



*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 amended 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, as amended, adopted, and approved by the Board of Ethics at its annual meeting on September 1, 2020.

Dated this 8<sup>th</sup> day of September, 2020.

**BOARD OF ETHICS**

By:   
Scott Kuck, Chairperson

ATTEST:

By:   
Heidi Fiedler, Secretary

RULES OF PROCEDURE, as amended, of the Board of Ethics reviewed and approved by the City Council at its regular meeting on September 14<sup>th</sup> 2020.

**CITY OF ABERDEEN**

  
Travis Schaunaman, 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 in 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 annual meeting 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 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 person accused of a violation (hereafter the "respondent"), 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.

(e) Unless otherwise specified, use of the word “days” throughout these rules shall mean calendar days, with intervening weekends and holidays included. Any period of time ending on a weekend or legal holiday shall be extended to the next business day.

(f) Appendix A to these rules provides a summary of relevant action dates and periods set forth in these rules, the Conflicts Policy, or the City Code.

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

(a) An agenda shall be in writing and available to the Board at least 24 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 City Attorney 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) Rules of order adopted by the Board 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.

(f) The City Attorney shall serve as legal counsel to the Board unless a council member or the City Attorney is the subject of a complaint, may be a witness in the matter, or if circumstances otherwise dictate. The Board may employ other legal counsel to assist the Board. A request for funds for legal services shall be directed to the City Manager or to the City Council, as appropriate.

(g) The City Attorney office shall act as Board Clerk for the Board, unless a council member or the City Attorney is the subject of a complaint, may be a witness in the matter, or if circumstances otherwise dictate, in which case the City Manager shall designate his office or another person to act as Board Clerk for purposes of such complaint.

**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 forty-five (45) days of receipt of the request. It may confer with legal counsel or other staff with respect to any question.

(e) Within ten (10) days of reaching its opinion, the Board 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 on any matter which would tend to defame or prejudice the character or reputation of any person, or as otherwise permitted by law, may be kept confidential. In such case, the Board's consideration of the request may be at closed meetings and opinions may 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 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.

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

**2. Processing Complaint.**

**(a) Acceptance of complaint:**

(1) **Proper form:** Prior to acceptance of the complaint, the City Attorney, or the City Manager if filed therewith, shall confirm the complaint is in proper form and bears a notarized signature, and promptly remit it to the Board Clerk for acceptance. If the complaint is not notarized or is not in proper form, it will be returned to the complainant for further action.

(2) **Advise Chair:** If the complaint is in proper form, the Board Clerk shall advise the Board Chair of the acceptance of the complaint.

(3) **Copies to respondent:** Copies of the complaint, any supporting documents therewith, and these rules shall be provided to the respondent within five (5) days of acceptance of the complaint.

**(b) Initial meeting; advise of rights of respondent:**

(1) **Initial meeting call:** Within five (5) days of acceptance of the complaint, the Board Chair shall call a meeting for initial action on the complaint at a closed meeting, or open meeting if the respondent has waived confidentiality. The initial meeting of the Board shall be held within thirty (30) days of the date of the acceptance of the complaint, except for good cause.

- (2) **Copies to Board:** The Board Clerk shall provide copies of the complaint, and any answer or objections thereto, to the members of the Board prior to the initial meeting.
- (3) **Advise of rights:** The City Attorney or Board Clerk shall advise the respondent of his or her rights prior to the initial meeting. The advise of rights shall include a copy of the Board's procedures and an election to waive confidentiality.

(c) **Notice of initial meeting:** A notice of the initial meeting shall be provided as follows:

- (1) Within five (5) days of acceptance of a complaint, the Board Clerk shall notify the respondent and the complainant of the initial meeting time of the Board to consider the complaint.
- (2) The notice shall inform the respondent that any answer or objections to the sufficiency of the complaint must be filed with the Board Clerk in writing at least five (5) days prior to the initial meeting on the complaint.
- (3) The notice shall state that the respondent may elect to waive confidentiality at any time during the proceeding.
- (4) The notice shall state that the Board is not a court of law but the respondent and complainant may be represented by legal counsel or a lay representative of their own choosing and expense during all stages of the proceeding.
- (5) The notice shall state that the Board will determine if the facts alleged in the complaint establish probable cause that there has been a violation of the Policy. "*Probable cause*" means a determination by the Board, upon the evidence and information disclosed during the proceedings, that the respondent more likely than not violated the Policy. The complainant bears the burden of proving by a preponderance of the evidence the allegations in the complaint.

### **3. Filing of papers.**

(a) The respondent and complainant shall file with the Board Clerk all documents, letters, pleadings, and other materials (hereafter collectively referred to as "papers") for consideration by the Board. The Board Clerk shall provide copies of the filed papers to the Board and the non-filing person.

(b) At the beginning of the proceedings, the respondent and complainant shall

provide the Board Clerk with their contact information, including email address, for purposes of receiving all filed papers and notices. Such persons thereafter may file with, and receive, all papers and notices regarding the matter from the Board Clerk via email.

