

ORDINANCE NO. 039-07

AN ORDINANCE AMENDING THE CEDAR RAPIDS MUNICIPAL CODE BY
THE ADDITION OF A NEW SECTION 6.22 ENTITLED CEDAR RAPIDS BOARD
OF ETHICS RULES AND PROCEDURES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR RAPIDS, IOWA

AS FOLLOWS:

Section 1. The Cedar Rapids Municipal Code is amended by the addition of a new

Section 6.22 as follows:

“6.22 CEDAR RAPIDS BOARD OF ETHICS RULES AND PROCEDURES

SECTION 1. Declaration of Policy

The Cedar Rapids Home Rule Charter, approved by the Cedar Rapids voters during an election held on June 14, 2005 provided for a Board of Ethics and gave it certain duties and responsibilities as set forth therein. The Home Rule Charter contemplates that certain substantive issues pertaining to conflicts of interest and ethics shall be administered by the Board. The purpose of these Rules and Procedures (hereinafter “rules”) is to set forth the procedures by which the Board will conduct its business and accomplish the responsibilities assigned to it in the Home Rule Charter.

SECTION 2. Applicable Provisions of Home Rule Charter and City Ordinances

Reference is made to Sections 6.01 and 6.02 Home Rule Charter of the City of Cedar Rapids.

Section 6.01. Conflicts of Interest.

The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official; the use of confidential information; and appearances by city officials before other city agencies on behalf of private interests.

Section 6.02. Board of Ethics.

The city council shall, by ordinance, establish an independent Board to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the board may hold elective or appointed office under the city or any other government or hold any political party office. Insofar as possible under state law, the city council shall authorize the board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint from officials or citizens, subpoena witnesses and documents, refer cases for prosecution, impose administrative fines, and to hire independent counsel. The city council shall appropriate sufficient funds to the Board to enable it to perform the duties assigned to it and to provide annual training and education

of city officials and employees, including candidates for public office, regarding the ethics code.

Further reference is made to Section 6.21 of the Cedar Rapids Municipal Code as follows:

6.21 BOARD OF ETHICS.

(a) **Creation.** The Cedar Rapids Board of Ethics is hereby created.

(b) **Members.** The Board shall consist of 5 members which shall be appointed by the Mayor with the approval of the City Council. Board members shall at all times be residents of the city and shall serve without compensation. No member of the Board may hold elective or appointed office under the city or any other government, or hold any political party office, either at the time such member is appointed or during the term of appointment. Each member shall serve for a term of 3 years and until a successor is appointed, however the terms of the initial members shall be arranged or staggered such that the terms of no more than 3 members shall expire at the same time. Appointment to vacancies will be for the unexpired term. The members of the Board shall elect a chairman and such other officers as the Board deems appropriate, at the first meeting in January of each year.

(c) **Removal of Members.** The members of the Board may be removed by the City Council before the expiration of a respective term for such cause as the City Council may determine necessary.

(d) **Duties.** The Board shall have such powers and duties as set forth in the charter, or as shall be prescribed by the City Council. Specifically, the Board shall have the power to:

1. Administer and enforce the conflict of interest and financial disclosure ordinances.
2. Issue binding advisory opinions, conduct investigations on its own or by referral, issue subpoenas, refer cases for prosecution, impose administrative fines, request assistance from the City Attorney, or in its discretion, hire independent counsel.
3. Conduct hearings or other activities to gather information and to otherwise make studies and recommendations for the enhancement and promotion of city policies and practices which the Board believes would or could enhance the ethical environment in which public servants work.

(e) **Funding.** The Board shall submit a requested budget for its operation and review and consideration of the City Council annually at such time as may be specified by the City Auditor or City Council.

(f) **Reports.** The Board shall make such reports to the City Council as the City Council may request from time to time.

(g) **Name.** The Board is named the Cedar Rapids Board of Ethics.

SECTION 3. Meetings

The Board shall meet at the call of the Chairperson or at the call of a majority of its members. An affirmative vote of a majority of the entire Board shall be necessary to take any action. The Board shall annually elect its own Chairperson and such other officers as it deems appropriate, and shall develop rules of procedure in addition to these rules as is necessary. The Board shall appoint a secretary who need not be a member of the Board, and such other staff as may be deemed necessary. The Board may make such use of formal or ad hoc sub-committees as is necessary to carry out its duties. A majority of the members shall constitute a quorum. Members may participate by conference call or other form of electronic transmission so long as all members participating in the meeting may simultaneously hear each other during the meeting.

SECTION 4. Definitions

For the purposes of these Rules the following terms shall have the following definitions. All other words and phrases shall have their normal meaning unless further defined herein.

