

ARTICLE 2-10 - Code of Ethics

Sec. 2-10-10. - Purpose.

- (a) Purpose. The purpose of this Article is to protect the integrity of City government by:
 - (1) Defining and discouraging certain actions that may create an appearance of impropriety that undermines public trust in the accountability and loyalty of elected and appointed public officials and employees.
 - (2) Protecting the integrity of City government by providing standards of conduct and guidelines for elected and appointed public officials and public employees to follow when their private interests as residents conflict with their public duties.
- (b) Legislative intent. It is the intent of the City Council to:
 - (1) Prohibit public officials and public employees from acting on any matter in which he or she may have a conflict of interest.
 - (2) Establish guidelines to encourage public officials and public employees to avoid any appearance of impropriety.
 - (3) Require adherence to any provision of state or federal law that imposes a higher standard of conduct than this Article.

(Ord. 1898 §1, 2006)

Sec. 2-10-20. - 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:

Affiliated with: an employee, partner, agent, stockholder, joint venturer or corporate director of any business organization or a person who shares office space with such organization.

Board: See *Commission*.

Business entity: any corporation whether for profit or nonprofit, governmental entity, business, trust, limited liability company, partnership, association or other legal entity; and any other form of business, sole proprietorship, firm or venture carried on for profit.

Commission: any appointive board or commission or other appointive body or authority of the City. The term *commission* or *board* shall not include members of advisory ad hoc committees who are not otherwise Officers, board members, commission members or employees of the City.

Commission member: a regular or alternate member of a commission, board, authority or similar body.

Confidential information: information which is not available to the general public under applicable laws, ordinances and regulations, and which is obtained by reason of the Council member's, commission member's or employee's position with the City.

Conflict of interest: any situation in which a Council member, an appointee to a City board, commission or authority, or a City employee:

- a. Has a substantial interest in any transaction with the City;
- b. Has a relative with a substantial interest in any transaction with the City;
- c. Has a substantial interest as an affiliate of a Business Entity with a substantial interest in any transaction with the City;

- d. Has a substantial interest as an affiliate of a Business Entity appearing on behalf of or employed by a person with a substantial interest in any transaction with the City;
- e. Is an Officer of an organization that has taken an official position on any transaction with the City;
- f. Is on the board of directors of an organization that is substantially affected by a transaction with the City;
- g. Is affiliated with a law, accounting, planning or other professional firm that has substantial interest in any transaction with the City; or
- h. Is required to receive official notice of a quasi-judicial action from the City.

Council member: an elected or appointed member of the City Council, including the Mayor.

Disclose in writing: the terms *disclose in writing*, *report* or *disclose* require written disclosure on such forms as provided by the City Manager, copies of which shall be provided to the Council or applicable commission.

Employee: any person holding a paid position of employment with the City, whether full time, part time, regular, temporary or by contract.

Employment means any service, of whatever nature, performed by an employee for the person employing him or her for compensation, whether full-time, part-time, regular, temporary or by contract.

Gift: any payment, entertainment, subscription, forbearance, service or any other thing of value, rendering or deposit of money, which is transferred to a donee directly or in trust for his or her benefit. A *Gift* is anything of value you receive without giving adequate and lawful consideration in exchange. *Gift* shall not include campaign contributions as permitted by law.

Interest or financial interest: a pecuniary, property or commercial interest or any other interest, the primary significance of which is economic gain or the avoidance of economic loss. An interest exists with regard to real property which is owned, leased or used by an Officer, commission member or employee if it is reasonably foreseeable that an action of the Officer, commission member or employee will have a special economic effect on the value or use of the real property, distinguishable from its effect on the public. An Officer, commission member or employee shall be deemed to have a pecuniary interest in a contract if the Officer, commission member or employee or any member of the Officer's, commission member's or employee's family is an employee, partner, Officer, director or sales representative of the person with whom such contract is made. However, the term *interest* shall not include any matter involving the common public good or necessity. Nor shall the term include any matter in which a similar benefit is conferred to all persons or property similarly situated. Provided further, ownership individually or in a fiduciary capacity of any securities or of any beneficial interest in securities of a business entity shall not be deemed to create an interest in the business entity unless the aggregate amount of such securities, or interest in such securities, amounts to five percent (5%) or more of any class of the securities of the business entity then outstanding or constitutes controlling interest in the business entity.

