

**RULES OF PROCEDURE
CITY OF PHOENIX
ETHICS COMMISSION**

April 18, 2024



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I. BACKGROUND INFORMATION

The City of Phoenix Ethics Task Force, which was comprised of community representatives, attorneys from a broad range of practice areas, and judges from several courts, issued a report in January 2013 related to the Task Force's review of City of Phoenix ethics and gift policies. The Task Force report proposed a set of rules and procedures to review, evaluate, investigate, and make recommendations related to alleged ethics and gift policy violations by Elected Officials and Board Members.

In February 2017, by ordinance the Council established the Ethics Commission to review, evaluate, investigate, and make recommendations to the full Council related to alleged ethics and gift policy violations by Elected Officials and Board Members. As part of the ordinance, the Council adopted rules and procedures to permit the Ethics Commission to carry out the Commission's powers, duties, and responsibilities. These rules reflect the rules and procedures adopted by Council as supplemented by consistent Task Force recommendations.

II. GLOSSARY

The definitions described and listed in Code Section 2-52 are incorporated and made a part of this glossary by this reference. For purposes of these Rules of Procedure, the following terms shall have the meaning ascribed as follows. The singular of the term shall include the plural, and the plural of the term shall include the singular. The following glossary terms govern and control to resolve any conflict or ambiguity created by reference to the definitions in Code Section 2-52.

"ARS" means Arizona Revised Statutes, as amended from time to time.

"Board Member" means a member, or the person's relative or partner, of a City of Phoenix board, committee, commission, or task force.

"Charter" means the Phoenix City Charter.

"Code" means the Phoenix City Code, as amended from time to time.

"Complainant" means a Phoenix resident or a person who is directly aggrieved by an act or the failure to act of an Elected Official or Board Member.

"Council" means the Phoenix City Council.

"Elected Official" means a person, or the person's relative or partner, elected or appointed as Mayor or as Council Member of the City of Phoenix.

"Ethics Commission" or "Commission" means the City of Phoenix Ethics Commission.

"Ethics Handbook" means the Phoenix Ethics Handbook adopted by the Council in June 1991, as amended from time to time that provides guidance to Elected Officials or Board Members.

“Ethics Policy” means Phoenix ethics policies and standards codified in Chapter XI, Section 1 of the Charter; Section 2-52 of the Code, and the Ethics Handbook.

“Investigator” means the person appointed by the Ethics Commission to investigate a Request for Inquiry as necessary.

“Judicial Selection Advisory Board” or “JSAB” means the Phoenix board whose establishment, membership, powers, and duties are defined in Code Section 2-96.

“Partner” means a person in a domestic partnership as defined in Phoenix City Code Section 18-401.

“Relative” means the spouse, child, child’s child, parent, grandparent, brother or sister of the whole or half blood and their spouse, and the parent, brother, sister, or child of a spouse.

“Request for Inquiry” means a specific allegation of an Ethics Policy violation by an Elected Official or Board Member.

“Respondent” means the person who must respond to a Request for Inquiry.

“Task Force” means the Phoenix Ethics Review Ad Hoc Task Force established September 10, 2012.

III. CITY OF PHOENIX ETHICS COMMISSION MEMBERS, AUTHORITY, RULES AMENDMENT

A. Ethics Commission Members. The Ethics Commission consists of five members who each serve a term of five years unless otherwise specified. Two Commission members must be registered members of the Democratic Party, two Commission members must be registered members of the Republican Party, and one Commission member must be registered with no party affiliation. All members must be Phoenix residents and must not be elected officials, precinct committee persons of a political party, or City of Phoenix employees. A member may not serve more than one full term. One Democratic member, one Republican member, and the unaffiliated member will each serve a full initial term. One Democratic member and one Republican member will each serve a three-year initial term. Each Commission vacancy must be filled by a candidate recommended by the JSAB and approved by Council. At the initial meeting, the Ethics Commission will adopt bylaws, elect officers, and set a regular meeting schedule to conduct business as may be presented to the Commission.

B. Appointment of Ethics Commission Members. The JSAB will seek out and encourage qualified individuals to apply for appointment to the Ethics Commission and may conduct investigations into the background and qualifications of candidates by questionnaires, personal interviews, and other means as the board deems reasonable. When making recommendations for appointment to the Ethics Commission, the board should consider the diversity of Phoenix’s population. A candidate for appointment to the Ethics Commission must be a registered Arizona voter who has been continuously registered with the same political party or registered as unaffiliated with a political party for five or more years preceding the date the candidate files an application with the board. A candidate for appointment to the Ethics Commission must be a Phoenix resident and may not serve as an elected official, a precinct committee person of a political party, or City of Phoenix employee on the date the candidate files an application with the board. As provided in Code Section

2-96, the board will recommend candidates for appointment to the Ethics Commission by the affirmative vote of seven Council members.

