

ORDINANCE NO. 16-_____

AN ORDINANCE AMENDING ALL SECTIONS OF ARTICLE 3 (CODE OF ETHICS) OF CHAPTER 1 (ADMINISTRATION, PERSONNEL, AND FINANCE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED

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

Section 1. All Sections of Article 3 (Code of Ethics) of Chapter 1 (Administration, Personnel and Finance) of the Code of the City of Colorado Springs 2001, as amended, are amended to read as follows:

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1.3.101: LEGISLATIVE PURPOSE:

A. There is hereby adopted by the City Council "The City of Colorado Springs Code of Ethics" which shall apply to the Mayor and Council Members;; all their appointed boards, committees, and commissions;; the Utilities Chief Executive Officer;; ~~MHS Enterprise Chief Executive Officer~~, **the** City Attorney;; **the** City Clerk;; **the** City Auditor;; Municipal Court Judges;; department, division, office, and agency heads appointed by the Mayor **or City Council**; and all employees of the City's municipal government and its enterprises, including Colorado Springs Utilities ~~and MHS Enterprise~~.

B. The City of Colorado Springs shall **aspire to** conduct its businesses, operations and services in accord with the law and the highest standards of business practices and ethics. The City of Colorado Springs is committed to complete honesty, utmost integrity, fair dealing, and ethical behavior as the basis of its businesses, operations, and services to the community.

C. Public service and public employment is a public trust. The Mayor and Council Members; **members of** ~~all their~~ appointed boards, committees and commissions; the Utilities Chief Executive Officer; ~~MHS Enterprise Chief Executive Officer,~~ **the** City Attorney; **the** City Clerk; **the** City Auditor; Municipal Court Judges; department, division, office, and agency heads appointed by the Mayor **or City Council**; and all employees of the City's municipal government and its enterprises, including Colorado Springs Utilities, ~~and MHS Enterprise~~ should employ independent, objective judgment in performing their duties; ~~and~~ should assure that businesses, operations, and services are conducted openly **to the extent required by law** to safeguard public confidence in the integrity of the City; **and should strive to** ~~by avoiding~~ any conduct creating ~~the~~ **an** appearance of impropriety.

D. The City of Colorado Springs, through its municipal government and all its enterprises, including Colorado Springs Utilities ~~and MHS Enterprise~~, exists for the purpose of serving the community through its businesses, operations, and services.

E. The City of Colorado Springs Code of Ethics is hereby deemed to be a matter of ~~City Council's exclusive~~ **exclusively within the City's** home rule authority and ~~supersedes~~ **a proper exercise of the City Council's legislative authority on behalf of the City, superseding** any other applicable Colorado statutes. Moreover, this Code of Ethics is in compliance with, and therefore supersedes by its own terms, **unless otherwise expressly adopted herein**, Colorado Constitution, article XXIX, "Ethics in Government".

1.3.102: DEFINITIONS:

The following definitions are applicable to the City Code of Ethics:

ADMINISTRATIVE OFFICERS: As defined by City Charter, article XIII, section 13-10. ~~All heads of departments appointed by the Mayor.~~

~~APPOINTEES: Are "administrative officers" and shall mean and include all persons appointed by the Mayor and/or members of City Council pursuant to the City Charter and this City Code, to include the City Attorney, City Auditor, City Clerk, Municipal Court Judges and Utilities Chief Executive Officer and all members of boards, committees and commissions appointed by the Mayor and/or City Council. For purposes of this Code, the term "appointee" shall also include the MHS Enterprise Chief Executive Officer.~~

ADVISORY OPINION: A response to an inquiry for consideration by the Commission or an opinion given by the City Attorney's Office to a covered person regarding the applicability of the Code of Ethics to a future action.

CITY: The municipal government **of Colorado Springs, Colorado**, and all its enterprises as defined by the Colorado Constitution, article X, section 20 and City Charter, article VII,

~~section 7-90, including, but not limited to, Colorado Springs Utilities and MHS Enterprise. The City's municipal government and the municipal enterprises are subject to the management and control of the Mayor. The City's Colorado Springs Utilities enterprise is subject to the management and control of City Council's appointed Chief Executive Officer. The City's MHS Enterprise is subject to the general supervision and control of City Council and is subject to the daily management and control of City Council's appointed Board of Trustees, who appoints a Chief Executive Officer.~~

CLEAR AND CONVINCING EVIDENCE: Evidence that persuades the fact finder that the contention is highly probable and free from serious or substantial doubt.

~~COVERED PERSONS: Elected officials, appointees, administrative officers, employees, independent contractors and volunteers in connection with their work for the City.~~

COMMISSION: Independent Ethics Commission.

COMPLAINT: A request for an investigation of or report on an alleged violation of the Code of Ethics.

CONFIDENTIAL INFORMATION: Information that is not available to the general public under applicable laws, ordinances, privileges, and/or regulations, and which is obtained by reason of a position or legal relationship with the City.

COVERED PERSONS: Elected officials, administrative officers, employees, independent contractors, volunteers of the City; and members of boards, committees, or commissions appointed by City Council, the President of Council, or the Mayor.

COVERED PERSONS SUBJECT TO THE COMMISSION'S JURISDICTION: Elected officials; administrative officers; Municipal Court Judges; and members of boards, committees, or commissions appointed by City Council, the President of Council, or the Mayor.

