

BY-LAWS OF THE ABERDEEN ETHICS COMMISSION

Approved July 8, 2013
Amended December 22, 2015
Amended February 10, 2016
Amended May 18, 2016

§ 1. Officers.

a. The Ethics Commission shall elect a Chair and Vice Chair from among its members. The terms of the Chair and Vice Chair are one year, and the Chair and Vice Chair may be reelected.

b. The Vice Chair shall perform the duties of the Chair in the absence, disability or disqualification of the Chair.

c. In the event of a vacancy in the office of Chair, the Vice Chair shall succeed as Chair for the remainder of the Chair's term. In the event of a vacancy in the office of Vice Chair, the Ethics Commission shall elect a Vice Chair to serve the remainder of the Vice Chair's term.

§ 2. Quorum.

A majority of members of the Ethics Commission is a quorum for the transaction of business, but the Commission may meet for informational purposes without a quorum.

§ 3. Staff.

a. The City Clerk, or other individual designated by the City Manager, shall serve as staff to the Ethics Commission.

b. Staff to the Ethics Commission shall be responsible for:

- 1) Maintaining all forms submitted to the Commission.
- 2) Ensuring that notice of Ethics Commission meetings is provided to members of the Commission and to the public.
- 3) Arranging for meeting space for Commission meetings.
- 4) Recording and transcribing minutes of Commission meetings.
- 5) Maintaining the record of all hearings conducted by the Commission.
- 6) Disseminating communications from the Commission.

- 7) Coordinating training for members of the Commission.
- 8) Arranging for publication of notice of Commission meetings.
- 9) Disseminating agendas and other meeting materials to members of the Commission.
- 10) Performing such other duties as directed by the Commission.

c. The City Clerk shall be the custodian of the Commission's records. The Commission's records shall be kept on file by the City Clerk. Any minutes or records of the Ethics Commission, confidential under the Maryland Public Information Act, shall be maintained separately in a secure manner and not subject to disclosure except as directed by the Commission.

§ 4. Duties.

The Ethics Commission shall have those duties and responsibilities as set forth in the City's Ethics Ordinance set forth in Chapter 43 of the City Code.

§ 5. Meetings.

a. The Ethics Commission shall meet at the call of the Chair, or upon request of a majority of the members of the Commission, after at least 48 hours notice to members of the Commission unless shorter notice is required because of exigent circumstances.

b. The Ethics Commission shall provide reasonable public notice of the time, place and agenda for the Commission's meetings.

c. Meetings of the Ethics Commission shall be held in the Aberdeen City Hall or at such other public location as the Chair of the Commission, in consultation with staff liaison, determines.

d. The Chair shall set the agenda, and preside and regulate conduct at all meetings and hearings of the Commission.

e. Meetings of the Ethics Commission shall be open to the public unless the Commission meets in closed session as authorized by law.

f. Meetings of the Commission shall be conducted according to the following order, subject to the right of the Commission to modify this order:

- 1) Roll call and determination of quorum.

- 2) Approval or revision of meeting agenda.
- 3) Approval of prior meeting minutes.
- 4) Unfinished Business.
- 5) Public Hearings.
- 6) New Business.
- 7) Other business.
- 8) Adjournment.

§ 6. Conflicts of Interest of Commission Members.

a. An Ethics Commission member who will be unable to render a fair and impartial decision based on the facts presented in a matter due to a financial or personal conflict in a case, or is the subject of a complaint before the Commission, shall not participate in a case prior to becoming involved in a hearing or voting on a case.

b. If an Ethics Commission member recognizes a conflict, or the appearance of a conflict, the member shall state this conflict before any proceeding and physically remove himself or herself from the room and avoid discussion of the matter until the Commission renders a decision.

§7. Hearings.

