

ORDINANCE 295

AN ORDINANCE ESTABLISHING AND ADDING §30.05-CODE OF CONDUCT FOR ELECTED OFFICIALS AND DUE PROCESS PROCEDURES FOR VIOLATIONS OF SAID CONDUCT TO TITLE III ADMINISTRATION CHAPTER 30 GENERAL PROVISIONS

WHEREAS: The City of Baltic (the "City") is adopting an ordinance pertaining to the conduct expected of its elected officials; and

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

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

NOW, THEREFORE, BE IT RESOLVED by the City of Baltic that there is hereby established a Code of Conduct for Elected Officials, which reads as follows.

§30.05 CODE OF CONDUCT FOR ELECTED OFFICIALS

Section 1: Elected Officials Conduct with One Another

A. Use civility and decorum in discussion and debate

- a. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of free democracy in action. However, this does not allow, elected officials to make belligerent, personal, disrespectful, slanderous, threatening, abusive, or personally disparaging comments in public meetings or during individual encounters. No shouting or physical actions that could be construed as threatening or demeaning will be acceptable.
- b. If an elected official is personally offended by the remarks of another official, the offended elected official should make notes of the actual words used and call for a "point of personal privilege" that challenges the other elected official to justify or apologize for the language used.

B. Honor the role of the Mayor in maintaining order

- a. It is the responsibility of the mayor (or in her/his absence, council president or in her/his absence, council vice president) to keep the comments of elected officials on track during public meetings. Elected officials should honor efforts by the mayor to focus the discussion on current agenda items. If there is a disagreement about the agenda or the mayor's actions, those objections should

be voiced professionally and with reason, following commonly recognized parliamentary procedures.

C. Demonstrate effective problem-solving approaches

- a. Elected officials have a public forum to show how individuals with different points of view can find common ground and seek a compromise that benefits the community as a whole. This public forum should be used in an effective and beneficial manner.

Section 2: Elected Officials Conduct with City Staff

A. Treat all staff as professionals

- a. Clear, honest communication that respects the abilities, experience, and the dignity of each individual is expected. Inappropriate or disrespectful behavior towards staff is not acceptable.

B. Limit contact with City staff

- a. Contact with City staff is encouraged during meetings, especially within committee meetings where City employees are in attendance.
- b. Questions directed to City staff and/or requests for incident background information shall first be directed to the City Administrator or Finance Officer.
- c. Requests for follow-up or directions to staff should be made only through the City Administrator or Finance Officer. When in doubt about what type of staff contact is appropriate, elected officials should ask the City Administrator or Finance Officer for direction. When appropriate, materials supplied to an elected official in response to a request will be made available to all elected officials so that all officials have equal access to the same information.
- d. City staff are permitted to meet with Elected Officials on their own volition

C. Do not disrupt City staff from their jobs

- a. Elected officials should not disrupt City staff while they are in meetings, on the phone, or engaged in performing their job functions in order to have their individual needs met.

D. Never publicly criticize an individual employee

- a. Elected officials must never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's department head. Comments about staff performance should only be made to the City Administrator, Finance Officer, or Mayor through private correspondence or conversation.

E. Do not attend meetings with City staff unless requested by staff

- a. Even if the elected official does not say anything, the elected official's presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their jobs objectively.
- b. This does not apply to committee meetings.

F. Do not solicit political support from staff

- a. Elected officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, collection of petition signatures, etc.) from City staff while they are working. City staff may, as private citizens within their constitutional rights, support political candidates. However, all such activities must be done away from the workplace and the staff cannot identify themselves in any manner as City employees.

Section 3: Elected Officials Conduct with the Public

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 elected officials toward an individual participating in a public forum. Every effort should be made to be fair and impartial to public testimony.

A. Be welcoming to speakers and treat them with care and respect

- a. For many citizens, speaking in front of elected officials is a new and difficult experience. Under such circumstances many are nervous. Elected officials are expected to treat citizens with respect during public hearings. Elected officials should commit their full attention to the speakers, actively listen to speakers, and any materials relevant to the topic at hand. Comments and non-verbal expressions should be appropriate, respectful, and professional. Questions by elected officials to speakers should seek to clarify or expand information.

B. Ask for clarification, but avoid debate and argument with the public

- a. The elected officials can ask for a point of order if the speaker is off the topic or exhibiting behavior or language the elected officials find disturbing.

C. Follow parliamentary procedure in conducting public meetings

- a. The City's ordinances require meetings of the elected officials to follow Robert's Rules of Order. It is expected all elected officials will adhere to this procedure in conducting meetings.

Section 4: In unofficial settings:

A. Make no promises on behalf of the City governing body in unofficial settings

- a. Elected officials will frequently be asked to explain actions of the governing body or to give their opinion about an issue as they meet and talk with constituents in

the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. Overt or implicit promises of specific council action, or to promise City staff will take some specific action must not occur.

Section 5: Elected Officials Conduct with other Public Agencies

A. Be clear about representing the city or personal interests

- a. If an elected official appears before another governmental agency or organization to give a statement on an issue, the elected official must clearly state; 1) whether his or her statement reflects a personal opinion or is the official stance of the City; 2) whether this is the majority or minority opinion of the council.

