



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

JULY 1, 2021

SUBJECT: REVIEW OF RULES OF PROCEDURE TASK FORCE RECOMMENDATIONS

ADMINISTRATIVE SUMMARY

City Council asked Mayor Shawn Pipoly, Mayor Pro Tem Susan Gardner, and Councilmember Renee Pettengill and staff to review the current Rules of Procedures and come back to City Council with a comprehensive and robust policy that outlines expectations and addresses decorum. The Committee along with City staff reviewed Rules of Procedure and other meeting procedures and ethics ordinances from local municipalities to craft a working document for City Council discussion. Staff asked the opinion from General Counsel on current City meeting procedures and conveyed the direction and intent of the committee for a comprehensive document(s). Foster Swift created the three attached documents for the committee's review. These three documents best encapsulated the needs and desires of the committee.

The public comment policy provides clear direction about the expectations from members of the public who attend City meetings. This document, if approved, defines public comment period, agendas, and public comment and would replace the current Rules of Procedure.

The public meeting procedures document summarizes certain public meeting procedures that all City officials are required to follow under state law, City Charter, and it establishes procedures to promote civil public meetings. This document, if approved, is for all boards and commissions as a handy tool that includes aspects of the Open Meetings Act, state law, and City Charter.

Also added was the Brighton ethics ordinances which aims to formalize a level of understanding and expectation for staff and officials of the City of Brighton. This ordinance, if approved, would be added to the City of Brighton Ordinance.

RECOMMENDATION

Prepared by: Tara Brown, City Clerk

Reviewed &

Approved by: Nate Geinzer, City Manager

Attachments: Public Comment Policy
City Council Procedures
Brighton Ethic Ordinances
Other documents reviewed (separate zipped file)

CITY OF BRIGHTON
POLICY FOR PUBLIC COMMENTS AT MEETINGS

I. Purpose

The City of Brighton welcomes and encourages comments from members of the public who attend City meetings. Pursuant to the requirements of the Open Meetings Act, a person is permitted to make a public comment during a meeting under rules established and recorded by the City. This policy applies to meetings of the City Council, Planning Commission, Zoning Board of Appeals, and all public bodies created by the City Charter or City Council.

II. Public Comment Period; Meeting Agendas

1. If an agenda is available, the City will have copies of the agenda available for the public who attend the meeting. The agenda will indicate the designated time(s) for the public to provide comments. Generally, the City Council will include two public comment periods during each meeting. These rules apply to the public comment period in any regular or special meeting or the any portion of a public hearing where public comment is required or designated (“Public Comment”).
2. Members of the public have no right to address the Council or make comments outside of the Public Comment. At any time, the Council, in its discretion, may accept comments from the public. However, outside of the Public Comment time, the Council is under no obligation to hear comments from the public during a meeting.
3. Members of the public may request that an item be placed on the City Council agenda by contacting the City Clerk’s office or any City Council member or by raising the item during Public Comment. The City Council has sole discretion to determine the content of each meeting agenda and is not obligated to add any item to the agenda.

III. Rules of Public Comment

The City adopts the following procedures to receive Public Comments at City meetings:

1. When the City meeting reaches a designated time for Public Comments, the Mayor (or other person who is chair of the meeting) will invite attendees to make Public Comments.
2. The Mayor (or meeting chairperson) will ask persons wishing to speak to raise their hands to be recognized by the Mayor. The Mayor will recognize one person to speak at a time, and each speaker must provide his or her name and address. No person in attendance may make a comment without being recognized.

3. Public Comments must be addressed to the Council, not to other members of the audience.
4. Public Comments shall be limited to three (3) minutes. Each speaker is only entitled to one (1) three-minute time during each Public Comment period and may not split the time or “give” the time to another speaker. However, if a public hearing is held during a meeting, then a person may speak during at the designated time during the public hearing and also at each of the Public Comment periods of the meeting.
5. In lieu of speaking, a person may submit any written comments to the City Clerk. Written materials submitted to the City are considered public documents.
6. The City encourages free and complete public dialogue on City issues within the bounds of civil discourse. Speakers may not breach the peace of the meeting.
7. If a speaker includes specific questions to the Council in his or her Public Comments, the Council has no obligation to respond.
8. Groups are encouraged to designate one or more individuals to speak on their behalf to avoid cumulative comments. However, there is no requirement to make this designation.
9. The Council may determine, in its sole discretion, how Public Comments will be summarized in the meeting minutes. Members of the public should not expect the minutes to include verbatim transcripts or details of any individual comment.
10. Members of the public are also encouraged to contact the City Manager’s office or any City Department during regular business hours to ask questions, raise concerns, and request information about City matters.

