

ORDINANCE NO. 3264

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CHULA VISTA ADDING CHAPTER 2.01 [CODE OF ETHICS]  
TO THE CHULA VISTA MUNICIPAL CODE AND  
AMENDING CHAPTER 2.28 [BOARD OF ETHICS],  
INCLUDING ADDING SECTIONS 2.28.160 THROUGH  
2.28.170, OF THE CHULA VISTA MUNICIPAL CODE

WHEREAS, Chapter 2.28 codified ethical standards for City Officials, created a Board of Ethics, and provided the Board the authority to investigate and hear violations of those standards; and

WHEREAS, the Board of Ethics is charged with reviewing Chapter 2.28, to propose revisions to ensure the Chapter's "continuing pertinence and effectiveness," and the Board of Ethics has undertaken such review; and

WHEREAS, the Board of Ethics, in the course of such review, has sought, *inter alia*, to provide greater clarity of the ethical standards required of City Officials by creating a Code of Ethics and to provide a streamlined hearing process to investigate violations of those standards, codifying minimum due process protections; and

WHEREAS, the City desires to update Chapter 2.28, to ensure the Chapter's continuing pertinence and effectiveness, by adding Chapter 2.01 [Code of Ethics] and making specified amendments to Chapter 2.28 [Board of Ethics].

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

SECTION I: ACTION

Chapter 2.01 is added to the Chula Vista Municipal Code as follows:

**Chapter 2.01**

**CODE OF ETHICS**

Sections:

- 2.01.010 Establishment of the Code of Ethics.
- 2.01.020 Application of the Code of Ethics.
- 2.01.030 Code of Ethics.
- 2.01.040 Severability.

**2.01.010 Establishment of the Code of Ethics.**

Public office is a public trust and City Officials shall exercise their public duties in a manner that preserves that trust. The public's trust can best be preserved if City Officials adhere to a high standard of ethics that transcend the standards prescribed by law. High ethical standards require that all City Officials understand, and avoid unethical behavior. Unethical behavior can develop in a variety of situations, but it occurs when the public interest is not the sole and paramount interest in all actions conducted by all City Officials. The purpose of this chapter is to encourage the highest standards of behavior by City Officials, increase public confidence in City Officials, to identify and take appropriate action with respect to unethical behavior, and to assist City Officials with decision-making in areas of ethical concern. Accordingly, the Code of Ethics is hereby established.

**2.01.020 Application of the Code of Ethics.**

The Code of Ethics shall apply only to "City Officials." City Officials shall mean members of the Chula Vista city council, including the Mayor, the City Manager, the City Attorney, the City Clerk, board members and commissioners, Assistant City Managers, City department heads, as well as to ex-City Officials who were subject to this chapter. The Board of Ethics shall investigate violations of the Code of Ethics as set forth in Chapter 2.28.

**2.01.030 Code of Ethics.**

The Code of Ethics is divided into two areas, Guiding Principles, as set forth in subdivisions A and B, and Specific Prohibitions, as set forth in subdivision C. The Guiding Principles are intended to provide a set of principles from which City Officials can draw upon to assist them in conducting the public's business. As such, the Guiding Principles are directory in nature and not subject to the complaint procedures set forth in Sections 2.28.090 through 2.28.150. The Specific Prohibitions are actions that City Officials shall not engage in, and as such, are subject to the complaint procedures set forth in Sections 2.28.090 through 2.28.150.

A. Guiding Principles. The public judges its government by the way City Officials conduct themselves in the posts to which they are elected or appointed. All City Officials should conduct themselves in a manner that will tend to preserve public confidence in, and respect for, the government they represent. The purpose of these Guiding Principles is to encourage the highest standards of behavior by City Officials, transcending the standards required by law; increase public confidence in the City Officials that serve the public; and assist City Officials with decision-making in areas of ethical concern. City Officials, in the performance of their duties, should strive to adhere to the following Guiding Principles:

1. City Officials are agents of public purpose and hold office for the benefit of the public. As such, City Officials have a duty to act in the best interests of the public. City Officials must strive to protect the public's resources through diligent and judicious management.
2. City Officials should not engage in, permit, or condone fraud, but should be proactive to identify fraud and seek to correct the causes that lead to the fraud. Fraud in public service includes, but is not limited to, making false or misleading representations about a material fact or engaging in deceitful conduct.
3. City Officials should not engage in, permit, or condone waste, but should be proactive to identify waste and seek to correct the causes that lead to the waste. Waste in public service involves the extravagant, careless, or needless expenditure of city funds, or the consumption of city property, that results from deficient practices, systems, controls, or decisions.

