

Draft Ethics Commission and Enforcement Procedures

Draft Ethics Commission Composition, Terms, and Method of Appointment

Appointment and terms of members

- The Ethics Commission shall be composed of five (5) members.
 - Two (2) members shall be appointed by the Mayor
 - Two (2) members shall be appointed by majority vote of the City Council
 - One (1) member shall be appointed by majority vote of the mayoral and council appointees
- Except for initial appointments to the Ethics Commission, as described below, each appointment shall be for a term of three (3) years; however, a member shall serve until his or her successor is duly appointed and qualified.
- A member appointed to fill a vacancy shall serve for the duration of the unexpired term.
- When making initial appointments to the Ethics Commission, the Mayor shall designate one of the mayoral appointees to serve an initial term of one (1) year and the other to serve an initial term of two (2) years.
- When making initial appointments to the Ethics Commission, the City Council shall designate one of the council appointees to serve an initial term of one (1) year and the other to serve an initial term of two (2) years.
- No member shall serve more than two (2) consecutive terms.
 - Partial terms of less than two (2) years duration shall not count as a term for the purposes of determining term limits.
 - No person who has served two (2) consecutive terms shall be eligible for a subsequent appointment unless at least three (3) years have passed since the end of their most recent term on the Ethics Commission.

Qualifications of members

- No more than one (1) mayoral appointee may be affiliated with a single political party.
- No more than one (1) council appointee may be affiliated with a single political party.
- Appointee political affiliations will be determined as specified in IC 36-1-8-10.
- At no time may a member be:
 - An elected official, appointed official, or employee of the City of Muncie;
 - A member of any other city board, commission, or committee;
 - An officer or employee of any political party; however, this shall not include an individual who is elected or appointed to serve as a delegate to a party convention;
 - A person **who is an owner, officer, director, or partner of a business organization which has been paid by the City and/or any of its agencies an aggregate amount exceeding \$X in the previous calendar year** ~~with a business relationship with an agency.~~ **[Alternatively, just strike this restriction.]**
- At all times a member must be a resident of the City of Muncie.

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- A member may be removed only for cause and only upon a two-thirds majority vote of the City Council.

Draft Jurisdiction, Authority, Administration, and Enforcement

Section 1. Jurisdiction.

- (A) The Ethics Commission shall have jurisdiction over current and former elected officials, appointed officials, individuals appointed to boards and/or commission of the City of Muncie, and officers and employees of the City of Muncie with respect to the interpretation and enforcement of the City of Muncie Code of Ethics. However, a complaint or investigation before the Ethics Commission may be stayed if the matter is subject to pending litigation or the Commission has been notified by law enforcement that a criminal investigation is underway.
- (B) The Ethics Commission may only consider complaints that are filed within two (2) years of the suspected violation of the Code of Ethics, unless the complainant did not know or had no reason to know of the suspected violation within the two (2) year period, in which case the Ethics Commission may consider a complaint filed within one (1) year of the complainant obtaining knowledge of the suspected violation.

Section 2. Authority.

The Ethics Commission may do any of the following upon a majority vote of its Members:

- Issue an advisory opinion upon request as to the application of the Code of Ethics to a specific situation.
- Initiate and conduct investigations of complaints alleging violations of the Code of Ethics.
- Dismiss complaints alleging violations of the Code of Ethics without investigation.
- Following an investigation, issue public findings and conclusions on alleged violations of the Code of Ethics.
- Refer alleged violations of the Code of Ethics to an appropriate law enforcement agency.
- Upon a finding of a violation of the Code of Ethics, refer the matter to Corporation Counsel for enforcement proceedings in accordance with **applicable law** ~~Chapter 36 of the City of Muncie Code of Ordinances and Ind. Code § 36-1-6-11.~~
- Compel the production of documents and other evidence.
- Compel the attendance and testimony of witnesses.
- Adopt rules to implement the Code of Ethics and provide for its enforcement.

