

EXHIBIT A
TO RESOLUTION 2023-34

Council Policy #CP-25
Adopted 04/03/23 by Resolution 2023-34

SUBJECT: City Council Conduct and Discipline

POLICY STATEMENT: The conduct of City Council members is a matter of public integrity and as such is a matter of public importance. In this regard, the City Council intends that complaints relative to the conduct of City Council members be handled in a manner that is reflective of the values of the City. The handling of such complaints must occur in a fair and impartial manner to preserve the public trust while also protecting elected officials from frivolous complaints that improperly exhaust public resource for otherwise improper purposes. The goal of this policy is to balance these interests while insuring public integrity.

A. Application of Policy and Receipt of Complaints.

1. *Application.*

- a. For purposes of interpreting and understanding this policy, it is recognized that mandatory policies require a council member to take a certain action and a prohibitory policy prohibits a council member from taking an action; policies that are suggestive or guidelines are not mandatory or prohibitory.
- b. The City Council shall determine whether a policy is mandatory or prohibitory.

2. *Violations.* This policy shall be applicable to violations as set forth in the City Charter, the Commerce City Revised Municipal Code, and the Council Policies. See Exhibit A, summarizing violations.

3. *Process.* The process contained herein is supplemented by that contained in Exhibit B.

4. *Complaints.*

- a. For any apparent violation of mandatory or prohibitory council policies by a councilmember, the city council may initiate an investigation or impose penalties under this section based on a verified complaint.
- b. Verified complaints of an alleged violation of mandatory or prohibitory council policies by a councilmember or other appointed official may be initiated by any person, including a councilmember, and shall be submitted to the city clerk. The city clerk shall forward the complaint to the city manager, who shall determine whether the complaint meets the requirements of this policy. If the complaint is determined to meet the requirements of this policy, the city manager shall promptly forward the complaint to the entire council, the city manager, and the city attorney including a designation of confidentiality and a copy of this policy. If the complaint is determined to not meet the requirements of this policy, the city clerk shall return the complaint to the complainant, if known, with an explanation of the requirements of this policy.
- c. To meet the requirements of this policy, complaints must:
 - a. Be verified;

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- b. Include the complainants name and contact information;
 - c. Identify the individual alleged to have violated policy;
 - d. Provide specific and sufficient factual detail to identify a policy that is at issue and the specific conduct alleged to have occurred that was in violation of the policy;
 - e. Claims and suspicions unsupported by sufficient factual allegations shall be insufficient to meet the requirements of this policy.
- d. No action may be taken on any complaint that is filed later than one month after the discovery of facts supporting an allegation that a violation occurred.
 - e. Unless specified as punishable as provided in this section, these policies as they apply to the conduct of councilmembers are intended as guides to conduct and a failure of a councilmember to abide by these policies shall not be punishable except a caution, reprimand, or censure.
- B. Mediation. When a violation of council policy occurs that involves a dispute between councilmembers, the councilmembers involved will discuss or mediate the matter in good faith before a neutral person. The councilmembers may agree to rely on the city manager, city attorney, a council committee, or, if requested by either councilmember, a third party not employed by the city. Failure of either councilmember to participate in the mediation may result in the imposition of penalties under this section. All mediations must comply with the Colorado Open Meetings Law. The mediation must occur before the council initiates any investigation or imposes penalties under this section, unless the mediation does not occur due to non-participation.
- C. Investigation. For any apparent violation of mandatory or prohibitory council policies by a councilmember, the city council may review the allegations and make such investigation or determinations as it deems appropriate. If recommended by the city attorney, the city council shall appoint special counsel to investigate and present any violation to the council for decision to avoid any conflict of interest, appearance of impropriety, or any violation of a rule of professional responsibility. Otherwise, the city attorney shall conduct the investigation. The city council may, in its discretion, authorize the subject of the alleged violation to retain special counsel, at the city's cost.
- D. Finding of Violation & Penalties. In addition to any other penalty provided for a violation of any other provision of the charter, this code, or any other applicable law, any councilmember found to have violated mandatory or prohibitory council policies by a two thirds majority of the city council members present at the time the vote is taken (excluding councilmembers whose conduct is in question, if applicable) is subject to the following penalties:
- 1. Any combination of the following, as solely determined by a majority of the city council members present at the time the vote is taken (excluding councilmembers whose conduct is in question, if applicable):
 - a. Official admonition, reprimand, mandated training, or censure;
 - b. Termination of any appointment to any subcommittee, board, or external body;

