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ETHICS CODE UPDATE

CITY COUNCIL STUDY SESSION PRESENTATION
MAY 10, 2022
Alicia Calderón, City Attorney

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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.

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What is a Gift?

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.

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What is a Not a Gift?

- Campaign Contributions
- 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.
- A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service.
- 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.
- 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.

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What is a Not a Gift?

- Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to a City Council member-officer, 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, which is not extraordinary when viewed in light of the position held by such officer, commission member or employee.

Items of perishable or nonpermanent value, including but not limited to meals, lodging, travel expenses or tickets as provided below for recreational, educational or cultural events.

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What is a Not a Gift?

- Payment for speeches, debates or other public events, reported as honorariums.
- Payment of salary from employment, including other government employment, in addition to that earned from being a City Council member, commission member or employee.
- 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.
- 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.
- Items which are similarly available to all employees of the City or to the general public on the same terms and conditions.

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What is a Not a Gift?

1. Given by an individual who is a relative or personal friend of the recipient on a special occasion.
1. A single unsolicited ticket given to a City Council member and valued at not in excess of one hundred fifty dollars (\$150.00) to attend events open to the public on behalf of the City, such as awards dinners, nonprofit organization banquets and seminars, provided that:
 1. The ticket is offered only to the City Council member and has no resale value; and
 2. The ticket is not offered by a commercial vendor who sells or wishes to sell services or products to the City.

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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.

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Independent Ethics Counsel

- The Independent Ethics Counsel may dismiss frivolous complaints.
- Any complaint dismissed as frivolous shall be maintained as confidential.
- The Counsel can take any steps necessary to investigate complaints that are not dismissed as frivolous, and within 14 days of concluding the investigation, 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.

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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.

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City Council Action

Upon receipt of the Independent Counsel's recommendation, City Council may take one of the following actions:

- 1) Issue a notice to proceed and appoint an independent hearing officer; or
- 2) Accept the Counsel's recommendation finding no violations of the Code of Ethics; or
- 3) Refer the matter back to the Counsel for further investigation; or
- 4) Dismiss all, or any part, based on the Counsel's recommendation that there is insufficient evidence to proceed; or
- 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; or
- 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.

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Next Steps

1. Within 7 days of the decision to issue a notice to proceed, the City Council notifies the accused party, the complainant, the Independent Counsel, and the City Attorney.
2. The accused party has 14 days to either admit the violations or request a public hearing.
3. Public hearing procedures are outlined: Set hearing within 84 days (12 weeks), exchange of documents and witness lists, may request the issuance of subpoenas, calling and cross-examination of witnesses, and recording the hearing.
4. Hearing officer will render a decision with findings of fact, a summary of the evidence presented, conclusions of law, and a determination as to whether or not there was a violation of the Code of Ethics.

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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

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Questions & Discussion

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