



CITY COUNCIL

Committee of the Whole

Monday, August 15, 2022

5:00 pm

Hybrid Meeting

Agenda

The City Council Committee of the Whole meetings are filmed and can be viewed LIVE while the meeting is taking place via the attached Zoom link and dial-in phone number, on Facebook and on the BCTV MAC Channel 99.

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://readingpa.zoom.us/j/86089612552?pwd=NHJHalZtTnZCNmc4MjNiS1ltYXo3QT09>

Passcode: 806658

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656 or +1 646 931 3860 or +1 386 347 5053 or +1 564 217 2000
or +1 669 444 9171 or +1 720 707 2699 or +1 253 215 8782 or +1 346 248 7799 or 877 853 5257 (Toll Free) or 888 475 4499
(Toll Free)

Webinar ID: 860 8961 2552

Passcode: 806658

- I. Solid Waste Update**
- II. ARPA Funding Discussion re Next Steps**
- III. Charter Board Ordinance Amendment – 6:30 pm (attached pgs 3-19)**
- IV. Council Appointments**
 - 1. VP**
 - 2. BAC Assignments (current list attached)**

- appointing _____ to the **BCAP Board** with _____ as alternate – **monthly 2nd Tues at noon - hybrid**
- appointing Donna Reed as liaison to the **BCTV Board** with Marcia Goodman-Hinnershitz as alternate – **monthly 1st Thurs at 8 am**
- appointing Johanny Cepeda-Freytiz to the **Blighted Property Review Committee** with Christopher Daubert as alternate – **March, May, August & Oct 3rd Thurs at 6 pm - hybrid**
- Donna Reed to **Conversion Therapy Board** with Johanny Cepeda-Freytiz as alternate – **not currently meeting**
- appointing _____ to the **Downtown Revitalization Public Private Partnership** with Johanny Cepeda-Freytiz and Donna Reed as liaisons – **not currently meeting**
- appointing Melissa Ventura to the **Diversity Board** with Johanny Cepeda-Freytiz and Wesley Butler as alternate – **monthly 3rd Thurs at 4:30 pm**
- appointing Marcia Goodman-Hinnershitz to the **Environmental Advisory Council** with Donna Reed and Johanny Cepeda-Freytiz as alternates – **most months 4th Tues at noon – in person during warm weather months, virtual rest of year**
- appointing Marcia Goodman-Hinnershitz to the **Mt. Penn Preserve Council of Governments Board** – **every other month 4th Weds at 6 pm**
- appointing Marcia Goodman-Hinnershitz to the **OPEB Board** with Johanny Cepeda-Freytiz as alternate - **annually**
- appointing Donna Reed as liaison to the **Planning Commission** with Johanny Cepeda-Freytiz as alternate – **monthly 4th Tues at 6 pm - hybrid**
- appointing Donna Reed to the **RATS Coordinating Committee** with _____ as alternate – **quarterly Thurs at 1 pm - hybrid**
- appointing Marcia Goodman-Hinnershitz and Melissa Ventura to the **Recreation Commission** with Wesley Butler as alternate – **as needed Thurs at 7 pm**
- appointing Melissa Ventura, Johanny Cepeda-Freytiz and Wesley Butler as Council liaisons to the **Youth Commission** – **monthly 1st Weds at 6 pm**
- appointing Marcia Goodman-Hinnershitz to the **Audit Committee** with Johanny Cepeda-Freytiz as alternate – **as needed - hybrid**
- appointing Marcia Goodman-Hinnershitz to the **Revenue Committee** with Johanny Cepeda-Freytiz as alternate – **as needed**
- appointing Johanny Cepeda-Freytiz as liaison to the **Human Relations Commission** with Christopher Daubert as alternate – **monthly 2nd Weds at 6 pm**
- appointing Donna Reed as liaison to the **Shade Tree Commission** with Christopher Daubert as alternate – **monthly 3rd Tues at 6 pm**
- appointing Donna Reed as liaison to the **Stadium Commission** with Wesley Butler as alternate – **monthly as needed Thurs at 7 pm**
- appointing Marcia Goodman-Hinnershitz to the **Capital Planning Committee** with Johanny Cepeda-Freytiz as alternate – **as needed**
- appointment to the Aulenbach’s Cemetery Board

Drafted by: City Solicitor
Referred by: City Solicitor
Introduced on: May 23, 2022
Advertised on:

