



Legislation Text

File #: ID-229-22, **Version:** 1

Department of City Attorney's Office

Reference: Updates to Article 2-10 The Code of Ethics

To: Mayor Gregory Mills and Members of City Council

Through: Michael Martinez, City Manager

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Date Prepared: May 27, 2022

PURPOSE

To update the City's Ethics Code and add a process for reviewing ethics complaints and an administrative hearing process to assure home rule independence and assure the City's Ethics Code is up to date with legal interpretations and decisions since it was first passed in 2006.

STRATEGIC FOCUS AREAS

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BACKGROUND

The City of Brighton is a home rule municipality. A majority of the voters in 2006 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 created by the article. In 2016, the Independent Ethics Commission (IEC) issued Position Statement 16-01 that found 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: a gift ban, a complaint and investigative process, a penalty provision or discipline process, and an independent decision-maker.

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 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.

The proposed ordinance will update the definition of gift and what is not a gift and clarify that confidential information may not be disclosed. A technical update is capitalizing defined terms, such as “officer” to “Officer.” The ordinance creates an Independent Ethics Counsel appointment whose job it will be to investigate ethics complaints, and if the allegations have sufficient merit and evidence, will prosecute the case in an administrative hearing. The ordinance adds a process for filing complaints, dismissing frivolous complaints, and reviewing complaints. After being noticed, the person accused may either admit the violations or request a public hearing. The hearing process is also being added to the municipal code.

At first reading of the ordinance, City Council approved a motion to amend the ordinance to require a “super-majority” for selecting the Independent Ethics Counsel and appointing a hearing officer. Those two sections were amended to require that two-thirds of City Council make those appointments.

FINANCIAL IMPACT

The Independent Ethics Counsel contract will have some costs associated but should be within this year’s budget and appropriation.

OPTIONS FOR COUNCIL CONSIDERATION

Approve the Ordinance as Written
Make modifications to the Ordinance before Second Reading
Deny approval of the Ordinance

ATTACHMENTS

1. Ordinance
2. Redline of the Current Ethics Code
3. Power Point