



City of  
**ABERDEEN**

City Council Chambers  
1<sup>st</sup> Floor ~ Municipal Building  
123 South Lincoln Street  
Aberdeen, SD 57401

**BOARD OF ETHICS**

Administrative Staff  
City Attorney Office  
Tel. (605) 626-7025

**RULES OF PROCEDURE**

The Board of Ethics for the City of Aberdeen, South Dakota, hereby adopts the foregoing Rules Of Procedure to comply with Aberdeen City Code, Sec. 2-386, which requires the Board of Ethics to adopt procedural rules consistent with the requirements of due process of law, the rules of evidence, the intent of the Aberdeen City Code, Chapter 2 – ADMINISTRATION, and the City Charter, and subject to review by the City Council.

RULES OF PROCEDURE adopted and approved by the Board of Ethics at its regular meeting on September 8, 2017.

Dated this 8<sup>th</sup> day of September, 2017.

**BOARD OF ETHICS**

By: \_\_\_\_\_

Scott Kuck, Chairperson

ATTEST:

By: \_\_\_\_\_

Jon Schaff, Secretary

RULES OF PROCEDURE of the Board of Ethics reviewed and approved by the City Council at its regular meeting on September 17, 2017.

**CITY OF ABERDEEN**

\_\_\_\_\_  
Mike Levsen, Mayor

ATTEST:

\_\_\_\_\_  
Karl Alberts, Finance Officer

## Preamble

The Board of Ethics of the City of Aberdeen, in order to achieve the order and decorum that will expedite the transaction of official business, to maintain free and open discussion, and to ensure the honorable and just administration of the City of Aberdeen Conflicts Of Interest Policy, does hereby submit to be governed by the following rules and procedures:

## Section I Board Procedures

### **1. Meetings.**

- (a) The Board shall meet at least annually on the second Tuesday of September of each year and at the call of the chair.
- (b) A meeting shall be scheduled at the written request of any three members.
- (c) Notice to the public and Board members shall conform to rules prescribed by law.
- (d) A quorum of the Board shall be as provided by ordinance.

### **2. Officers.**

- (a) The chair and vice chair shall be elected at the first meeting of each calendar year by a majority vote. Nominees must be current Board members. Officers may be reelected.
- (b) The chair may vote on all matters. All committees and subcommittees shall be created and appointed by the chair.

### **3. Procedures.**

- (a) Any member who does not answer roll call shall be recorded as absent, unless excused by the chair. No alternate or proxy votes shall be allowed.
- (b) After two consecutive unexcused absences, the chair shall notify the mayor.
- (c) Minutes shall be kept of all committee and Board meetings. Minutes of closed meetings shall be confidential. Complaints, confidential advisory opinions, and all files relating thereto are confidential and may only be released by the chair after conferring with legal counsel. The accused, however, may choose to waive confidentiality, at which time all complaints, advisory opinions, and all files relating thereto are public records which may be released to the public upon request, as provided

by law.

(d) A roll call shall be ordered on any question at the request of any member. No discussion may take place during a roll call and all members shall vote on every matter put to vote unless excused by the chair.

#### **4. Board Business.**

(a) An agenda shall be in writing and available to the Board at least 48 hours in advance of each meeting. Any meetings of the Board shall be duly noticed as required by law.

(b) All minutes, findings, and rulings of the Board shall be prepared in written form and filed with the Board. Records shall be available for public scrutiny only as provided in these rules.

(c) Any member may file a minority report dissenting in whole or in part from a Board report.

(d) No Board rules shall be rescinded or amended without the concurrence of four members. The chair promptly thereafter shall apprise the City Council of any rescinded or amended Board rule. Board rules shall be subject to review by the City Council from time to time.

(e) The current edition of Robert's Rules of Order shall govern the proceedings of the Board in all cases to which they are applicable and in which they are not inconsistent with these rules, City Code, City Charter, or laws of the State of South Dakota.

