

**SPECIAL STUDY SESSION MEETING NOTICE**  
**TOWN COUNCIL OF DEWEY-HUMBOLDT**  
**Friday, November 14, 2014, 2:00 P.M.**

**COUNCIL SPECIAL STUDY SESSION MEETING**  
**2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL**  
**DEWEY-HUMBOLDT, ARIZONA**

**AGENDA** (Amended)

The issues that come before the Town Council are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Council believes that the meeting be a safe place for people to speak. With this in mind, the Council asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Council may vote to go into Executive Session for legal advice regarding any matter on the open agenda pursuant to A.R.S. 38-431.03 (A) (3), which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda. Agenda items may be taken out of order. Please turn off all cell phones. The Council meeting may be broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Council may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

**1. Call To Order.**

**2. Roll Call.**

**2.1. Town Council.** Town Council Members Jack Hamilton, Mark McBrady, Dennis Repan, Sonya Williams-Rowe, Nancy Wright; Vice Mayor Arlene Alen; and Mayor Terry Nolan.

**3. Study Agenda.** No legal action to be taken.

**4. Special Session.** Legal Action can be taken.

**4.1. Code Enforcement Process Staff Review and Council Direction in regards to Code Enforcement Operation.** (Continued from October 14, 2014 Council meeting)

**4.2. Continued discussion on Public Body Code of Ethics Complaint Process.** (Continued from November 4, 2014 regular Council meeting)

**4.3. Whether to hold additional special session(s) this month.** This is an established agenda item for Council's discussion on whether to add an additional special study session and if so, to set the date.

**5. Comments from the Public.** The Council wishes to hear from Citizens at each meeting. Those wishing to address the Council need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Council. Individuals may address the Council on any issue within its jurisdiction. At the conclusion of Comments from the Public, Council members may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Council members are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Public Comment is **3** minutes per person. The audience is asked to please be courteous and silent while others are speaking.

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**6. Adjourn.**

**For Your Information:**

Next Town Council Meeting: Tuesday, November 18, 2014, at 6:30 p.m.

Next Planning & Zoning Commission Meeting: Thursday, December 4, 2014, at 6:00 p.m.

Next Town Council Work Session: Tuesday, December 9, 2014, at 2:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at [AgendaList@dhaz.gov](mailto:AgendaList@dhaz.gov) and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

**Certification of Posting**

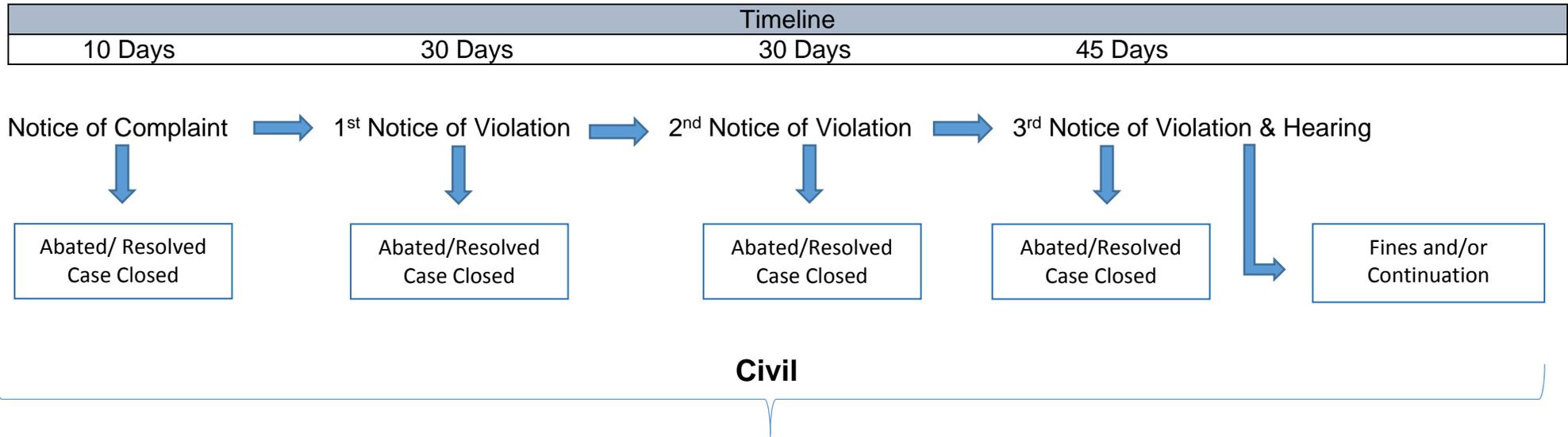
The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 2014, at \_\_\_\_ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: \_\_\_\_\_, Town Clerk's Office.