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- Prepare and/or provide any forms or other documents necessary for compliance with the Code of Ethics.
- Retain legal counsel and/or request the assistance of the Corporation Counsel and/or Legal Counsel for the Common Council to investigate a complaint alleging violations of the Code of Ethics and to issue findings and conclusions.
- Inform individuals or entities of a failure to file any document required by the Code of Ethics.
- Receive, review and file any document required by the Code of Ethics.
- Recommend appropriate corrective action and/or sanctions for a violation of the Code of Ethics.

Section 3. Records and Meetings.

Generally, all meetings of the Ethics Commission shall be open to the public provided, however, that all complaints submitted to the Ethics Commission may be initially reviewed in executive session pursuant to Indiana Code § 5-15-1.5-6.1(b)(2)(6). All records received or created by the Ethics Commission are subject to the Indiana Access to Public Records Act and shall be either disclosed or withheld in accordance therewith.

Section 4. Complaint Procedure.

- (1) Any individual may file a complaint. All complaints shall be in writing and signed by the complainant. The complaints shall state the nature of the alleged violation, the date, time and place of each occurrence, and the name of the individual charged with the violation (hereinafter referred to as “respondent”). All complaints shall be filed with the Ethics Commission in the manner prescribed by the Ethics Commission. If the complaint alleges a criminal act, the complaint shall be forwarded to an appropriate law enforcement agency.
- (2) All complaints shall be assigned a file number that will be used to identify the complaint. The respondent shall be provided with a copy of the complaint within seven (7) days of filing. All complaints shall be referred to and identified solely by complaint number unless or until the Ethics Commission approves further investigation of the complaint at a public meeting.
- (3) Within 15 days of receipt of a complaint, the Ethics Commission shall meet in executive session to receive information regarding the complaint and discuss whether the complaint warrants further investigation. ~~The respondent may be invited to attend the executive session in the discretion of the Ethics Commission.~~
- (4) Within 30 days of the executive session held in accordance with subsection (2) above, the Ethics Commission shall hold a public meeting for the purpose of taking action on the complaint. At the public meeting, the Ethics Commission shall take one or more of the following actions by majority vote:

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- a. Determine that the allegations are frivolous or inconsequential and dismiss the complaint;
- b. Determine that the allegations have been handled appropriately by the appropriate public official and/or department of the City and dismiss the complaint;
- c. If the violation alleged in the complaint is undisputed, issue recommendations for corrective action.
- d. Determine that the complaint does not allege sufficient facts to determine whether there is a violation of this Code of Ethics and dismiss the complaint;
- e. Forward a copy of the complaint to the appropriate elected official, appointed official, and/or department of the City of Muncie and either stay the complaint proceedings pending further action or dismiss the complaint;
- f. Determine that further investigation is necessary and stay the complaint proceedings until further information is gathered; or
- g. Determine that probable cause exists to support a violation of the Code of Ethics and schedule a public hearing on the matter.

The respondent shall be notified within 10 days of the decision of the Ethics Commission.

- (5) If the Ethics Commission determines that further investigation is necessary, it shall determine the scope of the investigation and seek legal counsel to assist if necessary.
- (6) If a hearing is scheduled on a complaint, the respondent shall be provided copies of all evidence in the possession of the Ethics Commission. In addition, the respondent shall have the right to be represented by counsel, conduct discovery, call witnesses, cross-examine witnesses and introduce exhibits.

Section 5. Decision.

- (1) If the Ethics Commission, by majority vote, determines after the hearing that the respondent has not violated the Code of Ethics, the Ethics Commission shall dismiss the complaint and state in writing the reasons for the dismissal.
- (2) If the Ethics Commission determines, by majority vote, by a preponderance of the evidence, that the respondent committed a violation of the Code of Ethics, the Ethics Commission shall issue a report of its findings and conclusions, and make any recommendations for corrective action and/or refer the matter to Corporation Counsel for enforcement proceedings in accordance with **applicable law** ~~Chapter 36 of the City of Muncie Code of Ordinances and Ind. Code § 36-1-6-11.~~

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- (3) If a majority of the Ethics Commission is unable to determine whether a violation of the Code of Ethics has occurred, the complaint shall be dismissed.
- (4) The Ethics Commission may, by majority vote, resolve a complaint through an agreed settlement signed by the respondent, a majority of the Ethics Commission and, if applicable, the individual in charge of the department in which the respondent is employed or the Mayor.

