



ETHICS CODE UPDATE

JUNE 7, 2022
Alicia Calderón, City Attorney



Why is an Update Needed?

- Article XXIX of the State Constitution's Interpretation of the home rule exemption by the Statewide Independent Ethics Commission (IEC)
- The City of Brighton has an Ethics Code, but it contains some exceptions to the gift ban that do not exactly align with Article XXIX.
- The City of Brighton does not have a complaint and investigation process.
- The City of Brighton does not have an independent decision-maker.
- The penalty provision does not require repayment of twice the amount of the financial equivalent of any benefits obtained.



What is a Gift and What is Not a Gift

- *Gift:* A *Gift* is anything of value without giving adequate and lawful consideration in exchange.

Not a Gift:

- If it is valued less than \$65.00 or an occasional gift from a friend or relative
- A nonpecuniary award or payment for a speech at a public event
- Salary
- Payment or reimbursement by a nonprofit or government entity for travel and food at a conference
- Items similarly available to all employees or the general public
- Campaign contributions



Independent Ethics Counsel

- City Council will appoint an Independent Ethics Counsel to oversee the complaint, investigation, and enforcement process in response to ethics complaints.
- Anyone may file a confidential complaint for any matter occurring within the last twelve months concerning any City Council member, employee, municipal court judge, or any member of a City board, authority, or commission.
- Complaint should include contact information, a full description of the facts known, identities and contact information of other persons who have knowledge of the facts, and a signature verifying that the information contained is true to the best of their knowledge.



Independent Ethics Counsel

- The Independent Ethics Counsel may dismiss frivolous complaints pursuant to the criteria.
- Any complaint dismissed as frivolous shall be maintained as confidential.
- The Ethics Counsel can take any steps necessary to investigate a complaint and will issue a confidential written recommendation to City Council containing the investigative findings.
- The recommendation will include specific findings of fact and a recommendation regarding whether or not, by a preponderance of evidence, one or more violations appears to have occurred.
- If the Ethics Counsel's recommendation finds that one or more violations may have occurred, the City Council may appoint an independent hearing officer to preside over a hearing.



Hearing Procedures

- The Ethics Counsel will notify the accused party, the complainant, and the City Attorney of the ethics charges.
- The accused party has 14 days to admit the violation or request a public hearing.
- The Ethics Counsel will prosecute the charges.
- The parties will exchange discovery, and the Hearing Officer may issue subpoenas.
- The parties will exchange a list of witnesses and exhibits.
- The hearing will include opening and closing arguments and witness questioning and cross-examination.
- The hearing will be recorded.
- The hearing officer will issue a decision and determine the sanctions.



Advisory Opinion

- Any City Council member, employee, municipal court judge, or member of a City board, authority, or commission may request an advisory opinion from the City Attorney in writing when there is a question as to the applicability of the Code of Ethics to a future action.
- As long as all facts and circumstances are fully disclosed in writing to the City Attorney, the person is entitled to rely on the advisory opinion issued.
- No person receiving a written advisory opinion shall be found to have violated the Code of Ethics, if in good faith, the person acted in accordance with the advisory opinion.



Sanctions

- Oral or written reprimand or censure
- Imposition of financial penalty commensurate with the violation
- For the most egregious and willful violations, suspension or removal of the appointed employee or member of a City board, authority, or commission
- Financial penalty equal to double the amount of the financial equivalent of any benefits obtained by the violation



Questions?