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- c. An invitation to resign from the city council; and
 - d. In addition to any other available penalty, any councilmember who is found to have disclosed or used confidential information in violation of the City Charter, City Revised Municipal Code, any other applicable law, or Council Policies may be prevented from receiving confidential information, including participating in executive sessions, concerning the same or similar subject or of the same or similar type.
2. Any combination of the following, as solely determined by a majority of the city council members present at the time the vote is taken (excluding councilmembers whose conduct is in question, if applicable):
 - a. Any of the penalties identified in subsection (e)(1), above;
 - b. Termination, restriction, or suspension of any privileges or support provided to councilmembers relating to any of the following: use of city facilities; travel and attendance at events and conferences; use of discretionary funds; and staff support and contact;
 - c. Deduction from the councilmember's stipend of costs expended by the city that the councilmember was required, but failed, to reimburse; and
 - d. Any other penalty otherwise deemed appropriate by the city council.
3. For purposes of this policy, a councilmember's conduct will be deemed to be in question if the question is: (a) to determine a violation by that councilmember; (b) to determine a penalty to be imposed against that councilmember; or (c) similar to an alleged violation or penalty pending or decided concurrently against a councilmember arising out of the same underlying event.
4. No penalty imposed under this section shall remove a councilmember from office or restrict a councilmember's ability to vote or participate in any council meeting, except where required by the Charter, to avoid voting on a matter in which the member has a prohibited interest, or to enforce express penalties authorized by this policy.

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This Exhibit A contains a non-exhaustive identification and listing of actions that constitute violations of the Code of Conduct. It is presumed that violations of any of these provisions would result in use of the process and potentially penalties under the ethics code. The items herein are subject to change and revision consistent with amendment that may occur to the City Charter, the Commerce City Revised Municipal Code, and City Council Policies. This document is intended as a summary and the wording herein does not supersede or control that found in the City Charter, the Commerce City Revised Municipal Code, and City Council Policies.

- A. Misuse of confidential information
 - 1. Personal use (to further “interest”)
 - 2. Disclosure to unauthorized persons
 - 3. Receipt of (if person has a known “conflict of interest”)
- B. Violation of the Charter or Code
 - A Charter violation, if prosecuted criminally and convicted may be grounds for removal from office/employment and disqualification from future city office/employment. See Charter § 19.11.
- C. Direct official action with a “conflict of interest” (personally or by influencing others; Includes Charter § 4.27
- D. Failing to disclose a “conflict of interest” or ex parte communication
- E. Behavior in official matters bringing disrespect/disrepute to office or city
- F. Failure to reimburse when required by law or policy
- G. Using city resources for personal gain/advantage
- H. Interfering with investigations/prosecutions
- I. Representation of city/council
 - 1. without permission or disclaimer
 - 2. in appointed roles (e.g. boards)
- J. Requiring city officials to make political contributions or statements
- K. Appearing before council/board/court for another person
- L. Representing/assisting others in litigation against the city
- M. No employment of board members
- N. Limit on future employment or prior employer for 6 months on matters involved in
- O. No voting on own conduct (see Charter § 4.27(c)) (including violation or penalty)

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P. No interest in contracts (Charter 4.19)

Q. Nepotism standards (not a standard of conduct subject to penalty)

No relative of a councilmember, a council employee, or any department head, or the city attorney, shall, during such city official's term or appointment, become an employee of the city or be appointed to any board. Seasonal employment that does not exceed 950 hours in a calendar year shall be exempt from this section. No effect on existing employees.

