

**MEMORANDUM**

**TO: ETHICS TASK FORCE MEMBERS**  
**FROM: DANIEL R. LOSCO, CITY SOLICITOR**  
**DATE: 12/15/2017**  
**RE: OUTLINE OF RECOMMENDATIONS TO COUNCIL**

The following is a summary outline of the major points being considered for recommendation to City Council on the subject of a Code of Ethics/Code of Conduct:

1. The Task Force recommends formal adoption via ordinance of the "State Employees', Officers' and Officials' Code of Conduct found in 29 Del. C. §§5801 et seq. Consideration should be given to reciting the entire State Code, personalized as to the City of New Castle, as opposed to simply incorporating the State Code into the City's Code by reference. This would be identified as the City's "Code of Ethics". Separately, the Task Force recommends adoption of a separate "Code of Conduct" as described in item 3 below.
2. The City Code of Ethics would provide for the establishment of an Ethic's Commission comprised of 7 adult City residents, none of whom otherwise serve the City as elected officials, appointees or employees. Additional details include the following:
  - a. Members would serve staggered 5 year terms.
  - b. One member would be appointed by each Councilperson other than the Council President, and the remaining 3 members appointed by the Mayor. If the Mayor or a Councilperson fails or refuses to make an appointment, the Council President shall make the appointment for him or her. If a member of the Commission is the object of an ethics complaint, he or she shall be disqualified from sitting on the Commission for that matter and the Mayor would serve as substitute Commission member in his or her place.
  - c. The Commission would have authority to issue advisory opinions on specific ethics related questions.
  - d. The Commission would have jurisdiction to receive complaints against employees, appointees or elected officials, conduct investigations and hearings, issue subpoenas, and make recommendations to Council as to how to resolve a particular complaint.
  - e. An additional mission of the Commission would be to educate persons subject to the Code of Ethics. The Commission would provide periodic training sessions to such persons. Participation in such training sessions would be strongly recommended for each elected official, employee or appointee at least once during the course of their term of office.

- f. All hearings and proceedings before the Commission would comply with State FOIA laws.
  - g. Recommendations may include, *inter alia*, dismissal of the complaint, counseling, suspension, demotion, public or private verbal or written reprimand, or termination of employment. Council would make the final determination. Discipline against elected officials would be confined recommending reprimands or censures.
  - h. The Commission would have the authority to dismiss complaints without a hearing if it determines them to be frivolous or otherwise moot (e.g. if an employee has already been terminated). If a case were dismissed *sua sponte*, the complaining party and the accused party shall have no right to a hearing.
  - i. The Commission would have no authority to usurp or undermine the City administration's or the Police Chief's right to terminate or discipline union or non-union employees.
  - j. The Commission would adopt rules of procedure to provide for due process at hearings to consider complaints. Accused parties would have the right to legal representation at their own expense and the Solicitor would serve as the prosecuting attorney.
  - k. The Commission would meet on an ad hoc basis as complaints are received, but would be required to meet at least once per year to receive refresher training on the Code of Ethics and to review the Code to make recommendations to Council for proposed revisions.
  - l. The Commission Chair would also have authority to convene meetings of the Commission for other proper purposes within the jurisdiction of the Commission.
3. In addition to the foregoing, the Task Force recommends adoption of a Code of Conduct to provide aspirational guidelines on matters of decorum and civility on the part of all City employees, elected officials and appointees.
- a. Issues addressed in the Code of Conduct would include treating all members of the public and City staff in a respectful and professional manner whether engaged in official duties or not; avoiding personal attacks in public debate; and being respectful of diverse opinions.
  - b. Violations of the Code of Conduct could also be presented to the Board of Ethics for hearing and recommendation to Council for appropriate discipline, but in the case of elected officials, little can be done in the way of discipline beyond reprimand or censure.