



PROVIDENCE ETHICS COMMISSION

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Municipal Integrity Officer

January 8, 2016

The Honorable Luis A. Aponte
Council President
Providence City Council
City Hall
25 Dorrance Street
Room 310
Providence, RI 02903


Dear Council President Aponte:

Enclosed, please find a regulation pertaining to the Providence Ethics Commission's complaint process for the City Council's consideration, approved by the Commission during its January 6, 2016 meeting.

Pursuant to Section 17-33(i)(2)(b) of the Code of Ordinances, the Providence Ethics Commission has the authority to investigate potential violations of the Providence Code of Ethics and to render probable cause determinations. The Commission seeks to adopt the enclosed regulation to establish clear procedures for the complaint process. In accordance with Section 17-33(i)(2)(e), the Commission sought the advice of the City Solicitor in drafting this regulation and now seeks the Council's consent to promulgate it.

Thank you again for your leadership on these important issues.

Very truly yours,


Susann G. Mark

Chair, Providence Ethics Commission

IN CITY COUNCIL
MAY 24 2017

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED AND APPROVED
 CLERK

Regulation 2016-2. Complaints.

- (a) Filing of Complaint. Complaints of violations of Section 17-33 of the Code of Ordinances of the City of Providence (the "Code of Ethics") shall be made by submitting a complaint on the Providence Ethics Commission's complaint form ("Complaint") to the Municipal Integrity Officer, Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903. The Municipal Integrity Officer will keep a record of the Complaint and the date received and will then forward it to an Assistant City Solicitor designated by the City Solicitor to review and advise as to whether an ethics violation has occurred. (The designated Assistant City Solicitor may be referenced in this regulation as the "Investigator.")
- (b) Initial Screening of Complaints. The Investigator shall conduct an initial screening of all Complaints in the following manner:
- i. Each Complaint filed shall be reviewed as to form. If there is a form defect, the Complaint shall be returned to the person who filed it (the "Complainant") for corrections. If not refiled within twenty (20) days of mailing the defective Complaint to the Complainant, the Complaint shall not be processed as filed.
 - ii. Complaints which are in proper form shall be presented to the Ethics Commission at its next meeting for initial determinations. Notwithstanding any defects as to form or failure of the Complainant to refile, if the Investigator determines that the facts stated in a defective Complaint are sufficient to allege a violation of the Code of Ethics, the matter shall be brought to the Ethics Commission for an initial determination at its next meeting.
 - iii. The City Solicitor's office shall file quarterly reports with the Municipal Integrity Officer on the number of Complaints received, including the number of defective Complaints.
- (c) Initial Determination of Complaint.
- i. At the meeting for an initial determination, the Ethics Commission shall review the Complaint and decide whether or not the facts alleged, if true, are sufficient to constitute a violation of the Code of Ethics. The Commissioners will not review any additional information or engage in any fact finding. The Commissioners are to examine the facts alleged within the Complaint, without making any judgment as to credibility or examination of any collateral information.
 - ii. If the Ethics Commission determines that the Complaint fails to allege facts sufficient to constitute a violation of the Code of Ethics, the Complaint shall be dismissed and the individual against whom the Complaint has been filed ("Respondent") and Complainant shall be mailed a written notification of the dismissal within three (3) working days.

- iii. If the Commission determines that the Complaint alleges facts sufficient to constitute a violation of the Code of Ethics, the Commission shall open an investigation. The Respondent and Complainant shall also be sent written notification regarding such initial determination by the Commission within three (3) working days thereafter and advising both parties of the opportunity to provide evidence to the Investigator regarding the allegations in the Complaint.
 - iv. The Ethics Commission shall conduct these proceedings in executive session, consistent with R.I. Gen. Laws § 42-46-5(a).
- (d) Investigation of Complaints. Following a determination that the Complaint alleges facts sufficient to constitute a violation of the Code of Ethics, an investigation will proceed in the following manner:
- i. The Investigator will contact the Complainant within twenty-five (25) days after the authorization of an investigation, to request additional information regarding the allegations in the Complaint.
 - ii. The Respondent may file a response under oath and submit other evidence in opposition to the allegations in the Complaint within twenty (20) days of the notification provided in (c)(iii).
 - iii. The Investigator will provide a report to the Commission's legal counsel within sixty (60) days after receipt of the Complaint by the Investigator, stating the Investigator's conclusion as to whether or not there is sufficient evidence to support a finding of Probable Cause that the Code of Ethics has been violated as alleged.

The Ethics Commission may also authorize an investigation into allegations that appear to constitute a violation of the Code of Ethics, in the absence of a Complaint.