Members of the City Council: all members of the Council, including the Mayor.

Officer: the City Manager, the City Attorney, the water attorney, the municipal judge, the prosecuting attorney, the directors of the administrative departments of the City.

Official act or action: any legislative, administrative or quasi-judicial act of the City Council, an Officer, commission, authority, board or employee of the City.

Person: any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association or other legal entity.

Relative: any person related, to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including without limitation the following: spouse, parents, parents-in-law, children, children-in-law, brothers and sisters, brothers- and sisters-in-law,

grandparents, grandchildren, aunts, uncles, cousins, nephews and nieces. A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

Substantial interest: a situation, including without limitation a financial stake in the outcome of a decision in which, considering all of the circumstances, would tend to influence the decision of a reasonable person faced with making the same decision.

Transaction: a contract of any kind; any sale or lease of any interest in land, material, supplies or services; or any granting of a development right, any planning, zoning or land use or review process that may precede granting of a development right, license, permit or application. A *transaction* does not include any decision which is legislative in nature that affects the entire membership of a class or a significant segment of the community in the same manner as the affected official or employee.

(Ord. 1898 §1, 2006; Ord. 2067 §2, 2010)

Sec. 2-10-30. - Restrictions.

- (a) No City Council member, employee or appointee to a City board, commission or authority shall use his or her public office or position for financial gain.
- (b) No City Council member, employee or appointee to a City board, commission or authority shall use or disclose confidential information obtained as a result of holding his or her public office or position to obtain financial gain, whether for personal gain; gain for his or her relative; gain of any property or entity in which the official or employee has a substantial interest; or gain for any person or for any entity with whom the official or employee is negotiating for or has any arrangement concerning prospective employment.
- (c) No City Council member, employee, or appointee to a City board, commission or authority shall knowingly disclose any confidential information to any person who is not an employee or Council member or to an employee or Council member whose official duties are unrelated to the subject matter of the confidential information. No City Council member, employee, or appointee to a City board, commission or authority 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 majority of the body holding such execution session.
- (c) No Officer, commission member or employee shall participate in any discussion of, take any official action on or vote to render any final decision or determination on any matter in relation to which the Officer, commission member or employee has a conflict of interest.
- (d) No Officer, commission member or employee shall perform an official act or vote on any matter that impacts his or her interest.
- (e) No City Council member or appointee to a City board, commission or authority or City employee or relative of such employee or official shall accept anything of value, including without limitation a gift, a favor, or a promise of future employment if:
 - (1) The official or employee is in a position to take official action with regard to the donor; or
 - (2) The City has or is known to be likely to have a transactional, business or regulatory relationship with the donor.
 - (3) The following shall not be considered gifts for purposes of this Subsection, and it shall not be a violation of this Article for a person to accept the same:
 - a. Campaign contributions to a candidate, candidate committee, political committee and/or issue committee if reported as required by law.

