

MEMORANDUM



TO: Mayor and Council
FROM: Judi Baumann, City Attorney (Ext. 8227)
Renie Broderick, Internal Services Director (Ext. 8407)
DATE: May 3, 2018
SUBJECT: Tempe City Council Code of Conduct

The Tempe City Council Code of Conduct was adopted in 2009 by way of Resolution No. 2009.126. The Personnel Rules have recently been updated, first in 2015 and in 2018. The Council may consider, but is not required to, update the Code of Conduct to reflect these changes and any other revisions that the Council may prefer. Certain changes may result in a recommendation to amend the Tempe City Charter.

The Resolution adopted in 2009 included two (2) documents as the City Council Code of Conduct: (a) the City of Tempe Personnel Rules and Regulations, Rule 406, part B, "Grounds for Dismissal" (with some exclusions); and (b) the Tempe Employee Ethics Handbook, "Ethics in Our Workplace." The Resolution also adopted an investigation process and a maximum sanction, formal censure, for violations of the Code.

The Code of Conduct was amended recently to revise the flowchart so that the City Manager or designee will review for fact finding under the Code of Conduct (Resolution No. R2017.114.)

For ease of reference, a chart of the former (2009) and updated Personnel Rules is included. The first column of the chart contains the previous Personnel Rules as adopted in the (2009) Code of Conduct, with strikeouts indicating which provisions were not included in the Code of Conduct. The second column indicates the nearest equivalent provision in the 2018 Personnel Rules for your consideration.

Formal action to revise the Tempe City Council Code of Conduct will take place at an upcoming Regular Council Meeting.

As requested, language from the City Charters of Mesa and Phoenix are attached.

2009 CODE OF CONDUCT RULES (Rule 406(B))	2014 PERSONNEL RULES (Rule 406(C)(2015)—If Any)
<p>1. The employee lacks sufficient competency or efficiency to perform assigned duties and responsibilities.</p>	<p>1. exhibited a lack of sufficient competency or efficiency to perform assigned duties and responsibilities.</p> <p>3. been unacceptably inefficient by loafing, visiting, loitering, lounging, sleeping, or otherwise engaging in non-work related activities during scheduled work hours or has interfered with another employee's efforts to meet work standards.</p>
<p>2. The employee is unsafe to himself/herself, other employees, the public, or city property in the performance of duties and responsibilities; or the employee has frequently violated safety rules or practices.</p>	<p>2. acted negligently, recklessly, or carelessly in performing his/her duties during a specific incident or incidents.</p> <p>5. violated an applicable safety rule, policy or directive.</p>
<p>3. The employee has been abusive in attitude, language, behavior, or conduct toward a fellow employee, a supervisor, or the public; or their action has resulted in physical harm, injury, or fear of it to such persons.</p>	<p>9. been abusive in attitude, language, behavior, or conduct toward another employee or the public.</p> <p>10. engaged in behavior that has resulted in physical harm, or threat thereof, to another employee or the public.</p> <p>11. engaged in behavior that does not meet a reasonable standard of workplace civility and respect in his or her interactions with other employees, or the public.</p>
<p>4. The employee has been insubordinate, willfully disobedient, or has failed to follow reasonable direction from a supervisor.</p>	<p>4. been insubordinate or has failed to follow reasonable direction from a supervisor.</p>
<p>5. The employee has been convicted of a criminal offense while employed by the City.</p>	<p>15. failed to notify Human Resources within five days of being charged with a criminal offense while employed by the City.</p> <p>16. failed to notify Human Resources within five days of being convicted of a criminal offense while employed by the City.</p>
<p>6. The employee has stolen public or private property, misappropriated city funds, or has been an accomplice in any of these practices while employed by the City of Tempe.</p>	<p>19. stolen public or private property, misappropriated City funds, or has been an accomplice in any of these practices while employed by the City.</p>
<p>7. The employee has made unauthorized use and/or removal of city property.</p>	<p>21. made unauthorized use and/or removal of City property.</p>
<p>8. The employee, through negligence or willful misconduct, has caused damage to public property or waste of public supplies.</p>	<p>7. caused damage to public property or waste of public supplies through negligence, recklessness, or carelessness.</p>
<p>9. The employee has engaged in conduct, on or off duty that is of such a nature that it causes discredit to the City.</p>	<p>12. engaged in conduct, on or off duty, that is of such a nature that it causes discredit to the City.</p>