COVERED PERSONS SUBJECT TO HUMAN RESOURCES' JURISDICTION: All other covered persons not subject to the Commission's jurisdiction, including employees, volunteers, and independent contractors.

DIRECT OFFICIAL ACTION: Any action that involves:

A. ~~Negotiating, approving, disapproving, administering, enforcing or recommending for or against a franchise, contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use, or any other matter to which the City is a party. "Recommending" shall mean someone in the formal line of decision making for the matter;~~

B. ~~Enforcing laws or regulations or issuing, enforcing, or regulating~~**administering** permits and licenses;

C. ~~Appointing and terminating employees, temporary workers, volunteers, and independent contractors as defined by the Internal Revenue Code;~~**or**

* * *

E. "Direct official action" does not include acts that are purely ministerial-, **including pro forma signing of documents on behalf of the City and approval as to form.** ~~It also does not include signatures by the Mayor, City Council, City Auditor, City Attorney, City Clerk, Utilities Chief Executive Officer or MHS Enterprise Chief Executive Officer unless these individuals initiate the contract or are involved in the selection of the contractor or the negotiation or administration of the contract.~~ **Also, a** A person who abstains from a vote is not exercising direct official action.

* * *

GIFT: A payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given, to include food, lodging, transportation, golf or other recreation or entertainment, and reimbursement for other than necessary expenses for official business on behalf of the City, unless consideration of equal or greater value is received.

IMMEDIATE FAMILY **MEMBER:** ~~The employee's spouse and his or her dependents.~~ **A spouse, domestic partner, fiancé/fiancée, parent(s), child(ren), brother(s), sister(s), aunt(s), uncle(s), niece(s), nephew(s), grandparent(s), grandchild(ren), great grandparent(s), great grandchild(ren), first cousin(s), including step relatives and in-laws, and an individual who is a member of a covered person's household regardless of familial relationship.**

INDEPENDENT CONTRACTORS: ~~Those persons as~~ **individuals** defined **as such** by the Internal Revenue Code, in their work for the City.

INQUIRY FOR CONSIDERATION: **A request for an advisory opinion from the Commission regarding whether a future action by a covered person subject to the Commission's jurisdiction would be a violation of the Code of Ethics, or the means by which a future action could be taken without violating the Code of Ethics.**

PREPONDERANCE OF THE EVIDENCE: **Evidence that would cause a reasonable person to conclude that the contention is more probably true than not.**

SUBSTANTIAL INTEREST: **A situation in which a reasonable person faced with making a decision, after considering the relevant circumstances, would tend to have their decision influenced by a personal or financial stake or consideration.**

* * *

1.3.103: INDEPENDENT ETHICS COMMISSION:

A. Creation And Purpose: There is hereby created an Independent Ethics Commission. The purpose of this Commission shall be to render **written** recommendations **to City Council on ethics complaints** and **to issue written** advisory opinions ~~on ethical issues~~ **in response to inquiries for consideration.**

B. Members: City Council shall appoint five (5) members to the ~~Independent Ethics~~ Commission to serve staggered terms, who shall have expertise in ethical matters, acquired through education or experience. An alternate may be appointed pursuant

to this City Code. Each member of the initial ~~Independent Ethics~~ Commission shall serve at least one term and those initial terms shall be one **(1)**, two (2) and three (3) years.

* * *

D. Compensation: Members of the ~~Independent Ethics~~ Commission shall be "volunteers" as defined by this Code and **shall** serve without compensation. Members may be reimbursed for reasonable expenses **they incur by providing service to the Commission.**

E. At Will: Each member of the ~~Independent Ethics~~ Commission shall serve at the pleasure of City Council and shall be subject to **the** City Charter, particularly City Charter subsection 3-60(d) and section 9-10, ~~this~~ **the** City Code, and the rules and procedures of City Council.

F. Majority Vote: The ~~Independent Ethics~~ Commission shall make **decisions/recommendations** based upon a majority vote.

G. City Attorney: The City Attorney, or a designee of the City Attorney, shall be the chief liaison and legal advisor to the ~~Independent Ethics~~ Commission, but shall have no vote. **In the event the City Attorney is the subject of a pending complaint, City Council may, in its sole discretion, appoint outside counsel to serve as the legal advisor to the Commission, appoint a City employee not within the Office of the City Attorney to serve as Secretary to the Commission for the complaint against the City Attorney, and if necessary, appoint special counsel to prosecute allegations of ethics violations brought against the City Attorney.**

H. Disqualification: Any member of the ~~Independent Ethics~~ Commission shall disqualify himself or herself from participating in any matter before the Commission in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where he or she has a **substantial interest**, a personal bias or prejudice concerning a party, or personal knowledge of or involvement in disputed evidentiary facts concerning the matter. In that case, the alternate may sit in place of the disqualified member.

I. Subpoena ~~And Recommendations~~ **Power:** The ~~Independent Ethics~~ Commission shall have the power to subpoena documents and witnesses, **and to enforce such power by judicial action.** ~~The determination of a recommendation by the Independent Ethics Commission shall be made based upon the preponderance of evidence before it.~~

J. Rules Of Procedure: The ~~Independent Ethics~~ Commission shall promulgate its own ~~r~~**Rules of p**Procedure to be approved by City Council.