4. City Officials should not engage in, permit, or condone abuse, but should be proactive to identify abuse and seek to correct the causes that lead to the abuse. Abuse involves the improper use of city resources, including abuse of position, authority, or resources such as tolls, vehicles, or other city property.
5. City Officials must be loyal to the public they serve and should put the public's interests above their personal interests.
6. City Officials must protect and enhance the image and reputation of the City.
7. City Officials must treat all citizens conducting business with the City with due courtesy, efficiency, and impartiality, and no one citizen shall receive special advantage.
8. City Officials must always be mindful of the public trust and confidence in the exercise of their assigned duties and shall refuse to condone breaches of public trust or improper attempts to influence the decision-making process.
9. City Officials must always be mindful of conflict of interest laws and abide by them.
10. City Officials must be aware of all their financial interests, thereby ensuring that such financial interests do not influence their conduct or actions.
11. City Officials should avoid an appearance of a conflict of interest when possible. Recusal or abstention is appropriate when a good faith determination has been made by the City Official that such action is required. However, elected officials subject to this chapter are reminded that they are elected to conduct the public's business and should not abstain or recuse themselves without cause.
12. City Officials are expected to abide by all local, state, and federal laws.
13. The City values the ability of the Boards and Commissions to provide honest, forthright, learned, and independent advice to the City, thereby fostering greater public input into the conduct of City government. Accordingly, while City Officials may attend City board and commission meetings, City Officials should be mindful that their actions, whether intentional or not, may unduly impair or influence the Boards' and Commissions' ability to provide honest, forthright, learned, and independent advice to the City and therefore City Officials should avoid such actions.

B. Additional Guiding Principles for Board of Ethics Members. In addition to the Guiding Principles set forth in Section A, Board of Ethics members should adhere to the following:

1. A Board of Ethics member that is a candidate for elected office should not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the Board of Ethics, including, but not limited to, commenting on complaints that have been before or may appear before the Board of Ethics or endorsing another candidate for any elected office using their title as current or former Board of Ethics member. A reference by a Board of Ethics member, in their own campaign materials, that they are or have been a member of the Board of Ethics alone does not violate this guiding principle.
2. A Board of Ethics member should conduct their outside activities so as to minimize the risk of conflicts with their duties as a Board of Ethics member.
3. A Board of Ethics member should perform their duties impartially. To accomplish the aforementioned guiding principle, a Board of Ethics member should refrain from participating in a matter before the Board of Ethics when they have a personal interest in the matter or, outside of a Board of Ethics meeting, have advocated, supported, or taken a position on that matter.

C. Specific Prohibitions. It is prohibited and shall be deemed unethical for a City Official to engage in one or more of the following actions:

1. Accept gifts, favors, or promises of future benefits, which might compromise or tend to impair independence of judgment or action.
2. Use their official title or position for personal gain. Personal gain includes, but is not limited to, situations wherein a City Official solicits or accepts items of value in consideration of their official title or position. This section does not include obtaining benefits that are otherwise authorized by law.
3. Divulge confidential information for personal gain or for the gain of associates in a manner contrary to the public interest or in violation of any law.
4. Use or permit the use of City resources including but not limited to funds, seals or logos, city time, personnel, supplies, equipment, identification cards/ badges or facilities for unapproved non-city activities, except when available to the general public, provided for by administrative regulations or policies, or approved by City Council.
5. For current City Officials, appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the city; nor shall members of boards, commissions, and other advisory boards appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies, except for limited exceptions, as provided for in Fair Political Practices Commission Regulations, including 18702.4.
6. No Ex-City Official (not including former elected City Officials) for a period of one-year after leaving office or employment shall, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making oral or written communication before any city administrative office or agency or officer or employee thereof, if the appearance of communication is made for the purpose of influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract for the sale or purchase of goods or property.
7. No former member of the City Council, including the Mayor, shall be eligible to appear as a compensated representative at any time before the Council, or any commission, board, or city staff in connection with any case or other matter with which he/she personally participated while an official or employee of the city for twelve (12) months following the date of separation from elected or appointed office, except by permission of the City Council finding on four-fifths vote that special identified and articulated circumstances exist, cast at a regular public meeting taken after the involved member of the City Council has left office. Such special identified and articulated circumstances, include but are not limited to, determinations that it is in the best interest of the City to permit such representation, that the former councilmember, including the Mayor, is uniquely qualified to appear on the matter, or it is impractical to require another representative to appear on the matter.
8. Endorse or recommend for compensation any commercial product or service in the name of the city or in the employee's official capacity within the city without prior approval by a city council policy.

