

Chapter 1.79 Board of Ethics

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1.79.010 Board of ethics established – general provisions.

a. There is hereby established a Board of Ethics.

b. The Board shall be comprised of all members of the city council and the mayor. The mayor, or the vice-mayor in the mayor's absence, will serve as presiding officer of the Board. In the absence of both, the members of the Board shall elect a presiding officer from among its members.

c. The city attorney or other legal counsel for the Board may assist the Board at every stage of the proceedings, but shall have no vote.

d. A quorum of the Board shall be a majority of all members who are not excused for cause, such as being the complainant, the respondent, a witness, having a conflict of interest, or other cause for recusal. However, in no event may a quorum be less than three.

e. Decisions of the Board shall be adopted by a majority of the members who are qualified to act on the matter, where a quorum is present.

f. Unless the Board delegates such authority to another member or decides that no one shall have such authority, the presiding officer shall have authority to make procedural decisions between Board meetings on behalf of the Board. Examples of matters that may be decided by such delegate include scheduling hearings and other matters, establishing pre-hearing requirements and filing deadlines for motions, exhibits, witness lists, hearing briefs, and deciding other procedural matters.

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1.79.010(g)—1.79.030(a)

g. The presiding officer shall vote on every question, unless required to abstain for cause, and shall not have power to veto any action of the Board. (Ord. 08-31(S), 2008).

1.79.020 Function and authority. The Board of Ethics has authority to perform the following functions:

a. Investigate reported violations of Chapter 1.18.

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- b. Hear and decide written complaints of violations of Chapter 1.18.
- c. Hear and decide on requests for exceptions as specified in Chapter 1.18.
- d. Make findings and recommendations concerning sanctions, civil penalties and remedies for violations as provided in the code.
- e. Adopt recommended policies and procedures governing the board's conduct of business.
- f. Upon application of the complainant, respondent, or at the board's discretion, compel by subpoena the appearance and sworn testimony, at a specified time and place, of a person the board reasonably believes may be able to provide information relating to a matter under investigation by the board or the production of documents, records or other items the board reasonably believes may relate to the matter under consideration.
- g. Administer oaths and receive testimony from witnesses appearing before the board
- h. Request city agencies to cooperate with the board in the exercise of the board's jurisdiction
- i. Request the advising attorney to seek assistance of the superior court to enforce the board's subpoena
- j. Conduct investigative hearings in executive session, pursuant to notifications alleging violations of matters within the authority of the board. (Ord. 08-31(S), 2008).

1.79.030 Confidentiality; initial review.

a. Each written complaint of a violation of Chapter 1.18 received by the city clerk's office shall be assigned an identification number, which shall be used in lieu of names when referring to the complaint to maintain confidentiality. The city clerk and the board shall keep all written complaints of potential violation confidential during investigation and the board's deliberative process. Complaints of potential violation may be disclosed only to the staff member of the city clerk's office providing administrative support to the board, members of the board, and legal counsel. Upon receipt of a notification of potential violation, the board shall, at its next scheduled meeting or earlier, as determined by the board chair, review the complaint of potential violation in executive session and determine if further action on the notification of potential violation is warranted.

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1.79.030(b)—1.79.040(a)(2)

b. If the board determines the facts alleged in the notification of potential violation, even if proven, do not constitute a violation, or that the board lacks jurisdiction to address the complaint of potential violation, the board shall return the complaint of potential violation to the complaining party or it may recommend to the person filing the complaint that it be amended and re-filed. Notifications of potential violation returned without further action shall remain confidential.

c. If the board determines the allegation in a complaint of potential violation, if proven, may constitute a violation of a matter within the board's jurisdiction, the board shall:

1. Request and receive assistance from legal counsel to assist the board in all further deliberative processes, investigations and reports.
2. Give the respondent a copy of the complaint of potential violation, along with a copy of the outline of the board's process under this chapter, including notice that the respondent may choose to hold the proceeding in public and may be represented by legal counsel of respondent's choosing and at respondent's own expense; and
3. Notify both the person submitting the complaint of potential violation and respondent of the date(s) on which each may be requested to meet with the board, present documentary or testimonial evidence, and assist the board in resolving the potential violation. (Ord. 08-31(S), 2008).

