

RESOLUTION NO. _____ - 17

A RESOLUTION AMENDING THE INDEPENDENT ETHICS
COMMISSION RULES OF PROCEDURE

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF COLORADO SPRINGS:**

Section 1. That the Independent Ethics Commission Rules of Procedure, as amended, are amended as set forth on Exhibit "A" attached and made a part of this Resolution.

Section 3. That this Resolution shall be effective immediately upon its passage.

Section 4. That the Independent Ethics Commission Rules of Procedure, as amended, shall remain in effect until further amended or rescinded by City Council.

Dated at Colorado Springs, Colorado this _____ day of _____, 2017.

Merv Bennett, Council President

ATTEST:

Sarah B. Johnson, City Clerk

EXHIBIT "A"

Independent Ethics Commission Rules of Procedure

1.0 Introduction

These Rules of Procedure are promulgated pursuant to Section 1.3.103(J) of the Code of the City of Colorado Springs 2001, as amended. They are intended to set forth the procedures to be followed in proceedings before the Independent Ethics Commission pursuant to the City of Colorado Springs Code of Ethics, ~~Sections §§~~ 1.3.101 through 1.3.11908 of the Code of the City of Colorado Springs 2001, as amended.

2.0 Definitions

- 2.1 Adoption by Reference. These Rules adopt by reference the definitions as set forth in ~~Section §~~ 1.3.102 of the Code of Ethics.
- 2.2 City Code. The Code of the City of Colorado Springs 2001, as amended.
- 2.3 Code of Ethics. The City of Colorado Springs Code of Ethics, §§ ~~Sections~~ 1.3.101 through 1.3.11908 of the City Code.
- 2.4 Commission. The Independent Ethics Commission as created by § ~~Section~~ 1.3.103 of the City Code and appointed by City Council.
- 2.5 Rules. The Rules of Procedure as promulgated by the Independent Ethics Commission and approved by the Colorado Springs City Council pursuant to ~~Section §~~ 1.3.103(J) of the City Code.

3.0 Chair/Vice Chair

- 3.1 **At its annual meeting every year, the Commission shall choose from its own membership a Chair and a Vice Chair who shall serve at the Commission's pleasure a term of one year, until the next annual meeting. There is no term limit to the number of consecutive terms the Chair or Vice Chair may serve during his or her period of service on the Commission.** The Chair, subject to the direction of the Commission, shall have such general authority and responsibility in the administration of these Rules as shall not be inconsistent with the powers granted to the Commission by the Code of Ethics. **In the event the Chair or Vice Chair position is vacant before the Commission's annual meeting, the Commission may meet and select a new Chair or Vice Chair.**
- 3.2 In the absence of the Chair ~~the Commission member with the longest term shall act as Chair,~~ **the Vice Chair shall act as Chair. In the absence of the Chair and Vice Chair, the Commission shall designate an acting Chair.**

3.3 The Chair shall have the authority to sign all documents on behalf of the Commission, as long as the document notes how each member of the Commission voted.

4.0 Legal Advisor/Secretary

Pursuant to ~~Section~~ § 1.3.103(G), the City Attorney, ~~or a designee of the City Attorney,~~ **or the legal advisor appointed by City Council pursuant to § 1.3.103(G),** in addition to serving as the legal advisor to the Commission, is the Commission's chief liaison. **Subject to § 1.3.103(G),** ~~In~~ such role the City Attorney shall provide a **City** staff member to serve as Secretary to the Commission, **and** to perform such duties as these Rules or the Commission may assign.

5.0 Meetings

5.1 All meetings of the Commission shall be held in the Office of the City Attorney unless other arrangements suitable to the Commission are made. The presence of two members of the Commission shall constitute a quorum.

5.2 The Commission shall meet for the purpose of: ~~either considering an inquiry for consideration or investigating a written complaint as set forth in Section 1.3.103K of the City Code. The procedures shall be as set forth in Rules 6, 7 and 8.~~

(a) Considering either an inquiry for consideration or investigating a written complaint as set forth in §§ 1.3.105 and 1.3.106 of the City Code. In addition to the procedures set forth in the City Code, the procedures set forth in Rules 6, 7 and 8 shall apply to the Commission.