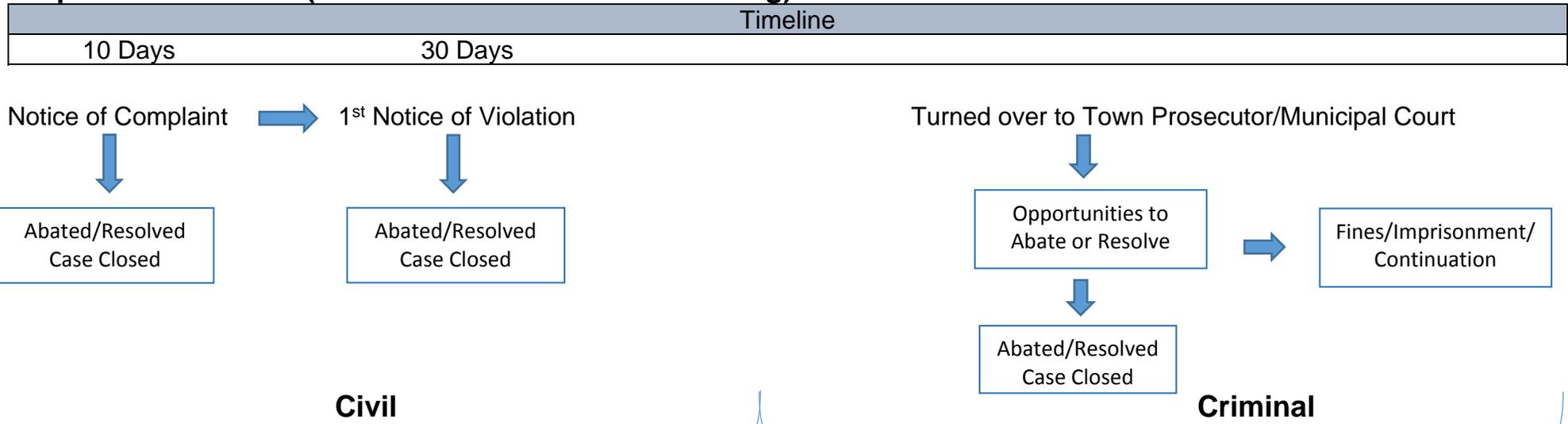
Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.

# Code Enforcement Procedure Current/Proposed Flow Chart

## Current Procedure (Civil Violation & Hearing)



## Proposed Procedure (Civil/Criminal Violation & Hearing)



Town of Dewey-Humboldt Code of Ordinances sections relating to zoning and building codes violations and enforcement

Title I: General Provisions

§ 10.99 GENERAL PENALTY.

(A) Any person found responsible for violating any provisions of this code, except as otherwise provided in this code, shall be responsible for a civil code infraction, and upon such finding of responsibility therefor may be punished by a civil sanction not to exceed \$500. Each day that a violation continues shall be a separate offense punishable as herein provided.

(1) In addition to any monetary civil sanction, the Civil Hearing Officer shall order the defendant to abate the civil code infraction, unless it has been abated by the date of a finding of responsibility therefor.

(2) The Civil Hearing Officer shall have the authority, within his or her discretion, to suspend the payment of any civil sanction imposed.