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1.79.040 Disclosure of complaint of potential violation prohibited.

a. A complaint of potential violation of HCC Chapter 1.18 is confidential until the board completes a written report for distribution as a public record.

1. No person, including the complainant, shall knowingly disclose to another person, or otherwise make public in violation of this chapter, the contents of a complaint of potential violation filed with the board, unless:

i. The respondent elects to proceed in public; or

ii. The written report of the board is electronically published by the city clerk.

2. Breach of confidentiality required by any provision of this chapter is a violation of this chapter subject to punishment.

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1.79.040(a)(3)—1.79.050(a)(6)

3. A person filing a complaint of potential violation shall keep confidential the fact that the person has filed the complaint with the city, as well as the contents of the complaint of potential violation. If the board finds probable cause to believe that the person filing the notice of complaint violation has violated confidentiality under this chapter, the board shall immediately dismiss the complaint of violation. Dismissal under this subsection does not affect the right of the board or another person to initiate a proceeding on the same factual allegations by filing a complaint of potential violation.

4. Public disclosure resulting from corrective action under this chapter is not a violation of this subsection. (Ord. 08-31(S), 2008).

1.79.050 Conduct of investigation and standard of proof.

a. The board's investigation shall be conducted in executive session, unless the respondent requests to hold the board's investigation of written complaint of potential violation in public. The respondent and the person who filed the complaint, and their counsel, if any, may be present in executive session while the investigation is being conducted.

1. The respondent and the person who filed the complaint of potential violation may identify other individuals and documents that each would like the board to interview and review.

2. If an individual with information bearing on the complaint of potential violation is unwilling to come forward with information, the respondent and the person who filed the complaint of potential violation may each request the board to subpoena the person and any documentary evidence.

3. Persons appearing before the board may be represented by counsel or other person serving in a representative capacity.

4. The board may question the respondent, the person who filed the complaint of potential violation, and other persons appearing before the board.

5. The board may solicit questions and testimony from the person filing the complaint of potential violation, the respondent and other persons appearing for the purpose of providing information to the board. The board may solicit questions from counsel present to represent persons appearing before the board, but all questions during the board's investigation shall be posed through and by a member of the board. Consistent with due process, the board may limit or prohibit questions suggested to the board by or on behalf of persons appearing before the board.

6. The standard of proof to be applied by the board in determining a violation under HCC Chapter 1.18 is proof by a preponderance of the evidence.

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1.79.050(a)(7)—1.79.061

7. Technical rules of evidence do not apply, but the findings of the board shall be based upon substantial evidence, which means reliable and relevant information presented to the board.

8. The board's finding of a violation of HCC Chapter 1.18 must be supported by substantial evidence.

9. The board's findings shall not be binding in a subsequent sanctions proceeding.

10. When the board's investigation is conducted in executive session, the public shall be excluded and the session shall be electronically recorded. The recording shall be available for access as a public record after publication by the city clerk of the proposed resolution and settlement under subsection 1.79.070. (Ord. 08-31(S), 2008).

1.79.055 Deliberations of the board. Deliberations of the board shall be conducted in executive session.

a. The deliberations of the board shall not be recorded.

b. The respondent, the person filing the complaint, and their counsel shall be excluded from the deliberations. The Board's legal counsel may attend the deliberations.

c. The board shall reconvene in open session when deliberations are complete. (Ord. 08-31(S), 2008).

1.79.060 Board member disclosures. When an investigation is convened in executive session to determine whether the respondent has violated HCC Chapter 1.18, the Board members will be requested to disclose any conflict of interest, ex-parte communications, or other facts that may affect their qualification to hear the matter. After such a disclosure, the other members of the Board shall determine whether a member shall be excused for cause. (Ord. 08-31(S), 2008).