- b. An occasional nonpecuniary gift, insignificant in value which does not exceed sixty-five dollars (\$65.00) in value., which sum may be adjusted for inflation by Resolution every four years.
- c. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service.
- d. Payment of or reimbursement by a nonprofit entity or other government for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which a City Council member, , commission member or employee is scheduled to participate or represent the City.
- e. Admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program.
- f. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to a City Council member, commission member or employee, the value of which does not exceed sixty-five dollars (\$65.00), as may be adjusted, or for which the City Council member, commission member or employee pays the difference, the difference in amount above sixty-five dollars (\$65.00) to the fair market value or the value to purchase the same ticket by the public .
- g. Payment for speeches, debates or other public events, reported as honorariums.
- h. Payment of salary from employment, including other government employment, in addition to that earned from being a City Council member, commission member or employee.
- i. Items available for free to the general public at trade conventions or other public exhibitions, and items offered at a discount, generally, to Officers, commission members and/or employees of governments.
- j. Reasonable expenses paid by other governments or governmentally related organizations for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate in a panel or represent the City.
- k. Items which are similarly available to all employees of the City or to the general public on the same terms and conditions.
- l. Given by an individual who is a relative or personal friend of the recipient on a special occasion.
- m. Participation of City employees hired for the purpose of promoting economic development of the City in economic development endeavors, including:
 - 1. Receipt of nonpecuniary gifts of insignificant value;
 - 2. Reimbursement for actual and necessary expenditures for travel and subsistence for attendance at economic development functions;
 - 3. Receipt of perishable or nonpermanent items, including but not limited to meals, lodging, travel expenses or tickets as provided below for recreational, educational or cultural events; and
 - 4. Payment of salary, benefits and reasonable expenses from employment by the Brighton Economic Development Corporation.

Provided, however, that such employees shall disclose in writing to the City Manager, not less frequently than monthly, all such gifts, payments, items, salary and benefits on forms provided by the City Manager.

- (f) No City Council member, commission member or employee shall use any City property or employee services for personal gain or advantage except in the same manner and under the same circumstances as any other person who is not a City Council member, commission member or employee of the City.
- (g) No City Council member or commission member shall take any official action on or vote on any question concerning the member's own conduct.

(Ord. 1898 §1, 2006)

Sec. 2-10-40. - Conflict of interest disclosure; Council member or commission or authority member.

- (a) No public official or public employee shall make or participate in the making of any official action in which he or she knows or should have known that he or she would have a conflict of interest.
- (b) No public official or employee with a conflict of interest shall fail to give written notice of the interest described in Subsection (a) above to the City Manager and Council, commission or authority of which the person is a member as soon as reasonably possible after the interest has arisen. However, no written notice is required if such person discloses the conflict of interest on the record of a public meeting of the City Council, commission or authority of which the person is a member. The interested City Council member, employee or appointee shall thereafter:
 - (1) Refrain from voting upon or otherwise acting in an official capacity in such transaction;
 - (2) Physically absent himself or herself from the room in which a matter related to such transaction is being considered; and
 - (3) Not discuss any matter related to such transaction with any other member of the City Council, commission, task force or similar body of which the person is a member.
- (c) A member who knowingly has a conflict of interest may vote notwithstanding the requirements and restrictions of this Section if he or she complies with the disclosure procedures under this Section and his or her participation is necessary to obtain a quorum for the purpose of the City Council, commission or authority acting on a motion for adjournment, tabling the matter or continuing with other matters.

(Ord. 1898 §1, 2006)

Sec. 2-10-50. - Conflict of interest disclosure; City employee.

- (a) An employee who is aware of a conflict of interest or a possible conflict of interest in relation to a matter pending before the employee shall promptly disclose in writing the conflict to the City Manager, who shall make a determination whether the employee has a conflict of interest and take any action that is in the best interest of the City.
- (b) In all cases, the determination of the City Manager as to whether or not a conflict of interest exists is final and shall not be the subject of a grievance or appeal under the City's personnel policies. Any suspension, demotion or discharge action taken as a result of the determination may be appealed under and in accordance with the City's personnel policies.

(Ord. 1898 §1, 2006)

Sec. 2-10-60. - Prior employment, outside employment and subsequent employment.