B. Representation of the City on an Outside Board, Commission, or to an Outside Agency

- a. If the elected official is representing the City, that elected official shall support and advocate the City's official position on an issue and cannot foster or further a personal viewpoint that is inconsistent with the official City position.
- b. Elected officials must inform the council of their involvement in an outside organization if that organization is or may become involved in any issues within the City's jurisdiction. If an elected official publicly represents or speaks on behalf of another organization whose positions differs from the City's official position on any issue, that elected official must clearly identify the organization upon whose behalf they are speaking and must withdraw from voting or commenting as an elected official upon any action, which would be deemed a conflict of interest.

C. Representation of the City on Intergovernmental Commissions and Other Outside Entities

- a. Elected officials serving on committees or boards as the City representative on outside entities or agencies shall properly communicate with other elected officials on issues pertinent to the city.

Section 6: Elected Officials Conduct with the Media

A. Expression of Positions on Issues

- a. When communicating with the media, elected officials shall clearly differentiate between personal opinions and the official position of the City. An elected official represents one vote of eight and until a vote on any issue is taken, elected officials' positions are merely their own personal opinions.

B. Discussions Regarding Staff Members

- a. Elected officials shall not discuss personnel issues or other matters regarding individual staff members in the media. Any issues pertaining to staff will be addressed directly to the City Administrator or Finance Officer.

Section 7: Sanctions and Violations Process

1. The first and most important step in this section is the requirement that the offended elected official address the concern with the offender including a description of the specific action observed, the relationship of that event to the respective Code of Conduct and, if applicable, the impact it had on the offended elected official. The purpose of this first step is to assure that an attempt has been made to discuss the issue and resolve the conflict without proceeding further. This step requires no formal action and no involvement of other elected officials.
2. Either party may request, and both must agree, to seek a third party who will assist in facilitating the discussion toward a mutually satisfactory conclusion.
3. If the situation cannot be settled through the process in steps (1) and (2), either elected official may choose to refer the concern to the entire council for review in an executive session meeting pursuant to SDCL 1-25-2(1). The other council members not involved in the situation will serve as a committee of the whole for purposes of Code of Conduct violations and sanction considerations.
4. To present the concern to the council, the offended elected official must advise the offending elected official that the issue will be taken to the council and subsequently ask the City Administrator to post the issue for the earliest upcoming executive session. All laws pertaining to executive session will apply.
5. The council will discuss the issue in order to:
 - a. Become fully informed.
 - b. Determine if there appears to be a violation of the governing Code of Conduct.
 - c. Seek resolution without further action or, if necessary, schedule the issue for an upcoming public hearing for final determination regarding whether a violation occurred.
 - d. Determine what sanction is most appropriate; customarily, sanctions are limited to a letter of reprimand, censure, or expulsion.
6. A two-thirds (2/3) vote of the council at a regular council meeting will be required for a determination that a violation has occurred and likewise, a two-thirds (2/3) vote is required for sanctions to be imposed.

Section 8. Due Process:

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 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 shall submit in executive session an unbiased fact-based investigative report to the City Council. All laws pertaining to executive session shall apply, and the City Council shall not take any action regarding any alleged violation of this Code in executive session. If, during executive session, a public hearing is requested or desired by council, the scheduling of a hearing cannot be made during executive session but must be set after resuming the public meeting.
 - 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 and they shall be provided copies of any materials reviewed by 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/have 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 in the file as to the reason(s) thereof.
 - iii. In cases of alleged criminal wrongdoing or on-going criminal investigation, the subject of the 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 and/or the public hearing.
 - c. The City 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 legal counsel of his or her choosing at the scheduled executive session and/or public hearing.
 - a. The elected official's counsel present under this section is only allowed to attend that portion of the executive session where the complaint at issue under this Code is discussed.
 - b. Counsel under this section means an attorney licensed to practice in the State of South Dakota.
3. Any elected official(s) accused of violating 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 City 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 City Council meeting.
4. At a public hearing, a concurrence of two-thirds (2/3) of the elected aldermen shall be required to determine that a violation of this Code has occurred and likewise, a concurrence of two-thirds (2/3) of the elected aldermen shall be required to impose any sanctions.

Section 9. 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 Governing Body.
2. Under SDCL 9-8-5, the council is the judge of the election and qualification of its members. The council determines its rules of procedure, and may punish its members for disorderly conduct, and, with the concurrence of two-thirds of the aldermen may expel a member.

3. Under SDCL 9-8-4, the Mayor is a member of the council and the mayor falls under the provisions of SDCL 9-8-5 and this Ordinance and Code of Conduct.
4. Any alderman who is convicted of bribery shall vacate the position.

Section 10. Definitions:

1. Public reprimand as used in this Code of Conduct means an official public declaration made by motion at a council meeting announcing that an elected official's conduct was improper and describing the impropriety under this Code of Conduct.
2. Public censure as used in this Code of Conduct means an official public condemnation made by resolution at a council meeting denouncing an elected official's conduct as a violation of this Code of Conduct and the reasons, therefore.
3. Elected official as used in this Code of Conduct means any person who is an official by virtue of an election. An elected official also includes persons appointed to positions which are typically filled by an election.

Effective Date. This Ordinance will become effective 20 days following publication, which will occur after the ordinance receives second and final reading by the City Council and is signed by the Mayor.

Dated this 19th day of April, 2022.

Approved:

Tracy Petersen, Mayor

Attest:

Sara Smith, Finance Officer

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