See also Charter § 4.20

R. No soliciting/accepting gifts or things of value directly or indirectly

1. if would tend to influence improperly or is for purpose of reward for official action (presumed if was given by or for a person with matters pending before the official)

2. EXCEPTIONS (may still create conflict of interest or result in disqualification but not a separate violation):

- a. Under \$75, as may be amended by the IEC (non-monetary, unsolicited, occasional)
- b. From a relative
- c. Gift or perishable or nonpermanent value (unsolicited, non-monetary, occasional; e.g., food, flowers, tickets if in connection with assigned city duties)
- d. Items available to all city employees or general public
- e. Gifts from other cities during visit
- f. Gifts provided by the City of Commerce City
- g. Campaign contributions (if properly reported)
- h. City payment for travel, registration, etc.
- i. Social functions or meetings "not extraordinary in light of" the official's position
- j. Payment for speeches, etc. if paid as honoraria
- k. Nonpecuniary awards for public service given by a nonprofit
- l. Salary or other compensation/incentive from employment
- m. Discounts or incentives generally available to government officials
- n. Gratuities (for tipped employees)
- o. Donations to the city or charities (with proper recordkeeping and only if soliciting person doesn't keep the gift or receive a monetary benefit)

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1. Complaints must have specific information and be signed under penalty of perjury
 - a. Considered confidential to the extent allowed by law
 - b. Must be retained per retention schedule and may be disclosed
 - c. False complaints are a misdemeanor
2. Complaint filed with city clerk within 30 days of discovery of conduct and reviewed
 - a. City clerk conducts initial review
 - i. If it appears to meet requirements, sent to a “magistrate”. Magistrate must be a neutral municipal judge or attorney on a rotating list funded through a lawful appropriation
 - ii. If it is obviously defective, clerk can reject it
 - iii. City clerk notifies council, city manager and city attorney of referral or rejection but doesn’t provide the complaint
 - b. Magistrate review to determine if requirements are met, or is frivolous, or if presents plausible allegations
 - i. If satisfied, forwards a summary to the entire council through the clerk with a written finding as to sufficiency of allegations (But doesn’t provide the complaint)
 - ii. If not satisfied, rejects the complaint and notifies council, manager, and attorney (but doesn’t provide the complaint)
 - iii. If allegations could be a criminal violation, referred directly to law enforcement (even if not meeting minimum requirements)
3. Council investigation and review
 - a. Council considers the magistrate’s referral in public and may investigate it or assign a 3rd party investigator
 - b. All are expected to cooperate
 - c. Investigator provides a confidential report to council, with a public summary. (Investigator also required to notify law enforcement if conduct may be criminal.)
 - d. If the investigation finds a violation is more likely than not:

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- i. Council conducts a hearing or
 - ii. Assigns to a magistrate to conduct the hearing (if there aren't enough councilmembers eligible to vote)
 - e. If the investigation determines that a violation is not more likely than not, complaint dismissed
- 4. Hearing
 - a. Quasi-judicial with adequate notice of violations
 - b. Special counsel assigned to prosecute
 - c. Special counsel may be assigned to defend at city's cost if council consents
 - d. City must establish violation by clear and convincing evidence
 - e. Council then determines if violation occurred by a vote of two-thirds (2/3) of those present
- 5. Sanctions
 - a. Council would determine a sanction by a vote of a majority of those present
 - b. Expressly states no removal (though removal can occur by declaring a vacancy under the charter in some circumstances)
 - c. Severity depends on willfulness, intent or knowledge, overall impact, mitigating factors, limited discretion; incorporates escalating discipline for repeat offenses
 - i. Discipline to consider state of mind
 - 1. Unintentional/oversight
 - 2. Negligent
 - 3. Intentional (or repeat unintentional or negligent)
 - ii. Impact to consider
 - 1. Financial impact (cost)
 - 2. Impact to image of City
 - 3. Impact to image of City Council
 - 4. Impact to image of City Staff

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5. Impact on constituents
 6. Actual harm or damages
 7. Criminal
 8. Mitigating factors (apology, other)
 9. Aggravating factors (failure to participate in process; obstructive)
- iii. Discipline imposed (punishment intended to fit the severity of violation; discipline is not required to occur on a stepped basis)
1. Verbal admonition
 2. Written reprimand (published with minutes)
 3. Mandated training (may include cultural responsiveness and trauma sensitivity to cultural impacts)
 4. Censure (Resolution of City Council)
 5. Board/Committee assignments modified (including removal)
 6. Fine
 7. Invitation to resign from City Council