



CITY COUNCIL AGENDA ITEM NO. H.4
10/10/2023

SUBJECT: Review of City Council/Administrative Policy Ethics and Conduct Policy 110-5

DEPARTMENT: City Manager's Office

STAFF: Darin Gale, Assistant City Manager

TITLE/RECOMMENDATION

That the City Council discuss and provide direction to staff on potential amendments to City Council/Administrative Policy 110-5, Ethics and Conduct

FISCAL IMPACT

There is no fiscal impact associated with this action, however, utilizing a consultant with expertise in this area, as well outside legal counsel for a review of the enforceability of State and Federal law violations, could cost approximately \$25,000 depending on the final scope and time commitment involved. Any costs incurred will be funded by the General Fund.

BACKGROUND

In response to Council Member Mendoza's future agenda request on October 11, 2022, later deferred with her permission until September 2023, and continued from the September 26th meeting, this request is seeking City Council direction about amendments to the City Council Ethics and Conduct policy (the Policy). At the October 11, 2022 meeting, the City Council authorized the following direction:

Update the City of Brentwood Ethics & Conduct Policy:

- Benchmark other cities ethic and conduct policies, include copies of the policies in a future staff report and highlight best practices
- Benchmark policies from Cities that might have recently updated their policy or dealt with recent violations
- Review City Council option to discuss possible violations of State & Federal Law during regular council meetings and to refer to the appropriate legal agencies
- Specifically consider Council options for possible Brown Act Violations
- Once information is collected as mentioned above, hold a workshop for Council and Public discussion to recommend updated Council Ethics & Conduct Policy.



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Staff is seeking authorization to hire a consultant to prepare amendments to the Policy, and outside counsel to review questions associated with the ability to discuss and/or enforce State and Federal law violations. Staff will return with their assistance in providing benchmark policies, as well as determinations on whether there are alternatives and options about addressing Federal and State law. If authorization is received, the additional General Fund budget request required for this assistance will be included in a future agenda item on this matter.

To look into how best to provide the City Council with baseline information related to the Policy, staff contacted, JoAnne Speers of S2, Ethics Strategies, an expert on ethics issues and policies. Ms. Speers provided a broad review of the Policy, and her thoughts are included in the attached letter. Ms. Speers did not charge the City for her review. She stated that the Policy “benchmarks well” and recommended four areas to consider:

1. **Length and Relevance:** “Extensiveness” (or length) can be a double-edged sword. Longer documents—particularly those with less relevant information-- are more difficult for busy elected officials to keep top of mind.
2. **Terminology:** The code has language that may be ambiguous or overly broad.
3. **Process:** To be maximally effective, it can be helpful for those whose conduct is to be guided by the document to have the opportunity for input into its content. A good practice is to give Councilmembers the opportunity to review, revise and refine ethics codes periodically.
4. **Implementation:** Most of the time, implementation is a staff function. This is less so with policies that pertain to the Council’s values and behaviors, since Councilmembers in their words and actions are the policy’s implementers. There are some additional practices the Council can consider in enhancing its implementation processes.

As Ms. Speers’ review was a broad overview of the Policy, a more in-depth analysis could result in additional recommendations. Such recommendations would be brought forward when the matter is again considered by the Council.

Finally, the current Ethics and Conduct Policy does not apply to violations of State and Federal law. When this matter was discussed in 2022, questions were raised about this applicability issue. If the Council is still interested in exploring this issue, with your direction staff would engage the services of special counsel to prepare an opinion memo.



CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.

DATE OF NOTICE

Not Applicable.

ENVIRONMENTAL DETERMINATION

Not Applicable.

ATTACHMENT(S)

1. Previous Action
2. City Council/Administrative Policy 110-5 Ethics and Conduct
3. S2, Ethic Strategies – Outside Legal Counsel Code Review & Recommendation