1.3.104: CITY ATTORNEY ADVISORY OPINION:

Any covered person may request a confidential or non-confidential advisory opinion from the City Attorney whenever a question arises as to the applicability of the Code of Ethics to a future action. Provided all pertinent facts and circumstances are fully disclosed in writing to the City Attorney by the covered person, such covered person

shall be entitled to rely upon the advisory opinion issued for purposes of determining compliance with the Code of Ethics for a future action. No covered person shall be found to have violated the Code of Ethics if, in good faith, the covered person has acted in accordance with an advisory opinion issued as described in this section. Any verbal advisory opinion issued by the City Attorney shall be documented at the request of the covered person. It shall be the obligation of the covered person to provide the advisory opinion to the Commission. Any verbal advisory opinion shall not be binding on any complaint investigation by the Commission.

1.3.105: FILING OF COMPLAINTS/INQUIRIES FOR CONSIDERATION:

A. Complaints; Inquiries: Complaints must be filed confidentially. A complaint may only be considered for matters occurring within the last twelve (12) months and shall be filed with the appropriate authority as designated below:

1. Covered Persons Subject to the Commission's Jurisdiction: Any person may file a written complaint or an inquiry for consideration ~~by~~ **with** the Independent Ethics Commission through the City Attorney regarding a **covered person subject to the Commission's jurisdiction.** ~~matter involving an elected official, an appointee including members of boards, committees and commissions; administrative officer; or a member of a board, committee, or commission appointed by City Council, the President of Council or the Mayor, or an independent contractor. Any written complaint or inquiry shall be filed confidentially and processed in accord with the Independent Ethics Commission Rules of Procedure. The written complaint or inquiry may only be considered for matters occurring within the last twelve (12) months. Any person may file a written complaint or inquiry for consideration directly with the Mayor, Utilities Chief Executive Officer, MHS Enterprise Chief Executive Officer, City Attorney, City Auditor, City Clerk or Presiding Municipal Judge for covered persons within these organizations or for covered persons who work for the City in a volunteer capacity, not including members of boards, committees and commissions appointed by City Council or the Mayor.~~

2. Covered Persons Subject to Human Resources' Jurisdiction: Any person may file a written complaint with the City's Human Resources Department or the Colorado Springs Utilities' Human Resources Department regarding a matter involving a covered person not subject to the Commission's jurisdiction.

~~L. Frivolous Complaints; Inquiries: The Independent Ethics Commission may dismiss frivolous complaints or inquiries without further action. A record of dismissal as deemed frivolous shall be maintained as confidential by the Independent Ethics Commission.~~

B. Requirements for Complaints/Inquiries for Consideration:

1. A complaint shall set forth the following to the best of the complainant's ability:

a. The name of the individual, either personally or on behalf of an organization, submitting the complaint, best available contact information including mailing address, telephone number, and electronic mail

address. A complaint submitted anonymously may be dismissed by the Commission.

b. The identity of the person(s) alleged to have committed a violation of the Code of Ethics.

c. A full description of the facts known to the person filing the complaint which are alleged to constitute a violation of the Code of Ethics.

d. The identities and contact information (if known) of other persons who have knowledge of such facts.

e. A signature of the person submitting the complaint with a verification stating the following:

“The undersigned hereby certifies or affirms that the information contained within this complaint is true to the best of my knowledge, information, and belief. I have not filed this complaint for the purpose of harassment or to falsely disparage the individual(s) claimed to have committed violations of the Code of Ethics.”

2. An inquiry for consideration shall set forth the following:

a. The name of the individual, either personally or on behalf of an organization making the inquiry for consideration, best available contact information including mailing address, telephone number, and electronic mail address. An inquiry for consideration may not be anonymously submitted.

b. The identity of the covered person subject to the Commission’s jurisdiction and his or her title or position.

c. A full description of the facts known to the person filing the inquiry for consideration.

~~M. — Nonfrivolous, Formal Complaints; Inquiries: The Independent Ethics Commission shall take such steps as necessary pursuant to its rules to investigate nonfrivolous, formal complaints. Within ten (10) days of the conclusion of its investigation and deliberations, the Commission shall issue a confidential written recommendation to City Council containing findings of fact and conclusions of law.~~

1.3.106: REVIEW OF COMPLAINTS/INQUIRIES FOR CONSIDERATION:

A. The Commission may dismiss frivolous complaints or dismiss inquiries for consideration without further action for any of the following reasons:

1. The Commission has no jurisdiction over the individual(s) named in the complaint or inquiry for consideration;

2. The alleged violation, even if true, would not constitute a violation of the Code of Ethics;
3. The allegations/issues were previously asserted in another complaint or inquiry for consideration that is already being considered or was resolved by the Commission;
4. The alleged violation, even if true, is minor in nature and fails to justify the use of public resources to prosecute;
5. The allegations/issues involve actions or events that occurred more than twelve (12) months prior to the date of the filing of the complaint;
6. The complaint is, on its face, groundless, or brought for purposes of harassment;
7. The individual who is the subject of the complaint previously obtained an advisory opinion from the Commission or the City Attorney's Office that identifies the conduct as not being in violation of the Code of Ethics;
8. The Commission is referring the complaint to another agency with jurisdiction over the allegations/issues set forth in the complaint and such referral will better serve the public interest (e.g., City Council, the Mayor, City department or enterprise, law enforcement, District Attorney, state or federal Attorney General, or Department of Justice);
9. The complaining party failed to follow the Commission's Rules of Procedure for filing a complaint;
10. The complaining party failed to file the complaint confidentially as required by the Commission's Rules of Procedure; and/or
11. The complaint was filed anonymously.

