



Legislation Details (With Text)

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Department of the City Attorney's Office

Reference: Proposed Updates to the Ethics Code

To: Mayor Gregory Mills and Members of City Council

Through: Michael Martinez, City Manager

Prepared By: Alicia Calderón, City Attorney

Date Prepared: May 2, 2022

PURPOSE

To review proposed updates to the Ethics Code primarily to assure home rule independence by adding a process for reviewing complaints and conducting an independent hearing on those complaints.

BACKGROUND

The City of Brighton is a home rule municipality. In 2006, a majority of the voters in the state passed an initiative to promote ethics in government. This became Article XXIX of the State Constitution. Article XXIX Section 7 states that "Any county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are more stringent than any of the provisions contained in this article. The requirements of this article shall not apply to home rule counties or home rule municipalities that have adopted charters ordinances, or resolutions that address the matters covered by this article." For a number of years, all home rule municipalities that had adopted an ethics code were exempt from Article XXIX and the statewide Independent Ethics Commission. In 2016, the Independent Ethics Commission (IEC) issued Position Statement 16-01 finding that for a home rule entity to be considered as having addressed the matters in Article XXIX, the ordinance must address certain areas: gift ban limits and exceptions, an independent commission or independent model to address complaints, a complaint investigation and enforcement process, penalty provisions, and a process for covered individuals to seek ethical guidance.

While a couple home rule entities challenged the IEC Position Statement in individual complaint processes, no court has clearly overruled this Position Statement. Weld County was found to lack a complaint process for members of the general public and penalties. The IEC found that the following were essential in that case: a gift ban, a complaint and investigative

process, a penalty provision or discipline process, and an independent decision-maker. Since Weld County was lacking these essential pieces, the elected official was subject to IEC jurisdiction. In Weld County Complaint 17-28, the IEC found that the covered individual receiving a ticket had to pay the “fair market value” or “aggregate actual cost”, meaning the price a seller is willing to accept and the buyer is willing to sell on the open market and in an arm’s length transaction. The ticket value was \$275, and the individual paid \$150. The penalty was double the amount of the financial equivalent of the benefit, so in this case it was $\$275 - \$150 = \$125$, so the penalty due to be paid to Weld County was \$250.00.

Although the City has an Ethics Code, the definition of gift has a couple of areas less stringent than the state constitution and IEC guidance. The City does not have a complaint process, independent adjudication process, or clear penalty provisions, other than prosecution in municipal court.

The following are in the Code but would probably be considered problematic under the state statutes: 1) Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to a City Council member or employee which is not extraordinary when viewed in light of the position held by such officer, commission member or employee. 2) 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. 3) 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. BMC § 2-10-30.

FOR COUNCIL CONSIDERATION

City Council will be presented with redlines to the current municipal code for discussion. The modifications will be brought back to City Council at a future date as an ordinance for consideration.

ATTACHMENTS

1. Redline
2. Power Point