<p>10. The employee has purchased, possessed, used, manufactured, distributed, dispensed, or sold alcoholic beverages, unauthorized drugs or controlled substances, or any other intoxicants on city property, while operating city equipment, or while performing city duties unless authorized to do so, or the employee has reported to work under the influence of alcohol or drugs as defined in Rule 3, Section 310. Drug-Free Workplace, or the employee's off-duty use, possession, or sale of drugs or alcohol adversely affects work performance, safety, or the City's reputation.</p>	<p>22. violated the City's drug-free workplace rule.</p>
<p>11. The employee has intentionally falsified any document, report or statement relating to their employment with the City.</p>	<p>14. knowingly been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.</p>
<p>12. The employee has secured employment with the City through misrepresentation or fraud.</p>	<p>14. knowingly been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.</p>
<p>13. The employee has refused to subscribe to any oath or affirmation required in connection with city employment</p>	<p>29. refused to subscribe to any oath or affirmation required in connection with City employment.</p>
<p>14. The employee has violated the rule or regulation governing outside employment. See also Rule 6, Section 602. Outside Employment, Activity or Enterprise.)</p>	<p>23. violated the City's outside employment rule.</p>
<p>15. The employee has been inexcusably absent, has failed to receive prior approval for any paid or unpaid absence, has abandoned their position, feigns sickness or injury, or otherwise deceives a supervisor as to their condition or ability to perform the duties of the position, or the employee has falsified a certificate justifying medical leave.</p>	<p>31. had unexcused, unpaid absences or has failed to receive prior approval for any paid leave.</p> <p>33. left the assigned work area while on duty without his or her supervisor's permission.</p>
<p>16. The employee has had excessive absenteeism or tardiness.</p>	<p>30. had excessive absenteeism or tardiness.</p> <p>32. exceeded the authorized number and/or length of lunch periods and breaks.</p>
<p>17. The employee has engaged in a strike. (See also Rule 4, Section 409. Strike.)</p>	<p>25. violated the City's strike rule.</p>
<p>18. The employee has refused to perform reasonable light duty that is assigned because of an illness, injury or disability. (See also Rule 4, Section 405. Disability.)</p>	<p>34. refused to perform reasonable light duty that is assigned because of an illness, injury or disability that resulted from the performance of their assigned duties.</p>
<p>19. The employee has worked at unauthorized outside employment while on medical leave, industrial accident leave, or Family and Medical Leave (FMLA) or Long Term Disability (LTD). (See also Rule 5, Sections 503. Medical Leave, 504. Industrial Accident Leave, 512. Family and Medical Leave, and Rule 6, Section 602. Outside Employment, Activity or Enterprise.)</p>	<p>35. violated the City's FMLA policy.</p>

<p>20. The employee has concealed information or failed to properly report an accident or incident under the purview of any state statute or city resolution or regulation.</p>	<p>27. concealed or failed to properly report or document any information or incident required to be reported to federal and/or state agencies, and/or City management as part of the employee's job duties and responsibilities.</p>
<p>21. Failure of an employee, convicted under a criminal drug statute for a violation occurring in the workplace, to notify his or her department manager within five (5) days after such conviction.</p>	<p>15. failed to notify Human Resources within five days of being charged with a criminal offense while employed by the City.</p> <p>16. failed to notify Human Resources within five days of being convicted of a criminal offense while employed by the City.</p>
<p>22. The employee holds a City of Tempe elective office prior to resigning from a city position or holds any other office incompatible with a position with the City</p>	<p>26. violated the City's political activity rule.</p>
<p>23. The employee has used or attempted to use political influence in securing a promotion, leave of absence, transfer, or an increase in pay.</p>	<p>26. violated the City's political activity rule.</p>
<p>24. The employee has accepted a fee, gift, or other item in the course of performing the duties and responsibilities of their position, if the gift is given in hope of receiving a favor or preferred treatment, or if the gift is given after receipt of the favor or preferred treatment. (See also Rule 6, Section 604, Gifts and Gratuities.)</p>	<p>24. violated the City's gift rule.</p>
<p>25. The employee has committed an act of discrimination, harassment or retaliation because of race, color, religion, gender, sexual orientation, gender identity, national origin, age, or disability. (See also Rule 4, Section 410. Diversity.)</p>	<p>13. violated the City's diversity policy.</p>
<p>26. The employee has committed any other conduct of equal gravity to the reasons enumerated in this section.</p>	<p>37. been involved in any other conduct of equal gravity to the reasons enumerated in this section.</p>
<p>27. The employee possessed a deadly weapon, either concealed or unconcealed, while on city property, during scheduled work hours. The employee possessed a deadly weapon, either concealed or unconcealed, in a city vehicle, or in a personal vehicle which is being used for city business. Deadly weapons include, but are not limited to, explosives, firearms, and prohibited weapons as those terms are defined by Arizona Revised Statutes §§ 13-3101 A. (1), (3), (4), and (7), but do not include mace and pepper spray. This applies to all city employees and contract employees, excluding employees engaged in military or law enforcement activities.</p>	<p>6. possessed a weapon while in any City building or workplace, in a City vehicle, or in a personal vehicle which is being used for City business. This excludes police officers or military personnel acting in an official law enforcement or military capacity.</p>
<p>28. The employee has lied about or misrepresented facts or circumstances during an external or internal investigation.</p>	<p>14. knowingly been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.</p>
<p>29. The employee has been dishonest in the course of performing his or her job.</p>	<p>14. knowingly been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any</p>

	statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.
30. The employee has deliberately and knowingly misused the City provided information infrastructure including telecommunications, cable and computer networks, electronic mail (email) with its ancillary applications, or the Internet, when using city-provided resources, by accessing or transmitting any adult (pornographic) material(s), websites, or anything which could be construed as sexually explicit, scandalous, defamatory, libelous, illegal or immoral, or by propagating a computer worm or virus, or any other program or material which may have a debilitating or disabling affect on the City's computer systems.	8. violated City and/or department policies and guidelines regarding access to and use of the City's technology infrastructure.
31. The employee has deliberately and knowingly made false accusations against another employee, elected official, or board and commission member in order to discredit another employee, elected official, or board and commission member.	14. knowingly been dishonest by deceiving, lying, omitting, misleading, misrepresenting or falsifying any statements, facts, documents or reports in the course of performing their job duties and/or during a City investigation or official inquiry.
32. The employee has failed to report all criminal convictions prior to city employment within five (5) days of employment to the Human Resources Manager or designee.	15. failed to notify Human Resources within five days of being charged with a criminal offense while employed by the City. 16. failed to notify Human Resources within five days of being convicted of a criminal offense while employed by the City.
33. The employee holds a Commercial Driver's License (CDL) or regular driver's license, and the employee's position requires them to drive, and the employee is convicted of an offense which results in the loss of their driving privileges in accordance with state and federal law	17. lost his or her driving privilege through suspension or revocation of a Commercial Driver's License (CDL) or non-CDL license, and driving is required to perform an essential job function in his or her position with the City. 18. driven a City vehicle or a personal vehicle on City business during a period of driver's license suspension or revocation.
	28. knowingly or intentionally engaged in the unauthorized release or improper disclosure of proprietary or confidential information or records.
	36. failed to adhere to Tempe Police Department Policies and Procedures, Tempe Fire Medical Rescue Department Policies and Procedures, Arizona Code of Conduct for Judicial Employees, Arizona Judicial Code of Conduct, or any other applicable City department written policy or guideline.
	20. through action or inaction has failed to reasonably fulfill required responsibilities that has resulted in loss or misuse of public funds and/or public property.

The City of Mesa Charter provides:

- (A) **VACANCIES.** The office of Mayor or Councilmember shall become vacant upon the member's death, resignation, forfeiture of office, or removal from office in any manner authorized by law. (Amd. Charter Election 3-14-00/3739)

- (B) **FORFEITURE OF OFFICE; OTHER FORMS OF DISCIPLINE. (AMD. CHARTER ELECTION 3-14-00/3739)**
 - 1. The Mayor or a Councilmember shall forfeit their office if they (1) lack at any time during their term of office any qualification for the office prescribed by this Charter or by law, or (2) violate any express prohibition of this Charter. (Amd. Charter Election 3-14-00/3739)

 - 2. In addition, it shall constitute grounds for forfeiture of office, suspension, censure, reprimand, monetary penalty, letter of warning, other form of discipline, or some combination of the foregoing penalties, at the sole discretion of the City Council, if five (5) or more City Councilmembers agree that a Councilmember, including the Mayor, or a citizen advisory board member appointed under Section 501 of this Charter, has:
 - (a) Violated the mandatory code of ethics for Councilmembers and citizen advisory board members adopted by the Mesa City Council by resolution and in effect when the alleged conduct occurred; (Amd. Charter Election 3-14-00/3739)

 - (b) Within two years before their first election or appointment, or during their term of office, been convicted, indicted, arrested, or the subject of a direct criminal complaint regarding a crime involving violence, dishonesty, or sexual misconduct; (Amd. Charter Election 3-14-00/3739)

 - (c) Been absent from three (3) consecutive and duly noticed meetings without being excused for good cause; or (Amd. Charter Election 3-14-00/3739)

 - (d) Engaged in any other conduct demonstrating a lack of fitness for office. (Amd. Charter Election 3-14-00/3739)

Mesa, Arizona City Code Sec. 206(A), (B).