(b) Conducting an annual meeting of the Commission to elect a Chair and Vice Chair and to review the Code of Ethics and these Rules to determine whether any changes should be recommended to City Council. The annual meeting shall be held in September or as soon thereafter as practicable.

~~5.3 Additionally, there shall be an annual meeting of the Commission to elect a Chair and to review the Code of Ethics and these Rules to determine whether any changes should be recommended to City Council. The annual meeting shall be held in September or as soon thereafter as practicable.~~

5.34 Written minutes of Commission meetings shall be prepared and maintained by the Secretary.

5.45 Meetings shall be scheduled as needed either by the Chair or by majority vote of the Commission. At least five **(5) business** days' notice of such meetings shall be given **to** Commission members.

6.0 General Inquiries for Consideration

6.1 Pursuant to ~~Section~~ § **1.3.105** ~~1.3.103(K)~~ of the City Code, any person may file an inquiry for consideration by the Commission regarding a matter involving an

elected official; an **administrative officer**; appointee, or an independent contractor; a **Municipal Court Judge**; or a member of a board, committee, or commission appointed by City Council, the President of Council, or the Mayor. The inquiry for consideration must be in writing and must set forth with specificity the facts underlying the inquiry **comply with the requirements set forth in City Code § 1.3.105.** ~~The Commission shall consider only inquiries involving matters occurring within twelve months previous to the date of inquiry.~~

- 6.2 Inquiries for consideration **regarding covered persons subject to the Commission's jurisdiction** shall be filed through the City Attorney. ~~Upon receiving the inquiry~~ **Within five (5) business days after receiving the inquiry**, the City Attorney or designee shall notify each member of the Commission and shall forward to each member a copy of the inquiry. ~~The Chair~~ **A meeting** shall then ~~schedule a meeting~~ **be scheduled** as soon as practicable to consider the inquiry.
- 6.3 At the meeting the Commission shall discuss the inquiry for consideration with a view to determining a response. Should a majority of the Commission determine that the inquiry involves ~~a matter that occurred more than twelve months prior to the date of the inquiry or that the inquiry~~ an individual other than an elected official; an appointee, or an independent contractor, **administrative officer; a Municipal Court Judge; or a member of a board, committee, or commission appointed by City Council, the President of Council, or the Mayor, or for any reason set forth in City Code § 1.3.106**, no further action shall be taken. ~~Additionally, should a majority of the Commission deem the inquiry to be frivolous no further action shall be taken. The City Attorney in writing shall inform the individual submitting the inquiry of the Commission's determination.~~ **If no further action is taken, the City Attorney or designee shall inform in writing the individual submitting the inquiry and, if possible, the subject of the inquiry, if different from the inquiring individual, of the Commission's determination.**
- 6.4 **If the Commission determines that additional action is required**, ~~the~~ Commission by majority vote shall determine the nature of the response to be provided to the individual submitting the inquiry for consideration **and, if possible, the subject of the inquiry, if different from the inquiring individual.** The City Attorney, **City Attorney's designee, or the Commission** shall draft the response ~~for review by the Commission~~. Upon approval by the Commission, the written response shall be provided to the person submitting the inquiry. **Any Commissioner may, at his or her discretion, include a dissenting or concurring opinion in the response.**
- 6.5 In its discretion the Commission may treat an inquiry for consideration as a formal complaint. In such case the procedures set forth in **the City Code of Ethics and** in Rules 7.0 and 8.0 shall apply.