IV. Recording of Rules

These rules will be recorded in the minutes and kept on file with the City Clerk.

CITY OF BRIGHTON
PUBLIC MEETING PROCEDURES

I. Purpose

This document summarizes certain public meeting procedures that the City Council and the City's boards and commissions are required to follow under state law and the City Charter, and it establishes additional procedures to promote civil, orderly public meetings. If anything in these Public Meeting Procedures conflicts with a provision of applicable law or the City Charter or City Code, then the applicable law, City Charter, or City Code provision controls.

II. Public Meetings – General Requirements

a. Open Meetings Act

All meetings of the City's Council, boards and commissions must comply with the Open Meetings Act, Act 267 of 1976, MCL 15.261 *et seq* ("OMA"). This includes, but is not limited to, the City Council, Planning Commission, Zoning Board of Appeals, Board of Review, Building Authority, and any committee that meets the definition of public body under the OMA. A quorum of the members of a public body must not hold a meeting except in compliance with the OMA.

b. Notices

The City must provide notice of all meetings of the City's boards and commissions in accordance with the OMA. Generally, City staff will prepare all required notices and arrange for posting or publishing the notices.

Special meetings¹ and rescheduled regular meetings of a public body require that public notice be posted at least 18 hours before the meeting in a prominent place at City Hall and on the City's website. The notice must state the date, time, and place of the meeting.

c. Minutes

Minutes required. The City Council and each board and commission of the City must keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed

¹ See Section III(B) of these Procedures for additional requirements for special meetings of the City Council.

session is held. MCL 15.269(1). The minutes must include all roll call votes taken at the meeting. MCL 15.269(1).

Preparation of minutes. The City Clerk prepares the minutes of City Council meetings. For other boards and commissions, the secretary of the board or commission prepares the meeting minutes. Draft minutes must be prepared and available for public inspection within **8 business days** after the date of the meeting, as required by the OMA. MCL 15.269(3). The approved minutes must be made available for public inspection within **5 business days** after the meeting at which the minutes are approved. MCL 15.269(3).

Correction of minutes. Meeting minutes may only be corrected at the next meeting after the meeting to which the minutes refer. MCL 125.269(1).

d. Closed Sessions

Permissible Purposes. The City Council and any board or commission of the City may enter into a closed session during the meeting for any of the following reasons under the OMA:

- (a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.
- (b) [omitted]².
- (c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.
- (d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
- (e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

² This document omits permissible closed session purposes under the OMA that do not apply to cities.

- (f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j) [president of an institution of higher education].
- (g) [omitted].
- (h) To consider material exempt from discussion or disclosure by state or federal statute. **[Note: this includes attorney-client privileged written legal opinions.]**
- (i) [omitted].
- (j) [omitted].
- (k) [omitted].

MCL 15.268 (subsections b, g, and j-k omitted as inapplicable to cities).

Procedure. Entering closed session requires a 2/3 roll-call vote of all members elected or appointed and serving, except that closed sessions under subsections (a) and (c) require only a majority vote. The roll call vote and the purpose of the closed session must be included in the meeting minutes.

Separate Minutes. A separate set of minutes must be taken for the closed session. The closed session minutes are retained by the City Clerk (the clerk or secretary of any board or commission must ensure that sealed closed session minutes are sent to the City Clerk for retention), are not available to the public, and are to be disclosed only if required by a civil action filed under the OMA. The closed session minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

e. Public Comment

Under the OMA, a person must be permitted to address a meeting of a public body under rules established and recorded by the public body. MCL 15.263(5). The City of Brighton has adopted

a “Policy for Public Comments at Meetings.” The City will allow public comment at all City Council, board, and commission meetings pursuant to that policy.