~~N. Penalty: Any individual who is found to have breached the public trust and has been found to have done so for private gain, and any person or entity inducing such breach, shall be liable to the City for 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.~~

B. A record of dismissal of a complaint as deemed frivolous shall be maintained as confidential by the Commission. The City expressly adopts Colorado Constitution, article XXIX, § 5(3)(b), for the discrete purpose of allowing the Commission to dismiss frivolous complaints without conducting a public hearing and to require complaints dismissed as frivolous be maintained as confidential. The Code of Ethics is a matter exclusively within the City's home rule authority and a proper exercise of the City Council's legislative authority on behalf of the City, superseding any other applicable Colorado statutes. Other than as set forth in this subsection, this Code of Ethics is in

compliance with, and therefore supersedes Colorado Constitution, article XXIX, "Ethics In Government," by its own terms.

~~○. Final Action: Any decision of the City Council made upon confidential written recommendation of the Independent Ethics Commission may be deemed to be a final action, subject to any appeal to a court with proper jurisdiction.~~

C. Commission Investigation/Findings/Council Procedures:

1. Complaints against five (5) or more members of City Council shall be handled pursuant to § 1.3.106(D).

2. Investigation. The Commission shall take such steps as necessary pursuant to the Commission's Rules of Procedure to respond to inquiries for consideration or to investigate complaints not dismissed pursuant to § 1.3.106(A). During its investigation, if the Commission discovers potential violations of the Code of Ethics not raised in the original complaint, it may amend the scope of the investigation and the subject of the investigation shall be notified of the additional possible violations as soon as practicable.

3. Findings. Within fourteen (14) days of the conclusion of its investigation and deliberations regarding a complaint, the Commission shall issue a confidential written recommendation to City Council containing its investigative findings. The Commission's recommendation shall include fact findings and a determination, with citation to specific provisions of the Code of Ethics, regarding whether or not by a preponderance of the evidence the Commission concludes one or more violations of the Code of Ethics has occurred. The Commission's written recommendation to City Council is work product prepared for elected officials. Such work product is not a public record under the Colorado Open Records Act, C.R.S. § 24-72-202(6)(b), as amended. Therefore, the Commission's deliberations and preparation of its confidential recommendation to City Council is not public business subject to the City's Open Meetings Law, adopted by City Charter § 3-60(d).

4. Council Procedures: Upon receipt of the Commission's recommendation, City Council may, by majority vote:

a. Issue a notice to proceed with those allegations of ethics violations which City Council determines, in its independent judgment, are appropriate, or issue a finding of no violation(s);

b. Accept the Commission's recommendation finding no violations of the Code of Ethics;

c. Refer the matter back to the Commission for further investigation;

d. Dismiss all or any part of the Commission's recommendation due to insufficient evidence to proceed if, in the opinion of City Council, the standard of proof is not met;

- e. Dismiss all or any part of the Commission's recommendation because in the opinion of City Council, there is no substantial likelihood of success on the merits through an adversarial hearing;
- f. Stay proceedings or dismiss all or any part of the Commission's recommendation after referring the matter for action by law enforcement, regulatory, or other authorities with jurisdiction over the matter; or
- g Dismiss all or any part of the Commission's recommendation in the interests of justice, including the presence of circumstances in which proceeding with the matter would be contrary to the interest of the City or the citizens.

City Council shall provide the accused party, the complaining party, the Commission, and the City Attorney's Office with written notice of its decision, including any notice to proceed with allegations of ethics violations issued by City Council.

5. City Council - Notice to Proceed with Allegations of Ethics Violations/Mandatory Recusal:

- a. If City Council elects to issue a notice to proceed with allegations of ethics violations based on the recommendation of the Commission, City Council will notify the accused party, the complaining party, the Commission, and the City Attorney's Office of the ethics charges in writing within seven (7) days after the decision is made.
- b. The accused party shall be given fourteen (14) days to respond in writing to the City Attorney or designee and the City Council President either admitting the violations or requesting a public evidentiary hearing. City Council will consider the accused party's failure to respond within fourteen (14) days to be an admission and may then move to impose sanctions. The time for response may be extended or the matter may be reconsidered by City Council upon a showing of good cause for failure to timely respond. The City Council President may extend the deadline up to fifteen (15) days upon a showing of good cause. Any extensions beyond fifteen (15) days shall be approved by City Council upon a showing of good cause. A request for a public evidentiary hearing shall be handled pursuant to § 1.3.107.
- c. If the accused party is a member of City Council, he/she is automatically recused from participating in the matter as a member of City Council and is required to refrain from voting on or taking any direct official action concerning the matter.
- d. If the accused party is subject to a criminal investigation or a criminal charge is pending against the accused party and the investigation or charge is related to the conduct underlying the

allegations of ethics violations, the accused party may submit a request to City Council to stay the proceedings until the conclusion of the investigation or criminal charges. City Council has sole discretion to stay the proceedings pursuant to a request under this subsection. City Council may resume the proceedings at any time.

