposes, such materials may include, but are not necessarily limited to architectural plans, technical studies, and engineering designs.

- c. if a member is precluded from participating in or influencing the decision of their board or commission, they may request a variance from the limitations of this subsection from the City Council in the following circumstances, and in the following manner:
    - 1. The member must submit a request for a variance to the City Clerk on a form provided by the City Clerk for such purpose.
    - 2. The member must demonstrate that without the variance, they would suffer an exceptional hardship, and that no reasonable alternative exists that would allow for that hardship to be avoided or substantially mitigated;
    - 3. The City Council must act by resolution to approve or disapprove the requested variance.
  - d. This limitation does not apply to persons other than the member who are affiliated with that member's firm or entity, and such other persons, but not the member, may continue to work on the project and may advocate to such member's board or commission, provided that the member complies with the applicable requirements and limitations.
- (4) All officers and employees shall refrain from accepting payment for any speeches, debates or other public events and shall further refrain from accepting any gift or favor which, in the judgment of a reasonably prudent person, would tend to impair the officer's or employee's independence of judgment in the performance of his or her official duties. The following shall not constitute prohibited gifts or favors under this Section:
- a. Campaign contributions reported as required by Chapter 7, Article V of this Code;
  - b. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;
  - c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which an officer or employee is scheduled to participate;
  - d. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to an officer or employee which is not extraordinary when viewed in light of the position held by such officer or employee;
  - e. Items of perishable or nonpermanent value that are insignificant in value, including, but not limited to, meals, lodging, travel expenses or tickets to sporting, recreational, educational or cultural events; and
  - f. Payment of salary from employment, including other employment in addition to that earned from being an officer or employee.
- (5) No officer or employee shall request on his or her own behalf, or for or through a relative or related entity, from any other officer or employee, or grant to any other officer or employee, or relative or related entity of the same, any consideration, treatment or advantage in the interpretation, administration or enforcement of the Charter, Code, any City regulation, policy or program or in the provision of public services, that is substantially different from that available to other persons in the same circumstances or having the same need.
- (6) If any Councilmember contacts an officer or employee regarding a request in connection with that contacted officer's or employee's role and in relation to a matter that is not a routine City matter and is

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not within the Councilmember's role as an officer of the City, said Councilmember shall no later than 5:00 p.m. on the next business day after such contact deliver a written disclosure to the City Clerk and the City Manager and to all other members of City Council. The written disclosure must describe the date, time and general subject matter of the contact, together with the identity of the officer or employee contacted. Any private or confidential information, such as tax, utility account, or other personal information may be excluded or redacted from such disclosure. Disclosure by means of an electronic message shall be deemed to constitute written disclosure for purposes of this provision.

(7) Additional limitations on participation.

- a. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, who has participated or intends to participate as a member of the public, or on behalf of another person or entity, to provide input or public comment as part of a City process about a particular proposal or project for which a City review, permit or approval is required (such as, for example, speaking at a neighborhood meeting for a development project or appearing at an administrative hearing for a project), is allowed to participate in that process in their role as a board or commission member.
  1. In the event such input or public comment has been provided, or is expected to be provided, the commission member must promptly provide written notice to the City Clerk that they are required to refrain from participation in their role as a commission member in the City process or decision.
  2. The commission member must also provide the required notice to the chair of the commission of which they are a member.
- b. The prohibitions and requirements of this subsection (7) apply whether or not a conflict of interest is presented or has been declared and are in addition to, and not in place of, the requirements applicable to any officer or employee in the event of a conflict of interest.
- c. No member of a Quasi-Judicial Commission, as defined in Article III of this Chapter 2, may provide input or public comment on behalf of that commission as part of a City process about a particular proposal or project for which a City review, permit or approval is required, except as expressly authorized and directed by such commission.

(8) With respect to any Councilmember serving as a liaison to a board or commission, such Councilmember must not direct the board in its activities or work. A liaison's role is to serve as a contact rather than an advocate for or ex-officio member of the board or commission.