III. City Council Meetings

a. Schedule Set by Resolution

Under Section 6.1 of the City Charter, the City Council must establish the time and place of its regular meetings by resolution and hold at least one regular meeting each month. A regular meeting must be held at 8:00 P.M. on the Monday after each regular City election.

b. Special Meetings of City Council

Calling Special Meeting; Notice to Council Members. Under Section 6.2 of the City Charter, the City Clerk must call a special meeting on the written request of the Mayor or any two members of the Council. Each member of the Council must receive at least 24 hours’ written notice, served personally or left at his or her usual place of residence. The special meeting may be held on less than 24 hours’ notice to Council members if all members of the Council are present or have waived notice of the meeting in writing.

Public Notice. Under the OMA, all special meetings require that public notice be posted at least 18 hours before the meeting in a prominent place at City Hall and on the City’s website. The notice must state the date, time, and place of the meeting.

Business at Special Meeting. Under Section 6.3 of the City Charter, no business may be transacted at any special meeting of the Council unless the business was stated in the meeting notice. However, any business that lawfully comes before a regular meeting may be transacted at a special meeting if all the members of the Council present consent and all the members absent file their written consent.

c. Agendas

Although agendas are not required under the OMA, the City’s policy is to prepare agendas for City Council meetings. Agendas are prepared by City staff in consultation with the Mayor and/or Mayor Pro Tem and are considered for approval by the City Council at each meeting. Members of City Council may request that City staff include specific items on the agenda before the meeting and may move to add items to the agenda during the meeting.

Members of the public may request that an item be placed on the City Council agenda by contacting the City Clerk's office or any City Council member or by raising the item during Public Comment. The City Council has sole discretion to determine the content of each meeting agenda and is not obligated to add any item to the agenda.

d. Publication of Proceedings

In addition to the minutes required under the OMA, the City Council must publish the proceedings or a summary of the proceedings within 15 days after each meeting. (City Charter, Section 6.7.) Any summary must be prepared by the Clerk and approved by the Mayor, and it must show the substance of each separate proceeding of the Council.

e. Voting Procedures

Roll Call Required. Under Section 6.7 of the City Charter, a roll call vote is required on all ordinances and resolutions. The roll call must be recorded in the minutes unless the vote is unanimous, in which case the minutes may state that the vote was unanimous.

Order of Roll Call. In all roll call votes, the names of the members of the Council must be called in alphabetical order, and the name to be called first will be advanced one position alphabetically in each successive roll call vote.

Members Required to Vote. Each Council member in attendance must vote on each question before the Council unless (1) the Council member has a conflict of interest under the Ethics Ordinance, (2) the Council member has a financial interest in the question, other than the common public interest, or (3) the question concerns the Council member's conduct. A Council member who refuses to vote when required to vote is guilty of misconduct in office under Section 6.7 of the City Charter.

f. Quorum; Rescheduling of Meetings

A majority of Council members constitutes a quorum. A quorum is required to hold a meeting. If less than a quorum is present, the City will reschedule the meeting and provide the notice required under the OMA for a special meeting.

g. Conduct of Council Members

City Council members must conduct themselves in accordance with the City's Ethics Ordinance and are encouraged to act with civility toward fellow Council members, City staff, and members of the public.

h. Parliamentary Procedure

The City may rely on Robert's Rules of Order (Newly Revised) for guidance on parliamentary procedure, but the City is not required to strictly follow Robert's Rules of Order to govern all questions of conduct and procedure.

Approved by City Council: _____, 2021

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CITY OF BRIGHTON

ORDINANCE NO. _____

ORDINANCE TO ADOPT CODE OF ETHICS FOR THE CITY OF BRIGHTON

The City of Brighton ordains:

CHAPTER ONE: TITLE, PURPOSE, AND DEFINITIONS

Section 1-1. Title.

This ordinance shall be known and cited as the "City of Brighton Code of Ethics" or the "Code of Ethics."

Section 1-2. Purpose.

The purpose of the Code of Ethics is to prescribe standards of conduct for the officers and employees of the City of Brighton (the "City").

Section 1-3. Definitions.