9. Violate Government Code section 87100 related to financial interests and governmental decisions made by them. If a complaint is filed with the Board of Ethics alleging a violation of this subsection, the Board of Ethics recognizes that the Fair Political Practices Commission (“FPPC”) is the primary enforcement authority of the Political Reform Act and that their decisions should be given great weight. As such, if a complaint is filed concurrently, then the Board of Ethics may defer action on such allegation, as set forth in this chapter. If a complaint is not filed concurrently, the Board of Ethics may submit a complaint to the FPPC and defer action until such complaint is addressed by the FPPC. A ruling on the merits by the FPPC may be accepted as a finding of the Board.

10. No City Official shall coerce any of their subordinates or any other City employee to participate in an election campaign, contribute to a candidate or political committee, engage in any other political activity relating to a particular party, candidate, or issue, or to refrain from engaging in any lawful political activity. A general statement encouraging another person to vote does not violate this prohibition.

11. No City Official shall display campaign materials in any city owned vehicle under their control and operated by that City Official. Campaign materials include, but are not limited to, bumper stickers, signs, or other similar items.

12. No City Official shall aid and abet another City Official to violate the Specific Prohibitions enumerated in this subdivision nor shall they aid and abet any person to engage in conduct that would constitute a violation of the Specific Prohibitions enumerated in this sub-division on their behalf.

13. No City Official shall negotiate for employment with any person, firm, or organization at the same time that aforementioned person, firm, or organization has a matter pending before City Council, Board or Commission, or city department and upon which the City Official must act or make a recommendation.

#### **2.01.040 Severability.**

If any provision of this chapter, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this chapter to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable.

Chapter 2.28 of the Chula Vista Municipal Code is amended, including the addition of sections 2.28.160 and 2.28.170, as follows:

## **Chapter 2.28**

### **BOARD OF ETHICS\***

Sections:

2.28.010 Establishment of the Board of Ethics.

2.28.020 Purpose.

2.28.030 Function and Duties of the Board of Ethics.

2.20.040 Powers of the Board of Ethics.

2.28.050 Membership.

2.28.060 Meetings and Staffing.

2.28.070 Order of Business.

2.28.080 Advisory Opinions.

2.28.085 Board Referral For Investigation

2.28.090 Complaints-Form, Referral to Other Enforcement Agency and Requests for Confidentiality.

2.28.100 Complaint Procedures-Receipt of Complaint.

2.28.110 Complaint Procedures-Prima Facie Review.

2.28.120 Complaint Procedures-Probable Cause Hearing.

2.28.130 Complaint Procedures-Hearing on the Merits.

2.28.140 Complaint Procedures-Decision After Hearing on the Merits.

2.28.150 Conflicts.

2.28.160 Records.

2.28.170 Severability.

\* For provisions of Charter law concerning appointive boards and commissions, see city Charter §§ 600 – 606.

#### **2.28.010 Establishment of the Board of Ethics.**

The Board of Ethics is hereby created. The provisions of Article VI of the Chula Vista City Charter, Chula Vista Municipal Code sections 2.01 and 2.25, and this chapter shall govern the Board of Ethics.

#### **2.28.020 Purpose.**

It is the purpose of the Board of Ethics to advise and make recommendations to the City Council of the City of Chula Vista on all matters relating to potential unethical conduct and to make such necessary and appropriate recommendations to the City Council for the implementation of the Code of Ethics, as set forth in Chapter 2.01, and amendments thereto, which may become necessary from time to time. The Board of Ethics will serve as a hearing body for violations of the Code of Ethics, as set forth in Chapter 2.01, and shall render impartial and objective opinions and insure that those covered by the Code of Ethics are appropriately informed.

Members of the Board of Ethics should be aware that they are in a unique position of trust given their role under this chapter and as such must strive to avoid any appearance of bias or partiality. Accordingly, they should be aware that their conduct and actions will be scrutinized by the public at all times, but particularly during the election cycle.

