

Overview of Council's Ethics Policy

Budget and Effectiveness Committee

CITY ATTORNEY'S OFFICE
JANUARY 6, 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 by ordinance; applied to Council and managers
- 1983 - adopted Conflict of Interest policy
- 2010 - adopted Council's Code of Ethics (as required by law)
- 2013 - repealed Conflict of Interest policy (codified by City Charter, Sec. 8-101)
- 2015 – amended Code of Ethics Policy
 - Gift Policy added
 - Disclosure requirements added (Statement of Economic Interest)
 - Process for complaint review, investigation and sanctions added
 - Oct. 2015 – adopted for boards, committees & commissions

Current Ethics Policy

Review of Complaints, Investigations and Sanctions (Part D of Ethics Policy)

- City Attorney's 3-prong review for complaints
- 1. Complaints **(Part D, Sec. 1)**
 - a. *Any individual may file a complaint alleging a violation. Complaints shall be filed with the City Clerk on a form provided by the City Clerk. 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. *Upon receiving a complaint, the City Clerk shall forward the complaint to the **City Attorney for initial review**.*
 - c. *The **City Attorney shall review the complaint to determine whether it provides the information required in subsection a**. If the City Attorney determines that the complaint fails to provide the information required by subsection (a), the complainant shall be so informed and afforded an opportunity to provide the required information. If the City Attorney determines that a complaint does provide the required information, the complaint shall be referred to an independent outside counsel selected by the City Attorney.*
- **No** - complainant informed
- **Yes** - refer to independent outside counsel

Current Ethics Policy – cont.

Independent Outside Counsel (Part D, Sec. 2)

- 2. Investigations
 - a. The independent outside counsel **shall review a complaint referred by the City Attorney**. In the event that the independent outside counsel determines that the complaint is either: (i) frivolous; or (ii) does not state a claim of a violation even if the facts alleged are true, then the outside counsel shall communicate that conclusion in writing to the City Attorney who shall in turn communicate that conclusion to the complainant and the Mayor or, if the subject of the complaint is the Mayor, to the Mayor Pro Tempore.
 - b. **If the independent outside counsel determines that the complaint is not frivolous and does state a claim** of a violation if the facts alleged are true, the **independent outside counsel shall investigate the allegations and make written findings as to the truthfulness of the factual allegations and conclusions as to whether a violation has occurred**. The **written findings and conclusions shall be provided to the City Attorney who shall in turn provide them 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.

Current Ethics Policy – cont.

- **Sanctions (Part D, Sec. 3):**
 - Resolution of Censure
 - Any other sanction under Council’s power
 - (i.e., removal from Committee assignments, leadership roles)

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 ¾ 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 ¾ 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 ¾ vote of present and voting quorum

Status of pending complaints

Council-approved revisions to current policy

- Sep. 8, 2020, Council adopted limited revision to policy as recommended by B&E Committee
 - Substitute word “investigator” with “outside counsel” in Part D
 - Made review and referral of pending complaints retroactive to date of first complaint
- Authorized retaining independent outside counsel to review complaints meeting requirements of Part D, Sec. 1.a.

Committee review of additional policy revisions

- ✓ Review and approve revisions to conflicts of interest and complaints review process portions of policy (Part A, Sec. 3.b. and Part D), OR
- Revise and update entire policy, OR
- Committee reviews policy while outside counsel reviews referred complaints; once complaints review concluded, Committee finalizes and approves policy revisions for referral to full Council.

Proposed policy revisions - approved

B&E Committee Actions:

- **Dec. 15, 2020** meeting – unanimous approval of proposed policy revisions (see version 2, redline)
 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 – options (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 clarifications - pending approval

B&E Committee – seek approval of clarifications

- **Jan. 6, 2021** meeting – consider clarifications to previous revisions (see version 2.1, yellow highlights)
 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
 - any 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, and
 - Deletes references to “section 2.e.”

Questions?