## **Section II** **Advisory Opinions**

### **1. Request for Advisory Opinions.**

(a) To the extent authorized by law and by policy, the Board shall accept a request for an advisory opinion from any individual, specifically including former officials, either personally or on behalf of an organization or governmental body regarding the propriety of any matter or matters to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of the Board an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party.

(b) The requestor shall be guided by the opinion rendered.

(c) The request shall be in writing and state specifically the facts at issue. The requestor's supplemental interpretation of the facts may be made in writing or given

orally under oath to the Board at a meeting. No hypothetical questions will be considered by the Board.

(d) The Board shall consider the request at a regular or special closed meeting pursuant to statute and within 45 days of receipt of the request. It may confer with legal counsel or other staff with respect to any question.

(e) The Board shall render its opinion within ten (10) days of reaching the opinion and shall submit a written opinion to the requestor in letter or memorandum form. Unless confidentiality is requested, requests for advisory opinions, records obtained or filed in connection therewith, and advisory opinions rendered shall be open to public inspection. A summary of a non-confidential opinion shall be distributed immediately to such persons as the Board may determine.

## **2. Confidential Advisory Opinions.**

(a) A request for an advisory opinion may ask that it be kept confidential. In such case, the Board's consideration of the request shall be at closed meetings and opinions shall be confidential unless made public by the requestor. This does not preclude the Board from compiling or publishing summaries of confidential advisory opinions if no identification of the requestor or any organization identified in the opinion is made.

(b) No member of the Board may make public the identity of the individual requesting a confidential advisory opinion or of individuals or organizations mentioned in the opinion.

## **Section III** **Complaint Procedures**

### **1. Filing Complaint.**

(a) A complaint may be submitted to the Board by any person who is a resident of the City or is doing or attempting to do business with the City. The Board may also issue a complaint on its own motion or amend any complaint before it on its own motion.

(b) The complaint shall be in writing and on the standard form prescribed by the Board and shall bear a notarized signature.

(c) The complaint shall be filed with the City Attorney or, if against the City Attorney, with the City Manager. The complaint shall be in a sealed envelope, addressed to the Board of Ethics, and marked "COMPLAINT."

(d) The complainant may attach any supporting documentation to the complaint.

## **2. Processing Complaint.**

(a) Prior to acceptance of the complaint, the City Attorney, or the City Manager if filed therewith, under the direction of the Board, shall determine whether or not the complaint is in proper form and bears a notarized signature. If the complaint is not notarized or is not in proper form, it will be returned to the complainant for further action. If it is in proper form, the complaint shall be referred to the Board for initial action at a closed meeting, or open meeting if the accused has waived confidentiality.

(b) Within two (2) business days of receiving a complaint, the Board shall notify the complainant that the complaint will be presented to the Board at a meeting of the Board. The Board shall also provide a copy of the complaint and any other supporting documents to the accused, together with notice of the meeting. The Board shall also notify the accused that objections to the sufficiency of the complaint must be filed in writing at least five (5) days prior to the initial meeting on the complaint and that the accused must elect whether to waive confidentiality at least 48 hours prior to the first meeting.

(c) All documents, letters, pleadings, and other materials submitted to the Board by either the complainant or the accused shall be concurrently provided to the opposing party or legal counsel for the opposing party and a certificate of service shall be provided to the Board.

## **3. Consideration of Complaint.**

(a) At the initial meeting to consider the complaint, the Board shall determine whether or not it has jurisdiction to hear the complaint and whether the complaint is sufficient on its face.

(b) If the Board determines it does not have jurisdiction, the complaint shall be dismissed and notice of dismissal, stating reasons for dismissal, shall be provided to the complainant and the accused. If the Board determines that the complaint is insufficient on its face, the Board shall dismiss with leave to refile.

(c) If the Board determines that it has jurisdiction and that the complaint initially meets the sufficiency test, it shall accept the complaint.

(d) At the initial meeting to consider the sufficiency of the complaint on its face, the Board may confer with the City Attorney or other legal counsel of the Board's own choosing.