**2.28.030 Function and Duties of the Board of Ethics.**

It shall be the function of the Board of Ethics to implement the Code of Ethics as set forth in Chapter 2.01. The duties of the Board of Ethics shall be:

- A. To receive or initiate complaints of violations of the Code of Ethics.
- B. To hear and investigate complaints and transmit the findings and recommendations to the City Council.
- C. To render advisory opinions or interpretations with respect to the application of the Code of Ethics and this chapter, either on request or on its own initiative.
- D. To propose revisions of this chapter or other City policies to assure its continuing pertinence and effectiveness.

**2.28.040 Powers of the Board of Ethics.**

In order to carry out its duties, the Board of Ethics is authorized to receive complaints, conduct investigations upon complaints or information received, make referrals to other governmental agencies regarding unethical conduct, hold hearings, swear witnesses, render advisory opinions and adopt rules of procedure for the conduct of its business

**2.28.050 Membership.**

A. The Board of Ethics shall be composed of seven members, to be appointed in accordance with Article VI of the City Charter, CVMC section 2.25, and this chapter. Irregularities in the interview process set forth in Section 2.25.050, subdivision D, may be brought to the attention of the City Council.

B. No person shall be appointed as a member of the Board of Ethics, or shall be entitled to retain their membership, if he or she, within the past 10 years prior to the date of appointment, has been convicted of any felony or a crime involving moral turpitude, has been found to have committed a criminal violation of the Fair Political Practices Act, or has a conflict of interest as defined in this chapter.

C. A “conflict of interest” for purposes of this section shall mean the following:

1. The applicant or any of applicant’s relatives is or has been an employee of or sought employment from any City Official subject to this chapter;
2. The applicant or any of applicant’s relatives is or has been supervised in an employment setting by any City Official subject to this chapter;
3. The applicant has served in any capacity (including staff member, advisor, or volunteer) involving the election, selection, or appointment of any City Official subject to this chapter to any public office (elected or appointed);
4. The applicant has served in any capacity (including staff member, advisor, or volunteer) opposing the election, selection, or appointment of any City Official subject to this chapter to any public office (elected or appointed); or
5. The applicant is related to any City Official subject to this Chapter.

D. This section is not retroactive.

**2.28.060 Meetings and Staffing.**

The Board of Ethics will hold meetings as set forth in Municipal Code section 2.25.200(A)(2). The City Attorney or his or her appointed representative shall act as secretary to the board. The secretary shall cause notice of the meetings of the board to be kept and distributed. The secretary shall also give appropriate and required written notice of all meetings to all members and persons having business before the board.

**2.28.070 Order of Business.**

A. The following shall be the order of business for all meetings:

1. Roll call of members.
2. Reading of minutes of previous meeting.
3. Amendment or approval of minutes of previous meeting.
4. Consideration of matters continued from previous meeting.
5. Consideration of new complaints or requests.
6. Consideration of proposed or existing state legislation in the field of ethics and amendments to the code of ethics of the city of Chula Vista.
7. Other business.
8. Oral communication.

The aforementioned order of business may be modified by an affirmative vote of the Board of Ethics.

B. Items of business shall be placed on the agenda as set forth in Municipal Code section 2.25.210(A).

**2.28.080 Advisory Opinions.**

When a City Official has doubt as to the applicability of a provision of this chapter to a particular situation, he or she may make a written inquiry to the Board of Ethics for an advisory opinion. The purpose of the advisory opinion is to assist the City Official in the task of judging themselves, so as to enable them to properly carry out their responsibilities as trustees in the public interest, and to conform their conduct to the Code of Ethics. The City Official shall have the opportunity to present their interpretation of the facts at issue and of the applicable provisions of this chapter before such advisory opinion is rendered. The Board of Ethics may also, on its own initiative, issue advisory opinions regarding the interpretation or implementation of any provision of this chapter.

**2.28.085 Board Referral For Investigation.**

A. If an individual Board of Ethics member personally observes a violation of the Code of Ethics, he or she may inform the Board of Ethics and request that the matter be referred to a panel attorney ("Panel Attorney") that is serving as the enforcement authority under CVMC 2.52 for investigation.



B. If a panel to serve as the enforcement authority has not been established, the Board of Ethics shall establish, in a manner similar to the process used to create the panel for the enforcement authority, a panel of attorneys to serve pursuant to this section.