(3) In any case involving a civil code infraction relating to the occupancy or use of land, any monetary civil sanction imposed pursuant to this section upon a defendant who holds an ownership interest in such land shall be recordable as a lien upon the land and shall run with the land. The town, at its sole option, may record a notice of civil sanction and abatement order with the Yavapai County Recorder and thereby cause compliance by any person(s) or entity thereafter acquiring the property. When the property is brought into compliance by the owner or responsible party, a satisfaction of notice of civil sanction and abatement order shall be filed at the request and expense of the owner or responsible party. It shall be the property owner's responsibility to secure the satisfaction of notice of civil sanction and abatement order from the town.

(B) Any person found guilty of violating any provision of this code which is classified as a Class 1 misdemeanor, upon conviction thereof, may be punished by a fine not to exceed \$2,500, by imprisonment for a period not to exceed six months, by a term of probation not to exceed three years, or by any combination of the fine, imprisonment and probation.

(C) Notwithstanding any other provision of this code, any person found to have violated any provision of this code or amendments thereto, which pursuant to this section is classified as a civil code infraction, and who has been twice previously found to have violated the provision within the preceding 24 months, shall, in addition to any penalty prescribed for such civil code infraction, be guilty of a Class 1 misdemeanor and shall be punished by a fine not to exceed \$2,500, by imprisonment for a period not to exceed six months, by a term of probation not to exceed three years, or by any combination of the fine, imprisonment and probation.

**Statutory reference:**

*Maximum penalty for civil traffic violations, see A.R.S. § 28-1598*

*Misdemeanor penalty authorized, see A.R.S. § 9-240(B)(28)(b)*

Title XV: Land Usage

Chapter 150 Building Codes

150.01 Administrative Code, as amended

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*Chapter I*

SECTION 113 — VIOLATIONS shall be handled through §§ [153.019](#), [153.020](#) and [153.999](#) of the Zoning Regulations.

113.1 — Violations. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment, or cause or permit the same to be done in violation of this code and the technical codes. **A violation is punishable as a Class 2 Misdemeanor.**

...

*Chapter II*

Town of Dewey-Humboldt Code of Ordinances sections relating to zoning and building codes violations and enforcement

204.3 — Hearings Officer. In the absence of a Building Safety Advisor and Appeals Board, the Hearings Officer for the Town of Dewey-Humboldt as authorized by the Town Zoning Regulations, § 153.019(E) shall serve in the same capacity as the Board of Appeals.

*Section 205 — VIOLATIONS*

205.1 — Violations. It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment, or cause or permit the same to be done in violation of this code and the technical codes. **A violation is punishable as a Class 2 Misdemeanor.**

205.2 — Continuing Violation. When there is argument to the orders issued by the Building Official and the violation is not abated according the orders issued by the Building Official, the Building Official may refer the matter to the Town Hearing Officer for a hearing and the imposition of penalties and sanctions.

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(Ord. 07-31, passed 4-17-2007; Am. Ord. 10-61, passed 1-19-2010; Am. Ord. 10-73, passed 8-17-2010; Am. Ord. 11-80, passed 2-1-2011; Am. Ord. 11-87, passed 7-19-2011)

Title XV Land Usage/ 153. Zoning Regulations

📖 § 153.019 ENFORCEMENT.

(A) *Zoning Administrator.*

(1) For reference, this title equates to Zoning Administrator as mandated in A.R.S. § 9-462.05.

(2) For the purpose of enforcement of the provisions of this chapter, there is hereby created the position of Zoning Administrator and such deputy specialists as may be required, who shall be appointed by the Town Council. The Zoning Administrator shall administer and enforce this chapter, including the receiving of applications, the inspection of premises, and the issuing of permits. No building permit or certificate of occupancy shall be issued, except where the provisions of this chapter have been complied with.

(B) *Zoning inspection.*

(1) *Responsibility.* The Code Enforcement Officer is responsible for investigating all complaints of suspected violations of this chapter and other applicable codes within the town's jurisdiction.

(2) *Inspection.* With proper permission from the property owner or his or her agent, the Code Enforcement Officer may, in the discharge of his or her duties, and for good and probable cause, enter private property during assigned working hours to inspect same in connection with any application made under the terms of this chapter, or for any investigation as to whether or not any portion of the property, building or other structure was constructed or is being used in violation of this chapter. If permission to enter property is unobtainable, refused or withdrawn, the Inspector shall follow legally prescribed procedures for seeking a search warrant subject to the protections provided for rights of the property owner by the State of Arizona and the United States Constitution.