**Sec. 2-569. Board of ethics.**

- (a) In order to assist the Councilmembers and board and commission members in interpreting and applying the definitions, rules and procedures pertaining to ethics established by the Charter and Code and by the applicable provisions of state statute, there is hereby created a Board of the City to be known as the Ethics Review Board, hereafter referred to in this Division as the "Review Board."
- (b) The Review Board shall consist of three (3) Councilmembers elected by the City Council, one (1) of whom shall be elected by the Review Board to serve as a chairperson. One (1) alternate shall also be appointed by the City Council to serve in the event that a regular member of the Review Board is unavailable or in the event that any particular complaint or inquiry is directed towards a member of the Review Board.
- (c) Subject to the provisions of Subsection (d) below, the duties and responsibilities of the Review Board shall be as follows:

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- (1) To review and investigate complaints of unethical conduct filed against Councilmembers or board and commission members by any person;
  - (2) To review and investigate actual or hypothetical situations involving potential conflicts of interest presented by individual Councilmembers or board and commission members;
  - (3) After review and investigation, to render advisory opinions or interpretations pertaining to such complaints or inquiries under the relevant provisions of the Charter and Code and the applicable provisions of state law, if any, and to make written recommendations to the City Council and any affected board or commission concerning the same; and
  - (4) To propose any revisions to the provisions of the Charter or Code or other regulations, rules or policies of the City pertaining to ethical conduct as the Review Board may deem necessary and appropriate in the best interests of the City.
- (d) Inquiries and complaints shall be submitted to the Review Board only according to the following procedures:
- (1) *City Council inquiries.* Any Councilmember may present directly to the Review Board any inquiry regarding the application of ethical rules of conduct under state statute or the Charter or Code to any actual or hypothetical situation of a Councilmember or board and commission member.
    - a. In performing its review and investigation of any inquiry submitted in accordance with this Subsection (d)(1), the Review Board shall afford all affected board and commission members an opportunity to present their interpretations of the facts at issue and of the applicable provisions of law before rendering its advisory opinion and recommendation.
    - b. It is not necessary for the Review Board to conduct a full public hearing and take public comment on an inquiry, although the Review Board may do so if it determines public input will assist the Board in its consideration of the inquiry.
    - c. The Review Board may also request such additional materials or information from City staff or members of the public which it considers reasonably necessary or helpful to its deliberations.
    - d. After consideration of an inquiry, the Review Board shall forthwith issue an advisory opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said advisory opinion and recommendation shall be submitted to City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same as a final ethics opinion of the Council.
    - e. Any whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the opinion.
  - (2) *Complaints.*
    - a. Any person who believes that a Councilmember or board or commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the chairperson of the Review Board, the Councilmembers or board or commission member named in the complaint, the City Council and the City Attorney. Each complaint shall name only one officer as its subject.
    - b. The City Attorney shall periodically seek proposals and select and retain, after consultation with the Review Board, one or more qualified attorneys to review complaints filed against Councilmembers under this subsection (2) and determine whether the complaint warrants investigation in light of the applicable screening criteria and commonly known and documented facts and circumstances. Such review attorneys shall also function as investigators to develop the facts relevant to a complaint under investigation and interpret and apply the applicable state and local ethics provisions and based on that investigation and evaluation, make a recommendation

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to the Review Board (or alternate Review Board, if applicable) of such findings and determinations as may be appropriate in response to the complaint.

- c. For a complaint against a board or commission member:
- i. The City Clerk shall schedule the complaint for consideration by the Review Board as soon as reasonably practicable. The Review Board will meet and consider the complaint within thirty (30) working days after the date of filing of the complaint. In the event extenuating circumstances arise in the scheduling and preparation for such meeting the Review Board shall meet to consider the complaint as soon as reasonably practicable.
  - ii. The City Clerk shall provide written notice of the scheduled meeting for initial review of the complaint to the board or commission member named in the complaint, as well as the complainant, the chair of the board or commission of which the subject of the complaint is a member, and the City Council, at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant shall be posted along with the meeting notice.
  - iii. Upon receipt of any such complaint, the Review Board shall, after consultation with the City Attorney, decide by majority vote whether to formally investigate the complaint. In making such determination, the Review Board shall consider the screening criteria set out in this subsection (d)(2)f below. If the Review Board determines that the complaint does not warrant investigation, the Review Board shall send written notice to the complainant of its determination and the reasoning behind that determination, and shall provide a copy of such notice, together with a copy of the complaint, to the board or commission member named in the complaint, as well as the chair of the board or commission of which the subject of the complaint is a member, and the City Council.
  - iv. If a complaint proceeds to investigation after the initial review, in performing its review and investigation of any complaint or inquiry submitted in accordance with Subsection (d)(2)c hereof, the Review Board shall afford all affected board and commission members an opportunity to present their interpretations of the facts at issue and of the applicable provisions of law before rendering its opinion and recommendation.
  - v. Prior to reaching a decision on the merits of a complaint, the Review Board shall provide the complainant an opportunity to present facts and argument in support of the complaint, however, it is not necessary for the Review Board to conduct a full public hearing and take public input on a complaint.
  - vi. The Review Board may also request such additional materials or information from City staff or members of the public which it considers reasonably necessary or helpful to its deliberations. In addition, the Review Board shall have the power to compel by subpoena the attendance and testimony of witnesses and the production of such documents as the Review Board may consider necessary to its investigation.
  - vii. After investigation, the Review Board shall forthwith issue an opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said opinion and recommendation shall be submitted to City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same as a final ethics opinion of the Council.
- d. For a complaint against a Councilmember:
- i. The City Clerk shall provide written notice of the complaint, including a copy of the complaint and brief explanation of the review process, to the Councilmember named in the



