

Your Committee, to which this proposal was referred, has amended the proposal to read as follows and recommends its adoption as amended.

CITY COUNTY COUNCIL

PROPOSAL NO. 22, 2010

CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

INTRODUCED: 01/11/2010

REFERRED TO: Ethics Committee

SPONSOR: Councillors Cain, Evans, Lutz, B. Mahern, Moriarty Adams and Smith

DIGEST: amends the Code and adopts procedures for investigations of allegations of violations of ethical standards for councillors

SOURCE:

Initiated by: Ethics Committee

Drafted by: Robert G. Elrod, General Counsell

LEGAL REQUIREMENTS FOR ADOPTION:

PROPOSED EFFECTIVE DATE:
Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: January 7, 2010

CITY-COUNTY GENERAL ORDINANCE NO. _____, 2010

A PROPOSAL FOR A GENERAL ORDINANCE amending the Revised Code and adopting procedures for investigations of allegations of violations of ethical standards for councillors.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Division 1 of Article XI of Chapter 151 of the Revised Code of the Consolidated City and County be, and is hereby amended by deleting the stricken-through text and inserting the underlined text, to read as follows:

Sec. 151-1101. Establishment and review of standards of ethical conduct for councillors.

Prior to March 1 of each year, the ethics committee shall review the standards of ethical conduct for councillors and devise and propose any amendments the committee deems necessary or appropriate.

Sec. 151-1102. Review of alleged violations.

In addition to the duties provided in section 151-1101, the ethics committee may do any of the following:

- (1) Receive and hear any complaint filed pursuant to Division 2 of this Article, which alleges any violation of the standards of ethical conduct for councillors, regardless of when the misconduct or violation is alleged to have occurred;
- (2) Obtain information with respect to any complaint filed pursuant ~~to this section~~ Division 2 of this Article and, ~~to that end as provided therein,~~ to compel the attendance and testimony of witnesses and the production of documents;
- (3) Recommend to the council that, because of his or her violation of the standards of ethical conduct for councillors, a councillor be subject to censure or such other punishment as the council may

deem proper, or the law may provide, as will best maintain, in the minds of the public, a good opinion of the conduct and character of councillors; and

(4) Act as an advisor to councillors on ethics questions.

Sec. 151-1103. Conduct of investigations.

~~(a) The ethics committee shall conduct investigations under this division Article as provided in this section Division 2 of this Article.~~

~~(b) Review of complaint. When a complaint is filed with the committee, a copy shall promptly be sent to the councillor alleged to have committed the violation, referred to as the respondent. After receiving a copy of the complaint, the respondent may submit a written response to the committee. If the committee determines the complaint does not allege facts sufficient to constitute a violation, the complaint shall be dismissed and the complainant and respondent notified. If the committee determines the complaint alleges facts sufficient to constitute a violation, it shall promptly investigate the alleged violation.~~

~~(c) Preliminary investigation. The committee may meet in executive session to conduct a preliminary investigation and to determine whether probable cause exists to support an alleged violation. If, after such preliminary investigation, the committee finds that probable cause does not exist to support an alleged violation, the allegation shall be dismissed. All committee investigations and records relating to the preliminary investigation shall be confidential, as authorized by IC 5-14-3-4(b).~~

~~(d) Hearing. If the committee finds that probable cause exists to support an alleged violation, it shall convene a hearing on the matter within thirty (30) days after making such determination. If a hearing is to be held, the respondent shall be allowed to examine and make copies of all evidence in the committee's possession relating to the allegations. At the hearing, the respondent shall be afforded appropriate due process protection, including the rights to be represented by counsel, to discovery, to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses.~~

~~(e) Findings. If the committee, based on a preponderance of the evidence, finds the respondent has violated the standards of ethical conduct for councillors, it shall state its findings in writing in a report to the president of the council. Such report shall be supported and signed by a majority of the committee members. If the committee finds the respondent has not violated the standards of ethical conduct for councillors, it shall dismiss the charges.~~

Sec. 151-1104. Recusal.

No member of the ethics committee shall participate in any matter under this division in which he or she is involved. ~~If a member must recuse himself or herself, that member's appointing authority shall appoint another member of the council to temporarily fill the vacancy.~~

SECTION 2. The Revised Code of the Consolidated City and County be, and is hereby amended by adopting a new Division 2 of Article XI of Chapter 151, to read as follows:

DIVISION 2 .PROCEDURES FOR INVESTIGATION OF ALLEGATIONS OF
VIOLATIONS OF ETHICAL STANDARDS

Sec. 151-1121. Allegations of violations of ethical standards.

(a) Any allegation of violations of the ethical standards of this chapter must be initiated by a Councillor in one of the following manners:

- (1) An allegation by a Councillor of violations of ethical standards by a Councillor during a meeting of the Council or any committee of the Council shall be made by the Councillor stating the allegation which shall be noted in the minutes. No further statement of allegation is required, but the Councillor making the allegation may file a further statement of allegation that complies with Sec. 151-1122,

(2) An allegation of violations of ethical standards by a Councillor with respect to conduct of a Councillor not during a meeting of the Council or a Council committee shall be made by filing a statement of allegation, that complies with Sec. 151-1122, with the Clerk of the Council.

