



Background:

The City of Clarksville's Code of Ethics was implemented to ensure the maintenance of high standards of honesty, integrity, impartiality, and conduct by employees and agents of the City, which is essential to ensure the proper performance of government business and the maintenance of confidence by citizens in their government.

A code of ethics is also required by TCA 8-17-103 and the City of Clarksville Charter. The Charter requires the Code of Ethics to contain policies regarding gifts, gratuities, conflicts of interest, financial interests, use of information, and use of City property, as well as procedures for logging and investigating ethical complaints.

The Code of Ethics, last amended in April 2013, addresses each of the requirements listed above and applies to all employees, which includes all full time and part time elected or appointed officials and employees, whether compensated or not, including those of any separate board, council, commission, committee, authority, corporation, or other instrumentality appointed or created by the City. The Code of Ethics also establishes an Ethics Commission, comprised of five citizens, tasked with receiving ethics complaints, determining whether a violation of the Code of Ethics occurred through hearings and investigations, and reporting their decisions, to include recommended actions as applicable. In addition to the Code of Ethics, the Ethics Commission has adopted a set of bylaws.

Noncompliance with or an ineffective Code of Ethics jeopardizes public confidence and potentially negatively impacts organizational culture, which weakens the internal control environment of the City. A weakened internal control environment impacts compliance with other laws, productivity, ethical decisions, and overall operational effectiveness.

Audit Objectives and Scope:

The objectives and scope of this engagement include the following:

- Assess compliance with TCA 8-17-103 and the City of Clarksville Charter Article VI, Section 10;
- Assess compliance with Clarksville City Code Title 1, Chapter 6, section 1-601 requiring all employees to review the Code of Ethics and acknowledge understanding and agreement annually;
- Assess compliance with Clarksville City Code Title 1, Chapter 6, sections, 1-611 defining the Ethics Commission; 1-613 defining the requirement for the Commission to elect officers; 1-614 requiring the creation of Ethics Commission bylaws; and 1-623 pertaining to eligibility of candidates to the Commission;
- Assess Ethics Commission compliance with its bylaws as applicable;
- Review City Code Title 1, Chapter 6, sections 1-601 through 1-623 and make recommendations to improve the process, if applicable.

The audit period is April 2013 through April 2019.

This audit did not address the existence or validity of potential complaints, but focused solely on the processes established by the aforementioned laws and bylaws of the Ethics Commission.

Audit Results:

Training and Acknowledgement Forms

Observation:

As noted, all full time and part time elected or appointed officials and employees, whether compensated or not, including those of any separate board, council, commission, committee, authority, corporation, or other instrumentality appointed or created by the City are required to review the City Code of Ethics, as codified in the City Code, and sign a form of understanding and agreement (acknowledgement form) confirming their review on an annual basis. The Code of Ethics, as written, directs the City Attorney and Human Resources to coordinate and develop the review/signature/filing processes.

Not all City employees signed the acknowledgement forms in 2018 as required by the City Code of Ethics. This includes elected officials, City General (including CGW), and CDE. Specifically, four of the 13 elected officials did not sign the annual ethics acknowledgement form. At least 54 employees from City General/CGW did not sign the acknowledgement forms. No CDE employees signed the forms in 2018, due to process changes related to training and performance reviews.

While there is a process in place to track the completion of the Ethics training for City employees, there is no current policy to follow up with employees and elected officials who do not take the training as required. Additionally, there is no process in place to obtain acknowledgement forms from the volunteer commissions, committees, authorities, corporations, or other instrumentalities appointed or created by the City.

The Code of Ethics ties completion of acknowledgement forms to the employee's annual review. As management plans to change the timing of this process, the Code of Ethics should also be updated to align with the process change. This may also be true for other areas of the Code of Ethics.

Management Action Plan:

City General Human Resources (HR): HR will develop a follow up process to ensure compliance with the training completion and acknowledgement process. This follow up process will include notifications to the employees, the employees' department heads, and the Mayor's Office. Employees that do not comply with the training completion and acknowledgement requirements will be subject to disciplinary action.

HR will notify the Mayor's Office of any City Council members not in compliance with the training completion and acknowledgement requirements. The Mayor's Office will address noncompliance directly with the City Council members.

CDE: At CDE, the regular process for the collection of forms was to connect it to the performance appraisal and compliance training. Completion of acknowledgements in 2018 was delayed due to the restructuring of the appraisal system and separation in timing from the annual employee compliance training. All employees did complete the acknowledgement forms in the first quarter of 2019. All new hires continued to complete the form at the time of hire. Going forward, the acknowledgement forms will be collected during the first quarter each year and will not depend upon another task for completion.