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complaint, as well as the complainant, within five (5) working days of receipt of the complaint.

- ii. The City Attorney shall forward the complaint to a review attorney retained as described above in subsection (d)(2)b for review of the complaint. No more than thirty (30) working days after the date of filing of the complaint, subject to extenuating circumstances making delay reasonably necessary, the review attorney shall evaluate the complaint to determine whether it is sufficient and warrants investigation pursuant to the screening criteria set out in subsection (d)(2)f below. The review attorney shall promptly provide to the City Clerk and City Attorney for distribution to the Review Board a written determination of whether the complaint warrants further investigation, including a brief explanation of the decision.
- iii. The City Clerk shall send written notice to the complainant of the review attorney's determination and the reasoning behind that determination, and shall provide a copy of such notice, together with a copy of the complaint, to the Councilmember named in the complaint, as well as the City Council and City Attorney.
- iv. If the review attorney has determined that the complaint does not warrant investigation, no further action will be taken on the complaint. If the review attorney has determined that the complaint warrants investigation, the City Attorney will arrange for investigation by the review attorney who completed the initial review or another retained review attorney, depending on availability and other related circumstances and considerations.
- v. If a complaint proceeds to investigation after the initial review, in their review and investigation of any complaint, the investigating attorney shall interview the complainant and all affected or interested Councilmembers to learn their interpretations of the facts at issue and of the applicable provisions of law, may interview such other persons as the investigating attorney reasonably believes may have relevant or useful information pertinent to the investigation, and may request such additional materials or information from City staff or members of the public that the investigating attorney considers reasonably necessary or helpful to the investigation or determination. In addition, the investigating attorney shall have the power as vested in the Review Board to compel by subpoena the attendance and testimony of witnesses and the production of such documents as the investigating attorney may consider necessary to the investigation.
- vi. Upon completion of the investigation the reviewing attorney shall interpret and apply the applicable state and local ethics provisions and, based on that investigation and evaluation, make a recommendation to the Review Board (or alternate Review Board, if applicable) of such findings and determinations as may be appropriate in response to the complaint.
- vii. The City Clerk shall schedule the investigating attorney's determination and recommendations on a complaint for consideration by the Review Board within thirty (30) working days after receipt, or, as soon as reasonably practicable. The Review Board shall meet to consider the determination and recommendations and render a formal Review Board opinion based upon the determination and in light of the recommendations, but shall not be bound to follow the recommendation made.
- viii. The City Clerk shall provide written notice of the scheduled meeting for consideration of the investigating attorney's determination and recommendations on a complaint to the complainant, the Councilmember named in the complaint, and the City Council and City Attorney, at least three (3) working days prior to the meeting. The complaint and investigation attorney's determination and recommendations shall be provided with such notice and shall be available with the agenda for the meeting.