- (e) Role of Commission legal counsel. Upon the receipt of the Investigator's report, the Ethics Commission's legal counsel shall undertake the following:
- i. Review the report and prepare a written recommendation for the Ethics Commission, indicating whether legal counsel concurs or disagrees with the conclusion of the Investigator; and
 - ii. Forward the Investigator's Report and legal counsel's recommendation to the Ethics Commission for review and disposition at a Probable Cause proceeding; and
 - iii. In case of a Complaint deemed by legal counsel to have allegations of serious criminal conduct, upon advice to the Chair of the Ethics Commission, forward the Complaint to the City Solicitor for referral to the Attorney General for prosecution.
- (f) Probable cause proceedings. Unless good cause is shown to extend the time, the Respondent shall be given at least two weeks' notice prior to the scheduled Probable Cause proceeding. Probable Cause proceedings before the Ethics Commission will

consist of the review of the Investigator's report and legal counsel's recommendation, as well as presentations to the Ethics Commission by the Investigator, its legal counsel and Respondent (and/or Respondent's attorney). The Ethics Commission shall have the power to compel attendance of witnesses at such proceeding for examination under oath and to require the production of evidence prior to and at such proceeding. Respondent or Respondent's attorney may submit a written statement, present legal arguments, and introduce oral and written evidence in response to the allegations. The Ethics Commission shall conduct these proceedings in executive session, consistent with R.I. Gen. Laws § 42-46-5(a).

Within ninety (90) days following the completion of the Probable Cause proceedings, the Ethics Commission shall report its findings in open session and will thereafter issue written findings. If a majority of all of the members of the Ethics Commission determines that there is Probable Cause to believe that the Code of Ethics has been violated, the Ethics Commission shall take one or more of the following actions:

- i. Refer the matter to the City Solicitor for review and potential prosecution in the Providence Municipal Court, and request a report from the City Solicitor as to actions taken within sixty (60) days of referral;
- ii. In the case of matters involving employees within the personnel system established by Article IX of the Providence City Charter, also refer the matter to the human resources department for appropriate disciplinary action;
- iii. In the case of matters involving sworn personnel of the public safety department, also refer the matter to the Commissioner of Public Safety for appropriate disciplinary action;
- iv. In the case of matters involving employees or officials (other than sworn personnel of the public safety department) not subject to the personnel system established by Article IX of the Charter, also refer the matter to the appointing authority, for appropriate disciplinary action.

The Ethics Commission's written findings regarding its Probable Cause determinations will be forwarded to both the Complainant and the Respondent.

(g) Informal Disposition.

- i. At any time subsequent to the referral by the Ethics Commission's legal counsel for a Probable Cause proceeding, the Ethics Commission, with the concurrence of the Respondent and Respondent's attorney, may seek an informal disposition through an agreed settlement, consent order, or other informal resolution of the pending Complaint.
- ii. At the direction of the Ethics Commission, the Ethics Commission's legal counsel may meet with the Respondent and Respondent's counsel for an informal conference to seek such informal disposition. This conference shall not be recorded or transcribed and no statements made by any person at such

conference shall be used as evidence in any subsequent proceeding of the Ethics Commission.

- iii. An informal disposition must receive the approval of a majority of the members of the Ethics Commission in order to become effective. The approved informal disposition of the Complaint shall become a public record. The Complainant shall be notified of the date on which the Ethics Commission will consider the proposed informal disposition, shall be notified of any actions taken by the Ethics Commission regarding the informal disposition, and shall be provided with a copy of any approved informal disposition agreement and/or order.
- (h) State Ethics Code violations. If, in addition to finding Probable Cause to believe that the Code of Ethics has been violated, the Ethics Commission becomes aware of any circumstance or situation which appears to violate or may potentially violate the state code of ethics, R.I.G.L. 36-14-1 *et seq.*, the Ethics Commission shall also report the matter to the Rhode Island Ethics Commission.

If the Ethics Commission learns that the Rhode Island Ethics Commission is investigating a complaint arising out of the same set of facts contained in a Complaint currently pending before the Ethics Commission, the Ethics Commission shall determine whether to proceed with its investigation or stay its proceedings pending the outcome of the matter before the Rhode Island Ethics Commission.
- (i) Criminal violations. If, in the process of investigating any Complaints, the Ethics Commission becomes aware of any circumstance or situation that appears to constitute a crime, the Ethics Commission shall also report the matter to the Attorney General's office. Upon reporting the matter to the Attorney General, the Ethics Commission shall determine whether to proceed with its investigation or stay its proceedings pending resolution of any criminal matter.
- (j) Limitation Period on Filing of Complaint. Any Complaint shall be filed with the Ethics Commission no later than five (5) years from the date of the alleged violation of the Code of Ethics.
- (k) Commission Records. Following the Commission's Initial Determination, as set forth in (c), the Complaint is a public document. All other requests for Commission records will be fulfilled in accordance with the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

The Chair of the Ethics Commission has authority, on the basis of good cause shown, to extend any of the time periods contained in this Regulation.