C. The Board of Ethics may refer the matter to a Panel Attorney if the Board of Ethics member presenting the request makes a prima facie showing as set forth in section 2.28.110. This provision may not be used in the place of or to circumvent the other provisions in this chapter for the submission of complaints. Once a Board of Ethics member submits a request under this section and the matter is submitted to a Panel Attorney, they shall recuse themselves from voting on the complaint.

D. The Board of Ethics referral shall go to a Panel Attorney for investigation and determination if probable cause exists on the complaint. The Panel Attorney may dismiss the complaint if he determines that probable cause does not exist or if he concludes he cannot prove that probable cause exists. If he dismisses the case for lack of probable cause, he shall inform the Board of Ethics and provide a basis for the dismissal. If the panel attorney determines that probable cause exists, he shall present his case as set forth in section 2.28.120 for determination by the Board of Ethics if probable cause exists. If the Board of Ethics determines that probable cause exists, another Panel Attorney will continue the investigation for submission to the Board of Ethics for a full hearing. Panel Attorneys assigned under this paragraph will be assigned in the same manner they are assigned to investigate complaints for violations of chapter 2.52. The Panel Attorney shall present the matter for full hearing as set forth in section 2.28.130.

#### **2.28.090 Complaints-Form, Referral to Other Enforcement Agency and Requests for Confidentiality.**

A. All complaints regarding violations of this chapter shall be in writing, identify a person subject to the Code of Ethics, contain a full allegation of facts that would constitute a violation of the specific prohibitions enumerated in this chapter, and sworn under penalty of perjury. All alleged violations must be submitted within 90 days of occurrence or when it should have been discovered with the exercise of reasonable diligence. Justification for any delay in filing complaints is the responsibility of the complainant. For complaints concerning unethical patterns of behavior, such complaints must be received by the Board of Ethics within 90 days of the most recent event comprising the pattern of behavior complained of, or within 90 days of when the last event should have been discovered with the exercise of reasonable diligence. The Board of Ethics will, in its discretion, limit the pattern of behavior to those events the Board of Ethics feels are proximately related in time to be a part of the same pattern of behavior.

B. The Board may refer the matter to a local, state, or federal enforcement agency that may have jurisdiction over the matter at any stage of the proceedings and may hold in abeyance Board action pending results of the referral. The Board of Ethics may, but is not required to, resume Board action on the matter if it has been provided notice of inaction by the agency to whom the complaint was referred, the expiration of any applicable statute of limitations, or inaction for more than one year by the agency to whom the complaint was referred. Local, state and federal enforcement agencies include, but are not limited to, the United States Attorney's Office, the California Attorney's General's Office, the San Diego County District Attorney's Office, the San Diego County Grand Jury, and the Fair Political Practices Commission (FPPC). If the Board learns of misconduct during any stage of the proceedings, but the misconduct is not within the specific prohibitions set forth in this chapter, the Board of Ethics may make a referral to the appropriate local, state, or federal enforcement agency that may have jurisdiction over the alleged misconduct.

C. The name of the complainant shall be disclosed unless the complainant has requested that their name be kept confidential and there is good cause to withhold such name. Requests for confidentiality shall be addressed as follows:

1. To request that their name be kept confidential, the complainant must provide, with their complaint, a detailed factual statement, sworn under penalty of perjury, that they would suffer harm or retaliation if their name were to be disclosed. Facts that may be considered to determine if good cause exists may include, but are not limited to:
  - a. The existence of an employer/employee or supervisor/subordinate relationship between respondent and complainant or the existence of such a relationship between complainant's spouse or immediate relative(s) and respondent or respondent's spouse or immediate relative;
  - b. Facts that show that complainant would be shunned, ostracized, or rebuked by any organization or group to which they belong if their name were to be made public;
  - c. Evidence of prior acts of retaliation or harm by respondent against complainant or any other person;
  - d. The existence of criminal convictions for crimes of violence by or the existing of any restraining orders against respondent.

Conclusionary or speculative statements of harm or retaliation are insufficient to establish good cause.

2. Upon a request for confidentiality, the Chair and two board members, chosen by the Chair on a rotating basis, shall form an ad hoc sub-committee within two business days of being informed by the City Attorney's Office of a request for confidentiality and, after consideration of the request, determine if good cause exists to withhold disclosure of the name. The Chair shall inform the complainant of its decision within five business days.