- (a) All members of the City Council, officials and employees shall report existing or proposed outside employment or other outside business interests that may affect their responsibilities to the City in writing to the City Manager prior to being appointed or hired. All such people shall report any changes of employment or changes to outside business interests that may affect the person's responsibilities to the City within thirty (30) days after accepting the same.
- (b) No former member of the City Council, official or employee shall seek or obtain employment concerning matters upon which he or she took official action during his or her service with the City for six (6) months following termination of office or employment.
- (c) No former City Council member, commissioner, or employee shall engage in any action or litigation in which the City is involved on behalf of any other person or entity, if the action or litigation involves a matter upon which the person took official action during his or her service with the City for twelve (12) months following termination of service with the City.
- (d) No member of the City Council shall seek or obtain employment with the City, the Brighton Urban Renewal Authority, the Brighton Housing Authority or the Brighton Economic Development Corporation, during his or her term of office on the City Council or for six (6) months following termination of such term of office.

(Ord. 1898 §1, 2006; Ord. 2067 §1, 2010)

Sec. 2-10-70. - Appearances of impropriety discouraged.

- (a) The provisions of this Section are intended to be guidelines to establish ethical goals and principles to help City Council members, employees and appointees to a City commission or authority to determine if their actions may cause an appearance of impropriety that will undermine the public's trust in local government.
- (b) A City Council member, employee or appointee to a City commission or authority who determines that his or her actions may cause an appearance of impropriety should consider, but is not required to disclose and recuse as prescribed by Subsection 2-10-40(b) of this Article if the person has an interest in any transaction with the City that is personal or private in nature that would cause a reasonable person in the community to question the objectivity of the City Council member, employee or appointee to a City commission or authority.

(Ord. 1898 §1, 2006)

Sec. 2-10-80. - Prohibition of certain contracts.

- (a) The City Council declares that the best interests of the City are served by prohibiting the making of certain contracts. Accordingly, in addition to any other applicable requirements in this Article, the requirements of Subsection (b) below shall apply to the making of contracts by the City.
- (b) The City shall not knowingly make any contract, including purchases and sales, in which a City council member, public official, officer or a relative thereof shall be interested, directly or indirectly.

(Ord. 1898 §1, 2006; Ord. 2034 §2, 2009)

Sec. 2-10-90. - Quasi-judicial matters.

- (a) No Council member, Officer or commission member shall receive, nor shall any employee or member of the public provide to any Officer or commission member, any substantive ex parte oral or written information, except for legal advice from the City Attorney, regarding a matter which is pending before the City Council, commission or authority on which the member sits, and which is the subject of a quasi-judicial hearing before the Council or commission or similar body outside of the quasi-judicial

hearing process. The term *quasi-judicial hearing process* includes but is not limited to preparations necessary for such hearing, such as written staff reports, scheduling, agendas, proposed resolutions and ordinances, posting or publishing notice and legal advice. The City Attorney shall provide affected Officers, commission or authority members and employees advice on what constitutes a quasi-judicial decision.

- (b) In the event a City Council member, Officer or commission or authority member shall inadvertently or unintentionally receive any substantive ex parte oral or written information outside of the quasi-judicial hearing process, as prohibited in this Section, the City Council member, Officer or commission or authority member shall fully and completely disclose such substantive oral or written information received at the start of the quasi-judicial public hearing process.

(Ord. 1898 §1, 2006)

Sec. 2-10-100. - Independent Ethics Counsel.

(a) Creation and Purpose. There is hereby created an Independent Ethics Counsel, whose purpose shall be to oversee the complaint, investigative, and enforcement process in response to ethics complaints submitted pursuant to this Article and to render written recommendations to City Council on the same.

(b) Appointment and Qualifications. The Independent Ethics Counsel shall be appointed by a majority vote of the disinterested members of City Council. The Independent Ethics Counsel shall be an attorney licensed to practice law in Colorado.

(c) Term of Appointment. The Independent Ethics Counsel shall serve until his or her successor is appointed by Council.

(d) Subpoena Power. The Independent Ethics Counsel shall have the power to subpoena documents and witnesses, and to enforce such power by judicial action.

Sec. 2-10-110. - City Attorney Advisory Opinion.