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- ix. Prior to reaching a final decision on the merits of a complaint, the Review Board shall provide the complainant an opportunity to present facts and argument in support of the complaint, and the subject of the complaint an opportunity to present facts and argument related to the complaint. However, it is not necessary for the Review Board to conduct a full public hearing and take public input on a complaint.
  - x. After investigation, the Review Board shall forthwith issue an opinion and recommendation to the City Council, which shall immediately thereafter be filed with the City Clerk and be available for public inspection. Said opinion and recommendation shall be submitted to City Council at a regular City Council meeting, at which time the City Council shall determine whether to adopt the same as a final ethics opinion of the Council.
  - xi. Any Councilmember whose conduct or circumstance is the subject of the opinion shall refrain from participating in any deliberations of the City Council regarding the opinion.
- e. Alternate Review Procedures.
- i. In the event multiple complaints are filed with the City Clerk under the provisions of this Subsection that allege a related violation on the part of two (2) or more members of the Review Board (including the alternate) and are subject to investigation and a decision by the Review Board, such complaints shall not be considered by the regular Review Board but instead upon a determination that the complaints warrant investigation, shall be submitted to an alternate Review Board consisting of all remaining Councilmembers who are not named in the complaints.
  - ii. In the event related complaints are filed naming five (5) or more Councilmembers and upon review it is determined that an investigation of complaints naming five (5) or more Councilmembers is warranted, the alternate Review Board shall also include as many members of City boards or commissions as are necessary to constitute a seven-member board. Said Board or commission members shall be selected at random by the City Clerk within ten (10) working days of the date upon which the determination that further investigation is warranted is received by the City Clerk. Any board or commission member selected by the City Clerk who elects not to serve on the alternate Review Board shall immediately so notify the City Clerk, who shall thereafter select as many additional board and commission members as are necessary to constitute the seven-member alternate Review Board. The procedures utilized by the alternate Review Board for reviewing and investigating the complaint and rendering an advisory opinion and recommendation shall be as provided in the applicable subsections of this Section, except that: (i) the opinion and recommendation of such Board shall be final and shall not be submitted to the City Council for review or adoption by the City Council unless at least three (3) Councilmembers remain available to consider and take action on the opinion and recommendation; and (ii) the City Council and City staff shall, upon request by the alternate Review Board, make available to such Board all information in the possession of the city that is relevant to the Board's investigation, including, without limitation, tape recordings of any relevant executive sessions, unless the release of said information is prohibited by state or federal law; and, in reviewing and discussing such information, the Board shall abide by any local, state or federal confidentiality requirements that might limit or prohibit the release of such information to third parties.
- f. Screening criteria. The determination as to whether a complaint merits investigation and further action shall be made on the basis of one or more of the following considerations:
- i. The City Council has no jurisdiction over the individual(s) alleged to have violated the relevant ethics provision;

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- ii. The alleged violation, even if true, would not constitute a violation of the relevant ethics provisions;
  - iii. The allegations of the complaint were previously asserted in another complaint that is already being considered or was resolved by the Review Board and/or City Council;
  - iv. The alleged violation, even if true, is minor in nature and fails to justify the use of public resources to investigate or prosecute;
  - v. The allegations of the complaint involve actions or events that occurred more than one (1) year prior to the date of the filing of the complaint and, due to the passage of time and the likely unavailability of evidence, witnesses, and witnesses' recollections, investigation and prosecution of the complaint will not justify the use of public resources, except that complaints based on conduct resulting in a criminal conviction (regardless of the type of plea entered) or entry into a plea agreement subject to a deferred prosecution, deferred judgment, or deferred sentencing agreement may be referred to an appropriate enforcement agency;
  - vi. The complaint is, on its face, frivolous, groundless, or brought for purposes of harassment;
  - vii. The alleged violation is unlikely to be proven by the required standard of preponderance of the evidence due to the evidence consisting of conflicting oral testimony and unverifiable statements;
  - viii. The person who is the subject of the complaint has admitted wrongdoing and made or committed to make sufficient redress or remedy satisfactory to Review Board or City Council;
  - ix. The matter has become or will become moot because the person who is the subject of the complaint is no longer a city official or will no longer be a city official prior to the conclusion of any consideration or investigation of the allegations in the complaint;
  - x. The person who is the subject of the complaint previously obtained an advisory opinion under this code of ethics that identified the conduct as not being in violation of the code of ethics; or
  - xi. The City Council has elected to refer the complaint to another agency with jurisdiction of the allegations of the complaint and such referral will better serve the public interest (e.g., law enforcement, district attorney, state or federal attorney general; or department of justice).
- (e) The City Attorney shall provide legal advice to the Review Board and shall prepare and execute all advisory opinions and recommendations of the Review Board.
- (g) Compliance with the applicable provisions of the Charter and Code and the provisions of state law, as well as decisions regarding the existence or nonexistence of conflicts of interest and the appropriate actions to be taken in relation thereto, shall be the responsibility of each individual Councilmember or board and commission member, except as provided in Subparagraph 2-568(c)(1)(g). An opinion adopted by the City Council under Subsection (e) of this Section shall constitute an affirmative defense to any civil or criminal action or any other sanction against a Councilmember or board or commission member acting in reliance thereon.