(C) *Zoning violation.*

(1) The erection, construction or alteration of any structure or the use of any property or structure, not in conformance with this chapter constitutes a violation.

(2) **Violations of this chapter are subject to civil penalties or other legal action per §§ 153.020 and 153.999 of this code for failure to comply with any provision of this chapter.**

(D) *Zoning violation hearing.*

(1) The Hearing Officer may hear and decide complaints alleging violations of this chapter, as authorized by A.R.S. § 9-462.04.

(2) The form and service of complaints, and the hearing procedures of the Hearing Officer, shall follow the zoning enforcement Rules of Procedure adopted by the Town Council.

Town of Dewey-Humboldt Code of Ordinances sections relating to zoning and building codes violations and enforcement

(3) If the Hearing Officer determines a zoning violation exists, civil penalties may be imposed by the Officer in accordance with § [153.999](#). Imposition of civil penalties listed in § [153.020](#) shall not preclude persons from pursuing remedies provided for in § [153.020](#).

...  
(Ord. 08-44 § 205, passed 10-21-2008)

📖 § 153.020 REMEDIES.

(A) All remedies provided in this chapter shall be cumulative and not exclusive.

(B) The imposition of penalties on any person under this chapter shall not relieve the person from the responsibility of correcting prohibited conditions or removing prohibited structures or improvements, and shall not prevent the enforced correction or removal of such violations.

(C) If any structure is erected, constructed, reconstructed, altered, maintained or used, or any land is used, in violation of this chapter, the Town Council, the Town Attorney or the Zoning Administrator may institute injunction, mandamus (court order), abatement or any other appropriate legal action or proceedings to prevent, abate or remove the violation.

(D) (1) It is unlawful to erect, construct, reconstruct, alter or use any building or other structure within any area subject to the provisions of this chapter without first obtaining a building permit zoning approval from the Building Department and/or Zoning Administrator, where such permit is required thereby.

(2) The conviction of any person, firm or corporation hereunder shall not relieve the person from the responsibility to correct the violation, nor prevent the enforcement, correction or removal thereof.

(3) Any fees authorized by the Town Council shall be doubled for failure to apply prior to commencing construction or sale of lots.

(Ord. 08-44 § 206(C), passed 10-21-2008)

§ 153.999 PENALTY.

(A) *Civil penalties.*

(1) Each day's continuance of a zoning violation shall be deemed a separate offense.

(2) The maximum penalty for each offense shall be:

(a) For an individual, \$750; or

(b) For any enterprise corporation, association, labor union or other legal entity, \$10,000.

(B) *Criminal penalties.* The maximum penalty for each offense shall be a Class 2 misdemeanor as established by the Arizona Revised Statutes.

(Ord. 08-44 § 206(A), (B), passed 10-21-2008)

## Ethics Complaints

### Process and Procedures for hearing

1. Complaint filed with Clerk.
2. Complaint forwarded to Hearing Officer
3. Complaint must be filed upon discovery...or within 30 Calendar days of alleged incident.
4. Hearing Officer reviews complaint and determines if complaint is valid or not. If complaint is valid the hearing officer will contact both the complainant and the defendant that a hearing date will be set.
5. If the Hearing Officer determines that the complaint is being used for political, personal, retaliation, professional defaming or frivolous. Then accusers will be charged with an ethics violation at the purview of the defendant.
6. The Hearing Officer will accept a response from the defendant on the complaint and will then set a hearing date.
7. After the Hearing the Hearing Officer will determine the decision and notify the parties involved.
8. The Hearing Officer will determine the course of action to prevent the issue from reoccurring.

