

RESOLUTION NO. 58-13

**A RESOLUTION APPROVING THE PROCEDURES FOR
INVESTIGATION AND HEARING OF ETHICS COMPLAINTS
UNDER THE CITY CODE OF ETHICS**

WHEREAS, City Council adopted the Code of Ethics by Ordinance No. 07-59 on April 10, 2007, creating the Independent Ethics Commission for the purpose of rendering recommendations and advisory opinions on ethical issues;

WHEREAS, the Independent Ethics Commission has jurisdiction to investigate and make recommendations to City Council regarding ethics complaints involving an elected official, an appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, or an independent contractor; and

WHEREAS, City Council has determined that additional guidelines are needed concerning the investigatory role of the Independent Ethics Commission and City Council's practices and procedures upon receipt of recommendations for ethics charges from the Independent Ethics Commission.

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

Section 1. The Independent Ethics Commission ("IEC") should investigate any non-frivolous complaint over which it has jurisdiction in the manner the IEC determines is most thorough and efficient. The party accused in the complaint, however, must be given the opportunity to review any relevant documents considered by the IEC during its investigation and an opportunity to present, in the manner directed by the IEC, his or her position regarding the complaint to one or more IEC members of the IEC's election prior to the IEC issuing recommendations of appropriate charges to City Council.

Section 2. At the conclusion of its investigation, the IEC shall forward to City Council its recommendations of ethics charges, if any, the IEC determines are supported by a preponderance of the evidence.

Section 3. Upon receipt of the IEC's recommendations of appropriate ethics charges, City Council may, by majority vote, pursuant to City Council's rules:

A. Issue any formal ethics charges City Council determines, in its independent judgment, are appropriate;

B. Dismiss all or any part of the complaint due to insufficient evidence to proceed to formal charges if, in the opinion of City Council, a preponderance of the evidence does not support the ethics charges proposed by the IEC;

C. Dismiss all or any part of the complaint because there is no substantial likelihood of success on the merits if, in the opinion of City Council, a preponderance of the evidence exists to justify formal charges but there is no substantial likelihood that the burden of clear and convincing evidence could be met through an adversarial hearing;

D. Dismiss after referring the matter for action by law enforcement, regulatory, or other authorities with jurisdiction over the matter;

E. Dismiss all or any part of the complaint in the interest of justice if, in the opinion of City Council, justice so requires, including if proceeding with the matter would be contrary to the interest of the City or the citizens; or

F. Dismiss all or any part of the complaint due to mootness if, in the opinion of City Council, the matter is moot because the accused party is no longer an appointee or elected official.

Section 4. If City Council elects to issue any formal ethics charges based on the recommendations of the IEC, City Council will notify the accused party of such formal ethics charges in writing within five (5) business days after the decision is made. The accused party shall be given ten (10) business days to respond in writing submitted to the City Attorney and the President of City Council, either admitting the violations or requesting an evidentiary hearing. The City Council will consider the accused party's failure to respond within ten (10) business days to be an admission and will then move to impose sanctions.

Section 5. If the accused party requests an evidentiary hearing in writing within ten (10) business days, City Council will elect, in its sole discretion, to either serve as the hearing body or appoint a hearing officer to conduct the proceedings. The accused party and the complainant shall also be notified of the date and time of the hearing.

A. Minimum hearing procedures. Either Council or the hearing officer will oversee the proceedings and adopt rules and procedures to ensure appropriate due process is afforded the accused party but, at a minimum, each side shall be afforded the opportunity to call and cross examine witnesses; make opening statements and closing arguments; the evidentiary burden shall be clear and convincing; and the hearing shall be conducted publically.

B. Hearing Officer Option. Any hearing officer selected by City Council shall be a licensed attorney. The hearing officer will render an Initial Decision which will be submitted to City Council for approval, denial, or modification. The parties will be permitted to file written objections to the Initial Decision for City

Council consideration. City Council's affirmation, rejection, or modification of the findings in the Initial Decision will be the final agency action.

C. City Council Option. If City Council elects to conduct the evidentiary hearing, it will sit as a quasi-judicial body. At the conclusion of the proceeding, City Council shall issue written findings which will be a final agency action.

D. The City Council's designated legal advisor shall advise the Council during the proceedings. A member of the Prosecution Division of the City Attorneys' Office will prosecute the charges.

Section 6. If City Council finds that a violation of the City's Code of Ethics has occurred, whether pursuant to an admission or at the conclusion of a full evidentiary hearing, City Council shall then proceed to impose any of the following sanctions:

A. Monetary Fine: A monetary fine is appropriate per the City's Code of Ethics if the individual who committed an ethics violation financially benefitted from their actions. Such penalty shall be double the amount of financial equivalent of any benefits obtained by such actions. The manner of recovery and any additional penalties may be as provided by law. *City Code §1.3.101 et seq.*


B. Censure: Censure is a formal, official reprimand by City Council of one of its members. Such penalty carries no fine or suspension of the rights of the member as an elected official. *City Charter, Article III, § 50.*

C. Removal: Removal is available for City Council appointees and member of boards, committees and commissions appointed by City Council. *City Charter, Article IX, § 10(a).* If the violator is a Mayoral appointee, City Council may make a recommendation to the Mayor that the appointee be removed.

DATED at Colorado Springs, Colorado this 28th day of May, 2013.


Keith King, Council President

ATTEST:


Sarah Johnson, City Clerk