C. Ethics Commission Authority. The Ethics Commission is authorized to receive allegations of ethical violations, investigate, take testimony, and engage in any other action to the extent permitted and established by law to oversee the investigation and enforcement of the Ethics Policies and City of Phoenix Ethics Handbook for Elected Officials and Board Members. The Ethics Commission may appoint an independent investigator as may be necessary to assist the Ethics Commission in carrying out its purpose and responsibilities.

D. Ethics Commission Compensation. Ethics Commission members will not receive a salary or otherwise be compensated except for reimbursement of parking fees near Phoenix City Hall.

E. Amendments to Rules and Procedures. By an affirmative vote of four members, the Ethics Commission may refer changes to these Rules and Procedures to the City Manager for review and recommendation to Council. Any changes to these Rules and Procedures must be approved by an affirmative vote of seven Council members.

IV. RULES AND PROCEDURES

Rule 1. Scope and Purpose.

These rules govern the procedure in all actions and proceedings presented before the Ethics Commission. They should be construed, administered, and employed by the Ethics Commission and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. Adoption of Local Rules of Practice and Procedure City of Phoenix Municipal Court—Civil Cases.

The Ethics Commission adopts the Local Rules of Practice and Procedure for the City of Phoenix Municipal Court—Civil Cases (Local Rules) to the extent the Local Rules are consistent with these rules and procedures. These rules and procedures govern and control to resolve any conflict or ambiguity created by the application of the Local Rules.

Rule 3. Review Limitation.

The Ethics Commission may only review, evaluate, or recommend action for an act, error, omission, or failure to act by an Elected Official or Board Member first occurring on or after January 1, 2018. All Requests for Inquiry filed against an Elected Official or Board Member must be brought within one year after the cause of inquiry accrues and not afterward.

Rule 4. Initiation of Proceedings.

- a. A Complainant may file with the Phoenix City Clerk a written, notarized Request for Inquiry

containing specific allegations of an Ethics Policy violation by any Elected Official or Board Member. A Complainant must certify to the truth of the allegations under penalty of perjury, and acknowledge that a frivolous Request for Inquiry may result in the award of sanctions against the Complainant. The Phoenix City Clerk must not accept the submission of an anonymous Request for Inquiry.

- b. Within five business days of receiving the Request for Inquiry, the City Clerk will assign a matter number to the Request for Inquiry, refer the Request for Inquiry to the Ethics Commission for initial evaluation at the Ethics Commission's next available meeting and send a copy of the Request for Inquiry to the Respondent.
- c. For the period that begins with the assignment of the matter number by the City Clerk through the Ethics Commission's recommendation for action to Council, the Request for Inquiry must solely be referenced by matter number, and the Request for Inquiry, investigation and any Ethics Commission proceedings related to its evaluation must remain confidential. The Ethics Commission may discuss the Request for Inquiry in executive session as provided by law. All records related to the Request for Inquiry will be made public in accordance with Arizona law after the Ethics Commission votes in open session to: (i) dismiss the Request for Inquiry in whole after an initial evaluation; or (ii) makes a final recommendation to Council related to the Request for Inquiry.

Rule 5. Initial Evaluation by Commission.

Each inquiry received by the Commission will be initially evaluated to determine by the affirmative vote of four members if the allegations in the inquiry:

- a. Are within the Commission's jurisdiction and are facially sufficient in whole or in part to warrant additional evaluation or investigation of the allegations in the inquiry; or
- b. Are outside of the Commission's jurisdiction or facially insufficient to warrant investigation, and therefore, dismiss the inquiry. The Commission's dismissal of the inquiry is not subject to review; or
- c. May involve a crime, in which case the Commission must refer the inquiry to the proper authority for investigation and prosecution. If the Commission refers the inquiry to another authority for criminal investigation or prosecution, the Commission must stay all action related to the inquiry until the criminal investigation and any related proceedings are resolved; or
- d. Are not well grounded in law or fact and are interposed for an improper purpose, such as to harass or cause unnecessary delay or expense to the elected official or board member. The Commission may recommend that the Council impose a civil sanction in the maximum amount of \$500 against the person or entity for each frivolous inquiry.
- e. If the Commission fails to decide by unanimous or the affirmative vote as required in subsections (a) through (d), the Request for Inquiry is deemed closed.