(c) Unless a longer time is permitted or required by these Rules, all papers must be filed with the Board Clerk at least two (2) business days before a meeting of the Board so such papers may be promptly provided by the Board Clerk to the Board and to the non-filing person before the meeting. Any paper or other item not timely filed with the Board Clerk will not be considered by the Board except for good cause.

#### **4. Consideration of Complaint.**

(a) At the initial meeting to consider the complaint, the Board shall determine if it has jurisdiction to hear the complaint and if the complaint is sufficient to allege a violation of the Policy. If the Board determines it lacks jurisdiction or that the complaint is not sufficient to allege a violation of the Policy, the Board shall dismiss the complaint.

(b) If the Board determines the complaint is sufficient on its face and that it has jurisdiction, the Board shall receive information from the complainant and the respondent regarding the matter, and it may conduct an investigation of the allegations contained in the complaint.

(c) If the Board determines that 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 respondent. If the Board determines that a complaint was frivolous, the Board shall so state.

(d) Prior to rendering its probable cause determination, the Board may consider all statements and written evidence from the complainant and the respondent.

#### **5. Investigations.**

(a) The Board, in its discretion, may conduct investigations at any stage of the proceeding.

(b) Before an investigation is initiated, notice shall be given to the respondent and the complainant either verbally at the meeting or in writing. The notice of investigation shall include the purpose of the investigation and the acts to be investigated.

(c) The Board may avail itself of any of the powers or procedures enumerated in the Policy or in the City Code for purposes of any investigation.

(d) A written report of the results of any 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 complainant and the respondent at least five (5) days prior to the meeting where the report is to be presented and considered by the Board.

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

(a) For a complaint against a person other than a City Council member, if the Board determines that there is probable cause 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 respondent.

(b) A hearing shall be commenced within thirty (30) days after the date it is ordered unless the respondent petitions for and the Board consents to a later date. The respondent shall have the right to present additional information and witnesses and to examine any information and witness offered against the respondent.

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

## **7. Action on Complaints.**

(a) The Board shall complete its review of the complaint and report its decision to the City Council in writing not more than sixty (60) days after the complaint is presented to it, except for good cause.

(b) At the conclusion of the Board's review of all information received upon a complaint against a City Council member:

- (1) The Board shall determine whether probable cause exists to believe that an ethics violation has occurred and prepare a written report with findings of fact and conclusion for each violation, and recommended sanctions, if any.
- (2) The Board shall promptly send written notice of such determination to the respondent and to the complainant.
- (3) The Board shall present its report in writing to the City Council.
- (4) 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.

(c) At the conclusion of the Board's review of all information received on a complaint not involving a City Council member, the Board shall prepare a written report

including:

- (1) A summary of the investigation.
- (2) A summary of any proceedings including but not limited to any testimony heard by the Board.
- (3) A decision and recommendations, if any.
- (4) The Board shall provide its report to the respondent and, as appropriate, to the City Manager or City Council.

#### **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 consult with its legal counsel and 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.

[End of rules. Appendix A to follow.]

**APPENDIX A**  
**TIMELINE SUMMARY OF ACTION DATES**

As used herein, “days” shall mean calendar days, with intervening weekends and holidays included. Any period of time ending on a weekend or legal holiday shall be extended to the next business day. In calculating the number of days for action on an item, the day of acceptance of a complaint or of the filing of a request is not counted.

**Ethics Complaint:**

<b>ACTION ITEM</b>	<b>PERIOD FROM DATE OF FILING</b>	<b>RULES REFERENCE</b>
Acceptance of complaint	None	Sec. III.2(a)(1)
Board Clerk to advise Chair complaint in proper form	Within 5 days of acceptance	Sec. III.2(a)(2)
Complaint & Rules provided to respondent	Within 5 days of acceptance	Sec. III.2(a)(3)
Chair call for Initial Meeting	Within 5 days of acceptance	Sec. III.2(b)(1)
Notice of Initial Meeting provided to parties	Within 5 days of acceptance	Sec. III.2(c)(1)
Initial Meeting of Board to consider complaint	Within 30 days of acceptance, except for good cause	Sec. III.2(b)(1)
Additional meeting(s) of Board	To be determined by Board	Sec. III
Answer or objections filed by respondent	Within 5 days of Initial Meeting	Sec. III.2(c)(2)
Advise of Rights to respondent	Before Initial Meeting	Sec. III.2(b)(3)
Filing of “papers” with Board Clerk	At least 2 business days before meeting	Sec. III.3(a)&(c)
Notice of investigation by Board provided to parties	Before investigation initiated	Sec. III.5(b)
Investigation report provided to parties	At least 5 days before meeting	Sec. III.5(d)
Written report to City Council and notice of determination to parties	Within 60 days after Initial Meeting, except for good cause	Sec. III. 7(a),(b)&(c)

**Advisory Opinion Request:**

<b>ACTION ITEM</b>	<b>PERIOD FROM DATE OF FILING</b>	<b>RULES REFERENCE</b>
First meeting of Board to consider request	Within 45 days	Sec. II.1(d)
Additional meeting(s) of Board	To be determined by Board	Sec. II.1(d)
Issuance of written opinion to requestor	Within 10 days of Board reaching its opinion	Sec. II.1(e)