- A. **Board.** The Cedar Rapids Board of Ethics .
- B. **Candidate.** Any individual who seeks nomination or election to a public office in the City of Cedar Rapids, Iowa which is normally decided by vote of the electorate, whether such individual is elected by the electorate or is appointed
- C. **City Official.** Any member of the Cedar Rapids City Council: any of the following officials of the City of Cedar Rapids, Iowa: the City Clerk, the City Attorney, the City Manager, the Chief of Police, and the Fire Chief; any member of a City board or commission who is appointed or approved by the City Council.
- D. **Conflict of Interest Action.** A Conflict of Interest Action is any one of the following:
 - 1. Any official action or vote on a matter in which the City Official has or can reasonably be expected to have a Private Financial Interest in the outcome;
 - 2. The acceptance of gifts and other things of value in violation of applicable provisions of Iowa law or the City of Cedar Rapids Municipal Code;
 - 3. Acting in a private capacity on matters dealt with as a public official;
 - 4. The use of confidential information for purposes other than the fulfillment of the City Official's official duties; or
 - 5. Appearances by City Officials before other city agencies on behalf of private interests.
- E. **Immediate Family.** A City Official's spouse, lineal ascendants, lineal descendants, parents-in-law, sisters, sisters-in-law, brothers, brothers-in-law, stepparents, stepchildren, stepbrothers or stepsisters, and domestic partners. For purposes hereof, a person who is adopted shall be treated as having been naturally born to the adoptive parents.
- F. **Private Financial Interest/Private Gain.** Any direct or indirect economic benefit or other consideration to:
 - (1) the City Official or to a member of the City Official's Immediate Family, or
 - (2) any business entity or organization by which the City Official or a member of the City Official's Immediate Family is employed or in which the City Official or a member of the City Official's Immediate Family has an ownership interest representing 5% or more of the voting power or capital interests and which would not otherwise benefit the general public.

SECTION 5. Penalties

If the Board finds that a City Official has engaged in a Conflict of Interest Action following the Complaint and Investigation Procedure set forth in Section 7 hereinbelow, the Board may take one or more of the following actions as may be determined appropriate by the Board:

- 1. A *finding* that no action is warranted.
- 2. *Private warning*, in which case the decision of the Board shall be made a part of the City Official's file and no public disclosure shall be made of the action.

3. *Public reprimand*, in which case the decision of the Board shall be made a part of the City Official's file and public disclosure shall be made of the action.
4. *Imposition of an administrative fine* to cover the costs and expenses of investigating any violation.
5. *One or more of the following actions, which may be taken in conjunction with or in addition to the preceding actions:*
 - a.. Order the City Official to make restitution in accordance with the actions of the Board.
 - b. Order the City Official to cease and desist from engaging in a particular activity deemed to be in conflict with the action of the Board.
 - c. Order the City Official to take specified action to bring him or her in compliance with the Board action.
 - d. Refer the matter for review or with specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction of the matters.
 - e. Institute appropriate civil or equitable action to enforce the order and decision of the Board.
 - f. Institute appropriate legal action seeking restitution.
 - g. Recommend to City Council the forfeiture of office or position with the City.

SECTION 6. Advisory Opinions

Upon the written request of any City Official, filed with the City Clerk, or without such request should a majority of the Board deem it in the public interest, the Board may render advisory opinions concerning actual, potential, or hypothetical Conflict of Interest Actions (as defined herein), and shall issue an advisory opinion in writing as to any such question. The Board may in its discretion publish its advisory opinions with any redactions necessary to prevent disclosure of the identity of the person who is the subject of the opinion. Absent extenuating circumstances, Advisory Opinions should be issued within thirty (30) business days of the Board' receipt of the request for the issuance of such Advisory Opinion.

An advisory opinion may be used as a defense in any subsequent investigation or prosecution, provided that the City Official who sought the opinion acted on it in good faith and only to the extent material facts were not omitted or misstated in the request for the opinion.

SECTION 7. Complaint and Investigation Procedure

A. Who May File

Any person may file a complaint asserting the occurrence of an alleged Conflict of Interest Action. In addition, the Board may initiate proceedings by its own action. A person signing a complaint shall affirmatively state that they:

1. Reasonably believe in the existence of facts upon which the claim is based.

2. Reasonably believe that the complaint may be valid under the applicable provisions of the Cedar Rapids Municipal Code and the Home Rule Charter.

B. How to File

Complaint forms are available upon request from the office of the City Clerk and shall be filed with the City Clerk. The complaint should state the name, office held by the alleged violator and a description of the facts that are alleged to constitute a violation. It must be executed under penalty of perjury. The City Clerk shall forward five (5) copies of the Complaint to the Chairperson promptly after such Complaint is filed. The City Clerk shall maintain records of all complaints and the disposition thereof.

C. Screening Inquiry

If the Board has no jurisdiction in the matter, the complainant will be notified. Otherwise, the Board or a designated committee of the Board will conduct a preliminary screening within 45 business days. If the screening fails to establish that provisions over which this Board has jurisdiction have been violated, the inquiry will be terminated and the complainant and the person who is the subject of the inquiry will be notified. The Board may also refer the complainant to an appropriate State agency or other authority.