**BILL NO. ___ 2022
AN ORDINANCE**

AMENDING THE CITY OF READING CODE CHAPTER 23, PART 6 CHARTER BOARD

WHEREAS, in 2002 City voters approved a referendum that amended the City Home Rule Charter “to establish an independent Charter Board, appointed by the Mayor and confirmed by Council, with enforcement powers to hear and decide all cases alleging violations of the Charter;” and

WHEREAS, Amendment I to the Charter authorizes the Charter Board to “issue binding opinions, impose penalties and administrative fines, refer cases for prosecution, and conduct investigations on its own initiative and on referral or complaint;” and

WHEREAS, the current ordinance has created a system that leads to extremely costly, drawn-out legal disputes including matters on appeal long after the alleged Charter violations have been resolved or rendered moot; and

WHEREAS, the process set forth in the current Charter Board ordinance has forced the City to spend millions of tax payer dollars on legal bills incurred by the Charter Board and the City in defending Charter Board complaints; and

WHEREAS, this amendment recognizes City Council’s obligation under Charter Amendment I to provide “sufficient funds” for the operations of the Charter Board while at the same time allowing the City to set reasonable guidelines on Charter Board spending; and

WHEREAS, the process set forth in this proposed Amendment will retain the enforcement powers of the Charter Board provided in Charter Amendment I and will continue to allow residents to challenge violations of the Charter without having to file a lawsuit; and

WHEREAS, the proposed ordinance eliminates the costly advisory opinion process which is no longer necessary as all government officials now have access to the legal advice of their own solicitor; and

WHEREAS, the proposed ordinance creates avenues for a more streamlined and less drawn-out process which will allow for Charter disputes to be resolved in a more timely fashion rather than having to adhere to a protracted investigation process; and

WHEREAS, the proposed ordinance eliminates unnecessary confidentiality provisions and allows the subject to access the complaint at the beginning of the process which not only gives the subject a constitutional and fair process, but also makes it more likely that compliance can be achieved without costly hearings and appeals;

WHEREAS, the proposed ordinance creates a hearing officer to further ensure that the Board’s adjudicatory role is independent from the Investigative Officer’s investigatory role;

WHEREAS, the proposed ordinance retains all of the required elements set forth in Charter Amendment I;

The Council of the City of Reading hereby ordains as follows:

Section One: The City of Reading hereby amends City of Reading Code Chapter 23, Part 6 as set forth in Attachment "A."

Section Two: All relevant ordinances, regulations and policies of the City of Reading, Pennsylvania not amended per the attached shall remain in full force and effect.

Section Three: If any section, subsection, sentence or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section Four: This Ordinance shall become effective ten (10) days after its adoption in accordance with 219 and 221 of the Home Rule Charter of the City of Reading.

Adopted _____ 2022

President of Council

Attest:

City Clerk

Sent to Mayor _____

Date: _____

Signed by Mayor: _____

Date: _____

Vetoed by Mayor: _____

Date: _____

Over-ridden by Council: _____

ATTACHMENT "A"

Part 6 Charter Board

[Adopted 7-25-2005 by Ord. No. 46-2005 (Ch. 1, Part 5L, of the 2001 Code of Ordinances)]

§ 23-601. Title; purpose.

A. Title. The title of this Part shall be the City of Reading Charter Board Ordinance.

B. Purpose of ordinance. The purpose of the City of Reading Charter Board Ordinance is to provide, through the institution of the City of Reading Charter Board ("Board"), for the implementation of Amendment I of the Reading City Charter, which is entitled "Enforcement of Charter." ⁶

⁶ Editor's Note: Amendment I, Enforcement of Charter, of the Reading City Charter is located at the end of the Home Rule Charter.

§ 23-602. Organization of Charter Board.

A. Composition and structure of Board.

(1) Composition. The Board established under Amendment I of the City of Reading Home Rule Charter ("Charter") shall be composed of five residents of the City of Reading. Board members shall be appointed by the Mayor with the consent of City Council.

(2) Terms of service. Members of the Board shall serve for terms of five years, except that the members shall continue to serve until their successors are appointed and qualified. The terms of the initial members shall be staggered, with members serving terms of one, two, three, four, and five years, respectively.

(3) Vacancy. An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he/she succeeds and is eligible for appointment thereafter according to the terms herein. ⁷

⁷ Editor's Note: Former § 1-599.22D, Removal of members, added 8-23-2010 by Ord. No. 59-2010, which immediately followed this subsection, was repealed 3-26-2012 by Ord. No. 39-2012.