(e) If the Board determines the complaint is sufficient on its face and that it has jurisdiction over the complaint, the Board will then determine if it wishes to conduct an investigation of the allegations contained in the complaint. If the Board elects to conduct an investigation and proceed on the complaint, it shall promptly advise the accused of his/her rights on a form approved by the Board. The advise of rights will include a copy of

the Board's procedures, a description of the nature of the charges against the accused, and a description of those matters to be investigated by the Board, if any. The Board, in its discretion, may conduct a preliminary investigation into the allegations contained in the complaint to assist it in determining whether the complaint is sufficient and whether the Board has jurisdiction to render a decision on the complaint. All the rules pertaining to any investigations shall apply to any preliminary investigation conducted by the Board.

(f) If the Board determines that the complaint is insufficient, or a violation has not occurred, the complaint shall be dismissed and notice of dismissal with the reasons for the dismissal provided to the complainant and accused. If the Board determines that a complaint was frivolous, the Board shall so state.

(g) Prior to rendering its probable cause determination, the Board may consider statements and other written evidence from the complaining party and the accused.

#### **4. Investigation of Complaints.**

(a) Before an investigation is initiated, written notice shall be given to the accused and the complainant. The notice or advise of rights shall include the purpose of the investigation and the acts to be investigated.

(b) During all stages of investigation, the accused may be represented by counsel and/or a representative of his/her own choosing at his/her own expense. The City Attorney shall serve as legal counsel to the Board, unless the subject of a complaint. The Board may employ other legal counsel to assist the Board if circumstances dictate. A request for funds for legal services shall be directed to the City Manager or to the City Council, as appropriate.

(c) The Board may avail itself of any of the powers or procedures enumerated in the Conflicts Of Interest Policy or in the City Code.

(d) If a complaint has been investigated, a written report of the results of the investigation shall be prepared. The report will contain copies of any documents or other tangible evidence reviewed during the investigation. A copy of the investigation report along with any supporting documentation will be provided to the complaining party and the accused at least five (5) days prior to the meeting where the report is to be presented and considered by the Board.

(e) At the conclusion of each investigation, the Board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that an ethics violation has occurred. If the Board determines that no probable cause exists, it shall immediately send written notice of such determination to the accused and to the complainant.

(f) For complaints accusing a City Council member, the Board will prepare its

written findings and recommendations and present its report to the City Council. If the Board determines that no probable cause exists, then the matter is deemed concluded. If the Board determines that probable cause exists, then the City Council shall assume jurisdiction over the complaint.

#### **5. Hearing on Complaint Against Non-Council Member.**

(a) For complaints against a person other than a City Council member, if the Board determines that there is probable cause for believing that a violation of the Conflicts Of Interest Policy has been committed, its preliminary findings of fact and conclusions may include an order setting a date for a hearing to determine whether a violation of the Conflicts Of Interest Policy has occurred. The Board shall serve the order upon the accused.

(b) A hearing shall be commenced within thirty (30) days after the date it is ordered unless the accused petitions for and the Board consents to a later date. Prior to any hearing ordered under this section, the accused is entitled to full discovery rights, including adverse examination of witnesses who will testify at the hearing.

(c) The Board shall inform the accused or his/her counsel of exculpatory evidence in its possession.

#### **6. Action on Complaints.**

(a) At the conclusion of the Board's investigation for any matters not involving a City Council member, the Board shall prepare a written report including:

- (1) A summary of the investigation.
- (2) A complete record of any proceedings including but not limited to any testimony heard by the board.
- (3) A decision and recommendations, if any.

### **Section IV** **Other Board Business**

#### **1. Additional Functions.**

The Board, as it deems appropriate, and in a manner to be determined, may exercise the functions assigned to it by ordinance, including, but not limited to, recommending policy and ordinance revisions.

## **2. Executive Sessions.**

The Board may meet in executive session to discuss the qualifications, competence, performance, character, or fitness of any public officer or employee, or prospective public officer or employee, to the extent authorized by law.

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