



Special Code of Ethics Revision Committee – Board of Representatives

Benjamin Lee, Chair

J.R. McMullen, Vice Chair

Committee Report

Date: Tuesday, September 1, 2020
Time: 7:00 p.m.
Place: This meeting was held remotely.

The Code of Ethics Revision Committee will meet 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	Committee Action
1. COE30.005	ORDINANCE for publication; Amending Chapter 19 of the Code of Ordinances, Code of Ethics 08/05/20 – Submitted by Rep. Lee	Held, as amended

Committee members discussed the process to be followed. The ordinance will be reviewed and revised in sections, beginning with sections focusing on process. The committee worked from the version of the ordinance submitted as LR30.089.

Committee members first discussed changing Subsection 19-14.C(1)(e) to add language as follows:

The Board of Ethics may amend or revoke any advisory opinion. Written notification of such amendment or revocation shall be made to the party who originally requested the advisory opinion, the Mayor, Corporation Counsel, President of the Board of Representatives, and Town and City Clerk within thirty (30) days of such amendment or revocation.

A motion to approve this change was made, seconded and approved by a vote of 9-0-0 (Reps. Lee, McMullen, Curtis, Fedeli, Miller, Morson, Sherwood, Stella and Zelinsky in favor).

Committee members next discussed adding the following new Subsection 19-14.C(1)(f) :

(f) Advice of Corporation Counsel is not a substitute for an Advisory Opinion from the Board of Ethics and cannot be used as an absolute defense in the investigation of an ethics violation. Corporation Counsel's opinion is not binding on the Board of Ethics

Committee members discussed that

- the Corporation Counsel should not issue advisory opinions
- The Board of Ethics should not consider advice from Corporation Counsel as binding
- Corporation Counsel should be able to provide advice, even if it is not binding
- No advice of any outside party should be binding

The language of the proposed subsection was modified to read:

(f) Advice from other sources, including Corporation Counsel, shall not be a substitute for an Advisory Opinion from the Board of Ethics and may not be used as an absolute defense in an investigation of an ethics violation. Advice from other sources shall not be binding upon the Board of Ethics.

A motion to approve this change was made, seconded and approved by a vote of 9-0-0 (Reps. Lee, McMullen, Curtis, Fedeli, Miller, Morson, Sherwood, Stella and Zelinsky in favor).

The Committee next discussed deleting Subsection 19-14.C(2).

(2) Personal advice. Upon the written request from any officer or employee to obtain personal advice for that individual with respect to potential future official actions and this Code of Ethics, and a request that such advice or hearings be kept confidential, the Chairperson of the Board may request that one (1) member hear any such request and offer advice with respect to this Code of Ethics pursuant to that specific request. Said board member may offer such advice without holding open public hearings concerning the request, and, provided that the employee or officer appears to be acting in good faith and that no crime has been or will be committed, shall maintain any requested confidentiality, but only to the extent permitted by law and unless compelled by legal process. Such advice shall not be binding on the officer or employee, or the Board of Ethics. Reliance on such advice shall not be a defense in any action or proceedings brought under the provisions of this Code of Ethics, although the Board may consider such advice in any such proceedings. The member so appointed for the purpose of giving such advice shall recuse himself or herself from any and all future action concerning the said officer or employee, including, but not limited to, ethics complaints or requests for advisory opinions on the issue or issues involved in the specific request.

Items discussed included:

- People should be seeking advice through the advisory opinion process; this is not transparent
- People can always speak to members of the Board of Ethics
- There may be personal matters that people don't want made public
- People might want to speak to members of the Board prior to seeking an advisory opinion as a first step
- Deleting this would eliminate the clarity that people can speak to members of the Board of Ethics
- This communication would still be subject to FOIA, hence confidentiality is illusory. Other committee members noted that the probability of a FOIA request regarding a personal request for advisory opinion is quite low
- Deleting this section may encourage people to go through the advisory opinion process
- By contrast, as drafted, someone would need the permission of the Board chair to speak to a member of the Board; and might be told it is or is not worth proceeding
- In that people can get informal advice in any event, can still do this, why remove the section

- Some committee members have found from personal experience that a short conversation can be valuable
- As noted, there may be embarrassing situations which people don't want in the public eye
- Maybe the Ethics Board could report to the Board of Representatives how often this occurs in its annual report.

A motion to approve this change was made, seconded and approved by a vote of 5-4-0 (Reps. McMullen, Curtis, Sherwood, Stella and Zelinsky in favor; Reps. Lee, Fedeli, Miller and Morson opposed).

A motion to change Subsection 19-9.A to reduce gifts to \$0 was made and did not receive a second.

A motion to add Subsection 19-2.D as follows:

Nothing in this section can be used as the basis for an ethics complaint

was made, seconded and subsequently withdrawn.

Chair Lee noted that he would like proposed changes submitted in writing prior to the meeting, along with any research regarding the experience of other municipalities as applicable.

Chair Lee adjourned the meeting at 8:53 p.m.

Respectfully submitted,
Ben Lee, Chair

This meeting is on [video](#).