D. Complaints Against Five (5) or More Members of City Council:

1. **Investigation.** The Commission shall take such steps as necessary pursuant to the Commission's Rules of Procedure to investigate complaints alleged against five (5) or more members of City Council not dismissed pursuant to § 1.3.106(A). During its investigation, if the Commission discovers potential violations of the Code of Ethics not raised in the original complaint, it may amend the scope of the investigation and the subject of the investigation shall be notified of the additional possible violations as soon as practicable.

2. **Findings.** Within fourteen (14) days of the conclusion of its investigation and deliberations regarding a complaint, the Commission shall prepare a written decision containing its investigative findings. The Commission's decision shall include fact findings and a determination, with citation to specific provisions of the Code of Ethics, regarding whether or not by a preponderance of the evidence one or more violations of the Code of Ethics has occurred.

a. 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.

b. If the Commission finds one or more violations of the Code of Ethics, it shall issue a notice to proceed with allegations of ethics violations. The Commission's written decision and notice to proceed with allegations of ethics violations shall be provided to the accused party, the complaining party, and the City Attorney's Office after the Commission finalizes its decision.

(1) Each accused party shall be given fourteen (14) days to respond in writing to the City Attorney or designee and the Commission either admitting the violations or requesting a public evidentiary hearing. The Commission will consider the accused party's failure to respond within fourteen (14) days to be an admission. If an accused party admits the violations or does not timely request an evidentiary hearing, the Commission may impose sanctions pursuant to § 1.3.108. The time for response may be extended or the matter may be reconsidered by the Commission upon a showing of good cause for failure to timely respond. The Commission will determine whether good cause exists. A request for a public evidentiary hearing shall be handled pursuant to § 1.3.107.

(2) If an accused party is subject to a criminal investigation or a criminal charge is pending against the

accused party and the investigation or charge is related to the conduct underlying the allegations of ethics violations, the accused party may submit a request to the Commission to stay the proceedings until the conclusion of the investigation or criminal charges. The Commission has sole discretion to stay the proceedings pursuant to a request under this subsection. The Commission may resume the proceedings at any time.

1.3.107: ADMINISTRATIVE HEARING PROCEDURES:

A. Hearing Officer. If the accused party timely requests a hearing, as soon as practicable City Council or the Commission for complaints subject to § 1.3.106(D) will select by a supermajority vote (65%) of the votes cast in a public meeting a Hearing Officer to conduct the proceedings. Any Hearing Officer selected shall be a Colorado licensed attorney in good standing.

B. Legal Representation. Subject to § 1.3.103(G), a member of the Prosecution Division of the City Attorneys' Office will prosecute the charges or, in the sole discretion of the City Attorney, the City Attorney may appoint another attorney in the City Attorney's Office or special counsel to prosecute the charges. The accused party is entitled to be represented by counsel at his or her expense or as provided in § 1.3.110.

C. Burden of Proof. The prosecution bears the burden to establish, by clear and convincing evidence, the existence of a violation of the Code of Ethics.

D. Hearing Date. Within fourteen (14) days after selection of a Hearing Officer by City Council or the Commission for complaints subject to § 1.3.106(D), the Hearing Officer shall set the date for the hearing in the Hearing Officer's sole discretion, after making reasonable attempts to consult with the accused party and the prosecution. The hearing shall be set for the earliest practicable date, but in no event shall it be set earlier than sixty (60) days after receipt of the accused party's request for a hearing. The Hearing Officer may continue the hearing in his or her sole discretion and may grant a request for a continuance by the accused party or the prosecution for good cause.

E. Discovery. Within ten (10) days after issuance of notice to proceed with ethics allegations, the accused party and the prosecution shall be entitled to a copy of the Commission's investigation file, including the Commission's confidential recommendation or written decision. Within twenty (20) days after receipt of the notice of hearing date, the accused party and the prosecution shall exchange copies of all relevant documents and other tangible things within their possession, and a list, including any known contact information, of all persons who have relevant information or knowledge about the matter with a short statement regarding the relevant facts or opinions about which they have information or knowledge. Each party has an ongoing duty to supplement disclosures in a timely manner when additional information is received.

F. Subpoenas. At the request of the accused party, the prosecution, or in the Hearing Officer's discretion, the Hearing Officer shall have the power to subpoena

documents and to subpoena witnesses to make statements and produce documents. Requests for subpoenas by the accused party or the prosecution must be submitted to the Hearing Officer no later than thirty (30) days prior to the hearing. Subpoenas must be served in accordance with the rules governing service followed by courts of general jurisdiction within the state of Colorado.

G. Witnesses and Exhibits. At least ten (10) days before the hearing, the parties shall exchange and submit to the Hearing Officer a proposed list of witnesses and a list of proposed exhibits to be introduced at the hearing, except for witnesses called or exhibits presented solely for rebuttal purposes. The Hearing Officer shall have the sole discretion to exclude any witness or exhibit disclosed to the opposing party fewer than ten (10) days prior to the hearing.

