



## ETHICS REVIEW COMMISSION RECOMMENDATION NO. 20160608-02A

Date: June 8, 2016

Subject: Proposed Amendment of City Code Section 2-7-41 (*Complaints*) Relating to Processing of Ethics Review Commission Complaints

Motioned By: Secretary Stratmann

Seconded By: Commission Member Smith

### **Recommendation:**

*The Commission recommends that the City Council repeal and replace City Code Section 2-7-41 (Complaints) to read as follows:*

#### § 2-7-41 - COMPLAINTS.

(A) In this article:

- (1) COMPLAINANT means an individual person filing a sworn complaint; and
- (2) RESPONDENT means an individual person who is alleged in a sworn complaint to have violated a provision within the jurisdiction of the Ethics Review Commission.

(B) To be eligible for preliminary hearing by the commission, a complaint must conform to the following requirements:

- (1) A complaint must be filed with the city clerk;
- (2) A complaint must be sworn and properly notarized, unless the complaint is filed on the commission's own initiative in accordance with subsection (F) of this section;
- (3) A complaint must contain the name and contact information of the complainant;
- (4) A complaint must contain the name of the respondent; with which city office, department, or commission a respondent is associated; and the respondent's contact information if known;
- (5) A complaint must allege one or more violations by one named individual respondent who is within the personal jurisdiction of the commission, in accordance with subsection (C) of this section and Section 2-7-27 (*Limit on the Commission's Jurisdiction*);
- (6) A complaint must allege violation of one or more provisions within the subject matter jurisdiction of the commission, in accordance with Section 2-7-26 (*Functions*);
- (7) A complaint must specifically list each individual section of the code or the charter alleged to have been violated, and a citation to the charter as a whole or to an entire chapter or article of the code as a whole is not sufficient to fulfill this requirement;
- (8) The section of code or charter alleged to have been violated must be applicable to the named respondent;
- (9) A complaint may not allege violation of a provision which the commission has previously determined is incapable of violation in a written order of the commission;

- (10) A complaint may not allege an allegation of conduct that the commission has previously determined is not a violation of a provision within the commission's jurisdiction;
- (11) A complaint must list the full date of each individual day on which a violation allegedly occurred;
- (12) A complaint must describe the action taken by the respondent which is alleged to be a violation of a provision with the jurisdiction of the commission;
- (13) A complaint must be filed within two years from the date of the action alleged to be a violation, and not afterward; and
- (14) A complaint must describe the evidence or witnesses that would be presented by the complainant at final hearing if a final hearing were to be set by the commission.

A complaint that fails to conform to all of the above requirements is deficient and is ineligible to be heard by the commission, unless all deficiencies are corrected and the corrected complaint is refiled with the city clerk.

- (C) Except as provided by Section 2-7-27 (*Limit on the Commission's Jurisdiction*), the commission has personal jurisdiction over the following individuals: City officials and employees, former City officials and employees, candidates for election to City offices, and other persons subject to the provisions set forth in Section 2-7-26 (*Functions*). The commission may not consider complaints against its own members.
- (D) Not later than five working days after the city clerk receives a sworn complaint, the city clerk shall acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the city attorney, the chair of the commission, and the respondent. The city clerk shall also send a copy of the complaint to any person or entity identified as involved in the alleged inappropriate conduct if the person or entity's name and contact information is listed on the complaint form.
- (E) Not later than five working days after receipt of a complaint from the city clerk, the chair of the commission shall make an initial determination as to whether the complaint is eligible for preliminary hearing by the commission in accordance with subsection (B) of this section.
  - (1) If the chair determines that a complaint is eligible for preliminary hearing, the chair shall set the complaint for preliminary hearing at the next feasible commission meeting, but no later than 60 days after the chair's initial determination unless agreed upon by the parties or by vote of the commission. At least 10 working days prior to the meeting, the chair shall cause a written notice of the preliminary hearing date to be sent to the complainant, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. For good cause, the chair may grant a postponement request made by the complainant, the respondent, or any person or entity identified as involved in the alleged inappropriate conduct.
  - (2) If the chair determines that a complaint is deficient and therefore ineligible for preliminary hearing, the commission shall review the chair's initial determination at the next feasible commission meeting and may overturn the chair's determination.
    - (a) Not later than five working days after the chair determines that a complaint is deficient, the chair shall cause a written notification of such initial determination to be sent to the complainant, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. The notification shall state the reasons why the complaint is deemed deficient by the chair.

- (b) If the commission determines that a complaint is deficient for lack of commission jurisdiction, but the complaint is within the city auditor's investigatory jurisdiction, the commission shall refer the complaint to the city auditor for possible investigation.
  - (c) If the commission determines that a complaint is deficient and therefore ineligible for preliminary hearing, the chair shall cause a written notification of the commission's final determination to be sent to the complainant, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. The notification shall state the reasons why the complaint is deemed deficient by the commission and that the complaint may be refiled if all deficiencies are corrected. If applicable, the notification shall state that the commission has referred the complaint to the city auditor for possible investigation.
  - (d) If the commission overturns the chair's initial determination and determines that a complaint is eligible for preliminary hearing, the complaint shall be set for preliminary hearing in accordance with the procedures set forth in subsection (E)(1) of this section.
- (F) The commission may consider a possible violation of a provision within the jurisdiction of the commission on the commission's own initiative. Within 10 working days of the commission's decision to consider a possible violation, the commission shall draft a written complaint specifying each code section or charter provision alleged to have been violated, shall file a copy of the complaint with the city clerk, and shall provide a copy of the complaint to the city attorney, the respondent, and any person or entity identified as involved in the alleged inappropriate conduct. A complaint initiated by the commission need not be sworn. The chair shall set the complaint for preliminary hearing at the next feasible commission meeting, but no later than 60 days after the complaint is filed with the city clerk unless agreed upon by the parties or by vote of the commission. At least 10 working days prior to the meeting, the chair shall cause a written notice to be sent to the respondent and any person or entity identified as involved in the alleged inappropriate conduct notifying the respondent and any person or entity identified as involved in the alleged inappropriate conduct of the date of the preliminary hearing. For good cause, the chair may grant a postponement request made by the respondent or any person or entity identified as involved in the alleged inappropriate conduct.

**Rationale:**

*To provide the parties to Ethics Review Commission complaints with additional clarity and transparency regarding the necessity of complete and accurate information needed by the Commission to process a sworn complaint.*

**Vote:** 7-0

**For:** Chair Einhorn, Vice Chair Lamon, Secretary Stratmann, and Commission Members Harding, McCormick, Ohueri, and Smith.

**Against:** None

**Abstain:** None

**Absent:** Commission Members Danburg, Quinzi, Speight, and Thompson

**Attest:**

  
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 Cynthia Tom, Commission Executive Liaison