(4) Election of Chairperson and Vice Chairperson. The Board shall elect a Chairperson and Vice Chairperson upon seating of the members and thereafter annually at a meeting held in July of each year. The Vice Chairperson shall act as the Chairperson in the absence of the Chairperson or in the event of a vacancy in that position.

(5) Quorum. A majority of the members of the Board shall constitute a quorum and the votes of a majority of the members present are required for any action or recommendation of the Board.

(6) Staff. The Board shall appoint a Solicitor, **an investigative officer, a hearing officer,** a secretary, and such other staff as may be deemed necessary. The Solicitor, **investigative officer, a**

hearing officer, secretary, and such other staff as may be necessarily appointed shall not be members of the Board.

(7) Meetings. The Board shall meet at the call of the Chairperson or at the call of a majority of its members.

(8) Investigative Officer.

<(a) The Board shall appoint an investigative officer ("Investigative Officer") who shall serve at the pleasure of the Board. The Investigative Officer is charged with determining jurisdiction, conducting preliminary and full investigations, issuing written findings reports, prosecuting complaints before evidentiary hearings, and performing such other duties as set forth herein. The Investigative Officer shall conduct his/her work independently and without comment or inquiry from the Board, except as provided in Subsection A(8)(d) below.

<(b) The Investigative Officer shall be a member in good standing of the Pennsylvania Bar Association and shall have so been for at least five years. The Investigative Officer need not be a resident of the City of Reading and shall not be a Board member. The Investigative Officer is authorized to retain the services of an investigator and other professional staff and/or consultants, and shall only delegate nondiscretionary functions.

<(c) The Investigative Officer shall not be the current or former Solicitor to the Board and the Investigative Officer shall not serve in the future as Solicitor to the Board on any matter investigated or prosecuted by the Investigative Officer. Furthermore, the Investigative Officer shall not seek the advice of the Solicitor to the Board, and the Solicitor to the Board shall not seek the advice of the Investigative Officer, on substantive aspects of any complaint or referral before the Board.

<(d) In addition to all other responsibilities of the Investigative Officer, he/she shall provide to the Board every six months a summary of any each complaint dismissed or otherwise resolved during the investigatory stage. ~~received, its procedural status, and if it has been dismissed, the reasons for its dismissal. Said summary shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint.~~

B. Prohibitions. Due to the nature of their appointment, Board members have a duty to avoid any known conflicts of interest, especially actions or behaviors in violation of the City Charter or its full and impartial enforcement. The prohibitions in this section are in addition to all other duties, responsibilities, and obligations imposed upon Board members.

(1) No member may hold or campaign for any other public office.

(2) No member may hold office in any political party or political organization or political committee.

(3) No member may hold a position of employment with City government or appointment to any other board, authority, or commission formed by the City of Reading.

(4) No member may actively participate in or contribute to any political campaign in the City of Reading for a candidate running for the office of Mayor, President of Council, Council member, or Auditor. This does not abridge the right of a member to vote or attend a debate, speech or similar event that is held primarily for the purpose of communicating a candidate's platform or position on issues of public concern.

(5) No member shall receive compensation but shall be reimbursed by the City for documented expenses actually incurred.

C. Mandate to fund. City Council shall appropriate sufficient funds for the Board to perform its enforcement, ~~advisory~~, and educational duties, including expenses for independent counsel, investigative personnel, investigations, hearings, appeals, staff, any other necessary personnel, and professional educational programming. **City Council may place reasonable restrictions to limit the funding to an amount that is necessary to meet the Charter requirement to provide funding that is adequate, these limits shall include, but are not limited to the following:**

1. Limits on reimbursement for travel and travel time from and to locations outside of Berks County.

2. Limits on fees that are in excess of that for which are standard for similar work in Berks County. City Council may require the Charter Board to follow the City's purchasing procedures to determine whether funding for the Charter Board is adequate.

D. Right to a defense. City officials and employees who are the subject of a complaint are entitled to a defense. Defense counsel fees shall be limited to the standard for similar work in Berks County. Defense counsel shall be selected from a panel of attorneys/firms who have been procured in accordance with the City's Purchasing Policy.

§ 23-603. Powers and duties of Charter Board.

