

# CODE OF CONDUCT FOR ELECTED OFFICIALS AND ADVISORY BOARD MEMBERS CITY OF HOLBROOK, ARIZONA

## **SECTION 1: The City of Holbrook Ethics Policy**

It is the policy of the City of Holbrook to uphold, promote and demand the highest standards of ethics from all of its officials, whether elected to the City Council or appointed to advisory boards. Accordingly, all members of City boards, commissions, committees and members of the City Council shall maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws, and never use their City position or authority improperly or for personal gain.

The City of Holbrook and its elected and appointed officials all share a commitment to ethical conduct and service to the City of Holbrook. This code has been created to ensure that all elected and appointed officials have clear guidelines for carrying out their responsibilities in their relationships with each other, with the staff, with the citizens of Holbrook, and with all other private and governmental entities.

## **SECTION 2: City Council Relationships**

### **A. Intra-Council Relationships**

The Mayor and City Council, hereinafter referred to as “the Council” have a Charter responsibility to set the policies for the City. In doing so, certain types of conduct are beneficial and certain types are destructive. The City Council is responsible to take the high road on Intra-Council conduct and treat other council members as they would like to be treated.

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions and goals. Despite this diversity, all have chosen to serve in public office and have the obligation to preserve and protect the well being of the community and its citizens. In all cases, this common goal should be acknowledged and the Council must recognize that certain behavior is counterproductive, while other behavior will lead to success. The following are examples of how the Council Members should relate to one another:

- Practice civility and decorum in discussion and debates.
- Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of an effective City Council. However, City Council Members who are belligerent, impertinent, slanderous, threatening, abusive, or who engage in personal or disparaging attacks

on other Council members denigrate the process and preclude effective discussions and the successful resolution of issues.

- Every council member has the right to an individual opinion, which should be respected by the other Council Members. Council Members should assume the other members of the Council have the appropriate motives and interest of the public in mind and not criticize differing opinions because they believe them to be lacking in judgment or improperly motivated.
- An issue may be contentious without being hostile, degrading or defamatory.
- The Council should act as cooperatively as possible and may be required, from time to time, to modify to some extent their positions so that a decision can be reached. Compromise in a Council Member's position does not indicate dishonesty or lack of integrity, but does indicate a recognition of the realities involved in reaching a consensus or decision in the best interests of the community.

#### B. Council Action in the Public

The City Council Members are expected to demonstrate, not only publicly but privately, their honesty and integrity and be an example of appropriate and ethical conduct. A Council Member should not personally criticize other Council Members, nor impugn their integrity. Council Members should treat each other with respect when discussing council issues outside of Council meetings, and should convey to the public their respect and appreciation for other Council Members and their positions.

Council Members must ensure that in expressing their own opinions they do not mislead any listener into believing that their opinion is the opinion of the Council unless the Council has taken a vote on that issue and the Council Member's opinion is the same as the decision made by the Council. Likewise, no Council Member should state in writing that Council Member's position in a way that implies it is the position of the entire City Council. A City Council Member has the right to state a personal opinion, and has the right to indicate that he/she is stating such as a member of the Council, but must always clarify that he/she is not speaking on behalf of the City or the City Council unless authorized by the Council to do so.

#### C. Council Conduct with City Staff

Governance of the City relies on the cooperative efforts of elected officials who set policy and the City staff who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each other for the good of the community. The following are examples of how the Council should relate to the staff:

- The Council Members should treat all staff as professionals. Clear, honest communication that respects the abilities, experience and dignity of each staff member is expected. Poor behavior or comments toward staff are not acceptable.
- Staff works within a chain of command under the ultimate direction of the City Manager. Since the City Manager is the principle administrator in the City,

the City Council should generally direct questions and suggestions to the City Manager and allow the City Manager to assign out those tasks or responsibilities.