Mayor's Office: The Mayor's Office will develop a process to obtain the Code of Ethics acknowledgement forms from volunteers serving on commissions, committees, et al.

City Attorney: The City Attorney, with input from the Mayor, will draft proposed amendments to the Code of Ethics to place responsibility for coordinating and developing the review/signature/filing processes on the Mayor's Office instead of the City Attorney, and to remove the reference to the annual review process. The proposed amendments will be presented to the City Council for approval.

Managers Responsible: Will Wyatt, HR Director; James Halford, Chief of Staff (Mayor's Office); Lance Baker, City Attorney

Estimated Completion Date: 12/31/19

Ethics Commission Noncompliance

Observation:

Several areas of potential noncompliance were noted in relation to the Code of Ethics and Ethics Commission bylaws:

- The Code of Ethics requires the Ethics Commission to elect officers and for those officers to serve terms of one year. The bylaws of the Ethics Commission require the elected officers to take office on July 1st of each year. The Commission met one time in February 2014. There is no record of any Commission meeting since that date, nor any record of officer elections.
- Members of the Ethics Commission must be residents of Clarksville to be appointed and remain on the Commission. One member of the Commission no longer lives in the City of Clarksville.
- The Ethics Commission bylaws prohibit members from being an officer of a political party. However, one member of the Ethics Commission was recently elected as an officer of a political party.

No City employee has been assigned responsibility to ensure that members meet requirements or to act administratively for the Commission in scheduling regular meetings.

Management Action Plan:

The City Attorney will advise the members to hold a meeting to elect officers, as required by the Code of Ethics and the Ethics Commission bylaws.

The City Attorney will also advise the Chairman that the meetings are to be held at least annually, prior to July 1st, to hold elections of officers.

The Mayor's Office will ensure that the Ethics Commission meets annually.

Both members no longer eligible to serve on the Ethics Commission resigned, as per the Code of Ethics and the Ethics Commission bylaws.

Managers Responsible: Lance Baker, City Attorney; James Halford, Chief of Staff (Mayor's Office)

Estimated Completion Date: 9/30/19

Code of Ethics Design

Observation:

The Code of Ethics and Ethics Commission bylaws have provisions that potentially prohibit or negatively impact the effectiveness of the Ethics Commission in achieving its intended purpose.

- The April 2013 revision of the Code of Ethics specifies procedures requiring an individual wishing to file an ethics complaint to do so in writing, after having signed and sworn under oath as evidenced by a notary public. The complaint must contain a summary of the facts giving rise to

Management Action Plan:

The City Attorney, with input from the Mayor, will draft proposed amendments to the Code of Ethics, to be presented to the City Council for approval. The amendments will address the areas outlined in the observation.

The City Attorney will advise the Ethics Commission to review the bylaws for areas in which the bylaws may exceed their authority and/or scope and make amendments as appropriate.

the alleged ethics complaint and explain why those facts constitute a Code of Ethics violation. This language essentially requires the person filing the complaint to conduct their own investigation, gather evidence, and explain why the activity violates the Code of Ethics. In the six years since the revision, there have been zero ethics complaints filed.

- There is no provision in the Code of Ethics, nor the Ethics Commission bylaws, for the Ethics Commission to self initiate an investigation should publicly available information warrant consideration by the Commission.
- Per the Code of Ethics, the Ethics Commission can not obligate or bind the City in any way. If the Ethics Commission were to attempt to fulfill their duty to “conduct investigations” as provided for in Section 1-620(a) “Duties” of the Code of Ethics, there is no independent source of funds to hire an investigator or outside attorney. The Commission, consisting of volunteer members of the community, may not have the resources and expertise to investigate potential Code of Ethics violations.
- The current bylaws may expand the duties of the Commission beyond what is authorized by the Code or what is possible given the volunteer nature of the Commission.

Managers Responsible: Lance Baker, City Attorney

Estimated Completion Date: 12/31/19

Other Recommendations:

There is no provision in either the Code of Ethics or the Ethics Commission bylaws for an employee under the jurisdiction of the Code of Ethics to obtain an advisory opinion from the Ethics Commission regarding anticipated, planned, and/or initiated activities that may violate the Code of Ethics. The Council should consider adding a provision to authorize the Ethics Commission to provide advisory opinions when requested.

Management Comments:

The City Attorney will consider adding this provision in the proposed amendment to the Code of Ethics. All proposed amendments will be presented to the City Council for consideration.

Manager Responsible: Lance Baker, City Attorney

Estimated Completion Date: 12/31/19