The Phoenix City Charter states:

Ch, III, § 5 PHOENIX CITY CODE

Sec. 5. Absence of Mayor; vacancy in office of Mayor; vacancy of the member of Council; special terms; removal of Council member.

A. During the absence or disability of the Mayor or when the office of Mayor is vacant, the Vice-Mayor shall act as Mayor pro tempore.

B. Vacancies in City of Phoenix elective offices shall be filled as follows:

(1) If a vacancy occurs 365 days or more prior to the end of the term, there shall be a special election held to fill the unexpired portion of the term subject to the following provisions:

a. There shall be a period of 10 days from the date the vacancy occurs during which any person desiring to run for the vacant office must declare as a candidate for the office and, in the case of a Council Member desiring to run for the office of Mayor, if necessary, resign the office of Council Member.

b. The Council shall within 10 days of the expiration of the period provided in subparagraph (a) of this paragraph or if any vacancies occur during this period, within 10 days of the expiration of the period provided in subparagraph (a) for the last vacancy, call a special election to fill the vacancy or vacancies to be held not less than 120 days from the date it is called.

c. Candidates for vacant positions shall be entitled to circulate nomination petitions for the office as soon as the vacancies occur.

d. The procedure for nomination and election shall be the same as for the regular Mayor and Council election to the extent possible.

e. The Council shall, not less than 12 days nor more than 15 days from the date any vacancy occurs under the provision of this paragraph, appoint, in the manner provided in paragraph (2)(b) through (h) of this subsection, a person to fill the vacant office for a term ending the first business day after the canvass of votes is completed following the election of a candidate to fill the unexpired term of the office, provided that if the office to be filled is that of Mayor, the Council Member selected to serve during the interim until a new Mayor is elected shall serve as Mayor Pro Tempore and shall continue to serve as a district Council Member.

(2) If a vacancy occurs less than 365 days prior to the end of the term but not less than 90 days prior to the next regular Mayor and Council election, the vacancy shall be filled by Council appointment as follows:

- a. The Council shall, within 10 days of a vacancy occurring, select a person to serve the unexpired portion of the term in which the vacancy exists.
- b. In the case of a vacancy in the office of Mayor the Council shall select one of the remaining Members of the Council to serve as Mayor for the remainder of the term.
- c. A vacancy in the office of Council Member shall be filled by a qualified elector residing in the district in which the vacancy exists.
- d. When selecting a new mayor, all Council Members present may participate and vote for any candidate for mayor.
- e. Vacancies in City of Phoenix elective offices shall be filled at public meetings and all votes shall be taken publicly.
- f. A majority of the total number of Council positions shall constitute a quorum for purposes of filling a vacancy in a City of Phoenix elective office, provided that if less than a majority of the authorized positions on the Council are filled, all Council positions that are filled at that time shall constitute a quorum for the purpose of filling Council vacancies until a majority of the authorized Council positions are filled.
- g. Any Council Member may nominate a candidate to fill any vacancy with no second required. Candidates shall be voted upon individually in the order in which they were nominated. The first candidate receiving an affirmative majority of the votes of the Council Members present shall be selected to fill the vacancy.
- h. If after the end of the ten (10) day period provided in subparagraph (a) of this subparagraph, the vacancy remains unfilled, the Council shall meet each day for the purpose of filling the vacancy until the vacancy is filled, provided that if the vacancy remains unfilled 90 days before the regular Mayor and Council election at which the office in which the vacancy exists is to be voted upon, the provision of paragraph (3) of this subsection shall become applicable.

(3) If a vacancy occurs less than 90 days prior to the regular Mayor and Council election at which the office in which the vacancy exists is to be voted upon, the Council may leave the office vacant or may at any time prior to the expiration of the term fill the vacancy by appointment as provided in paragraph (2)(b) through (h) of this subsection.

C. Such vacancy shall exist, except under the recall provisions of this Charter, when an elective officer fails to qualify within thirty (30) days after commencement of his term, dies, resigns, removes from the City, absents himself continuously for thirty (30) days from the duties of his office without the consent of the Council, is convicted of violating any of the provisions of this Charter, or of a felony, or is judicially declared a lunatic or incompetent as defined by statute.

(Election of 10-1-1991; election of 10-5-1993).