

**Council Policy #CP-25 Adopted
04/03/23 by Resolution 2023-34
Revised [] by Resolution []**

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 for Receiving and Reviewing Complaints.*
 - a. Complaints shall be made using a City-provided complaint form. Complaints must have specific information and be signed under penalty of perjury. Specifically, complaints must:
 - i. Be verified;
 - ii. Include the complainant's name and contact information;
 - iii. Identify the individual alleged to have violated policy; and
 - iv. 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.
 - b. Complaints shall be filed with City Clerk within 30 days of discovery of the alleged conduct and reviewed.
 - i. The City Clerk will conduct an initial review. If it appears to meet the complaint requirements above, then the complaint will be sent to a "magistrate". The magistrate must be a neutral municipal judge or attorney on a rotating list funded through a lawful appropriation. If the complaint is obviously defective, then the Clerk can reject it.

ii. In instances where a magistrate is sent a complaint, the magistrate will review it to determine if the requirements are met, is frivolous, or if the complaint presents plausible allegations.

1. If satisfied, the magistrate will forward a summary to the entire Council through the City Clerk with a written finding as to the sufficiency of allegations (but doesn't provide the complaint).

2. If not satisfied, the magistrate rejects the complaint and notifies the City Council, City Manager and City Attorney (but doesn't provide the complaint). The City Clerk will inform the complainant of this decision.

3. If allegations could be a criminal violation, the magistrate will refer the complaint directly to law enforcement (even if not meeting minimum requirements).

c. Council investigation and review

i. Council will consider the magistrate's referral in public and may investigate it or assign a 3rd party investigator.

ii. All Council members are expected to cooperate.

iii. An investigator will provide a confidential report to Council with a public summary. The investigator is also required to notify law enforcement if conduct in question may be criminal.

iv. If the investigation finds that a violation is more likely than not then:

1. Council will conduct a hearing; or

2. Council will assign the matter to a magistrate to conduct the hearing (if there are not enough councilmembers eligible to vote).

v. If the investigation determines that a violation is not more likely than not, then the complaint will be dismissed.

d. Hearings

i. Quasi-judicial with adequate notice of violations.

ii. Special counsel will be assigned to prosecute.

iii. Special counsel may be assigned to defend at City's cost if Council consents.

iv. The City must establish a violation by clear and convincing evidence.

v. Council then determines if violation occurred by a vote of two-thirds (2/3) of those present.

e. Sanctions

- i. Council would determine a sanction by a vote of a majority of those present.
- ii. Expressly states no removal (though removal can occur by declaring a vacancy under the charter in some circumstances).
- iii. Severity depends on willfulness, intent or knowledge, overall impact, mitigating factors, limited discretion; incorporates escalating discipline for repeat offenses.

1. Discipline to consider state of mind

- a. Unintentional/oversight
- b. Negligent
- c. Intentional (or repeat unintentional or negligent)

2. Impact to consider

- a. Financial impact (cost)
- b. Impact to image of City
- c. Impact to image of City Council
- d. Impact to image of City Staff
- e. Impact on constituents
- f. Actual harm or damages
- g. Criminal
- h. Mitigating factors (apology, other)
- i. Aggravating factors (failure to participate in process; obstructive)

3. Discipline imposed (punishment intended to fit the severity of violation; discipline is not required to occur on a stepped basis)

- a. Verbal admonition
- b. Written reprimand (published with minutes)
- c. Mandated training (may include cultural responsiveness and trauma sensitivity to cultural impacts)
- d. Censure (Resolution of City Council)

e. Board/Committee assignments modified (including removal)

f. Fine

g. Invitation to resign from City Council

Exhibit A
to Council Policy #CP-25

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)

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)