7.0 Formal Complaint; Initial Review

- 7.1 Pursuant to ~~Section 1.3.103K~~ **§ 1.3.105** of the City Code any person may file a written complaint for consideration by the Commission regarding a matter involving an elected official, an appointee, or an independent contractor. ~~The written complaint must set forth with specificity the facts underlying the complaint. The Commission shall consider only complaints involving matters occurring within twelve months previous to the date of the complaint;~~ **administrative officer; a Municipal Court Judge, or a member of a board, committee, or commission appointed by City Council, the President of Council, or the Mayor.**
- 7.2 Written complaints shall be filed confidentially through the City Attorney. ~~Upon receiving~~ **Within five (5) business days after receiving** the complaint, the City Attorney **or designee** shall notify each member of the Commission and shall forward to each member a copy of the complaint. ~~The Chair~~ **A meeting** shall then **be scheduled** as soon as practicable to conduct an initial review of the complaint. Additionally, the City Attorney **or designee** shall notify the individual who is the subject of the complaint and shall forward a copy of the complaint to that individual.
- 7.3 The Commission shall conduct an initial review of the complaint. ~~Should a majority of the Commission determine that the complaint involves a matter that occurred more than twelve months prior to the date of the complaint or that it involves an individual other than an elected official, an appointee, or an independent contractor, the Commission shall take no further action on the complaint. Additionally, should a majority of the Commission deem the complaint to be frivolous no further action shall be taken. The City Attorney in writing shall inform the individual submitting the complaint as well as the individual who is the subject of the complaint of the Commission's determination.~~ **and any relevant evidence before it at the time of the initial review, and may dismiss the complaint without further action for any of the reasons stated in City Code § 1.3.106. The individual who is the subject of the complaint may, prior to the Commission's initial review of the complaint, submit information to the Commission through the City Attorney or the legal advisor appointed pursuant to § 1.3.103(G) to assist the Commission in its initial review of the complaint. If the Commission determines by majority vote that the complaint should be dismissed, the Commission, the City Attorney, or the legal advisor appointed pursuant to § 1.3.103(G) shall notify the individual submitting the complaint and the subject of the complaint that the complaint was dismissed without further action, the reason(s) for the dismissal, and that the complaint shall remain confidential. In the event of a dissenting opinion, the notice must contain the dissenting opinion.**
- 7.4 During the initial review, the Commission may determine in its discretion to defer further action on the complaint until after a preliminary investigation. The preliminary investigation is only to collect readily accessible information that would be dispositive of the issue of whether to dismiss the complaint under City Code § 1.3.106, which may include, but is not limited to, obtaining further information from the individual submitting the complaint, the person who is the subject of the complaint, or third parties; reviewing

public records; and/or conducting interviews. The Commission shall exercise care to the extent practicable not to disclose the contents of the complaint as part of any preliminary investigation.

8.0 Formal Complaints; Investigation Procedure

8.1 If a majority of the Commission determines it has jurisdiction over the complaint and that the complaint ~~is non-frivolous~~ **should not be dismissed under § 1.3.106**, the Commission shall determine the procedure to be used in the investigation of the complaint and shall provide the parties with written notice of the procedure to be followed. The Commission shall then conduct its investigation according to that procedure. **If, during the course of the investigation, the Commission determines in its discretion to alter the previously determined procedure to be followed, it may do so upon written notice to the parties of the procedural changes. Unless it is not practicable, the Commission should attempt to interview the complaining party. Any accused party must be given an opportunity to present evidence and be interviewed by the Commission. No more than two Commissioners will participate in any interview.**

8.2 The Commission on its own motion or upon the request of any party to the complaint may issue subpoenas for the production of documents or the attendance of witnesses for ~~presentation to the~~ **interviews by Commissioners**. The City Attorney, **City Attorney designee, or the legal advisor appointed pursuant to § 1.3.103(G)** shall prepare all such subpoenas and shall ensure that the subpoenas are properly served. All requests for subpoenas shall be submitted to the Commission through the City Attorney **or the legal advisor appointed pursuant to § 1.3.103(G)**. Failure to honor a subpoena shall be punishable as provided by law.