A. Charter enforcement powers. The Board shall have the following powers and duties with respect to Charter enforcement. It shall:

(1) ~~Hear~~ **Serve as an administrative body to hear** and decide ~~all~~ complaints alleging violations of the Charter and Administrative Code, except that its jurisdiction shall not extend to cases arising under the Ethics Code or the Personnel Code of the City of Reading. **Nothing in this part shall preclude a complainant from filing an action alleging a violation of the Charter and/or Administrative Code in a court of competent jurisdiction.**

(2) Impose penalties and administrative fines **if, after exhausting all available appeals, a subject fails to comply with an order finding that a subject violated the Charter. The Board may also and** refer matters to law enforcement, regulatory, or other authorities with jurisdiction over these matters.

(3) Initiate preliminary investigations on its own motion ~~through the Officer~~. In the event that the Board approves an investigation it shall direct the Investigative Officer to conduct a preliminary investigation and the Investigative Officer shall have standing to initiate proceedings in the Court of Common Pleas to enforce the Charter if the Investigative Officer reasonably believes a Charter Board violation exists. Board-initiated investigations shall not be heard by the Board itself.

(4) Appoint an Investigative Officer to conduct investigations and to issue findings reports where appropriate.

(5) Hold hearings, issue subpoenas and compel the attendance of witnesses, administer oaths, take testimony, require evidence on any matter under investigation before the Board, and issue orders, ~~including but not limited to adjudications and penalties~~ rendering a final determination on the Charter violations alleged in the Complaint and issue penalties for failure to comply with any order or final determination of the Charter Board.

(6) Adopt rules and regulations to administer, implement, enforce and interpret the Board ordinance.

(7) Have all other powers necessary and appropriate to effectuate the purposes set forth herein and in Amendment I of the Charter.

B. Charter advisory powers. A. Upon written request of any board or commission that does not have its own independent legal counsel or a City Employee or City Official who has a reasonable and good faith belief that the Solicitor or Council Solicitor has a conflict of interest, ~~public official or City employee, or without such request should a majority of the Board deem it in the public interest, the Board may the Board Solicitor to~~ render advisory opinions concerning matters of home rule or enforcement of the City Charter interpretation of the Charter or Administrative Code related to a potential or proposed course of action or pending decision involving the requester. All advisory opinions shall be issued in writing ~~and may include any redactions necessary to prevent disclosure of the identity of the person who is a subject of the opinion.~~ **The costs related to an advisory opinion shall not exceed \$1,000 per opinion unless a higher amount is reasonably necessary to adequately answer the question and the additional expenditure is approved by a unanimous vote of the Board.**

C. Charter educational powers. The Board shall have the following powers and duties with respect to Charter education. It shall:

(1) Direct and administer, with professional assistance, the required orientation of all newly elected City officials at the commencement of their initial full term of office.

(2) Be responsible, proactively and on an ongoing basis, for educating the public and members of City government as to their rights, duties, and obligations under the Charter and Administrative Code.

~~A. Standards for Charter interpretation: intent controls.~~

~~—(1) The object of all interpretation and construction of Charter provisions is to ascertain and effectuate the intent of the authors of the Charter.~~

~~—(2) When the words of a Charter provision are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.~~

~~—(3) When the words of a Charter provision are not explicit, the intent of the authors of the Charter shall be ascertained by considering:~~

~~—(a) The mischief to be remedied.~~

~~—(b) The object to be attained.~~

~~—(c) The circumstances under which it was enacted.~~

~~—(d) The contemporaneous legislative history.~~

~~B. Standards for Administrative Code interpretation: intent controls.~~

~~—(1) The object of all interpretation and construction of Administrative Code provisions is to ascertain and effectuate the intent of the enacting City Council.~~

~~—(2) When the words of an Administrative Code provision are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.~~

~~—(3) When the words of an Administrative Code provision are not explicit, the intent of the enacting City Council shall be ascertained by considering:~~

~~—(a) The mischief to be remedied.~~

~~—(b) The object to be attained.~~

~~—(c) The circumstances under which it was enacted.~~

~~—(d) The contemporaneous legislative history.~~

~~C. Refinements of interpretative standards. The standards set forth in Subsections A and B above may be refined only in accordance with~~

Interpretation of the Charter shall follow the provisions of the Statutory Construction Act, 1 Pa.C.S.A. § 1501 et seq., which is binding for the interpretation of all home rule charters through *Cottone v. Kulis*, 460 A.2d 880 (Pa. Commonwealth, 1983), and for the interpretation of all municipal ordinances through *Ciavarella et ux. Appeal*, 484 A.2d 420 (Pa. Commonwealth, 1984).