- a. "Employee" means a person employed by the City, whether on a full-time or part-time basis.
- b. "Confidential information" means information obtained in the course of holding public office or employment that is not available to members of the public and which the official or employee is not authorized to disclose, except to designated individuals or bodies, including written and non-written information.
- c. "Conflict of interest" includes a matter pending before the City Council or any City board or committee in which:
 - i. a member of the Council, board, or committee has a direct pecuniary interest in the matter or in the outcome of the matter, if such interest would result in an incompatibility between the member's private interests and the member's fiduciary duties; or
 - ii. a person in the member's immediate family has a direct pecuniary interest in the matter or in the outcome of the matter, if such interest would result in an incompatibility between the member's private interests and the Member's fiduciary duties. "Immediate family" means a member's spouse, children, stepchildren, grandchildren, parents, brothers, sisters, grandparents, parent's in-law, or any individual living in the member's household.

- d. "Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.
- e. "Officer" or "Official" means a person who holds office by election or appointment within the City, regardless of whether the person is compensated for service in his or her official capacity.
- f. "Prohibited source" means any person or entity who:
 - i. is seeking official action by an officer, (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;
 - ii. does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee;
 - iii. conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or
 - iv. has interests that may be substantially affected by the performance or nonperformance of the official duties of the officer or employee.

CHAPTER TWO: STANDARDS OF CONDUCT

Section 2-1. Confidential Information.

Except as otherwise required by law or court order, an officer or employee shall not divulge to an unauthorized person confidential information acquired in the course of employment or in the course of holding office in advance of the time prescribed for its authorized release to the public.

State law reference: MCL 15.342(1).

Section 2-2. Personal Opinion.

An officer or employee shall not represent his or her personal opinion as that of the City.

State law reference: MCL 15.342(2).

Section 2-3. Use of City Property and Resources.

An officer or employee shall use personnel resources, property, and funds under the officer or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

State law reference: MCL 15.342(3).

Section 2-4. Gifts.

- a. **Gifts prohibited.** Except as permitted by this ordinance, no officer or employee of the City shall intentionally solicit or accept any gift from any prohibited source or any gift that is otherwise prohibited by law or ordinance.
- b. **Exceptions.** Subsection (a) is not applicable to the following:
 - i. Opportunities, benefits, and services that are available on the same conditions as for the general public.
 - ii. Anything for which the officer or employee pays the fair market value.
 - iii. Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.
 - iv. A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of an individual's spouse and the individual's fiancé or fiancée.
 - v. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the

actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees.

- vi. Food or refreshments not exceeding \$50.00 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.
- vii. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.
- viii. Intra-governmental and inter-governmental gifts. For the purpose of this ordinance, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee of the City, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.
- ix. Bequests, inheritances, and other transfers at death.
- x. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.00.
- xi. Any item or monetary gift that is donated to the City, held in the City's possession, and used by the City for any lawful public purpose.

State law reference: MCL 15.342(4).

Section 2-5. Business Transactions.

- a. An officer or employee shall not engage in a business transaction in which the officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority.
- b. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with this state.

State law reference: MCL 15.342(5).

Section 2-6. Incompatibility.

Except as provided by Section 2a of Act 196 of 1973, MCL 15.341 *et seq.*, and other applicable law, an officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independent judgment or action in the performance of official duties.

State law reference: MCL 15.342(6).

Section 2-7. Negotiation of Contracts.

All elective and appointed officers must comply with Section 5.13 of the City Charter, which provides as follows:

(a) Except as permitted by this section no contract or purchase involving an amount in excess of one hundred dollars shall be made by the city in which any elective or appointive officer or any member of his family has an pecuniary interest, direct or indirect. A "contract" shall for the purposes of this section include any arrangement or agreement pursuant to which any material, service or other thing of value is to be furnished to the city for a valuable consideration to be paid by the city or sold or transferred by the city, except the furnishing of personal services as an officer or employee of the city; and the term "member of his family" shall include spouse, children, and the spouse of any of them.

(b) Without limiting the generality of paragraph (a) of this section, an officer shall be deemed to have a pecuniary interest in a contract if he or any member of his family is an employee, partner, officer, director or sales representative of the person, firm or corporation with which such contract is made or of a sales representative of such person, firm or corporation. Ownership, individually or in a fiduciary capacity, by an officer or member of his family of securities, or of any beneficial interest in securities, of any corporation with which a contract is made or which is a sales representative of any person, firm or corporation with which such contract is made, shall not be deemed to create a pecuniary interest in such contract unless the aggregate amount of such securities, or interest in such securities, so owned by such officer and the members of his family, shall exceed ten percent of any class of the securities of such corporation then outstanding.

