1. CALL TO ORDER

2. NOMINATIONS AND ELECTION OF CHAIR AND VICE CHAIR FOR 2018

3. APPROVAL OF MINUTES FROM DECEMBER 22, 2017 SPECIAL MEETING

4. APPROVAL OF 2017 ANNUAL REPORT

5. APPROVAL OF REPORT AND NOTICE OF DISMISSAL OF CONFIDENTIAL COMPLAINT 17-B

6. ANY BUSINESS OR PENDING ISSUES TO BE BROUGHT BEFORE THE BOARD

7. ADJOURNMENT

BOARD OF ETHICS MEMBERS:
Greg LaFollette, Chair
Jack Marsh, Vice Chair
Jeff Gednalske
Wanda Harris
Sue Roust

CITY STAFF:
Karen Leonard, Acting City Attorney
Cari Hanzel, Paralegal/Board Liaison

If an ADA accommodation is needed, please contact the Human Relations Office at 367-8745 or humanrelations@siouxfalls.org at least 12 hours in advance of the meeting.
MINUTES

Friday, December 22, 2017
at 10:00 a.m.

Board of Ethics
Special Meeting

Commission Room
1st Floor ~ City Hall
224 West Ninth Street
Sioux Falls, South Dakota

CITY OF SIoux FALLS

BOARD MEMBERS PRESENT: Jeff Gednalske, Wanda Harris, Greg LaFollette (by phone), Jack Marsh and Sue Roust

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Karen Leonard, Acting City Attorney, and Cari Hanzel, Recording Clerk

CALL TO ORDER

As Board Chair Greg LaFollette joined the meeting by phone and not in person, he asked Jack Marsh to chair the meeting.

Roll call was taken and with a quorum being present, the meeting was called to order by Vice Chair Jack Marsh at 10:00 a.m.

APPROVAL OF MINUTES

A motion was made by Sue Roust and seconded by Wanda Harris to approve the minutes from the Special Meeting on October 25, 2017 with one correction on page two, paragraph four, changing the word “exits” to “exists.” Vote to approve: 4 Yeses. 0 Noes. Motion passed.

APPROVAL OF WRITTEN ADVISORY OPINION 17-1

Deputy City Attorney Karen Leonard gave the Board a brief overview of the written opinion.

A motion was made by Greg LaFollette to approve Advisory Opinion 17-1. Sue Roust pointed out one correction in the “Facts” paragraph changing the word “exits” to “exists.” Wanda Harris seconded the motion with the correction. Vote to approve: 4 Yeses. 0 Noes. Motion passed.

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

A. RECUSAL OF CITY ATTORNEY AND APPOINTMENT OF ALAN PETERSON AS COUNSEL TO THE BOARD OF ETHICS REGARDING CONFIDENTIAL COMPLAINT 17-B

Acting City Attorney Karen Leonard advised the Board that she must recuse herself from all matters dealing with Complaint 17-B and further suggested that the Board hire independent counsel.
Greg LaFollette made a motion to appoint Alan Peterson as counsel for the Board of Ethics in regard to the handling of Confidential Complaint 17-B. Jeff Gednalske seconded the motion. Vote to approve: 4 Yeses. 0 Noes. Motion passed.

Ms. Leonard left the meeting.

B. CONFIDENTIAL COMPLAINT 17-B FILED 11/30/17

Mr. Peterson presented the Board with possible motions to move the Board into executive session.

Jeff Gednalske made a motion to enter executive session pursuant to SDCL § 1-25-2(1) to address Complaint 17-B involving a personnel matter and SDCL § 1-25-2(3) to consult with counsel. Sue Roust seconded the motion. Vote to approve: Yeses, 4. Noes, 0. Motion Passed.

Discussion was had regarding who was allowed to be present in the executive session. Upon the advice of counsel, everyone but the Board, attorney and recording clerk left the room. The Board went into executive session at 10:11 a.m.

Executive session to discuss personnel matter pursuant to SDCL 1-25-2(1) and consulting with legal counsel pursuant to SDCL 1-25-2(3).

The meeting was reopened to the public.

Wanda Harris made a motion to come out of executive session. Sue Roust seconded the motion. Vote to approve: 4 Yeses. 0 Noes. Motion Passed. The Board came out of executive session at 11:24 a.m.

A motion was made by Jeff Gednalske and seconded by Sue Roust that the Board of Ethics dismiss Complaint 17-B. The Complaint related to Sections 35.025 and 35.028 is dismissed due to lack of sufficient facts on its face. The Complaint related to Section 34.007(b) is dismissed due to this Board's lack of jurisdiction pursuant to Ordinance Section 35.010 and the Rules of Procedure of the City of Sioux Falls Board of Ethics. Vote to approve: 4 Yeses. 0 Noes. Motion Passed.