H. Hearing Presentation. The Hearing Officer shall have sole discretion to determine the hearing procedures. However, at a minimum, the hearing procedures shall include affording each side the opportunity to make opening statements and closing arguments, to call and cross examine witnesses, and to introduce evidence. Testimony by telephone/videophone may be permitted at the discretion of the Hearing Officer. All arrangements for taking of testimony by telephone or videophone shall be made by the party requesting the testimony, who shall be responsible for all costs associated with that testimony.

I. Hearing Matters/Evidence. The Hearing Officer shall determine all pre-hearing matters; preside over the hearing; administer oaths; and decide all points of order, procedure, and evidence. The hearing is an administrative hearing and, as such, need not be conducted according to the Colorado Rules of Civil Procedure or the Colorado Rules of Evidence. The Hearing Officer may admit any relevant evidence of probative value, including hearsay or unauthenticated documents, and may exclude or strike evidence that is incompetent, immaterial, irrelevant, cumulative, or unduly repetitious.

J. Record. An electronic or stenographic record of the hearing shall be made by the City as the official record of proceeding and retained with all exhibits admitted in the hearing in the Office of the City Clerk for no less than the time required by the applicable records retention schedule.

K. Hearing Officer Decision. The Hearing Officer will render a decision with findings of fact, a summary of the evidence supporting each finding, conclusions of law, a determination of whether or not the accused party violated the Code of Ethics, and a recommended sanction for each violation. In recommending a sanction, the Hearing Officer may consider the severity of the offense; the credibility of the witnesses and reliability of the evidence; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and/or whether the incident was isolated or part of a pattern. The decision will be submitted to City Council, the accused party, the Commission, and the prosecutor within thirty (30) days after the hearing. The City Council President may extend this deadline up to thirty (30) days upon a showing of good cause. Any extension beyond thirty (30) days must be approved by City Council upon a showing of good cause. For complaints subject to § 1.3.106(D), the Hearing Officer may impose any recommended sanctions pursuant to § 1.3.108, which shall be final agency action.

L. Council Action – Complaints Not Subject to § 1.3.106(D).

1. As soon as practicable after receipt of the Hearing Officer's Decision, City Council shall, in a public meeting, adopt the Hearing Officer's Decision regarding whether or not the accused committed a violation of the Code of Ethics. City Council may impose sanctions pursuant to § 1.3.108. Council may affirm, reject, or modify the Hearing Officer's recommended sanction(s). City Council may consider, when imposing sanctions, the severity of the offense; the presence or absence of any intention to conceal, deceive, or mislead; whether the violation was deliberate, negligent, or inadvertent; and/or whether the incident was isolated or part of a pattern.

2. Adoption of the Hearing Officer's Decision regarding whether or not the accused committed a violation of the Code of Ethics and any sanctions imposed shall be expressed in a written resolution passed by City Council. City Council's resolution shall be final agency action.

1.3.108: SANCTIONS:

If a violation of the Code of Ethics has occurred, whether pursuant to an admission or at the conclusion of a full administrative hearing, the following sanctions may be imposed:

A. Reprimand. Issue an oral or written reprimand;

B. Monetary Fine. A monetary fine is appropriate if the individual who committed an ethics violation financially benefitted from his or her action(s) or an immediate family member financially benefitted from the action(s) of the covered person. The monetary fine shall be no more than double the amount of financial equivalent of any benefits obtained by the unethical action(s);

C. Censure. Censure is a formal official reprimand by City Council of one of its members. This penalty carries no fine or suspension of the rights of the member as an elected official; and/or

D. Suspension/Removal. Suspension or removal of City Council appointees or members of boards, committees, or commissions appointed by City Council. If the covered person found to have violated the Code of Ethics is a Mayoral appointee, a recommendation may be made to the Mayor that the appointee be suspended or removed.

1.3.109: EX-PARTE COMMUNICATIONS:

Ex-parte communications by an accused party or an attorney prosecuting allegations of ethics violations with any Councilmember or the Hearing Officer concerning any ethics matter pending before the Commission, City Council, or a Hearing Officer are strictly prohibited.

1.3.110: LEGAL REPRESENTATION:

A. An elected official; administrative officer; Municipal Court Judge; or board, committee, or commission member appointed by City Council, the President of Council, or the Mayor who is the subject of an investigation as a result of a complaint(s) filed with the Commission, upon the Commission's finding that it has jurisdiction over the complaint(s) and that the complaint(s) is non-frivolous, is entitled to an independent legal representative of his or her choice at the City's expense, subject to the limitations contained in this § 1.3.110. The legal expenses paid by the City shall not exceed ten thousand dollars (\$10,000.00) per investigation unless good cause is shown to exceed this limit. City Council shall have sole discretion to determine whether good cause exists to extend the payment for legal expenses beyond the ten thousand dollar (\$10,000.00) limit. No decision with regard to legal expenses may be appealed or challenged.

B. The term "legal expenses" shall include attorney fees, witness fees, stenographer fees, investigator fees, and other direct costs in connection with defending the individual against an ethics complaint.

C. Before the City shall pay any legal expenses, the accused party shall acknowledge in writing the City's full reservation of right to reimbursement for all legal expenses if the accused party is found to have committed a violation of the Code of Ethics.

