



Special Code of Ethics Revision Committee – Board of Representatives

Benjamin Lee, Chair

J.R. McMullen, Vice Chair

Committee Report

Date: Monday, December 21, 2020
Time: 7:00 p.m.
Place: This meeting was held remotely.

The Code of Ethics Revision Committee met as indicated above. In attendance were Chair Lee, Vice Chair McMullen; and Committee Member Reps. Curtis, Fedeli, Miller, Morson, Sherwood, Stella, and Zelinsky. Also present was Rep. de la Cruz.

Chair Lee called the meeting to order at 7:03 p.m.

Item No.	Description	Invitee(s) or Designees
1. COE30.005	ORDINANCE for publication; Amending Chapter 19 of the Code of Ordinances, Code of Ethics 08/05/20 – Submitted by Rep. Lee 09/01/20 – Held by Committee, as amended, 9-0-0 09/23/20 – Held by Committee, as amended, 9-0-0 10/27/20 – Held by Committee, as amended, 8-0-0	Held, as amended, 9-0-0

Committee members discussed the penalty to be applied if a complainant violates the requirement of confidentiality. The sole remedy of filing an ethics complaint against the complainant was discussed. It was noted that an ethics complaint could not be filed against a member of the public nor could a member of the Board of Ethics file such a complaint.

A motion to amend the third sentence of §19-14.D(2)(b) as follows was made, seconded, and approved by unanimous voice vote.

A violation of the requirement of confidentiality by the complainant, whether direct or indirect, shall be grounds for an ethics complaint to be filed against the complainant and may at the discretion of the Board of Ethics, ~~to be grounds for the~~ dismissal of the complaint.

A motion to amend the fourth sentence of §19-14.D(2)(b) as follows was made, seconded, and approved by unanimous voice vote.

Pending the outcome of the probable cause hearing investigation, no member of the Board of Ethics shall disclose his or her knowledge of such investigation to a third party, except to the extent necessary to conduct the investigation. The respondent shall have the right to appear and be heard and to offer any information by way of answer or denial of the allegations.

A motion to amend the first sentence of §19-14.D(3)(a) to change "Board members" to "Committee" was made, seconded and approved by unanimous voice vote.

A motion to amend the second sentence of §19-14.D(3)(a) to change to change "that" to "of" and delete "to believe" and "exists" was made, seconded and approved by unanimous voice vote.

Committee members discussed adding the requirement under state statute that the result of the Investigating Committee's findings be communicated within 3 business days. It was noted that the Board of Ethics is a volunteer board with minimal staff support. This change should be discussed with the members of the Board of Ethics when they provide comments and concerns with the proposed changes.

A motion to amend §19-14.D(3) to add a new subsection (b) as follows was made, seconded and approved by unanimous voice vote.

(b) Not later than three (3) business days after the termination of the investigation, the Board of Ethics shall inform the complainant and the respondent of its findings and provide them a summary of its reasons for making that finding. Such notification shall be either by registered or certified mail, or personal service by a sheriff, constable or indifferent person.

A motion to amend old §19-14.D(3)(b) to change it to subsection (c) as follows was made, seconded and approved by unanimous voice vote.

(bc) If the Investigating ~~Board members~~Committee determine that probable cause does not exist that the respondent has violated the Code of Ethics does not exist, they it shall dismiss the complaint and all records of the complaint will remain confidential, except upon the request of the respondent.

A motion to amend old §19-14.D(3)(c) to change it to subsection (d) as follows was made, seconded and approved by a vote of 8-1-0 (Reps. Lee, McMullen, Curtis, Miller, Morson, Sherwood, Stella and Zelinsky in favor; Rep. Fedeli opposed).

(ed) If the Investigating ~~Board members~~Committee determines that probable cause does exist that the respondent has violated the Code of Ethics does exist, theyit shall

i. submit a written report to the Chairperson of the Board of Ethics to initiate public hearings,

Committee members had an extensive discussion regarding the ability of respondents to enter into stipulated agreements prior to and after a finding of probable cause. It was noted that respondents may be weighing the risk of a finding of probable cause in deciding to enter into a stipulated agreement prior to a finding to keep their appearance before the Board of Ethics confidential. It was also noted that public stipulated agreements provide guidance for the future for others. This should be discussed with the Board of Ethics members.

A motion to amend old §19-14.D(3)(c) [new §19-14.D(3)(d)] to create subsection (ii) and add the following language was made, seconded and approved by a vote of 5-1-3 (Reps. McMullen, Curtis, Sherwood, Stella and Zelinsky in favor; Rep. Miller opposed; Reps. Lee, Fedeli, and Morson abstaining).

ii. Within five (5) business days make public the finding of probable cause. At such time the entire record of the investigation and the written report shall become public, except that the Board of Ethics may postpone the release of such public records for a period not to exceed fourteen (14) days for the purpose of

reaching a stipulation agreement with the respondent. The Respondent shall have the right to request postponement for the purpose of pursuing a stipulated agreement. Such postponement shall not be denied without good cause. Any such stipulated agreement shall require the approval of a majority of the non-Investigating Board members. The Board of Ethics is to ensure the public records are posted to the City's Board of Ethics web page within the required time frames. The Board of Ethics is to ensure Stipulated Agreements are posted to the City's website within five (5) business days of the agreement being signed by the Respondent.

A motion to amend old §19-14.D(3)(c) [new §19-14.D(3)(d)] as follows was made, seconded and approved by a vote of 4-1-4 (Reps. McMullen, Curtis, Sherwood, and Zelinsky in favor; Rep. Miller opposed; Reps. Lee, Fedeli, Morson, and Stella abstaining).

~~unless they and the respondent reach a stipulated agreement to resolve the complaint. Once probable cause has been determined, any such stipulated agreement shall require the approval of a majority of the non-Investigating Board members. Notwithstanding the foregoing, in the event an agreement is stipulated to or a withdrawal of the complaint is filed prior to a determination of probable cause, approval by a majority of the non-Investigating Board members shall not be required.~~ If no stipulated agreement is reached, public hearings shall commence within thirty (30) days of receipt by the Chairperson of the aforesaid written report.

A motion to approve Item No. 1, as amended, was made, seconded, and approved by unanimous voice vote.

Chair Lee adjourned the meeting at 9:28 p.m.

Respectfully submitted,
Benjamin Lee, Chair

This meeting is on [video](#).