(b) The allegation shall be referred to the chairperson of the Ethics Committee by the president of the Council if made during a Council meeting, by the chairperson of the committee if made during a committee meeting, or by the Clerk if filed with the clerk.

(c) As used in this division, "Complainant" means the councillor alleging the violation, and "Respondent" means the Councillor against whom the allegation is made.

(d) If the Respondent or the Complainant is the chairperson of the Ethics Committee, the member of the Committee, who has served the longest on the Council, shall fulfill the duties of the chairperson with respect to such statement of allegation.

(e) If a member of the Ethics Committee is the Complainant or the Respondent, such member or members shall recuse themselves from consideration of such statement of allegation. The Committee on Committees shall name another Councillor or Councillors of the Councillor's political party, to serve during the consideration of the statement of allegations.

(f) If the general counsel, chairperson of the Ethics Committee or the committee determines that the general counsel has a personal interest or involvement in the matters described in the Statement of Allegation, the committee shall retain another attorney to perform the duties assigned by this Chapter to the general counsel with respect to proceedings with respect to that Statement of Allegation.

Sec. 151-1122. Statement of Allegation.

The statement of allegation shall contain the following:

- (1) A description of the conduct by the Councillor that is alleged to be a violation of the ethical standards and the standard of conduct that applies,
- (2) The time and place the alleged conduct occurred,
- (3) The names of other persons present when the conduct occurred,
- (4) The full name, address and phone numbers of any persons who provided information to the Councillor upon which the statement of allegation is based,
- (5) Any documents which form the basis of the allegation, and
- (6) An affirmation under penalties of perjury that the statement of allegation is true or based on information considered in good faith to be correct.

Sec. 151-1123. Referral of Statement of Allegation.

(a) The Clerk of the Council, within ten days of the filing of the statement of allegation or notation of allegation by a Councillor in the minutes, shall refer the matter to the chairperson of the Ethics Committee. The clerk shall provide copies of the allegation to the members of the Ethics Committee and to the Councillor against whom the allegation is made.

(b) The chairperson of the Ethics Committee, shall set a date for the Ethics Committee to meet in executive session for an informal review of the matter by the Ethics Committee not later than thirty days after the filing under subsection (a).

(c) The chairperson shall forward the statement of allegation or notation in the minutes to the general counsel, who shall issue an opinion under Sec. 151-1124.

(d) Notice of the action taken by the chairperson shall be given to the Complainant, the Respondent and the members of the Ethics Committee.

Sec. 151-1124. Filings prior to informal review.

(a) After receiving the statement of allegation for review under Sec. 151-1123, the general counsel shall:

- (1) inquire into the facts and law regarding the statement of allegation, and
- (2) issue an opinion on whether the statement of allegations, if true, warrants a formal hearing or does not raise a substantial issue of violation of ethical standards.

(b) The general counsel shall prepare the opinion within the time specified by the chairperson of the Ethics Committee, which shall be not later than 5 days prior to the informal hearing, and deliver copies of such report to the members of the Ethics Committee, the Complainant, and the Respondent.

(c) The Respondent may file a response to such report with the Clerk of the Council which response may include a proposed agreed sanction. Such response shall be forwarded to the members of the Ethics Committee and to the Complainant.

(d) Should the Respondent propose a sanction, the Complainant may file, with the Clerk of the Council, a statement in support or opposition to the proposed agreed sanction.

(e) The statement of allegation, the opinion of the general counsel, and any other documents filed pursuant to this section are deemed information prepared for an executive session on a personnel matter and are hereby determined to be exempted from disclosure under IC 5-15-3-4(b). Upon proper request, the clerk shall disclose that a statement of allegation has been filed and the action of the chairperson under Sec. 151-1123.

Sec. 151-1125. Informal Hearing.

(a) The Ethics Committee may convene an executive session to deliberate on the statement of allegation and filings under Sec. 151-1124.

(b) The Ethics Committee shall vote on whether or not to proceed with a formal hearing at a meeting open to the public. If the committee cannot reach a majority decision on how to proceed within forty-five (45) days after the executive session, the matter shall be scheduled for a formal hearing before the committee by the chairperson.

(c) If the Ethics Committee agrees to proceed without a formal hearing, it shall either:

- (1) Dismiss the statement of allegation for failure to allege a substantial issue of violation of ethical standards, or
- (2) Recommend the agreed sanction as proposed by Respondent.

(d) If the Ethics Committee votes to proceed with a formal hearing on the statement of allegation, the hearing shall be scheduled before the committee not later than thirty days after the informal review, unless the Respondent agrees to a later date.