- When Council Members give specific direction to a staff member the Council Members may in fact be giving direction contrary to direction already given to the staff member by a superior, or may be giving direction to the staff member which the staff member knows to be ineffective or inappropriate. The Council should attempt to work through the City Manager for all communication with the staff and expect the City Manager to be responsive to the Council's needs, questions and comments.
- The City Council should never publicly criticize City employees from the City Manager through the front line staff members. Public criticism of City employees leads to poor morale of the City employees, undermines their effectiveness with the public and is detrimental to their performance and to the ability of the City Manager to administer the City and implement Council policy.
- If a City Council Member has a question regarding a matter that is on a City Council agenda, the City Council Member should contact the City Manager prior to the meeting and indicate the concern or question that the City Council Member has to the City Manager, so that the City Manager can either research the question and be prepared to provide an answer, or have a staff member research the question and be prepared to provide an answer.
- The City Council should not attempt to influence the decisions or opinions of City staff members on issues that may come before the City Council.
- Council Members should avoid attending City staff meetings unless they are requested by the City Manager to attend, and should also avoid attending advisory committee meetings because of the likelihood that the members of the committee will be affected by the Council Member's attendance.
- The City Council should avoid asking for information which will unduly burden the staff and, when asking for information, should go through the City Manager.
- The Council Members shall not exert any influence on the City Manager on issues relating to hiring, promotion, or discipline of City employees.
- Nothing herein shall be interpreted to be in conflict with the provisions of Section 3.07 of the Charter, which specifically provides that the Council and its members may deal with the administrative services of the City for the purpose of inquirey, investigation or report.

#### D. Council Conduct in City Council Meetings

The Mayor shall conduct all City Council Meetings. Council Members shall address all comments through the Mayor. Only the Mayor, no individual Council Members, may interrupt a speaker during a presentation. However, a Council Member may ask the Mayor for permission to question the speaker.

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council Members toward an individual participating in a public forum. Every effort should be made to be fair and

impartial in listening to public comments. The Council should listen to comments from the public and concerns raised by the public or disagreements voiced by the public. Council Members should also ask for clarification if they do not understand the comment.

However, the public should not be allowed to launch any personal attacks against any members of the Council during any public meeting, nor should Council Members disparage or insult members of the public during any Council meetings.

The Mayor shall maintain order in all City Council meetings and shall take reasonable steps to ensure compliance by the public, staff and Council Members. This may include an indication that a comment is out of order and a ruling by the Mayor that in the event such inappropriate comments continue the interrupting party may be ordered removed from the premises.

#### E. Sanctions

Council Member behavior and conduct in City Council meetings and outside City Council meetings is subject to sanctions set out in this Code of Conduct. The preceding section regarding the conduct of elected officials not only sets out principals and examples of proper conduct or improper conduct, but also constitutes enforceable guidelines, not merely suggestions.

All Council conduct in and out of Council meetings must be in compliance with the open meeting law (see Section 7 and Exhibit A).

If a Council Member intentionally violates the principles and guidelines set out herein, that Council member is subject to the sanctions set out in this code.

### **SECTION 3: Boards and Commissions**

In accordance with Section 2.07 of the Charter, the Mayor shall appoint volunteer members to various committees, board and commissions after due official notice to the public and with consent of the Council. These members can provide substantial contributions to the Council and to the welfare of the entire City.

Committee and commission members are encouraged to attend all meetings, be prepared for all discussions in those meetings, and to follow the same principles and guidelines that are set out in the preceding sections for Council Member conduct.

Commission and committee members are subject to the sanctions set out herein.

### **SECTION 4: Ethics Policy and Conflict of Interest**

It is the policy of the City of Holbrook to uphold, promote and demand the highest standard of ethical behavior from its Mayor, members of its City Council and individuals appointed to serve on City boards and commissions. Honesty, integrity and fairness are hall

marks of public service. Use of one's office or position for personal gain or inappropriate influence will not be tolerated and is prohibited.

All City officials shall obey and observe the letter and spirit of the Constitution of the United States, the Constitution of the State of Arizona and all federal, state and local laws, codes and ordinances, including this Code of Conduct. A listing of key public service ethics laws and other specific laws governing the conduct of public officials are listed in Exhibit A attached to this code. (Exhibit A is offered for reference only and is not intended to be an inclusive list of statutory obligations or limitations on Council conduct.)

As a prerequisite for exercising any power of office, each City official is required to read and agree in writing to comply with the provisions of applicable laws, regulations, policies and this Code of Conduct, as well as to participate annually in continuing education workshops regarding public service ethics and applicable state laws.