## Vice Mayor Alen's submission

### Process and Procedures for hearing Ethics Complaints filed in Dewey-Humboldt

#### 1. Complaint Filed with Clerk

It is strongly suggested that prior to filing a complaint, the public and council attempt to

#### 2. Complaints must be filed upon discovery...or within 30 calendar days of alleged incident

#### 3. Ethics Committee Chair notified (or in succession order of seniority if named or recused) and documents copied to all committee members for review pre meeting by Clerk. Committee members MUST respond to notification of pending meeting and complaint within 3 business days of email from Chair. Should they not respond or respond by stating they must recuse themselves, the next councilmember in seniority will be contacted and the same response time applies to all who follow the initial reach out by Committee Chair.

#### 4. Chair calls committee meeting to discuss complaint and determine if case should move forward to a hearing. Should it be determined that case is not frivolous and no determination to dismiss can be made at this meeting Complainant and Respondent may request Arbitration in lieu of internal Ethics Committee hearing. Should they agree to do so, an outside Arbitrator will be selected from a list (TBD and compiled by staff through interaction with Legal and American Arbitration & Mediation Association or other Legal Entities providing these services. Prescott has list of local mediators and arbitrators available). Any cost incurred by this option shall be borne equally by Complainant & Respondent. They may determine to forgo this option and proceed with the Council Ethics Hearing Complainant and Respondent will be given notice that they have 2 calendar weeks to submit witness list and all documents/exhibits necessary to present/defend their case to Town Clerk. Original docs maintained and secured by Staff. Town Clerk and Chair will schedule Hearing post conferring on available dates of committee members and facilities/staff necessary for same. (Process for arbitration to be determined after conferring with Town legal and Arbitration association)

#### 5. Notices sent out as to hearing date and for materials, appearances, statements etc by Town Clerk. Two weeks given for all materials to be aggregated and copied to and reviewed by committee prior to hearing. Exceptions can be made and hearing rescheduled by consensus of hearing panel for unforeseen circumstances. (witness out of town etc) *(Refusal to appear or participate? What remedy) Discussion needed*

### Hearing Process

#### 1. Called to order by Chair and instructions given

#### 2. Complaint or outline of complaint (chair determination) read into record/and to those present

#### 3. Complainant then respondent make opening statements explaining their positions **10 minutes maximum**

#### 4. The complainant and respondent in that order may present their case and evidence

#### 5. Committee can ask questions at any time to parties having the floor *(should committee members not follow procedure and make speeches in lieu of questions or otherwise breach process they may be subject to a complaint being filed against them by Council when they review findings form at their post hearing meeting)*

6. Committee calls witnesses they have requested and asks questions. Both complainant and respondent may ask questions of these witnesses
7. Chairperson may eliminate any questions they feel argumentative or irrelevant to proceedings. Must be agreed to by consensus of ethics committee. All testimony must be in support of complaint or rebuttal of same. (*should committee members not follow procedure and make speeches in lieu of questions or otherwise breach process they may be subject to a complaint being filed against them by Council when they review findings form at their post hearing meeting*)
8. After witnesses are excused and all material reviewed and there are no further questions from the hearing panel
9. Both complainant and respondent in that order may make a uninterrupted closing statement (summation of case or rebuttal of same) **3 minute maximum**
10. The chair will then close the comments portion of the hearing and the hearing panel will enter discussion and come to a conclusion.
11. Their conclusion and recommendation on form provided by Town Attorney will then be sent via the town clerk for inclusion on the next regularly scheduled Town Council meeting agenda for discussion and legal action. (a vote to approve, change or amend).

## Councilmember Wright's submission

CM Nancy Wright's input on the process & procedure for the Ethics Complaints.