1.79.061 Duty of cooperation. A city official or the city manager subject to a complaint of a violation shall work cooperatively with the City Clerk to establish a hearing date and shall appear at the place and time set for the hearing, regardless of the respondent's intentions concerning defense or exercise of other rights. Failure to appear, except when failure results from a serious condition or event that prevented the respondent's appearance, is a breach of respondent's duties under this chapter and in itself may result in a summary finding of violation by the Board and imposition of remedies, penalties and disciplinary action under 1.79.070. For the purposes of this section, a "serious condition or event" may include a serious medical condition, a serious family emergency requiring the presence of the party, a death in the family, or other similar cause that prevents the respondent's attendance at the hearing. Nothing in this section shall prevent the rescheduling of a hearing for cause upon request of the respondent or the complainant. (Ord. 08-31(S), 2008).

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1.79.065—1.79.070(a)(iii)

1.79.065 Decisions on the record. Using the identification number of the complaint of potential violation to protect confidentiality, the board shall vote in open session on these questions:

a. Whether the board finds by a preponderance of the evidence one or more violations within the jurisdiction of the board; and

b. Whether the board recommends further administrative or remedial actions; and

c. What specific sanctions, corrective actions or referrals, if any, the board recommends pursuant to 1.79.070.

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d. If the board does not find a violation under HCC Chapter 1.18, the board shall prepare a confidential statement of closure listing the complainant and respondent, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the board in whole or in part, and the date of board closure. At the sole discretion of the respondent, the board may release the statement of closure as a public document. (Ord. 08-31(S), 2008).

1.79.067. Timely completion. The board shall complete action on a complaint of potential violation and investigations within 90 days of the filing of the complaint of potential violation. By a majority vote, the board may extend the completion date for up to an additional 90 days, or longer for good cause shown. (Ord. 08-31(S), 2008).

1.79.070 Sanctions, civil penalties and remedies.

a. Upon conviction for any violation of HCC Chapter 1.18 under criminal procedures or upon a determination of any violation of HCC Chapter 1.18 after an investigation conducted by the Board under this chapter, the Board may impose (or recommend in the case of subsection i.) as a sanction, penalty, or remedy any or all of the following, as appropriate to the seriousness of the violation:

i. A recommendation to the City Council that the office of a City Council member or the position of city manager be declared vacant for a serious violation that is (i) flagrant or (ii) willful and knowing. A recommendation that the office of the mayor be declared vacant may be made only if the violation justifies a declaration of vacancy under AS 29.20.280. Only the City Council may actually declare any of these positions vacant.

ii. A member of a board or commission may be removed from the board or commission.

iii. A public or private reprimand may be given to the official.

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1.79.070(a)(iv)—1.79.090(c)

iv. The official may be ordered to refrain from voting, deliberating, or participating in any matter in violation of HCC Chapter 1.18.

v. The committee assignments of an official may be revoked.

vi. An official's privilege to travel at city expense on city business may be revoked or restricted.

vii. A contract, or transaction or appointment, which was the subject of an official act or action of the city that involved the violation of a provision of chapter 1.18, may be voided.

viii. The official must forfeit or make restitution of any financial benefit received as a consequence of a violation of chapter 1.18.

ix. A civil fine of not more than \$1,000 per violation may be imposed. (Ord. 08-31(S), 2008).

1.79.080 Record of proceedings and public record. Permanent records and minutes shall be kept of Board's proceedings. Such minutes shall record the vote of each member upon every question decided in public. Every decision or finding shall immediately be filed in the office of the City Clerk, and shall be a public record open to inspection by any person. Every finding and recommendation shall be directed to the City Council at the earliest possible date. (Ord. 08-31(S), 2008).

1.79.090 Settlement of complaints.

a. The respondent in any case accepted for investigation may propose a resolution and settlement of the complaint. A proposed resolution and settlement will include the admitted violation of HCC Chapter 1.18; the remedial actions agreed to by the respondent subject to the city council's concurrence; any proposed preventive actions to be undertaken to avoid similar violation by respondent or others in the future; and other matters required by the board. b. A proposed resolution and settlement is subject to approval by the Board and has no effect unless

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approved by the Board. The Board will give the complaining person the opportunity to review and comment on the proposed resolution and settlement prior to approving it. Until approved by the Board, a proposed resolution and settlement must be kept confidential.

c. The proposed resolution and settlement becomes public record upon final approval by the Board. (Ord. 08-31(S), 2008).

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