§ 23-605. Enforcement.

A. Procedure.

(1) Standing.

(a) Any taxpayer, or aggrieved person, may file a complaint about alleged violations of the Charter or Administrative Code. The person signing a complaint shall:

[1] Reasonably believe in the existence of facts upon which the claim is based.

[2] Reasonably believe that the complaint may be valid under the Charter or Administrative Code.

(b) In addition, the Board may initiate preliminary investigations on its own motion, through the Investigative Officer **in accordance with § 23-603(A)(3).**

(2) Filing of complaint.

(a) Complaints must be submitted on forms provided by the Board. The Board shall make available this form upon request. The complaint shall state the name, job or office held by the alleged violator and a description of the facts that are alleged to constitute a violation. It must contain a notarized signature subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. The Board shall establish a separate post office box through which to receive complaints. This post office box shall be generally accessible by the Investigative Officer and/or the secretary, provided that the secretary is not a Board member.

(b) No member of the Board shall review any complaint until after an evidentiary hearing has been requested by the subject of the investigation, or if no evidentiary hearing is requested, then until the submission to the Board of the Investigative Officer's Findings Report.

(c) The complainant may withdraw his or her complaint at any time after its submission, and no further action will be taken with regard to the complaint. Such withdrawal shall be in writing and contain a notarized signature. If a preliminary investigation has already been initiated, the subject of the investigation shall immediately be notified of the withdrawal. The individual's withdrawal of a complaint does not preclude further action by the Board on its own motion **in accordance with § 23-603(A)(3).**

[d] Either the complainant or the subject may file an action in the Court of Common Pleas seeking declarative or injunctive relief on the issues raised in the Complaint. The filing of such an action in the Court of Common Pleas shall act as a stay of the Charter Board proceedings until the resolution of the Court of Common Pleas action.

(3) Determination of jurisdiction.

(a) Each complaint filed with the Board shall immediately be directed to and preliminarily reviewed by the Investigative Officer appointed by the Board to determine whether the complaint falls within the jurisdiction of the Board. The aforesaid determination shall be made within seven days of the filing of the complaint. If the Investigative Officer determines that the Board does not have jurisdiction over the matter underlying the complaint, the complainant will be notified and no further action will be taken with regard to the complaint. If, however, the **Investigative** Officer determines that the complaint falls within the jurisdiction of the Board, the **Investigative** Officer shall authorize a preliminary investigation. **The Investigative Officer shall provide the subject with a copy of the Complaint within 5 days of authorizing a preliminary investigation.**

(b) Upon determination that the complaint falls within the jurisdiction of the Board, the Officer shall attempt an informal resolution of the issue (as provided by the Rules of Administration and Procedure implemented by the Board. This subsection shall apply to all complaints filed after 60 days from the effective date of the ordinance adopting this amendment to the Charter Board Ordinance, Bill No. 46-2005.) [Amended 6-22-2015 by Ord. No. 30-2015]

(c) Concurrent with the attempt at informal resolution, the Investigative Officer shall inform both the complainant and the subject of the complaint of their rights and responsibilities under the formal adjudicative process.

[d] At any time during the proceedings, the Investigative Officer and the Subject may jointly request an evidentiary hearing or request to have the matter decided on briefs and/or oral argument in lieu of a full evidentiary hearing.

(4) Preliminary investigation.

(a) The preliminary investigation shall be initiated and conducted at the sole discretion of the Officer. If the Officer, in his/her discretion, finds that the alleged violation, would, if proved, constitute a "de minimis" infraction, he/she may decline to initiate a preliminary investigation and dismiss the complaint. A de minimis infraction is one that is so insignificant or trifling that enforcement serves merely to exhaust the Board's time and resources. See *Bailey v. Zoning Board of Adjustments*, 801 A. 2d 492 (Pa., 2002). Furthermore, if the Officer, in his/her discretion, finds that the Board in the instant case cannot provide an adequate or timely remedy, he/she may decline to initiate a preliminary investigation, dismiss the complaint, and advise the complainant of alternative remedies.

(b) At the onset of the preliminary investigation, the Officer shall notify both the complainant and the subject of the investigation of the filing of the complaint, the nature of the same and the initiation of a preliminary investigation.

(c) The preliminary investigation shall be completed within 30 days of the Officer's finding of jurisdiction.