(c) A contract in which an officer or member of his family has a pecuniary interest may be made by the city if the members of the Council in office at the time having no such interest shall, by unanimous vote, determine that the best interests of the city will be served by the making of such contract and if such contract is made after comparative prices are obtained.

(d) Any officer who knowingly permits the city to enter into any contract in which he has a pecuniary interest without disclosing such interest to the Council prior to the action of the Council in authorizing such contract, shall be guilty of misconduct in office. Except in the instances specified in paragraph (c) of this section, the unanimous determination (by vote or written instrument filed with the Clerk) of the Council that in a particular case an officer or member of his family will not have a pecuniary interest in any contract or purchase to be entered into by the city shall be final and conclusive in the absence of fraud or misrepresentation.

(e) No officer shall stand as surety on any bond to the city or give any bail for any other person which may be required by the charter or any ordinance of the city. Any officer of the city who violates the provisions of this paragraph shall be guilty of misconduct in office. Any contracts between a public official or employee and the City must also comply with the Contracts of Public Servants with Public Entities Act, Act 317 of 1968, MCL 15.321 *et seq.*

State law reference: MCL 15.342(7). *Charter reference:* Section 5.13.

Section 2-8. Political and Campaign Activities.

Public officials and employees must comply with the Political Activities by Public Employees Act, MCL 15.401 *et seq.*, and the Michigan Campaign Finance Act, MCL 169.201 *et seq.*

CHAPTER THREE: CONFLICTS OF INTEREST

Section 3-1. Procedure.

- a. Before participating in a decision, hearing, or casting a vote on a matter on which a member may reasonably have a conflict of interest as identified in this Ordinance, the member must disclose the potential conflict of interest to the Council, board, or committee.
- b. The member who has disclosed a conflict of interest must disqualify himself or herself at the outset of the hearing or discussion and must not participate in the deliberations or decision. The member must not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting. The presence of the member at the meeting is not counted in determining the presence of a quorum for purposes of the vote on the matter presenting the conflict of interest. The member's ineligibility to vote will be reflected in the minutes of the meeting.
- c. If the member is an applicant submitting an application, contract, transaction or any other matter to the Council, board, or committee, the member may be

present in the meeting room during discussion to make a presentation and answer questions.

- d. If a member plans not to attend a meeting at which he or she has reason to believe that the Council, board, or committee will act on a matter in which the member has a conflict of interest, the member must disclose to the chair of the meeting all facts material to the conflict of interest. The chair must report the disclosure at the meeting, and the disclosure will be reflected in the minutes of the meeting.

CHAPTER FOUR: VIOLATIONS

Section 4-1. Violations.

A person who violates this Ordinance is guilty of a misdemeanor, which is punishable by a fine of not more than \$500.00, imprisonment for not more than ninety 90 days, or both.

Section 4-2. Disciplinary Action.

Violation of this Ordinance constitutes malfeasance in office. In addition to any other penalty, whether criminal or civil, an employee or officer who intentionally violates this ordinance may be subject to disciplinary action including censure, reprimand, removal, dismissal, or discharge, to the extent permitted by law.

Section 4-3. Collective Bargaining Agreements.

Nothing in this Ordinance diminishes or impairs the rights of an officer or employee under any collective bargaining agreement. To the extent this Ordinance conflicts with a collective bargaining agreement in effect in the City, the collective bargaining agreement controls.

Section 4-4. State statutes.

State statutes cited in this ordinance contain criminal penalties and civil remedies that apply, as provided in those statutes, to the conduct regulated by those statutes.

CHAPTER FIVE: ADMINISTRATIVE PROVISIONS

Section 5-1. Validity and Severability.

Should any portion of this Ordinance be found invalid for any reason, such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5-2. Repeal of Prior Ordinance.

Any ordinances or parts of ordinances in conflict with this Ordinance are repealed, but only to the extent necessary to give this Ordinance full force and effect.

Section 5-3. Effective Date.

This ordinance becomes effective 15 days after adoption.