

RESOLUTION #2012-070

**A RESOLUTION AMENDING THE RAPID CITY CODE OF CONDUCT FOR ELECTED OFFICIALS IN ORDER TO INCORPORATE DUE PROCESS**

WHEREAS, the City of Rapid City (the “City”) has previously adopted various policies and procedures pertaining to the conduct expected of its elected officials; and

WHEREAS, the adopted policies and procedures address a number of specific requirements pertaining to the City’s expectations regarding the conduct of its elected officials; and

WHEREAS, in November, 2006, the City adopted by resolution a Code of Conduct for Elected Officials (the “Code of Conduct”); and

WHEREAS, the Code of Conduct did not replace other City policies and procedures pertaining to the conduct expected of its elected officials, but augmented any and all City policies and procedures regarding the City’s expectations of its elected officials; and

WHEREAS, the Code of Conduct does not currently incorporate a due process procedure in the event an allegation is made pursuant to the Code of Conduct; and

WHEREAS, a due process procedure would provide notice and an opportunity to be heard to any elected official affected by an allegation under the Code of Conduct; and

WHEREAS, the City of Rapid City deems it is in the best interests of the City and its elected officials to incorporate a due process procedure into the Code of Conduct.

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that there is hereby established an amended Code of Conduct for Elected Officials, which in its entirety reads as follows:

**RAPID CITY CODE OF CONDUCT FOR ELECTED OFFICIALS**

In order to maintain excellence in government and to facilitate the efficient provision of services to the public, the City of Rapid City adopts this Code of Conduct for Elected Officials. This Code of Conduct is in addition to all other policies of the City of Rapid City.

**A. The Code:**

1. The City of Rapid City expects each elected official to demonstrate the highest standards of conduct, personal integrity, and honesty in all of their activities in order to inspire public confidence and trust in elected officials.

2. The City of Rapid City expects each elected official to undertake their duties in a fair and impartial manner, refraining at all times from discrimination or the dispensation of special privileges.
3. The City of Rapid City strives to maintain a workplace that facilitates the growth and performance of its employees. To that end, each elected official is charged with the responsibility to insure that the workplace is free from hostility or harassment in any form and that the workplace is conducive to the provision of services in an efficient and effective manner.
4. The provision of governmental service requires elected officials to interact with the public. Given the unique relationship between the government and its citizens, each elected official is expected to treat members of the public with the respect and courtesy due to citizens from public servants. However, no elected official shall be expected to endure personal hostility or abuse, regardless of the source.

#### **B. Due Process:**

Except as provided in Section (B)(1)(a)(i), (ii), and (iii) herein, any time a violation of this Code is alleged, the affected elected official(s) shall be entitled to notice of the alleged violation(s) and a public hearing on the merits of the allegation(s).

1. Any complaint of violation of this Code shall be made in writing to the Office of the City Attorney. The City Attorney or his or her designee shall examine the complaint and shall also review any signed written submissions by the person(s) or entity(ies) that are directly involved. Pursuant to SDCL § 1-25-2(1), the complaint may be heard in executive session, and upon completion of the review, the City Attorney's Office shall submit in executive session an unbiased fact-based investigative report to the Common Council. All laws pertaining to executive session shall apply, and the Common Council shall not take any action regarding any alleged violation of this Code in executive session.
  - a. At least ten days prior to the scheduled executive session, any affected elected official(s) shall be notified in writing of the complaint and the scheduled date of the executive session discussion, and shall be provided copies of the materials reviewed by the Office of the City Attorney, along with the report produced by the City Attorney, or his or her designee.
    - i. This provision of notice shall be required, except in cases in which the affected elected official(s) has been accused of criminal wrongdoing, or in cases in which notice to the affected elected official(s) would jeopardize an on-going criminal investigation by any local, state, or federal law enforcement agency.

- ii. The City Attorney shall make the determination as to whether the above-enumerated notice exception applies, and shall document the file as to the reason(s) therefore.
      - iii. In cases of alleged criminal wrong doing or on-going criminal investigation, the subject complaint of violation of this Code shall be suspended until such time as the City Attorney deems the criminal allegation and/or criminal investigation has been resolved, either by prosecution, or a determination that no criminal charge(s) are warranted against the affected elected official(s).
    - b. In the event the notice exception above does not apply, the matter shall proceed and any affected elected official(s) shall have an opportunity to respond and be heard during the scheduled executive session.
    - c. The Common Council will utilize the executive session to:
      - i. Become fully informed;
      - ii. Discuss if there appears to be a violation of this Code;
      - iii. Seek resolution without further action;
      - iv. If necessary, discuss scheduling the matter for a public hearing for final determination regarding whether a violation occurred; and
      - v. If necessary, discuss what sanction if any may be most appropriate.
  - 2. Any elected official(s) affected by a complaint of violation of this Code may be represented by counsel of his or her choosing at the scheduled executive session.
    - a. Counsel present under this section is allowed to attend only that portion of the scheduled executive session where the complaint at issue under this Code is discussed.
    - b. Counsel under this section means an attorney at law licensed to practice in the State of South Dakota.
  - 3. Any elected official(s) affected by a complaint of violation of this Code may at any time during the process, at his or her option, choose to have the matter heard at a public hearing.
    - a. Election of a public hearing must be made in writing to the City Attorney.
    - b. The public hearing shall take place at the next regularly scheduled or special Common Council meeting after written notice has been received,

provided however that written notice is received at least ten days prior to the next regularly scheduled or special Common Council meeting.

4. Official action by a concurrence of two-thirds of the elected aldermen shall be required for a determination that a violation of this Code has occurred, and likewise, a concurrence of two-thirds of the elected aldermen shall be required in order to impose sanction.

**C. Effect of Violation:**

1. Neither an alleged nor confirmed violation of this Code of Conduct by itself provides a basis for challenging the validity of any final action, enactment, ordinance, resolution, decision, determination, or recommendation of the Common Council.
2. Under SDCL § 9-8-5, the Common Council is the judge of the qualification of its own members; any sanction available under state law, including but not limited to public reprimand and public censure, shall be available to the Common Council in judging its members.
  - a. Definitions.
    - i. Public reprimand as used in this Code means a public declaration made by resolution at a Common council meeting announcing that an elected official's conduct was improper and describing the impropriety under this Code.
    - ii. Public censure as used in this Code means an official public condemnation made by resolution at a Common Council meeting denouncing an elected official's conduct as a violation of this Code and the reasons therefore.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)