## **SECTION 5: Conflicts of Interest**

A conflict of interest arises when a City official, a relative of that official, or an entity in which a City official has a substantial interest is actively engaged in an activity that involves the City's decision-making process. "Decision-making process" is broader than just voting, and includes, inter alia, being involved with any aspects of any decisions the City makes, including contracting, sales, purchases, permitting, zoning, transactions in City owned property, discussions and negotiations with various business interests, and relationships with other governmental entities.

When a conflict of interest arises, the City official involved must immediately refrain from participating in any manner in the City's decision-making processes relating to that issue. The City official should not participate in any discussions of the matter, nor vote on the matter. Likewise, the City official should not provide any opinion or suggest any conduct to be taken by any member of the City Council or any City employee, contractor or agent, officer, staff member, commission member or any other advisory group to the City when such a conflict involves the City official.

In addition, the City official shall declare the specific nature of the possible conflict by either stating on the record in a public session the nature of the conflict or by providing a written disclosure of the conflict to the City Attorney and the City Manager.

In situations where said official has questions about the applicability of this Code of Conduct or the provisions in other Arizona conflicts of interest laws or any other questions regarding a possible conflict, the City official may seek the advice of the City Attorney on whether a conflict of interest exists. City officials are also strongly encouraged to avoid involvement in situations where conduct is not a technical conflict of interest, but where active participation might raise the perception of undue influence or impropriety.

All Council Members and members of City boards, commissions and committees shall complete and file with the City Clerk a Personal Interest Disclosure Form (a copy of which is

attached to this code as Exhibit B) prior to officially participating in a public meeting, and annually before January 31<sup>st</sup> of each year of service to the City.

## **SECTION 6: Acceptance of Gifts or Other Consideration for Public Action**

City officials are prohibited from soliciting, receiving or accepting personal gifts of any kind from anyone who is engaged in a general practice or specific situation that involves the City's decision-making or permitting processes. The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality including meals, promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including the purchase, sale or lease of any real or personal property by the City official, by the City official's relative or by any entity in which that official has a financial interest at a value below or above that available to the general public. Nor may the City official receive employment and/or services, contracts or direct or indirect benefits from any person or entity in exchange for any acts, conduct, or efforts made by the City official in the official's capacity, nor shall the City official allow any of that official's relatives or an entity in which the official or relative has a financial interest to be so benefited.

## **SECTION 7: Open Government**

The citizens of Holbrook expect and deserve open government. Arizona has an official public policy "that meetings of public bodies be conducted openly," and that any doubt should always be resolved "in favor of public meetings".

Therefore, City officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions. City officials are encouraged to employ a "mindset of openness" in conducting the affairs of the City and should be cautious before voting to hold a portion of a meeting in executive session. If a matter can be discussed in open session without damage to the public interest, public officials are encouraged to do so. Moreover, City officials are reminded that any attempt to circumvent the open meeting law, such as by using electronic technology, a "hub and spoke" scheme, or any other technique involving less than a quorum designed to communicate with the quorum of a public body will violate the open meeting law and is prohibited. City officials are reminded that any time a quorum of a public body is present in one location, or is in communication by telephone, e-mail, or by other means, and either propose, discuss, consider or vote on any City issue, that such conduct constitutes a violation of the open meeting law and is prohibited.

Please note that the Arizona Open Meeting Law (see Exhibit A) prohibits a discussion in a meeting on any item which is not listed on the agenda unless it is reasonably related to an item listed on the agenda. "Reasonably related" requires that reasonable members of the public would or should expect such "reasonably related items" to be discussed under the published agenda item. This ensures that members of the public will have adequate notice of the possible discussion so that they can decide whether they wish to attend the meeting in question.

The City Attorney is directed to vigorously promote and enforce state laws regulating open meetings, and be assertive in ensuring strict adherence to those laws reflecting the City's "mindset of openness".

During a person's employment or service with the City, and for two years thereafter, no member of a City board, commission, committee, or of the City Council may disclose or use confidential information without appropriate authorization. "Confidential information" includes certain economic development information and other non-public information that may affect the City's economic interests.

## **SECTION 8: Preservation of Public Records**

Consistent with the Arizona Public Records laws, written communications between public officials and private citizens, or between public officials and other public officials on matters involving the affairs of the City are considered public documents. Such written communications shall be preserved in compliance with the City's document retention policy and made available for review upon request.