(d) If, at any time during the preliminary investigation, an extension is necessary and justified, the Officer may request of the Board one fifteen-day extension, which shall be granted as of course. The Officer shall notify both the complainant and the subject of the investigation of such extension.

(e) At the conclusion of the preliminary investigation, the Officer shall determine whether there may exist facts to support the complaint. If the inquiry fails to establish such facts, the Officer shall dismiss the complaint and notify both the complainant and the subject of the complaint of the dismissal. If, however, at the conclusion of the preliminary investigation the Officer determines that there may exist facts to support the complaint, the Officer shall authorize a full investigation.

(5) Full investigation. If preliminary investigation uncovers facts to support the complaint, the Officer shall authorize a full investigation. The complainant and the subject of the investigation shall be notified within three days of the initiation of a full investigation and the subject shall be notified of the identity of the complainant. Until the investigation is concluded or terminated, the Officer will notify both the complainant and the subject of the investigation of the status of the investigation at least every 45 days. Within 90 days of the initiation of the full investigation, the Officer must either terminate the investigation or issue a findings report ("findings report").

(6) Findings report.

(a) The findings report shall set forth the pertinent findings of fact as determined by the Officer. The Officer shall deliver the findings of fact to the complainant and the subject of the investigation.

(b) Within 20 days of the issuance of the report, the subject of the investigation may make a request in writing to the Officer for an evidentiary hearing, and such request shall be granted as of right. When the Officer receives such a request, the Officer shall immediately notify the Board of the request for a hearing, and the names of the parties involved. The Investigative Officer shall then prepare facts in support of the complaint and present them at the evidentiary hearing.

(c) If the subject of the investigation does not request an evidentiary hearing within 20 days of the issuance of the findings report, the Officer shall immediately notify the Board of the names of the parties involved and shall deliver to the Board the findings report.

(7) Evidentiary hearing.

(a) Timing. An evidentiary hearing must be held within 45 days of the filing of a request for same **unless the Investigative Officer and Subject agree to a date beyond the 45-day period.**

(b) Procedure.

[1] The subject of the investigation shall have reasonable access to any evidence intended to be used at the hearing. The subject of the investigation shall have the opportunity to be represented by counsel and to subpoena witnesses, present evidence, cross-examine witnesses against him/her, submit argument, and shall be entitled to exercise all rights afforded him/her by the United States Constitution and the Pennsylvania Constitution which apply to this type of hearing.

[2] The formal rules of evidence will not apply to hearings; however, they may be used as a guide for determining the evidence admitted at the hearing.

[3] Testimony shall be given under oath or affirmation, and witnesses shall be subject to cross-examination.

[4] A stenographic record shall be taken of all evidentiary hearings.

[5] The Investigative Officer will present his/her case followed by the case of the subject of the complaint. Each party may make an opening and closing statement, unless otherwise directed by the Board.

[6] Subpoenas may be issued at the request of the parties to the hearing on the approval of the Board. Information subpoenaed shall be relevant and not privileged.

[7] The Board shall possess and be afforded all other powers, rights, privileges, and immunities, afforded to quasi-judicial bodies in the Commonwealth of Pennsylvania.

(c) Closed hearing. The hearing shall be closed to the public unless the subject requests an open hearing, in writing, to the Board at least five days before the hearing.

(d) ~~Solicitor. The Board shall be represented by its Solicitor. The Solicitor shall~~ **Hearing Officer.** **The Board shall appoint a hearing officer who shall** assist the Board in carrying out its functions during the evidentiary hearing, may examine witnesses, documents and things to the same extent as the Board, may make evidentiary rulings and advise the Board concerning same, assist in the preparation and review of the final order, and otherwise advise and counsel the Board as necessary. **The Hearing Officer shall maintain complete independence from the Board Solicitor and the Investigative Officer.**

(8) Decision by the Board: final order.

(a) Following evidentiary hearing. At the conclusion of the evidentiary hearing, and in a timely manner, the Board shall deliberate on the evidence to determine whether the subject of the complaint violated the Charter or the Administrative Code. The Board's decision shall be by a majority vote of those members present.

(b) Where no evidentiary hearing is requested. If the subject of the complaint does not request an evidentiary hearing, the Board shall decide by a majority vote of those members present

whether the findings report supports a determination that the subject of the complaint violated the Charter or Administrative Code.