D. Initial Investigation

If the Board determines that an initial investigation is necessary, the Board shall give written notice of the start of such initial investigation to the complainant and the person who is the subject of the complaint, and may request a response from the subject of the complaint within 30 business days. If, after 30 business days from the receipt of any requested response, the Board finds that a Conflict of Interest Action has *not* occurred, the investigation will be terminated and complainant and the person who is the subject of the inquiry will be notified.

E. Full Investigation

If an initial investigation by the Board establishes that a Conflict of Interest Action has occurred, a full investigation will be initiated. The subject of the investigation will be notified and provided with a general statement of the alleged violation(s) and of the identity of the complainant. The Board will notify the complainant within three (3) business days of the commencement of the investigation. In carrying out such investigation, the Board shall be authorized to exercise the powers granted to it hereunder. Absent extenuating circumstances, such investigations shall be completed within ninety (90) business days of their commencement.

F. Findings Report, Evidentiary Hearing and Board Decision

The findings report shall set forth the pertinent findings of fact. The subject, within thirty (30) days after the report is issued, has the right to respond to the report and request an evidentiary hearing, unless an extension is obtained from the Board. The evidentiary hearing must be instituted within forty-five (45) days after the filing of the subject's response and request for hearing. The subject will have access to any evidence intended to be used at the hearing. The hearing will be closed to the public unless the subject requests an open hearing. Following the hearing, the Board will determine whether a Conflict of Interest Action has been proven and shall issue a final order.

G. Reconsideration

Within ten (10) business days of the issuance of a final order by the Board, a petition for reconsideration of the final order may be filed by the complainant or the subject of the complaint. No response or resistance to a petition for reconsideration will be received unless requested by the Board. Ordinarily, no petition for reconsideration will be granted by the Board without such a request. If a petition for reconsideration is not filed within the specified time period, the decision of the Board shall become final and not subject to further review or appeal.

H. Protection of Complainant

No person or official or employee may be penalized for a good faith filing of a complaint with the Board, or providing information or testifying in any Board proceeding. No person may be discharged, suffer change in his/her official rank, grade or compensation, be denied a promotion, or be threatened or otherwise retaliated against as a result of any of the above.

I. Wrongful Use of Board of Ethics

The purpose of the Board is to endeavor to maintain a high standard of ethical behavior by City officials. This will be most effective when City officials and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact and have the intent to improve the ethical climate of the City.

Wrongful use of the Board is defined as the filing of a false complaint in a grossly negligent manner without any reasonable basis in law or fact. Wrongful use of the Board is prohibited. The Board may utilize the Complaint and Investigation Procedure contained herein to consider alleged wrongful use of the Board. Persons found to have committed wrongful use of the Board may be subject to administrative fines and such cases may be referred for criminal prosecution.

SECTION 8. Confidentiality of Board Information

The filing of a Complaint shall be a matter of public record; however, all Board proceedings and records relating to an investigation shall be confidential until a final determination is made by the Board, except as may be required to effect due process. The final order is a public record. All other file material shall remain confidential.

SECTION 9. Annual Review

Each year, at its first meeting, the Board shall conduct a thorough review of its actions and work in the prior calendar year, and consider such addenda or modifications to these Rules as will assure the most effective performance by the Board. In addition, at such meeting the Board shall be provided with additional education and training that will enable the Board and its members to function more effectively and in the best interests of the City of Cedar Rapids."

Section 2. SEPARABILITY OF PROVISIONS.

It is the intention of the Council that each section, paragraph, sentence, clause, and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part thereof other than that affected by such decision.

Section 3. That this Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Section 4. That the changes as provided in this Ordinance shall be made a part of the replacement pages of the Municipal Code, City of Cedar Rapids, Iowa, and made a part of said Code as provided by law.

Section 5. All ordinances or parts of ordinances in conflict with any provision of this Ordinance are hereby repealed.

Section 6. PENALTY.

That any person, firm or corporation violating any provision, section or paragraph of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine of not more than \$100.00 or be imprisoned for not more than 30 days. That each day a violation occurs shall constitute a separate offense.

Additionally, violation of any provision, section, or paragraph of this ordinance constitutes a municipal infraction subject to all the penalties and other relief provisions as set forth in Iowa Code Section 364.22 (1999).

That likewise as part of the penalty provision of this Ordinance, Sections 1.06 and 1.12 of the Municipal Code, City of Cedar Rapids, Iowa, are adopted, and shall apply to this Ordinance, and supersede the penalty clause as above provided when this Ordinance is incorporated into and made a part of the Municipal Code, City of Cedar Rapids, Iowa, and such penalty clause is herewith adopted and made applicable to all violations of this Ordinance.

Introduced this 8th day of August, 2007.

Passed this 15th day of August, 2007.

Kay Halloran, Mayor

Attest: Ann Ollinger, City Clerk