"Written communications", as used above, includes City related documents, memos and e-mail messages and attachments originating from or received by elected or appointed officials on any publicly or privately owned equipment at City Hall, at the City official's place of employment, private residence or at remote locations. Destruction of such communications prior to expiration of the time period specified in the City's document retention policy is prohibited.

## **SECTION 9: Enforcement of this Code of Conduct**

### **A. Filing of Complaints**

Any person who believes a City official, in his/her official capacity, has violated a requirement or prohibition or guideline set out herein, or any other federal, state or local law may file a sworn complaint with the City Attorney identifying 1) the complainant's name, address and telephone number; 2) the name and position of the City official who is the subject of the complaint; 3) the nature of the alleged violation, including the specific provision of this code or law allegedly violated, and 4) a statement of facts constituting the alleged violation and the dates on which, or period of time during which the alleged violation occurred.

Attached to the complaint the person making the complaint shall provide all documents or other materials in the complainant's possession that are relevant to the allegation, a list of all documents or other materials relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other materials relevant to the allegation but unavailable to the complainant, including the location of the documents if known, and a list of witnesses, what they may know, and information to contact those witnesses.

The complaint shall include an affidavit at the end of the complaint stating that the "information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged are true and correct and that they constitute a violation of the ethics code, guidelines set out therein, or federal, state or local law or ordinance." If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those

sources. The complainant shall swear to the facts by oath before a notary public, or before the City Clerk. The notary public or City Clerk shall verify the signature.

B. Time for Filing

A complaint under this code must be filed no later than one year from the date of discovery of the alleged violation. However, anyone having information on which a complaint is based is encouraged to file the complaint as soon as the information is obtained so that immediate action may be taken by the Council or the appropriate staff member or agency. The delay in filing a complaint may be considered in determining the sanction to be imposed.

C. False or Frivolous Complaints

A person who knowingly makes a false, misleading or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and possible civil liability. If, after reviewing an ethics complaint, it is determined that a sworn complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury, the City Attorney may refer the matter to the appropriate law enforcement authority for possible prosecution. A City official who seeks to take civil action regarding any such complaint shall do so at his or her expense.

D. Complaints Against Members of Boards, Commissions, Committees, Task Forces or other Appointed Advisory Groups.

1. Initial Screening of Complaints - The City Attorney shall review each complaint filed alleging a violation by a member of a City board, commission, committee, task force or other appointed advisory group, and within 15 business days either 1) return it for being incomplete; 2) dismiss it if the complaint, on its face, fails to state allegations that if true would violate a mandatory requirement or prohibition of this code, 3) dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the City Attorney determines that the complaint was false, misleading, frivolous or unsubstantiated, 4) refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states, on its face, allegations that, if true, would constitute a violation of Arizona or federal law, or, 5) if the complaint states, on its face, allegations that, if true, would constitute a violation of a mandatory requirement or prohibition of this code, take action as set forth below.

2. Investigation of Complaint - After completion of the initial review of the complaint as set out above, the City Attorney shall investigate the allegations and within thirty days submit to the Council, complainant, the official who is the subject of the complaint, and the City Clerk a report with findings of fact, conclusions of law and a recommendation. The City Council shall consider the City Attorney's report at a public meeting. Upon review of the report and following a discussion, if the City Council, by motion, concludes that there is a violation of this Code, the City Council may remove the member from the City board, commission, committee, task force or other appointed advisory group. In

resolving the complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of the wrong-doing.

3. Complaint and City Attorney Report are Public Records - On the same day the City Attorney notifies a complainant of the action taken on a complaint as set forth herein, and on the same day the City Attorney issues a report to the City Council regarding a complaint against a member of a City board, commission, committee, task force or other appointed advisory group, or on the same day that the City Attorney refers a matter to an independent reviewer, the City Attorney shall issue a report to the City Council regarding the complaint and provide copies of the complaint and all supporting documentation to the City Clerk to be made a public record.

E. Complaints Against the Mayor and Members of the City Council.

1. Investigator Appointment - The City shall use independent, non-city personnel to handle complaints lodged against the Mayor and members of the City Council. The independent non-city investigator shall be appointed by the City Attorney.