3. If the decision is to deny the request for confidentiality, complainant shall have five business days to withdraw their complaint. If complainant requests that the complaint be withdrawn, the entire complaint shall be returned to complainant and their complaint shall not be disclosed. The complaint and complainant's name shall be not disclosed during this evaluation process.

4. Upon a finding of good cause by the ad hoc sub-committee formed under this section, the name of the complainant shall be kept confidential unless and until a finding of probable cause is made. The complaint shall also be redacted accordingly.

#### **2.28.100 Complaint Procedures-Receipt of Complaint.**

A. The following procedures will be followed upon receipt of a complaint:

1. The complaint will be assigned a case number.
2. The complainant ("Complainant") will be sent a letter that provides notice that the complaint was received, the date of the next hearing in which the complaint will be addressed, and which generally explains the procedures that will be followed.
3. The subject of the complaint (hereinafter "Respondent") will be sent a letter that provides notice that a complaint has been received naming them as the subject, the date

of the next hearing in which the complaint will be addressed, and which generally explains the procedures that will be followed. The Respondent will also be sent a copy of the complaint with the letter. The complaint may be redacted as provided for in 2.28.090, subdivision C (related to confidentiality requests).

4. The Chair of the Board of Ethics shall be notified that a complaint has been received. Notwithstanding any other time frames, the Chair may set a special meeting on the complaint.

5. A preliminary review (hereinafter “Prima Facie Review”) of the complaint will be set within 30 days of receipt of the complaint. If the complaint is received within 90 days of a municipal election in which a City Official is a candidate, the Prima Facie Review of the complaint will be set within 15 days of the receipt of the complaint. The Chair and members shall be sent copies of the complaint for their review prior to the hearing. The Chair and members receiving copies of the complaint shall not discuss the complaint nor disclose the complaint to any person outside of the hearing.

#### **2.28.110 Complaint Procedures-Prima Facie Review.**

The Board of Ethics will conduct a prima facie review (“Prima Facie Review”) of the complaint. The purpose of Prima Facie Review is to determine if the complainant has made a prima facie showing that the complaint complies with the requirements in Sections 2.28.090, subdivision A, [Complaints-Form, Referral to Other Enforcement Agency, and Request for Confidentiality] thereby establishing jurisdiction. A Prima Facie Review may result in the following:

A. [No Prima Facie Showing Made-Dismissal.] After completing the Prima Facie Review, the Board may dismiss the complaint for any of the following reasons:

1. The complaint is not in writing or is not made under penalty of perjury;
2. The Respondent is not a City Official within the meaning of this chapter;
3. The complaint does not contain a full allegation of facts that would constitute a violation of the specific prohibitions enumerated in this chapter;
4. The complaint restates other complaints containing essentially similar or identical allegations that have already been disposed of, and the evidence presented does not warrant reopening of the previous case;
5. The allegations contained in the complaint are already under investigation by the Board of Ethics;
6. The complaint consists of speculation, opinion, frivolous contentions, or absurd accusations; or
7. The Board of Ethics determines other good cause requiring dismissal. If the dismissal is for this reason, the good cause must be set forth in the minutes of the preliminary review.

If the complaint is dismissed, the Board shall issue a letter to the Complainant and Respondent as soon as possible, indicating the reason for the dismissal of the complaint. Such letter is not a conclusive finding and is not intended to be evidence in any enforcement action initiated by another agency.

B. [Prima Facie Showing Made-Further Action.] If the Board determines that a prima facie showing has been made, then the Board shall determine the appropriate course of action, including the following:

1. The Board may request additional information from Complainant or the Respondent. The Board shall endeavor to complete this action within 45 days from the prima facie finding. If the information is not received within the 45 days, such fact shall be reported to the Board. After this stage is complete, the matter should be set for a probable cause hearing within 30 days.
2. The Board may create an ad hoc sub-committee comprised of one to three board members to conduct further investigation. The ad hoc sub-committee shall endeavor to complete its investigation within 90 days of the prima facie finding. If the investigation is not completed within the 90 days, such fact shall be reported to the Board. After this stage is complete the matter should be set for a probable cause hearing within 30 days.
3. The Board may hire an individual from a list of pre-qualified investigators to conduct an investigation. This provision is subject to available funding. The investigator shall endeavor to complete the investigation within 90 days of the prima facie finding. If the investigation is not completed within the 90 days, such fact shall be reported to the Board. After this stage is complete the matter should be set for a probable cause hearing within 30 days.