D. Requests for payment of legal expenses shall be submitted to the City Attorney and, once verified, paid within ten (10) days or as soon as practicable, subject to the monetary limitations above. Requests for payment of legal expenses shall be submitted no later than forty-five (45) days after the matter is closed.

E. Within thirty (30) days of the expiration of exhaustion of all rights to appeal any final decision by City Council concerning the ethics complaint, an accused party found to have committed a violation of the Code of Ethics shall be required to reimburse the City for all legal expenses paid by the City for the accused party's defense.

1.3.10411: GIFTS:

A. Hospitality And Gifts: No covered person **or immediate family member** shall solicit ~~for~~, accept, or give any gift ~~or thing of value~~ related ~~solely~~ to the covered person's duties and responsibilities on behalf of the City.

B. Exceptions: Providing that ~~the~~ gift could not be **reasonably** considered a bribe or a means of improper influence on a direct official action, no violation of this Code of Ethics shall be found to apply to the following:

1. * * *

2. An unsolicited item or items of value less than **the dollar amount established and adjusted in Colorado Constitution, article XXIX, § 3, fifty dollars (\$50.00)** per vendor or third party per year. **As of January 1, 2017, that amount is fifty-nine dollars (\$59.00)** ~~adjusted for inflation using the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder-Greeley.~~

~~a. The item or items shall not be cash or cash equivalent such as gift cards, checks or money orders.~~

~~ba.~~ * * *

~~eb.~~ For a charity event, the cost of the event is the fair market value of the activity received as opposed **amount the event organizer reports** to the full amount of the ticket **Internal Revenue Service as the non-deductible portion of the event.**

~~ec.~~ It is not permissible to pay part of the cost of a gift that is offered with a value exceeding **the amount set forth in 1.3.111(B)(2)** fifty dollars (\$50.00) (as adjusted) to reduce the value to less than **the amount set forth in 1.3.111(B)(2)** fifty dollars (\$50.00) (as adjusted) and then accept the gift.

d. Immediate family members of covered persons, except those of elected officials, may only accept a free or discounted event ticket if they attend the event with a covered person. Event tickets for elected officials are covered under § 1.3.111(B)(15).

* * *

4. A component of compensation paid or other recognition given in the normal course of employment, appointment ~~or~~, volunteer services, or business.

5. Any scholarship or grant or other financial aid for education given to any covered person or immediate family member for any reason ~~so long as the award is not based upon the influence of the covered person.~~

* * *

7. Any gift solicitation for a charitable purpose as determined **to be** appropriate by the City or its affiliated organization.

8. Any gift, whether solicited or not, to benefit a public safety or community purpose. ~~However, covered persons must not solicit or receive gifts that will directly or indirectly benefit themselves.~~

~~9. Any gift provided as a result of the recipient's outside business or employment activities that do not pertain to the City.~~

~~109.~~ Awards or prizes given at competitions or drawings at events open to the public, ~~so long as there is not an appearance of impropriety.~~

~~110.~~ Reasonable cost **(e.g., fees, meals, lodging, and/or transportation)** and frequency of ~~vendor sponsored or other professional educational~~

conferences, seminars, **events**, or meetings, so long as the conferences, seminars, **events**, or meetings are documented. **and:**

a. The person is scheduled to deliver a speech, participate in a presentation, participate on a panel, or receive an award;

b. The cost of the conference, seminar, event, or meeting is paid pursuant to a vendor agreement or contract; or

c. The cost of the conference, seminar, event, or meeting is paid by a governmental entity or a IRC 501(c)(3) organization.

~~12~~11. * * *

~~13~~12. * * *

~~14~~13. * * *

~~15~~14. * * *

~~16~~15. For elected officials **and their immediate family members**, reasonable cost and frequency of meals and event tickets pertaining to their official duties as Mayor or members of **City** Council so long as the gift is documented and is not intended, and does not affect, a direct official action.

16. A non-pecuniary award of reasonable value and frequency publicly presented by a IRC 501(c)(3) organization in recognition of public service.

17. Discounts that are similarly available to all employees of the City, or discounts that are offered to the public generally or to a large segment of the public (i.e., all uniformed personnel, all government employees, or all first responders).

~~17~~18. * * *

~~18~~19. Any other exceptions as may be approved by the ~~City Council~~ **Commission through an inquiry for consideration.**

C. Inappropriate Hospitality And Gifts: Inappropriate hospitality or gifts involves offering or receiving accommodations, tours, event tickets, recreation, entertainment, meals or other similar personal benefits when a **substantial interest** ~~personal or financial relationship~~ exists that could influence or be perceived to influence objectivity when interacting with, representing, or conducting business for or on behalf of the City. (Ord. 11-18)

1.3.10512: LOBBYING ACTIVITIES:

* * *

1.3.10613: CONFLICTS OF INTEREST/**CONFIDENTIAL INFORMATION**:

~~Every covered person owes a duty of loyalty to the City. A conflict of interest exists when there is any personal or financial relationship that could influence or be perceived to influence the representation or conduct of business for, or on behalf of, the City. A conflict of interest also exists when any improper and undue influence can be exercised, or be perceived to be exercised, concerning a direct action involving the City. A conflict of interest may exist when there is an appearance of impropriety. No conflict of interest is allowed.~~

Covered persons are prohibited from engaging in any behavior that constitutes a conflict of interest as set forth in this section.