(e) If the committee dismisses the allegations, the information reviewed in executive session shall remain confidential and exempted from public access. If a sanction is recommended or a formal hearing scheduled, the information reviewed in executive session shall not remain confidential and will be available for public access.

Sec. 151-1126. Formal hearing on statement of allegation.

(a) The general counsel shall preside over the Ethics Committee during the formal hearing, but shall have no vote. Whenever the Complainant, Respondent or a committee member objects to a ruling of the presiding officer, such ruling may be appealed to the committee, which ruling shall be sustained unless a majority of the committee vote to overrule the presiding officer.

(b) Respondent may file a formal response to the statement of allegations, if filed five days before the start of the hearing.

(c) Complainant shall present evidence to support the statement of allegation. Complainant may be represented by counsel employed by Complainant.

(d) Respondent may present evidence in response to Complainant's evidence. Respondent may be represented by counsel employed by Respondent.

(e) The hearing shall be open to the public, and a transcript of the hearing preserved.

Sec. 151-1127. Action after formal hearing.

(a) At the conclusion of the formal hearing, the Ethics Committee shall adopt a recommendation for the full Council.

(b) The committee may recommend:

- (1) That the Complainant failed to prove Respondent was in substantial violation of the ethical standards, and that no sanction be imposed,
- (2) That sanction be imposed as proposed by the Respondent,
- (3) That the Respondent be censured,
- (4) That the Respondent forfeit council offices or committee assignments,
- (5) That the Respondent forfeit per diem compensations, or
- (6) That the Respondent be removed from office by the council.

(c) If the committee cannot reach a majority decision on the adoption of a recommendation, the matter shall remain pending before the Ethics Committee until a majority adopts a recommendation.

(d) Any recommendation adopted by the Ethics Committee shall be reported in writing to the Council and a proposal for a resolution adopting such recommendation placed on the agenda of the Council at its next or subsequent meeting that is held more than fifteen days after the Ethics Committee adopts its recommendation.

Sec. 151-1128. Action by council.

(a) Respondent has the right to appeal to the Council any recommendation by the Ethics Committee and request a hearing. Such request shall be filed with the Clerk of the Council within 10 days after the Ethics Committee adopts its recommendation. On filing of the appeal the Clerk shall forthwith prepare a transcript or video record of the committee hearing, along with all exhibits and minutes of the hearing and committee deliberations and deliver copies to each councillor.

(b) If an appeal is filed by Respondent, action on the committee report and resolution shall be postponed until after the hearing is concluded.

(c) At the first regular meeting of the council after an appeal is filed, the council by simple majority vote of those voting shall decide whether the appeal shall be held on the record of the Ethics Committee hearing or a hearing de novo shall be held. The president of the Council shall schedule such hearing before the Council at a regular or called meeting within 30 days of the filing of the request by Respondent.

(d) If the council schedules a hearing on the record, no additional evidence shall be received at the hearing. The Respondent and Complainant, in that order, shall each have fifteen minutes to present arguments on the appeal.

(e) If a hearing de novo is held:

- (1) the president, or if president be the Respondent, the vice-president, may preside or may appoint the general counsel or another qualified person to preside; and if the person who is appointed to preside is not a Councillor, such person shall not be entitled to vote and whenever the Complainant, Respondent or a council member objects to a ruling of the presiding officer, such ruling may be appealed to the council, which ruling shall be sustained unless a majority of the council vote to overrule the presiding officer;
- (2) the presiding officer, with consent of the Council, may establish reasonable limits for presentation and closing arguments;
- (3) Complainant shall present evidence to support the statement of allegation and may be represented by counsel employed by Complainant;
- (4) Respondent may present evidence in response to Complainant's evidence and may be represented by counsel employed by Respondent;
- (5) Complainant and Respondent shall in order be allowed closing arguments; and
- (6) the hearing shall be open to the public.

(f) The Council shall act on the recommendation of the Ethics Committee by adopting the recommendation, modifying the recommendation, or determining that no action be taken.

Sec. 151-1129. Procedural matters.

(a) The general counsel, Complainant or Respondent may request the Ethics Committee to issue subpoenas for the production of documents or attendance of witnesses at the formal hearing, pursuant to IC 36-3-4-24.

(b) The Ethics Committee may grant or deny requests for subpoenas at its discretion by majority vote.

(c) Should a person fail to comply with a subpoena issued by the committee, the committee shall refer the matter to the Council for enforcement pursuant to IC 36-3-4-24(d).

(d) The Ethics Committee or the Council, when the matter is pending before the Council, may at any time postpone proceedings with respect to a statement of allegation if it finds:

- (1) the prosecutor or other law enforcement agency requests deferring the matter pending investigation or court proceedings, or
- (2) the Respondent is likely to assert a privilege against self-incrimination which would materially affect the Complainant's ability to produce evidence of the alleged ethical violation.

SECTION 3. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2010, at _____ p.m.

ATTEST:

Ryan Vaughn
President, City-County Council

Melissa Thompson
Clerk, City-County Council