The Ethics Commission recognizes that the consideration of a complaint of a violation of Chapter 16 of the City Code against a City employee personnel information that is confidential under the terms of the Maryland Public Information Act (“PIA”) and the procedures set forth below are intended to protect the employee’s privacy interests and their rights under the PIA to the maximum extent possible. In addition to procedures established by the Ethics Commission for complaints alleging violations of the City’s Ethics Ordinance, hearings before the Commission shall be conducted according to the following:

- a. The Chair shall conduct and regulate the course of the hearing.
- b. The Chair may establish reasonable time limits for the presentation of evidence and testimony.

c. The Chair shall rule on the admissibility of evidence and other evidentiary questions.

d. The Chair shall administer oaths to witnesses. Any witness appearing at a hearing before the Commission shall be administered the following oath: "Do you swear or affirm under the penalty of perjury that the testimony you shall give will be the truth."

e. The Commission is not bound by formal rules of evidence but may apply rules of evidence as to what is admissible in judicial proceedings so that probative evidence may be conveniently brought forth. The Commission may exclude immaterial or unduly repetitious testimony or evidence, and may limit the number of witnesses when testimony is cumulative in nature.

f. Paper exhibits admitted into evidence shall be folded to a maximum size of nine (9) inches by fourteen (14) inches. An exact duplicate of the exhibit may be mounted and used for presentation.

g. Order of Presentation.

The order of presentation shall be as set forth below:

- 1) Introduction of the case by the Chair.
- 2) Incorporation of the file and record provided by staff into the record.
- 3) Presentation of allegations and any supporting evidence by Complainant.
- 4) Cross-examination by Respondent.
- 5) Dismissal of Complainant from the hearing room in any case involving testimony or evidence relating to personnel issues concerning a City employee.
- 6) Presentation of Respondent's Case.
- 7) Respondent's summary.

At any time Commission members may address questions to the Complainant, the Respondent, any witnesses or any others present at the hearing as is deemed appropriate.

h. Communications.

- 1) In General.

The Commission shall not consider any *ex parte* or private communication from any person or organization, whether oral or written, which may relate to the merits of any administrative hearing. Any such communication must be noted in the record of the case and the parties shall be given an opportunity to comment thereon. Respondent shall be given the opportunity to comment thereon.

- 2) City staff.

Nothing contained herein shall preclude the Commission from obtaining any evidence, counsel or assistance from the City staff.

§ 8. Record of Proceedings.

a. The Ethics Commission shall keep an official record of its proceedings in each case. This record shall include all filings, correspondence, testimony, exhibits, a recording of the proceedings and other matters that the Commission deems necessary. The Commission shall maintain this record for a period of four (4) years after a final decision in a case. A final decision is one in which no further appeal can be taken.

b. The Ethics Commission shall provide for an audio recording to be made of each hearing. The Ethics Commission may provide for a stenographer or court reporter to record the proceedings of the Commission at the request and expense of a party to a proceeding.

c. After the filing of a petition for judicial review of a decision of the Commission, the Ethics Commission shall provide a transcript of testimony at a hearing if requested by the Respondent and upon payment, in advance, of the cost of the transcription. In all other situations the Respondent, in a proceeding before the Commission, may review an audio or written transcript of a proceeding at City Hall at a time convenient to the City Clerk and no copies may be made except in case of a judicial review or otherwise by Court Order.

d. Members of the Ethics Commission may review an audio recording or a transcript of testimony of a hearing as necessary to perform their duties. For such purposes Commission members may receive a copy of an audio recording or transcript from the City Clerk upon request. Each Commission member shall be responsible for the confidentiality and safekeeping of any such audio recording or transcript, shall not make any further copies of the audio recording or transcript, and shall return all audio recordings and transcripts to the City Clerk promptly after completion of the Commission member's review.