8.3 Formal rules of evidence shall not apply to the investigation. A record of the investigation **and any documentary evidence received in the investigation** shall be made and maintained in the Office of the City Attorney for ~~a reasonable period of time but in no event less than 60 days after the conclusion of the investigation.~~ **Any documentary evidence received in the investigation shall also be maintained in the Office of the City Attorney for minimum of 60 days, no less than three (3) years or the time required by the applicable retention schedule, whichever is more.**

8.4 **Complaints Other Than Those Subject To City Code § 1.3.106(D)**

8.4.1

No later than ~~ten days~~ **fourteen (14) days or as soon as practicable** after the conclusion of the investigation, the Commission shall deliberate to ~~review the evidence and to determine whether the evidence presented establishes by a preponderance of the evidence a violation of the Code of Ethics.~~ **determine the contents of its confidential recommendation to City Council.** Only members of the Commission who participated in the investigation shall participate in the

deliberations. Any determination by the Commission must be by a majority of its members who participated in the investigation.

~~8.5~~ **8.4.2**

~~Within ten days~~ **fourteen (14) days** of its deliberations, the Commission shall issue a confidential written recommendation ~~to the City Council containing findings of fact and conclusions of law signed by the Commission Chair. Such confidential recommendation shall contain the Commission's determination as to whether the evidence produced during the investigation supported a finding that a violation of the Code of Ethics occurred. The City Attorney shall promptly forward the Commission's recommendation to the City Council.~~ **The Commission's written recommendation shall include fact findings and a determination, with citation to specific provisions of the City Code of Ethics, regarding whether or not a preponderance of the evidence exists to conclude one or more violations of the City Code of Ethics occurred. Any participating Commissioner may, at his or her discretion, include a dissenting or concurring opinion in the recommendation, over his or her signature, and also signed by any other Commissioner who wishes to join the dissenting or concurring opinion. The Commission's written recommendation to City Council is work product prepared for elected officials. Work product is not a public record under the Colorado Open Records Act. Therefore, the Commission's deliberations and preparation of its confidential recommendation to City Council is not public business subject to the Open Meetings Law attached as an Appendix to the City Charter.**

8.5 Complaints Subject To City Code § 1.3.106(D)

8.5.1

No later than fourteen (14) days or as soon as practicable after the conclusion of the investigation, the Commission shall deliberate to determine the contents of its written decision. Only members of the Commission who participated in the investigation shall participate in the deliberations. Any determination by the Commission must be by a majority of its members who participated in the investigation.

8.5.2

Within fourteen (14) days of its deliberations, the Commission shall prepare a written decision. The Commission's decision shall include fact findings and a determination, with citation to specific provisions of the City Code of Ethics, regarding whether or not a preponderance of the evidence exists to conclude one or more violations of the City Code of Ethics occurred. Any participating Commissioner may, at his or her discretion, include a dissenting or concurring opinion in the decision, over his or her signature, and also signed by any other Commissioner who wishes to join the dissenting or concurring opinion. The Commission's written decision shall be provided to the accused party, the complaining party, and the City Attorney's Office. A finding of no violations of the Code of Ethics shall be final agency action. If the Commission finds one or more violations of the Code of Ethics, it shall

issue with its written decision a notice to proceed with allegations of ethics violations. The notice to proceed with allegations of ethics violations shall be provided to the accused party, the complaining party, and the City Attorney's Office. A copy of the Commission's investigation file, including its written decision, shall be provided to the accused party and the prosecution within ten (10) days after issuance of notice to proceed with ethics allegations.

8.5.3

If the accused party admits the violations in writing or does not timely request an evidentiary hearing, the Commission will meet as soon as practicable to impose sanctions, if any, pursuant to City Code § 1.3.108. Only members of the Commission who participated in the investigation shall participate in the sanctions deliberations. Any determination by the Commission must be by a majority of its members who participated in the investigation, and the Commission members who subscribe to the sanctions decision shall sign the decision. Any participating Commissioner may, at his or her discretion, include a dissenting or concurring opinion in the sanctions decision, over his or her signature, and also signed by any other Commissioner who wishes to join the dissenting or concurring opinion. Written notice of sanctions or a finding of no sanctions shall be provided to the accused party, the complaining party, and the City Attorney's Office. The written notice of sanctions or a finding of no sanctions will be final agency action.

8.5.4

If the accused party requests an evidentiary hearing pursuant to City Code § 1.3.107, as soon as practicable after the request the Commission will select by a supermajority vote (65%) of the votes cast in a public meeting a Hearing Officer to conduct the evidentiary hearing.