### Process and Procedures for hearing Ethics Complaints filed in Dewey-Humboldt

1. Complaint of a Code violation is filed with Clerk. Complaints must be filed upon discovery...or within 30 calendar days of the alleged incident. Original documents will be maintained and secured by Staff.
2. The Town Clerk will notify the Ethics Committee, complainant and respondent within 48 hours of receiving the complaint.
3. Any known documents to back up the complaint should be filed with the Clerk at this time. The specific code(s) that complainant thinks has been violated should be spelled out. Additional material such may be filed prior to the first meeting of the Ethics Committee.
4. Within 48 hours of notification by the clerk, the committee chair will arrange a date to meet. The meeting should be held within two weeks of notification. The committee meets and discusses the complaint to determine if it should move forward to the Hearing Officer.
5. Refusal to appear or participate by the respondent will be considered an assumption that the violation took place and sent to the Hearing Officer. Exceptions can be made and hearing rescheduled by consensus of the committee for unforeseen circumstances such as the witnesses being out and/or illness).
6. If an Ethics Committee member cannot or will not serve the next longest seated council member will be notified to participate. Notification to the next potential committee member must be made prior to publishing the agenda.
7. If the complaint filed is not a code violation the complainant will be notified why the complaint is not valid and that no hearing will be held.

### **Committee Hearing Process**

1. Called to order by Chair and notification to the public that no public comment will be allowed or taken during or after the hearing.
2. Complaint or outline of complaint will be read into record/and to those present.
3. Complainant then respondent will make opening statements explaining their positions.
4. The complainant and respondent in that order may present their case and evidence.
5. The Committee may ask questions at any time but the questions must be relevant to the complaint filed. No debate will be allowed on whether or not a person likes the ethics code or the procedure.
6. The Committee calls any witnesses that the complainant or respondent have requested and asks questions. Both complainant and respondent may also ask questions of these witnesses. Again, the questions must be relevant to the complaint.

7. The Chair or any committee member may call a Point of Order to eliminate any questions they feel irrelevant to proceedings. The committee will vote or agree by consensus that the question was irrelevant. All testimony must be in support of complaint or rebuttal of same.

8. After witnesses are excused and all material reviewed and there are no further questions from the committee both complainant and respondent in that order may make an uninterrupted closing statement (summation of case or rebuttal of same).

10. The chair will then close the comments portion of the hearing and the committee will enter discussion and come to a conclusion.

11. If committee's conclusion is that a violation took place the information will be sent to the Town's Hearing Officer to determine if the violation was minor or major and what penalty, if any, should be applied.

12. If the committee's conclusion is that a violation did not take place then the complainant and respondent will be notified of the decision, the reason(s) for the decision and that no further action will take place.

## CM REPAN 's submission

It is the intent to make the process of a possible violation of the code of ethics as expeditious as possible, therefore the following process will be applied.

1. Any possible infringement of the Dewey-Humboldt Code of Ethics will be made in writing within 10 days of the incident and filed with the town clerk.
2. Upon the filing of the potential complaint, the town clerk shall forward the complaint to a rotating, three member Code of Ethics committee. If, in the rotating order of the committee, either the complainant or defendant is up for committee, they will be automatically relieved of committee responsibility. The committee will consider the rules and procedures under which to meet and discuss the complaint. Within 7 days of the forwarding of the complaint from the town clerk, the committee will meet and determine if in fact a possible code infringement has taken place. If in fact a potential criminal infringement has taken place, the complaint shall be forwarded to the town magistrate office for possible concurrence and further investigation.
3. If the committee finds that there is no cause with the initial complaint, they shall issue such findings to the town clerks office along with the voting record of the committee. The town clerk will forward those findings to the complainant, defendant and a copy to the town council, city manager and town attorney.

4. If the committee finds for potential justification for the complaint, the complaint and any and all findings and information, including the voting record, shall be sent to the town clerk. Within 7 days of receiving those finding, the town clerk will forward all information, including any previous violations and judgments to the town magistrate.

5. The town magistrate shall make a determination and submit that determination to the town clerk on or before the end of a 3 week timeframe. The town magistrate, has the authority to call further witnesses, including the complainant and the defendant, to consul with the town attorney, or call for any further information such that a determination can be made before the end of the 3 week timeframe. The magistrate can also suggest a possible corrective action for consideration of council, in alleviating the situation from occurring again.

6. Within 72 hours of receipt of those finding , the town clerk shall forward those finding and any supporting information to the , town council, town manager, town attorney and both the complainant and the defendant of the potential violation.

7. Within 2 weeks of receiving those findings the town council shall meet in session to review and if necessary, recommend a corrective action.