§ 9. Actions of the Commission.

a. The Ethics Commission may act only on the affirmative vote of at least a majority of its members.

b. In a matter involving a complaint alleging of a violation of Chapter 43 a Commission member may not participate in the deliberations and vote on that matter unless the member has attended all hearings relating to that matter, except that where a matter involves multiple days of hearing a Commission member who is absent for one day of the hearings may participate in future hearings, the deliberations and vote on the matter if the member:

- 1) Attends all other days of hearings;

2) Prior to the next day of hearings, listens to the audio recording (or views the video recording if available) of the day of the hearing from which the member was absent;

3) Prior to the next day of hearings, reviews all exhibits presented at the hearing from which the member was absent; and

4) States on the record, prior to commencement of the next day of hearings, or prior to the commencement of deliberations if hearings have concluded, that the member listened to the audio or video recording and reviewed all exhibits as required by paragraphs 2 and 3.

c. The Chair shall sign all communications and decisions of the Ethics Commission, except that the Chair may authorize staff to sign communications of the Ethics Commission in the name of the Chair.

d. Decisions of the Ethics Commission shall be signed by all members of the Commission voting in favor of the decision. A member of the Commission who does not vote in favor of the Commission's decision may issue a dissenting opinion.

e. Staff shall disseminate copies of any Commission action or decision to all relevant parties and individuals except that, in the case of an administrative hearing on a complaint, the decision shall be disseminated to the Respondent and otherwise shall be held confidential.

§ 10. Commission Spokesperson.

The Chair of the Ethics Commission shall act as the Commission's spokesperson.

§ 11. Appearances before Commission.

a. The following individuals may appear before the Commission:

1) An individual appears on his or her own behalf.

2) A member of a partnership who represents the partnership.

3) A duly authorized representative of an individual, corporation, trust, or association who represents the individual, corporation, trust or association.

4) Duly authorized representatives or employees of the City.

b. Any party in a proceeding may be represented by an attorney admitted to practice law before the Court of Appeals of Maryland. Before the hearing begins, the attorney shall give

the Commission his or her name, address, and telephone number, and identify those persons that he or she is representing.

a. General Rules.

1) Except as set forth in subsections (b)-(d) of this section, during the pendency of any preliminary inquiry by Commission staff or following the filing of a complaint, the proceedings, meetings, and activities of the Commission and its employees in connection with the complaint shall be conducted in a confidential manner.

2) Except as set forth in subsections (b)-(d) of this section, the Commission, its staff, the Complainant, and the Respondent may not disclose any information relating to the complaint, including the identity of the Complainant and the Respondent.

b. Exceptions.

1) The Commission may release information at any time if the Respondent has agreed in writing to the release.

2) The identity of the Complainant shall be disclosed to the Respondent at any time in response to a written request from the Respondent.

3) Information may be disclosed by the Commission or the Commission's staff as necessary to conduct a preliminary inquiry, investigation, or hearing, or to issue subpoenas at the request of the Respondent pursuant to Chapter 43.

4) Confidentiality does not apply to referral or release of information to a prosecuting authority.

5) Confidentiality may be waived by the Respondent, and information disclosed accordingly as part of a cure, settlement, or other prehearing resolution of an enforcement proceeding pursuant to these regulations.

c. Information Provided to a Complainant.

The Complainant shall be provided with a copy of a signed order of the Commission dismissing a complaint if:

1) After a preliminary hearing, it is determined that the evidence does not merit further proceedings and that dismissal is not contrary to the purposes of Chapter 43; or

2) After a hearing, it is determined that the Respondent has not violated any of the provisions of Chapter 43.

d. Confidentiality after Hearing.

1) The confidentiality requirements apply, as set forth in subsection (a) of this section, to written reports setting forth findings of fact and conclusions of law required after a hearing.

2) When there is a finding that there was no violation of Chapter 43 the requirements of subsection (a) of this section apply, and there may not be disclosure of information.

3) When there is a finding of violation as to any allegation of the complaint, the written report, including findings and conclusions of any nonviolations, shall be a public record.

e. Penalties.

In the event that the Commission determines that there has been a breach of this § 12, the Commission may, in its discretion, determine whether to recommend that an individual be censured or disciplined, in the case of a City employee or officer, or whether to dismiss the Complaint.

§ 13. Amendments.

These By-laws may be amended by a vote of a majority of the entire membership of the Commission provided that notice of the proposed change is given to each member at least 15 days before the meeting at which the Commission acts on the amendment.