(a) 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 whenever a question arises as to the applicability of the Code of Ethics to a future action. Provided all pertinent facts and circumstances are fully disclosed in writing to the City Attorney, such person shall be entitled to rely upon the advisory opinion issued for purposes of determining compliance with the Code of Ethics. No City Council member, employee, municipal court judge, or member of a City board, authority, or commission shall be found to have violated the Code of Ethics if, in good faith, the person has acted in accordance with an advisory opinion issued pursuant to this Section.

(b) Any verbal advisory opinion issued by the City Attorney concerning this Code of Ethics shall be documented upon request. It shall be the obligation of such person to provide the

advisory opinion to the Independent Ethics Counsel. Any verbal advisory opinion shall not be binding on any complaint investigation by the Independent Ethics Counsel.

Sec. 2-10-120. - Filing of Complaints.

(a) Complaints Generally. Complaints must be filed confidentially. A complaint may only be considered for matters occurring within the last twelve (12) months and shall be filed with the City Attorney or the City Manager.

(b) Covered Persons. Any person may file a written ethics complaint for consideration by the Independent Ethics Counsel against any City Council member, employee, municipal court judge, or member of a City board, authority, or commission.

(c) Complaint Requirements. A complaint shall set forth the following to the best of the complainant's ability:

(1) The name of the person, either individually or on behalf of an organization, submitting the complaint and such person's contact information, including mailing address, telephone number, and email address. A complaint submitted anonymously may be dismissed by the Independent Ethics Counsel.

(2) The identity of the person(s) alleged to have committed a violation of the Code of Ethics.

(3) A full description of the facts known to the person filing the complaint which are alleged to constitute a violation of the Code of Ethics.

(4) The identities and contact information, if known, of other persons who have knowledge of such facts.

(5) A signature of the person submitting the complaint with a verification stating the following:

"The undersigned hereby certifies that the information contained within this complaint is true to the best of my knowledge, information, and belief. I have not filed this complaint for the purpose of harassment or to falsely disparage the individual(s) claimed to have committed violations of the Code of Ethics."

Sec. 2-10-130. - Dismissal of Frivolous Complaints.

(a) The Independent Ethics Counsel may dismiss frivolous complaints without further action for any of the following reasons:

- (1) The Independent Ethics Counsel has no jurisdiction over the person(s) named in the complaint;
- (2) The alleged violation, even if true, would not constitute a violation of the Code of Ethics;
- (3) The allegations were previously asserted in another complaint that is already being considered or was resolved by the Independent Ethics Counsel;
- (4) The alleged violation, even if true, is minor in nature and fails to justify the use of public resources to prosecute;
- (5) The allegations involve actions or events that occurred more than twelve (12) months prior to the date of the filing of the complaint;
- (6) The complaint is, on its face, groundless, or brought for purposes of harassment;
- (7) The person(s) who is the subject of the complaint previously obtained an advisory opinion from the City Attorney that identifies the conduct as not being in violation of the Code of Ethics;
- (8) The complaint does not include the required factual information or signature affirming the complaint's veracity as required by this Article; or
- (9) The complaint was filed anonymously.

(b) Confidentiality. The record of a complaint dismissed as frivolous shall be maintained as confidential by the Independent Ethics Counsel.

Sec. 2-10-140. - Review of Complaints.

(a) Investigation. The Independent Ethics Counsel shall take such steps as are necessary to investigate complaints not dismissed as frivolous pursuant to this Article. During the investigation, if potential violations of the Code of Ethics not raised in the original complaint are discovered, the Independent Ethics Counsel may amend the scope of the investigation and the subject(s) of the investigation shall be notified of the additional possible violations as soon as practicable.