Section 6. Violations.

If the respondent is found to have violated the Code of Ethics after enforcement proceedings in accordance with **applicable law** ~~Chapter 36 of the City of Muncie Code of Ordinances and Ind. Code § 36-1-6-11~~, the respondent may be fined in an amount determined by City Judge in accordance with applicable law.

Section 7. Whistleblower Protection.

No person shall be threatened or retaliated against for filing a complaint with the Ethics Commission, providing or offering to provide information to the Ethics Commission, or testifying or offering to testify at a hearing of the Ethics Commission. A violation of this section shall be considered a violation of the Code of Ethics and subject to the enforcement provisions set forth herein.

[Question for committee and an attorney: A member of the public has suggested including a list of forms of retaliation. We had a very brief discussion of that issue, but it may be worth revisiting.]

Draft Language for Other Issues

Training

- All elected officials, appointed officials, officers, and employees covered by the City Ethics Ordinance shall be properly trained in complying with the City Ethics Standards. Such training shall also include a review of the criminal offenses against public administration (IC 35-44-1), the Access to Public Records Act (IC 5-14-1.5), and the Open Door Law (IC 5-14-3).
- The City Attorney shall prepare and administer the training required by this section with the assistance of the City personnel director. The training provided shall be appropriate for the unique requirements of elected officials, appointed officials, officers and employees.
- At the time of adoption of this ordinance, the City Attorney and City personnel director shall arrange a training schedule that allows everyone covered by the training requirement to receive training expeditiously.
- The City Attorney and City personnel director shall endeavor to schedule training so that all new elected officials, appointed officials, officers or employees are able to receive the training prior to assuming their responsibilities.

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- All newly elected officials, appointed officials, officers, and employees shall complete ethics training no later than six (6) weeks following the beginning of their term, appointment date, or hire date as appropriate.
- All elected officials, appointed officials, officers, and employees shall complete ethics training at least every two (2) years during their tenure with the City of Muncie.
- The City's Personnel Department shall maintain records documenting the compliance of elected officials, appointed officials, officers, and employees with these requirements.

Transparency Portal

- The Ethics Commission shall oversee the maintenance and operation of a website, known as the "City of Muncie Transparency Portal," that will make ethics-related documents and information readily accessible to the public.
- Documents and information to be provided via the Transparency Portal shall include:
 - The Ethics Ordinance,
 - List of Ethics Commission members,
 - Conflict-of-interest forms filed with the Ethics Commission, and/or City Clerk, and/or state of Indiana,
 - Advisory opinions issued by the Ethics Commission,
 - Public documents related to complaints filed with the Ethics Commission,
 - Annual reports of the Ethics Commission,
 - Documentation verifying compliance with training requirements by elected officials, appointed officials, officers, and employees, and
 - Public documents related to purchases of \$5,000 or more by the City of Muncie or any of its boards, commissions, or other dependent bodies, including but not limited to:
 - Executed contracts,
 - Requests for bids,
 - Requests for proposals,
 - Invitations to quote, and
 - Documents received from potential suppliers **presenting their final bid, proposal, or quote** in response to a request for bids, request for proposals, or invitation to quote.
- The Ethics Commission may make other documents accessible via the Transparency Portal as it deems beneficial to the public interest.

Annual Reporting

- No later than 45 days after the end of each calendar year, the Ethics Commission shall provide an annual report to the City Council. The report shall include:
 - A summary of the complaints received by the Ethics Commission in the past year and the disposition of each,

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- A summary of the advisory opinions, if any, issued by the Ethics Commission in the past year,
- Any recommended changes to the Ethics Ordinance, and
- Any other information of benefit to the City Council or public.