Rule 6. Investigation by Commission; Inquiry Report; Commission Review.

- a. Upon a determination that an inquiry warrants additional evaluation or investigation, the Commission may investigate, take testimony, and engage in any other action to the extent permitted by law to

oversee the investigation and enforcement of the ethics or gift policy related to an elected official or board member. The Commission may appoint an independent Investigator to assist the Commission in carrying out its purpose and responsibilities.

- b. The Respondent will be given written notice of the investigation and the nature of the Request for Inquiry. The Respondent may submit a written response to the Commission or Investigator within 20 days of the notice requesting a written response. For good cause, the Commission or Investigator may grant an extension of time to respond to the Request for Inquiry.
- c. The Commission will forward a copy of the Respondent's response to the Complainant. The Commission or the Investigator may ask the Complainant to provide additional information.
- d. The Commission and its Investigator may conduct interviews, obtain records or other necessary information and undertake appropriate research. As part of the investigation, the Commission may set the Request for Inquiry for a formal hearing. The Complainant and Respondent may or may not be represented by legal counsel, in their respective discretion.
- e. All Respondents and Complainants must cooperate with the Commission and its Investigator. All Respondents and Complainants must provide requested information unless the request violates Arizona law. A Respondent or Complainant who fails to cooperate with the Commission or Investigator must cite the specific legal basis for doing so. If the Commission finds there is no legal basis for the Respondent's or Complainant's failure to cooperate, the uncooperative party shall pay for all costs incurred by the Commission directly related to that party's failure to cooperate.
- f. After the conclusion of any hearing or fact-finding related to a Request for Inquiry, the Commission or Investigator will prepare a written report with findings of fact and recommendations for such action as the Commission deems appropriate. The report will not be available for public inspection under Arizona law until after final action by the Commission.
- g. The Commission may review and discuss the inquiry and report in executive session as permitted by law. In public session, by the affirmative vote of four members the Commission may recommend to the full Council to sustain the alleged violations in whole or in part, to impose sanctions, if any, as permitted under Code Section 2-53, or to dismiss the Request for Inquiry. If there are less than four votes to make a recommendation to the full Council or to dismiss the Request for Inquiry, the Request for Inquiry is deemed closed.

Rule 7. Consideration of Recommendation.

A recommendation from the Commission related to a Request for Inquiry will be placed on the agenda of the next available meeting of the full Council. By the affirmative vote of seven members the Council may accept the Commission's recommendation in whole or in part, impose the same or different sanctions, if any, as permitted by Code Section 2-53, or dismiss the inquiry. If there are less than seven votes to accept the Commission's recommendation in whole or in part, or to dismiss the inquiry, the inquiry is deemed closed.

Rule 8. Sanctions.

By an affirmative vote of seven members, the Council may impose any of the following actions or civil sanctions for a violation of the ethics or gift policies by an Elected Official or Board Member: censure, a maximum civil sanction in the amount of \$500 for each violation, or removal from office if the violation relates to a Board Member. Code Section 1-5 does not apply to action under this subsection. The penalties and remedies provided in Title 38, Chapter 3, Article 8, A.R.S., may apply and may be enforced as provided by law.

Rule 9. Action for Frivolous Allegations.

Upon a finding and recommendation by an affirmative vote of four members of the Ethics Commission and by an affirmative vote of seven members of the Council, the Council may direct the City Manager through the City Attorney to file a complaint in municipal court against a person, or other entity recognized by law, for the filing of allegations of ethics or gift violations that are not well grounded in law or fact and are interposed for an improper purpose, such as to harass or cause unnecessary delay or expense to the Elected Official or Board Member. A person found liable for violating this section by a preponderance of the evidence may be subject to a maximum civil sanction in the amount of \$500.00 for each violation and may be ordered to pay the reasonable attorney's fees and costs incurred by the Elected Official or Board Member to respond to and defend against the improper allegations.

Rule 10. Additional Authority.

- a. As provided by law, the Commission may review, evaluate, investigate, and make recommendations under these rules to the proper authority for alleged violations of the Lobbyist Ordinance, Code Sections 2-1000, *et seq.*
- b. Consistent with these rules, the Commission may issue advisory opinions regarding ethics and gift policy issues upon request by an Elected Official or Board Member, and may make recommendations to Council related to Phoenix ethics and gift policies.
- c. Consistent with these rules, the Commission may review, evaluate, and issue a special occasion waiver as requested by an Elected Official or Board Member.

APPENDICES

Exhibit 1 – Request for Inquiry Form