(c) Final order **and opinion**. The final order **and opinion** of the Board shall contain findings of fact and conclusions of law in accordance with the Local Agency Law, 2 Pa.C.S.A. §§ 551 through 555. A copy of said order **and opinion** shall be delivered immediately to both the complainant and the subject of the complaint by certified United States mail, return receipt requested. The Board, **through its Hearing Officer**, shall render its decision and issue a final order **and opinion which shall be binding**:

[1] Within 30 days of the conclusion of the evidentiary hearing.

[2] In the instance where no evidentiary hearing is requested, within 60 days of the issuance of the findings report.

(9) Right to appeal.

(a) Any person aggrieved by an adjudication of the Board who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals pursuant to Title 42 (relating to judiciary and judicial procedure). All such appeals shall be conducted in accordance with the Local Agency Law, 2 Pa.C.S.A. §§ 751 through 754.

(b) In the instance of an appeal from an adjudication of the Board, representation of the Board shall be by its ~~Solicitor~~ **Hearing Officer**.

(10) Protection of complainant. No person may be penalized, nor any employee of the City be discharged, suffer change in his/her official rank, grade, or compensation, denied a promotion, or threatened, for a good faith filing of a complaint with the Board, or for providing information or testifying in any Board proceeding.

(11) Costs of Charter enforcement. Any person who prevails in any legal action against the City, its officers or agents to enforce this Charter or the Administrative Code pursuant to it, shall be entitled to recover all reasonable attorney's fees and costs incurred in such action.

B. Violations ~~and penalties~~.

(1) Violations. The violation of any section of the Charter or Administrative Code, in whole or in part, shall constitute a violation under the jurisdiction of the Board, except that the Board's jurisdiction shall not extend to cases arising under either the Ethics Code or the Personnel Code.

(2) ~~Penalties Relief~~. Upon the finding of any violation, the following ~~penalties~~ **relief may be ordered by the Board**: shall be available to the Board for imposition, in addition to and not withstanding restitution and other remedies listed in Subsection B(2)(b) below:

[a] Issue an Order requiring the subject to cease and desist from engaging in a particular activity or non-activity that is in violation of the Administrative Code or Charter.

[b] Order the subject to take specified action to bring him/her into compliance with Board directives.

~~(2)~~ (3) Penalties, ~~other remedies.~~

(a) Penalties.

[1] If, after the exhaustion of all available appeals, a subject who has been found to have violated the Charter continues or repeats the conduct found to have been a violation of the Charter or fails to correct an ongoing violation of the Charter, the board may institute penalties to enforce its Order.

[2] Factors to be considered. Before the imposition of any penalty ~~(as opposed to restitution or other remedy),~~ the Board shall consider the following factors and address the relevant factors in its final order:

[a] The seriousness of the offense.

[b] The substantive effect the offense has on the application of the Charter and its purposes.

[c] Whether the subject of the complaint has had previous decisions entered against him/her by the Board.

[d] The number of violations involved.

[e] Whether the violations were the result of willful or intentional conduct, recklessness, negligence, oversight or mistake.

[f] The consequences of the violation.

[g] Any other factors relevant in determining the type and severity of the penalty to be imposed.

~~[2]~~[3] Penalties. Upon the finding of any violation, the following penalties shall be available to the Board for imposition, in addition to and notwithstanding restitution and other remedies listed in Subsection B(2)(b) below:

[a] Admonition, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, a letter to the respondent, the Mayor, the Managing Director, and Director of the Department in which the respondent is employed, if any, and the complainant, if

any, indicating that the respondent has been found to have violated the Charter or Administrative Code.

[b] Public censure, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, and the news media indicating that a violation of the Charter or Administrative Code took place and that the Board strongly disapproves of the public official's or public employee's actions.

~~_____ [c] Suspension, without compensation for a stated period of time not to exceed 30 days, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any.~~

~~_____ [d] Termination, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any.~~

[e] [c] Referral to the appropriate authorities for criminal prosecution in cases where a violation of the Charter or Administrative Code is also a violation of federal or state law.

[f] [d] Imposition of a fine, not to exceed \$1,000 per violation.

[g] [e] Imposition of an administrative fine of not more than \$1,000. to defray the actual cost and expense of investigating any violation.