The Board of Ethics shall establish a written policy for the selection of pre-qualified investigators. In determining qualifications, the Board of Ethics shall consider, but is not limited to the following:

- a. Professional licensing;
- b. Experience in conducting investigations;
- c. Area or areas of expertise required for the investigation;
- d. Available support staff;
- e. Reasonable costs;
- f. The Existence of conflicts of interest;
- g. Proven ability to timely complete tasks.

4. The Board may set the matter for a probable cause hearing. The Board shall endeavor to set the probable cause hearing within 45 days of the prima facie finding.

**2.28.120 Complaint Procedures-Probable Cause Hearing.**

The purpose of the probable cause hearing is to determine if there are facts and circumstances, of a reasonably trustworthy nature, sufficient to justify a person of reasonable caution or prudence in the belief that a violation of the specific prohibitions has occurred (“probable cause”). To find probable cause, there must be an affirmative vote of the majority of the entire voting membership. The following procedures shall be followed in the conduct of a probable cause hearing:

- A. Both parties shall be provided notice that the probable cause hearing has been set.

B. The Complainant and Respondent shall be informed that they may lodge with the Board ten days before the hearing additional evidence and a statement on their behalf for the Board's consideration. If such evidence is not provided to the Board within the time frame indicated, the Board may, but is not required to, exclude such evidence. As soon after receipt of such evidence by the Board, the Board should endeavor to provide the opposing party a copy thereof.

C. At the hearing, the Board shall review, but is not limited to, the following: the complaint, including any supporting documents, that was filed; information acquired during any Board ordered investigation or request for information; and any other documents or evidence provided to the Board before the probable cause hearing.

D. The Board, in its discretion, may permit additional documents or evidence to be admitted into the probable cause hearing. The Board, in its discretion, may also permit witnesses to testify. Witnesses may be subject to cross-examination, as permitted by the Board.

E. Both parties may comment on the issue of probable cause, as permitted by the Brown Act.

F. If the Board determines that probable cause does not exist, the Board shall dismiss the complaint.

G. If the Board determines that probable cause exists, the Board should set a hearing on the merits within 45 days thereafter.

#### **2.28.130 Complaint Procedures-Hearing on the Merits.**

If probable cause is determined to exist by the Board, then the Board shall conduct a hearing on the merits ("Hearing on the Merits") as set forth herein:

A. Prior to the Hearing on the Merits, the Board may request additional information as set forth in section 2.28.110, subdivision B. The Board should set a date by which a request for additional information should be completed.

B. Both parties shall be provided notice of the Hearing on the Merits. The Board may provide copies of materials upon which the complaint is based to either party.

C. In the discretion of the Board, Complainant may present an opening and closing statement, present additional evidence and witnesses, including rebuttal evidence and witnesses, and cross examine witnesses.

D. In the discretion of the Board, the Respondent may present an opening and closing statement, present additional evidence and witnesses, including rebuttal evidence and witnesses, and cross examine witnesses.

E. The Board may admit, but is not limited to, evidence provided at the Hearing on the Merits, information provided with the complaint, information provided pursuant to section 2.28.110, subdivision B, or subdivision A of this section, information provided at the probable cause hearing, and any other evidence it determines should be considered.

F. The Hearing on the Merits is not a formal judicial proceeding, but the Board will exercise control over the hearing to ensure that it is conducted in an orderly and expeditious manner. While the technical rules of evidence are not applicable and hearsay is admissible, evidence that is admitted should bear an indicia of reliability.

**2.28.140 Complaint Procedures-Decision After Hearing on the Merits.**

The Board shall document its decision in a written statement of decision. A vote of five board members is required to make a finding of misconduct. Each finding of misconduct must be supported by a preponderance of the evidence. The statement of decision should be prepared expeditiously and shall be served upon both parties via certified mail with a certificate of mailing.

**A. Misconduct Found-Declaration of Misconduct.**

If the Board makes a finding of misconduct, the statement of decision shall contain, and be labeled as such, a Declaration of Misconduct. The Declaration of Misconduct shall detail the misconduct that has been found to be true and the supporting evidence. The Declaration of Misconduct shall be a final decision on the merits and shall not be changed by the City Council. The Declaration of Misconduct may contain a recommendation of sanctions against the City Official found to have engaged in misconduct, including, but not limited to, the following: a reprimand, censure, or removal from office. The Declaration of Misconduct may also recommend remedial actions to prevent misconduct in the future.