A. ~~No covered person shall hold financial interests that conflict with the conscientious performance of duty.~~ **knowingly use any confidential information gained in his or her official capacity with the City or allow the use of any such confidential information to further the financial or personal interest of the covered person or to further the financial or personal interest of an immediate family member of the covered person.**

B. ~~No covered person shall engage in business activities including financial transactions using nonpublic government or enterprise private information, or allow the improper use of that information to further any private interest or gain.~~

* * *

D. ~~No covered person shall give preferential treatment to~~ **in his or her official capacity with the City shall endorse any private organization or individuals –or request or grant to any private organization or individual any special consideration, treatment, or advantage beyond that which would be made available to every other private organization or individual in similar circumstances. This subsection D shall not apply to endorsements by elected officials of a person running for office, concerning the retention of a person who is the subject of a recall election, or concerning an election issue.**

E. ~~No covered person shall directly or indirectly participate in any matter involving the City where they or a member of their family has a direct or indirect substantial financial interest. If a direct or indirect substantial financial interest exists, the covered person shall make known that interest to the appropriate persons and shall refrain from participating in the matter as it is dealt with by the City.~~ **This subsection E shall not apply to City election judges or election watchers.**

F. ~~No covered person shall engage in outside employment or activities, including seeking or negotiating for employment that conflicts with their~~ **his or her** official duties and responsibilities **or his or her fiduciary duty to the City.**

G. ~~No covered person shall tolerate waste, fraud, abuse and corruption in government or any of its businesses, operations or~~ **misappropriate services or other resources of the City for personal benefit.**

H. ~~No covered person shall engage in any actions that may create, or do create, the appearance that they are violating the law or ethical standards.~~

I. ~~No covered persons shall engage in any activity that may create, or does create, the appearance of impropriety.~~

1.3.114: CONFLICTS OF INTEREST – APPEARANCE OF IMPROPRIETY:

An appearance of impropriety is created when a covered person will or may take a direct official action that, although not constituting a conflict of interest, will or may create a reasonable perception that the covered person's ability to carry out his or her official duties with integrity, impartiality, and competency is impaired.

A covered person who determines that his or her action(s) may cause an appearance of impropriety should consider (but is not required to) disclosing and recusing or disclosing and declaring impartiality as prescribed by the voluntary provisions of § 1.3.115.

1.3.115: CONFLICTS OF INTEREST – DISCLOSURE AND RECUSAL/DISCLOSURE AND DECLARATION:

A. Mandatory Disclosure and Recusal: A covered person with a prohibited conflict of interest shall:

- 1. Disclose the prohibited interest in writing to the proper authority or orally at an appropriate public meeting; and**
- 2. Recuse himself or herself from participating in the matter by:**
 - a. Refraining from voting on or taking any direct official action concerning the matter;**
 - b. Refraining from communicating with or attempting to influence any covered person with authority to take direct official action regarding the matter which includes, but is not limited to, commenting on the matter through public or private statements, emails, blogs, tweets, or other social media; and**
 - c. Physically leaving any room or premises at which the matter is being discussed or considered.**

B. Voluntary Disclosure and Recusal: A covered person with an appearance of impropriety may (but is not required) to:

1. Disclose the appearance of impropriety in writing to the proper authority or orally at an appropriate public meeting; and
2. Recuse himself or herself from participating in the matter by:
 - a. Refraining from voting on or taking any direct official action concerning the matter;
 - b. Refraining from communicating with or attempting to influence any covered person with authority to take direct official action regarding the matter which includes, but is not limited to, commenting on the matter through public or private statements, emails, blogs, tweets, or other social media; and
 - c. Physically leaving any room or premises at which the matter is being discussed or considered.

OR

3. Declare in writing to the proper authority, or orally at an appropriate public meeting, that the appearance of impropriety will not impact the covered person's ability to participate in the matter fairly and impartially.

1.3.116: CONFLICTS OF INTEREST – EXCEPTION:

It shall not be a conflict of interest for a covered person to take direct official action on the annual City budget or annual appropriations ordinance, or Utilities annual budget or annual appropriations ordinance, even if the person or an immediate family member would receive benefit thereunder.

1.3.10717: ETHICS EDUCATION:

Ethics education using this ~~Ethics Code~~ **of Ethics** and other ethics training shall be given annually to every covered person. **The current gift limit set forth in § 1.3.111(B)(2) shall be included in the annual ethics training.**

1.3.10818: FURTHER ETHICS RULES AND REGULATIONS:

Nothing in this Code of Ethics shall prohibit the Mayor, City Attorney, City Auditor, City Clerk, Utilities Chief Executive Officer, or ~~MHS Enterprise Board of Trustees or Chief Executive Officer~~, or Presiding Judge of the Municipal Court from enacting further ethics rules and regulations pertaining to those who report to them that may be as strict or more strict than this Code of Ethics.

1.3.119: NO PRIVATE RIGHT OF ACTION:

Nothing in this Code of Ethics is intended to, or does, create a private right of action against the City of Colorado Springs or against any covered person based upon noncompliance with its provisions. Authority to enforce compliance with this Code of Ethics is vested exclusively in the City pursuant to the provisions of the Code.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2016.

Finally passed: _____

Merv Bennett, Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk