



Mayor and Council Ethics Policy – Proposed revisions

Council Business Meeting

FEBRUARY 22, 2021

Background of Council's Ethics Policy

Council's 3 roles: advocates; legislators, and decision-makers

Council's Code of Ethics, Gift Policy & Disclosure Requirements ("Ethics Policy")

- Guidelines, not substitute for law or best judgment
- 1978 – adopted Code of Ethics ordinance; applied to Council and city managers
- 1983 - adopted Conflict of Interest policy
- 2010 - adopted Council's Ethics Policy (as required by 2009 law)
- 2013 - repealed Conflict of Interest policy (codified by City Charter, Sec. 8-101)
- 2015 – amended Ethics Policy to add:
 - Gift policy;
 - Disclosure requirements (Statement of Economic Interest);
 - Process for complaint review, investigation and sanctions; and
 - Oct. 2015 – Ethics policy adopted for boards, committees & commissions

Current Ethics Policy

Potential Conflicts of Interest (Part A, Sec. 3.b.)

- If potential conflict may be misunderstood, councilmember *should* seek City Attorney's advice and publicly disclose facts and steps taken

Review of Complaints, Investigations and Sanctions (Part D, Sec. 1)

- City Attorney's 3-prong review for complaints:
- 1. Complaints (Part D, Sec. 1)
 - a. Complaints shall: (i) **identify the complainant**; (ii) **state with specificity the facts that form the basis for the alleged violation**; and (iii) **cite the provision** that has allegedly been violated.
 - b. Clerk forwards complaint to the **City Attorney for initial review**.
 - c. **City Attorney shall review the complaint to determine whether it provides the information required in subsection a.** If City Attorney determines complaint **fails to provide** required information, the complainant informed and given chance to provide it. If City Attorney determines complaint **does provide** the required information, complaint *shall be* referred to outside counsel.
- **3-prong not met** > complainant informed
- **3-prong met** > refer to independent outside counsel

Current Ethics Policy – cont.

Independent Outside Counsel (Part D, Sec. 2)

- Investigations
 - a. Outside counsel **shall review a complaint referred by City Attorney**. If outside counsel finds that the complaint is either: (i) **frivolous**; or (ii) **does not state a claim** of violation even if facts alleged are true, then outside counsel shall inform City Attorney in writing, who shall then inform complainant and Mayor.
 - b. If outside counsel finds that **complaint is not frivolous and does state a claim, outside counsel shall investigate allegations and make written findings** on truthfulness of factual allegations and conclusions of whether violation occurred. Written findings and conclusions shall be provided to City Attorney, who shall provide it to the complainant, the Mayor, and the City Council.

No > complaint frivolous OR does not state a claim even if facts true

- inform City Attorney, who informs Mayor and complainant of conclusion

Yes > complaint not frivolous AND does state a claim

- investigate allegations and make written findings
- provide to City Attorney, who shares with Mayor, complainant and Council.

Sanctions (Part D, Sec. 3):

- Resolution of Censure
- Any other sanction under Council's power
 - (i.e., removal from Committee assignments, leadership roles)

Pre-2015 Ethics Policy

Previous policy (May 2010)

- Code of Ethics and Harassment Policy adopted per 2009 law
- **Complaints process under 2010 Code of Ethics**
 - Complaint *may be* filed with Council, *may* refer to City Attorney; reported to Mayor or MPT
 - Council *may* direct City Attorney to investigate apparent violation and report findings to Council
- **Complaints process under 2010 Harassment Policy**
 - Complaints brought to City Manager and Mayor (or MPT)
 - May be formal or informal (in employee and City Manager's discretion)
 - If informal, Mayor and City Manager may meet directly with individual whose conduct in question
 - If formal, Mayor and City Manager develop process for investigation and consider:
 - Nature of complaint; City's legal exposure; need to protect identify/confidentiality of employee; right of accused (notice and fair treatment); extent of employee involvement investigation; determine if multiple complaints/pattern of behavior
- **Investigation**
 - City Manager and Mayor consult with City Attorney & HR; jointly develop process for investigation of complaint
- **Sanctions**
 - Issued by Council after investigation of Mayor or councilmember
 - Resolution of Censure, or
 - Any other lawful sanction within Council's power
 - For boards, sanction may include removal of member

NC Peer City Policy Comparisons

City	Complaint Review	Investigations	Sanctions
Durham (Adopted 2018)	<ul style="list-style-type: none"> • "Financial," "personal interest" and "personal advantage" defined; Council may assess violations by councilmembers or staff; no formal review process 	<ul style="list-style-type: none"> • Council <i>may</i> hold hearings, conduct investigations and take action deemed appropriate; not city attorney's role 	<ul style="list-style-type: none"> • By charter, council may remove mayor or councilmembers from office for "misfeasance, malfeasance, corruption, neglect of duty or other misconduct," or • Adopt resolution of censure, resolution/letter of reprimand, or warning letters
Raleigh (Adopted 1988)	<ul style="list-style-type: none"> • "Interest" defined; complaints filed with council; no specific review process 	<ul style="list-style-type: none"> • Council <i>may direct city attorney to investigate</i> allegations and report findings to council • Upon city attorney's findings, <i>council may schedule hearing</i>; official charged may present evidence, cross-examine witnesses, including complainant and have legal counsel present 	<ul style="list-style-type: none"> • Intentional and repeated improper conduct <i>may be</i> reprimanded or formally censured by vote of full council • If violation found from hearing, <i>council may adopt resolution</i> of censure by $\frac{3}{4}$ vote of Council (excluding charged official) • If resolution of censure adopted, <i>violations shall be referred</i> to district attorney (for criminal prosecution)
Winston-Salem (Amended 2015)	<ul style="list-style-type: none"> • Violation of policy filed with city attorney, who conducts initial investigation, OR • Ethics complaints of elected official investigated by ethics officer and only forwarded to council if further action necessary • All complaints are confidential records 	<ul style="list-style-type: none"> • From initial investigation, if city attorney finds violation, then reports it to council • If majority of council agree with city attorney, council shall open investigation by directing city attorney to retain outside investigator to conduct extensive investigation and report findings to council • All information, including finding of reasonable cause, shall be shared with council upon completion of investigation. 	<ul style="list-style-type: none"> • When investigation complete, council may adopt censure resolution • If investigation shows criminal violation, council shall refer to district attorney (criminal act) • If ethics violation and $\frac{3}{4}$ of council votes to proceed with censure, then hearing at regular or special meeting; meeting notice shall include detailed allegations for public inspection; open hearing session; charged official may have legal counsel, witnesses, present evidence including "evidence of bias of any other city council member or the presiding officer"; meeting recorded. • Upon completion of hearing closed by vote, council may move for non-binding censure; charged official may join in debate but shall not vote on motion of resolution; non-binding resolution adopted by $\frac{3}{4}$ vote of present and voting quorum

Proposed policy revisions – B&E Committee approved

B&E Committee Actions:

- **Dec. 15, 2020** meeting – unanimous approval of proposed policy revisions
 1. If potential for conflict of interest, councilmembers shall seek advice of attorney where (revised **Part A, Section 3.b.**):
 - Actions may be misunderstood, or
 - Business or real property disclosed on economic interest statement is subject of city business
 2. Complaint Review Process (revised **Part D, Sections 1.a-b. & 2.a-d**)
 - “*Prima facie* allegation” standard of review set for alleged violations
 - City Attorney shall forward complaint to subject councilmember
 - Initial review by City Attorney: includes contact with complainant; 7-day window for complainant to revise before attorney closes complaint, if no *prima facie* allegation made
 - If *prima facie* allegation made, refer complaint to independent outside counsel who shall review and provide written findings to City Attorney who shall provide to Council for review and disposition; independent counsel’s report and written Council disposition shall be shared with complainant
 - Subject councilmember shall not participate in debate; if multiple subject councilmembers whose alleged violations cannot be easily separated, they may participate in debate
 3. Investigations section deleted (revised **Part D**, former **Section 2**)

Proposed policy revisions – B & E Committee approved

B&E Committee Actions – approved additional clarifications

- **Jan. 6, 2021** meeting – approved clarifications to previous revisions
 1. Councilmember’s obligation to seek attorney advice, not obligation of contractors, subcontractors or staff (see edits to **Part A, Section 3.b.**)
 2. *Prima facie* allegation defined (see edits to **Part D, Section 1.b.**):
 - includes connections posing potential conflicts, or
 - misappropriation of city resources, or
 - criminal or fraudulent activity, or
 - harassment; and
 - City Attorney may refer violations of law (criminal or fraudulent) to appropriate agency
 3. Initial Review by City Attorney to determine if two requirements met (see edits **Part D, Section 2.a & 2.b.**):
 - a) Minimum 3-prongs for complaint, and
 - b) *Prima facie* allegation standard of review, and
 - Deletes Investigations section (**former Part D, Section 2**)

Questions?