Government Code sections 3250 et.seq. [Firefighter Procedural Bill of Rights Act] and 3300 et.seq. [Public Safety Officers Procedural Bill of Rights Act] provides appeal rights for the Police and Fire Chief. The Police and Fire Chief shall be provided the appeal rights required under the aforementioned Government Code sections and City Council shall act as the body hearing any such appeal.

**B. No Misconduct Found-Declaration of No Misconduct.**

If the Board makes a finding of no misconduct, the statement of decision shall contain, and be labeled as such, a Declaration of No Misconduct. The Declaration of No Misconduct shall detail the basis for its finding.

**2.28.150 Conflicts.**

City Officials subject to the Specific Prohibitions set forth in this chapter should not participate in or influence the complaint process as set forth in Sections 2.28.090 to 2.26.140 in their official capacities. To this end, when a complaint involves a Board of Ethics member, a councilmember (including the mayor) or the City Attorney, the following procedures shall be followed:

A. If a complaint involves a Board of Ethics member, then the named Board of Ethics member shall recuse him or herself.

B. If a complaint involves a councilmember, including the Mayor, then the named councilmember shall recuse him or herself.

C. If the complaint involves the City Attorney, the City Attorney and his or her Office, shall recuse themselves. Outside counsel shall be appointed by the Board of Ethics to advise the Board of Ethics regarding a complaint alleging misconduct by the City Attorney. The Board of Ethics may establish procedures for the selection of such counsel.

**2.28.160 Disclosure of Board Records.**

The purpose of this section is to advance the public's interest under the Public Records Act to access information concerning the conduct of the Board in a manner that will not compromise the Board's ability to conduct effective and confidential investigations into alleged violations of the City of Chula Vista's Code of Ethics. The Board and its staff shall not make public comments regarding a pending matter until the Board has made a final decision on the merits or until the matter is otherwise closed. The complaint may be released to the public. The complaint may be redacted consistent with Section 2.28.090 (regarding requests for confidentiality). The Board may release its records unless they fall within, but not limited to, the categories that follow:

A. Preliminary or draft memoranda, documents, or records not kept in the ordinary course of business.

B. Personnel, medical, or other similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

C. Documents or records protected under any law (state or federal) related to privilege.

D. Records exempt from disclosure under the California Public Records Act (Government Code section 6250 et.seq.).

E. Documents or records where the public interest against disclosure outweighs the public interest served by disclosure. Such documents may include, but are not limited to, the following:

1. The names of juvenile witnesses; or
2. Personal or otherwise private information related or unrelated to the investigation if the disclosure would constitute an unwarranted invasion of privacy; or
3. The identity of a confidential source; or
4. Information, which, if disclosed, would create a credible risk of endangering any individual; or
5. Information, which, if disclosed, would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

**2.28.170 Severability.**

If any provision of this chapter, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this chapter to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable.

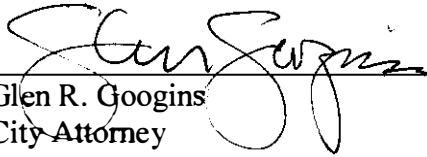
SECTION III: This ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

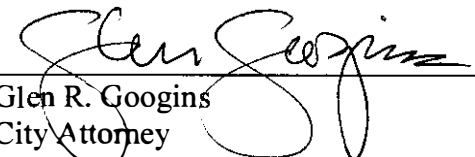
SECTION IV: Violations of Chapter 2.28 that occurred prior to the effective date of this Ordinance, shall be subject to the provisions of Chapter 2.28 and/or Board of Ethics policies or procedures in effect before the effective date of this Ordinance.

SECTION V: The City Clerk is directed to publish this ordinance in accordance with the City Charter.

Presented by

Approved as to form by

  
Glen R. Googins  
City Attorney


  
Glen R. Googins  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 7th day of May 2013, by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, Ramirez, Salas and Cox

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

  
Cheryl Cox, Mayor

ATTEST:

  
Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3264 had its first reading at a regular meeting held on the 23rd day of April 2013 and its second reading and adoption at a regular meeting of said City Council held on the 7th day of May 2013; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

June 4, 2013  
Dated

  
Donna R. Norris, CMC, City Clerk