2. Investigator Initial Action - The City Attorney shall immediately transfer any complaint filed against the Mayor or a member of the City Council to the City's independent investigator who will conduct the initial screening of the complaint and, within 15 business days, absent an extension granted by the City Council shall issue a report, including findings of fact and conclusions of law and recommend that the City Attorney handle the complaint in one of the following ways:

- a) Return the complaint to the complainant because it is not complete;
- b) Dismiss the complaint if, on its face, it fails to state allegations which, if true, would violate a prohibition or guideline as set out in this Code of Conduct;
- c) Dismiss the complaint for lack of merit and refer the complaint to the appropriate authorities for action against the complainant, if the independent investigator determines the complaint was false, misleading, frivolous, or unsubstantiated; or
- d) Refer any alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint, on its face, states allegations which, if true, would constitute a violation of Arizona or federal law.

Upon taking any of the above actions, the City Attorney shall submit a copy of the investigator's report to the official who is the subject of the complaint, unless, in the discretion of the City Attorney, to do so will impede a possible investigation of an alleged violation of Arizona or federal law.

3. Investigation - If the complaint appears valid on its face, the investigator shall conduct such investigation as he/she deems appropriate to determine the accuracy/truthfulness of the allegations made, and if such allegations violate any provision of this code or state or federal law. The independent investigator may request the assistance of the City Attorney in such investigation. The investigator shall then submit findings of

fact and conclusions of law to the City Attorney and the City Council.

4. Appointment of Hearing Officer and Presenting Attorney - If the investigator concludes that this code has been violated or that a violation of City, state or federal law has occurred, the City Attorney shall appoint a hearing officer to conduct a hearing on the matter. The City Attorney shall also designate an outside attorney to present the matter to the Hearing Officer on behalf of the complainant.

5. Rules of Procedure - The City Council will adopt written rules of procedure to govern the hearing process, including the right of a City official against whom a complaint has been lodged to respond to the complaint, attend any hearing, present witnesses and offer evidence, and be represented by counsel at his or her own expense.

The hearing officer shall conduct the hearing in accordance with the rules of procedure adopted by the Council. After completion of the hearing, the hearing officer shall make findings of fact and conclusions of law and transmit the same to the Council for a determination of the sanction/s to be imposed. The Council shall accept the findings and conclusions of the hearing officer as true and correct, but shall have the discretion to determine the appropriate sanction/s to be imposed. If the City official against whom the complaint was filed is exonerated by the hearing officer, the City may, in the discretion of the Council, pay part or all of the reasonable attorney's fees and costs incurred by the City official in his/her defense.

6. Penalties and Sanctions Policy - It is the intent of the City Council to educate and when necessary, discipline Council Members and members of boards and commissions appointed by the Council who violate this Code of Conduct. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the Council believes that the progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the Council does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving the matter, including the intent of the one accused of wrong-doing.

7. Possible Penalties and Sanctions - The City Council shall determine the appropriate penalty or sanction for violations of this Code of Conduct. Possible sanctions may include an informal censure by the Council, which would only be made as part of a motion in a public meeting; a formal censure by the Council, which would be made by motion in a public meeting and then published in the City newspaper. The Council may also vote to impose a dollar fine on the Council Member, up to \$500.00. The Council may also vote to prohibit a Council Member's participation on the Council for a specified number of days or may vote to remove a Council Member from office in the event of the most serious violations of this code. The imposition of any of these penalties or sanctions will require five affirmative votes of the Council.

**SECTION 10: Inclusion in City Charter**

The City Council intends to submit this Code of Conduct to the voters for approval as an amendment to the City Charter which would incorporate this Code of Conduct by reference as an official policy of the City.

**SECTION 11: Amendments to this Code**

After this code is adopted by the Council, and passed by the voters as a provision of the Charter, the City Council shall have the authority to modify or amend portions hereof by ordinance upon recommendation of an independent citizen advisory board chosen in compliance with the City Charter and this Code of Conduct, with an affirmative vote of five members of the Council.

**SECTION 12: Severability**

If any provision of this code is found to be legally invalid, that provision shall be severed from this code and the remainder of this code shall remain in effect.