(b) Findings. Within fourteen (14) days of the conclusion of its investigation of a complaint, the Independent Ethics Counsel shall issue a confidential written recommendation to City Council containing its investigative findings. The Independent Ethics Counsel's recommendation shall include specific findings of fact and a recommendation, with citation to specific provisions of the Code of Ethics, regarding whether or not by a preponderance of the evidence one (1) or more violations of the Code of Ethics appears to have occurred. The written recommendation to City Council is work product prepared for elected officials and is not a public record under the Colorado Open Records Act.

(c) Council Procedures. Upon receipt of the Independent Ethics Counsel's recommendation, the City Council may, by majority vote:

- (1) Issue a notice to proceed with those allegations of ethics violations and appoint an independent hearing officer;
- (2) Accept the Independent Ethics Counsel's recommendation finding no violations of the Code of Ethics;
- (3) Refer the matter back to the Independent Ethics Counsel for further investigation;
- (4) Dismiss all or any part of the Independent Ethics Counsel's recommendation due to insufficient evidence to proceed if the standard of proof cannot be met;
- (5) Dismiss all or any part of the Independent Ethics Counsel's recommendation because there is no substantial likelihood of success on the merits through an adversarial hearing;
- (6) Stay proceedings or dismiss all or any part of the Independent Ethics Counsel's recommendation after referring the matter for action by law enforcement, regulatory, or other authorities with jurisdiction over the matter; or
- (7) Dismiss all or any part of the Independent Ethics Counsel's recommendation in the interests of justice, including the presence of circumstances in which proceeding with the matter would be contrary to the interest of the City or its citizens.

(d) The City Council shall provide the accused party, the complainant, the Independent Ethics Counsel, and the City Attorney with written notice of its decision, including any notice to proceed with allegations of ethics violations issued by City Council.

Sec. 2-10-150. - Notice To Proceed With Allegations Of Ethics Violations; Mandatory Recusal.

(a) If the City Council elects to issue a notice to proceed with allegations of ethics violations based on the recommendation of the Independent Ethics Counsel, the City Council shall notify the accused party, the complainant, the Independent Ethics Counsel, and the City Attorney of the ethics charges in writing within seven (7) days after the decision is made.

(b) The accused party shall be given fourteen (14) days to respond in writing to the City Attorney and the City Council either admitting the violations or requesting a public hearing. The City Council shall consider the accused party's failure to respond within fourteen (14) days to be an admission of guilt and may then move to impose sanctions. The time for response may be extended or the matter may be reconsidered by City Council upon a showing of good cause for failure to timely respond.

(c) If the accused party is a member of City Council, such person is automatically recused from participating in the matter as a member of City Council and is required to refrain from voting on or taking any direct official action concerning the matter.

(d) If the accused party is subject to a criminal investigation or a criminal charge is pending against the accused party and the investigation or charge is related to the conduct underlying the allegations of ethics violations, the accused party may submit a request to City Council to stay the proceedings until the conclusion of the criminal investigation or charges. City Council has sole discretion to stay the proceedings pursuant to a request under this Subsection. City Council may resume the proceedings at any time.

Sec. 2-10-160. - Public Hearing Procedures.

(a) Hearing Officer. If the accused party timely requests a hearing, as soon as practicable the City Council shall appoint by resolution an independent hearing officer to conduct the proceedings. Any hearing officer selected shall be an attorney licensed to practice law in Colorado.

(b) Legal Representation. The Independent Ethics Counsel will prosecute the charges. The accused party is entitled to be represented by counsel at his or her expense.

(c) Burden of Proof. The prosecution bears the burden to establish, by a preponderance of evidence, the existence of a violation of the Code of Ethics.

(d) Hearing Date. Within fourteen (14) days after selection of a hearing officer by City Council, the hearing officer shall set the date for the hearing in the hearing officer's sole discretion, after making reasonable attempts to consult with the accused party and the prosecution. The hearing shall be set within eighty-four (84) days. The hearing officer may continue the hearing in his or her sole discretion and may grant a request for a continuance by the accused party or the prosecution for good cause.