NEXT MEETING

No specific date for the next meeting was scheduled.

ADJOURNMENT

A motion was made by Jeff Gednalske and seconded by Wanda Harris to adjourn the meeting. Vote to approve: 4 Yeses. 0 Noes. Motion passed. Meeting adjourned at 11:25 a.m.

Respectfully submitted,
Cari Hanzel
Recording Clerk
DATE: January 26, 2018

TO: Mayor Mike Huether
    City Council Members

FROM: Sioux Falls Board of Ethics
      Jeffrey Gednalske
      Wanda Harris
      Gregory LaFollette
      Jack Marsh
      Sue Roust

SUBJECT: Board of Ethics Annual Report for 2017

The Board of Ethics met four times in 2017. Two complaints were brought before the Board. One resulted in an Advisory Opinion being issued and the other was dismissed.

Pursuant to Sec. 35.011(b) of the Code of Ordinances of Sioux Falls, SD, the cost associated with the Board’s activities for 2017 was $1,000 for the retention of outside counsel Alan Peterson to represent the Board regarding Complaint 17-B. Although his services were incurred in 2017, the City received Mr. Peterson’s invoice after the close of the 2017 budget, so payment was made from the 2018 budget.

Attachment
City Of Sioux Falls
Board of Ethics
Opinions and Complaints, 2008-2017
January 26, 2018

Sioux Falls City Council  
235 W 10th Street  
Sioux Falls, SD 57104

Re: Ethics Complaint No. 17-B

Dear Honorable City Council Members:

This letter will serve as the Sioux Falls Board of Ethics’ Report and Notice of Dismissal with reasons pursuant to City Ordinance.

A citizen complaint was filed November 30, 2017 requesting review of a course of behavior by a city council member. It has been identified as Complaint 17-B.

FACTS

A citizen complaint alleging violations of Sioux Falls Ordinances 34.007(b), 35.025, and 35.028 was received on or about November 30, 2017. The City attorney determined the Complaint to be properly presented and forwarded it to the Board of Ethics for consideration. The complaint alleged violations of the identified provisions by a city council member. The city council member has not waived the rights of confidentiality involving the allegations and the Board has not publicly identified the Respondent to the Complaint. The Board of Ethics met on December 22, 2017 in public session and moved into executive session to conduct its initial hearing on the matter pursuant to SDCL 1-25-2 (1) and (3). The Board returned to public session to take action on the Complaint.

OPINION

Sioux Falls Ordinance 35.010(j) provides for the adoption of procedural rules governing the Board of Ethics. Pursuant to the rules adopted and in force, upon receiving a complaint, the Board must initially determine whether it has jurisdiction to hear the complaint and whether the complaint is sufficient on its face (Rule 3.08). The Board may conduct a preliminary investigation to determine whether the complaint is sufficient and whether the Board has
jurisdiction to render a decision on the complaint (Rule 3.12). If the Board determines that it lacks jurisdiction and/or the complaint is insufficient on its face, it shall dismiss the complaint and send notice of the dismissal including the reasons for the dismissal to the complainant, the accused and to the City Council.

Upon preliminary investigation and its review of the Complaint, the Board dismisses the Complaint as to the allegations of violations of Sioux Falls Ordinances 35.025 and 35.028 as being insufficient on its face for the Board to act. Both of the cited provisions apply to employees of the City and it is specifically provided that the cited Ordinances do “not apply to city council members.” (Sioux Falls Ordinance 35.025; see also Ordinance 35.027). Since the allegation involves actions of a city council member, the Complaint is insufficient on its face as to these cited provisions of the Ordinances.

Upon further preliminary investigation and review of the Complaint, the Board dismisses the Complaint as to the allegation of a violation of Sioux Falls Ordinance 34.007(b) for lack of jurisdiction by this Board to hear the matter. That provision is essentially a public meetings law. This Board has not been provided authority to investigate or otherwise hear such allegations. The Powers and Duties of the Board of Ethics are outlined and limited to those enumerated in Sioux Falls Ordinance 35.010. That Ordinance provides that the Board has investigative and regulatory powers concerning allegations of violations of Sioux Falls Ordinances 35.025 through 35.036 and 35.50 through 35.059. No authority is provided to this Board to investigate or otherwise hear an allegation of any other Ordinances. As such, this Board has no jurisdiction to hear the remaining allegation of a violation of 34.007(b).

RECOMMENDATION

The Board of Ethics dismisses Complaint 17-B. The board recommends this opinion be forwarded in writing to the Complainant, the Respondent and the City Council upon final approval.

Dated this ______ day of January, 2017 at Sioux Falls, South Dakota.

____________________________________
Chair of the Board of Ethics

cc: Involved Parties