(e) Discovery. Within ten (10) days after the issuance of notice to proceed, the accused party shall be entitled to a copy of the summary of the investigation and the confidential written recommendation to City Council. Within ten (10) days after receipt of the notice of hearing date, the accused party and the prosecution shall exchange copies of any other relevant documents and other tangible things within their possession, and a list, including any known contact information, of all persons who have relevant information or knowledge about the matter with a short statement regarding the relevant facts or opinions about which they have information or knowledge. Each party has an ongoing duty to supplement disclosures in a timely manner when additional information is received.

(f) Subpoenas. At the request of the accused party, the prosecution, or in the hearing officer's discretion, the hearing officer shall have the power to subpoena documents and to subpoena witnesses to make statements and produce documents. Requests for subpoenas by the accused party or the prosecution must be submitted to the hearing officer no later than thirty (30) days prior to the hearing. Subpoenas must be served in accordance with the rules governing service followed by courts of general jurisdiction within the State.

(g) Witnesses and Exhibits. At least ten (10) days before the hearing, the parties shall exchange and submit to the hearing officer a proposed list of witnesses and a list of proposed exhibits to be introduced at the hearing. The hearing officer shall have the sole discretion to exclude any witness or exhibit disclosed to the opposing party fewer than ten (10) days prior to the hearing.

(h) Hearing Presentation. The hearing officer shall have sole discretion to determine the hearing procedures. However, at a minimum, the hearing procedures shall include affording each side the opportunity to make opening statements and closing arguments, to call and cross examine witnesses, and to introduce evidence. Testimony by telephone/videophone may be permitted at the discretion of the hearing officer.

(i) Hearing Matters and Evidence. The hearing officer shall determine all pre-hearing matters; preside over the hearing; administer oaths; and decide all points of order, procedure, and evidence. The hearing is an administrative hearing and, as such, need not be conducted according to the Colorado Rules of Civil Procedure or the Colorado Rules of Evidence. The hearing officer may admit any relevant evidence of probative value, including hearsay or unauthenticated documents, and may exclude or strike evidence that is incompetent, immaterial, irrelevant, cumulative, or unduly repetitious.

(j) Record. A record of the hearing shall be made by the City as the official record of proceeding and retained with all exhibits admitted in the hearing with the City Clerk for no less than the time required by the applicable records retention schedule.

(k) Ex-Parte Communications. Ex-parte communications by an accused party or an attorney prosecuting allegations of ethics violations with any member of City Council, the Independent Ethics Counsel, or the hearing officer concerning any ethics matter pending before the same are strictly prohibited.

(l) Hearing Officer Decision. The hearing officer will render a decision with findings of fact, a summary of the evidence supporting each finding, conclusions of law, a determination of whether or not the accused party violated the Code of Ethics, and a sanction for each violation. In recommending a sanction, the hearing officer may consider the severity of the offense; the credibility of the witnesses and reliability of the evidence; 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. The decision will be final agency action.

Sec. 2-10-170. - Sanctions.

(a) If a violation of the Code of Ethics has occurred, whether pursuant to an admission or at the conclusion of a public hearing, the following sanctions may be imposed:

(1) Issuance of an oral or written reprimand or censure;

(2) Imposition of a financial penalty commensurate with the violation;

(3) For the most egregious and willful violations, suspension or removal of the appointed employee or member of a City board, authority, or commission;

(b) In addition to the violations imposed pursuant to Subsection (a) of this Section, if any violation of the Code of Ethics has occurred in which the accused party breaches the public trust for private gain, the following sanction shall be imposed:

(1) Financial penalty equal to double the amount of the financial equivalent of any benefits obtained by the violation; and

(2) Any person or entity inducing such breach shall be jointly and severally liability to the City for the financial penalty imposed by this Section.

(c) If a transaction, including but not limited to a contract or sale, is consummated contrary to the provisions of this Article, the City Council may void the transaction.

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(Ord. 1898 §1, 2006)

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