(b) Other remedies. Upon the finding of any violation, the Board may take one or more of the following actions, in addition to and notwithstanding the penalties listed in Subsection B(2)(a)[2] above:

~~[1] Order the subject to make restitution to those incurring damage or injury as a direct result of the actions of the subject that have been adjudicated as a violation of the Administrative Code or Charter.~~

[2] [1] Order the subject to cease and desist from engaging in a particular activity that is in violation of the Administrative Code or Charter.

[3] [2] Order the subject to take specified action to bring him/her into compliance with Board directives.

~~_____ [4] Refer the matter for review or with specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction over these matters.~~

~~— [5] Institute appropriate civil or equitable action to enforce the order and decision of the Board.~~

~~— [6] Recommend to City Council the forfeiture of the office held by the subject with the City in accordance with Charter §§ 206, 305, and 504.~~

~~— C. Board information.~~

~~— (1) Confidentiality of Board information. All Board proceedings and records relating to an investigation shall be confidential until a final determination is made by the Board. The final order shall become a public record at the time the Board renders its decision and issues a final order. All other records and proceedings shall remain confidential except: [Amended 4-8-2013 by Ord. No. 16-2013]~~

~~— (a) As necessary to effect due process.~~

~~— (b) For the purpose of seeking advice of legal counsel.~~

~~— (c) For the purpose of filing an appeal from a final order.~~

~~— (d) For hearings conducted in public according to Subsection A(7).~~

~~— (e) For communicating with the Board or its staff, in the course of an investigation or hearing or before a final determination is made by the Board.~~

~~— (f) For consulting with law enforcement officials for the purpose of initiating, participating in, or responding to an investigation or hearing.~~

~~— (g) For testifying under oath before a governmental body.~~

~~— (h) For information relating to a complaint, investigation, or hearing which is disclosed by the subject of such complaint, investigation, or hearing.~~

~~— (i) For the divulgence by individuals who are interviewees to confidential Board proceedings as to information that was already in their possession or as to their own statements.~~

~~— (j) For the publication or broadcast of information legally obtained by the news media regarding a confidential Board proceeding.~~

~~— (2) Board records.~~

~~(a) All final orders of the Board shall be kept on public file at the Office of the City Clerk. The City Clerk shall also file copies of all final orders of the Board with the Law Library of Berks County Court of Common Pleas.~~

~~(b) All confidential records and proceedings of the Board shall be kept on closed file at the Office of the City Clerk.~~

DC. Wrongful use of Charter Board.

(1) Complaints directed to the Board must be based on fact and a reasonable belief of a Charter violation. Wrongful use of the Board is prohibited and any person engaged in such conduct may be subject to penalties as set forth in Subsection B.

(2) Wrongful use of the Board is defined as **either**:

(a) Filing an unfounded, frivolous or false complaint. A complaint is unfounded, frivolous or false if it is filed in a grossly negligent manner without basis in law or fact and was made for a purpose other than reporting a violation of the Charter or Administrative Code. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim, and either reasonably believes that under those facts the complaint is valid or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.

~~(b) Publicly disclosing or causing to be disclosed information regarding the status of proceedings before the Board and facts underlying a complaint before the Board, in violation of Subsection C above.~~

§ 23-~~607606~~. Educational duties of Charter Board.

A. Overview. The educational duties of the Board are two-fold:

(1) It shall direct and administer, with professional assistance, the required orientation of all elected City officials at the commencement of their terms.

(2) It shall, proactively and on an ongoing basis, educate the public and members of City government as to their rights, duties and obligations under the City Charter and Administrative Code.

B. Orientation of elected City officials.

(1) A basic orientation course shall provide comprehensive information on Home Rule Law, the City Charter, the City Administrative Code, and the City Ethics Code. Other topics to be included in the course are: the impact of the Pennsylvania Constitution and other pertinent legal statutes on City government; a review of the City budget, including all City employees' labor agreements; and Roberts Rules of Order. This course shall be directed and

administered by the Board, with assistance from the Pennsylvania Department of Community and Economic Development, the State and County Bar Associations, the Ethics Board, and any other resources the Board deems appropriate.

(2) Any elected official who, in the determination of the Board, completes this course within four months of their initial full term will receive a bonus of \$250.

(3) City Council shall provide sufficient funds to ensure a thorough and professional orientation.

C. Educating the public and members of City government.

(1) Educating the public and members of City government about their rights, duties and obligations promotes involvement and participation for more effective and efficient government. The Board, with the assistance of resources deemed appropriate by the Board, shall conduct these educational programs in various formats. Educational information can be disseminated in a variety of formats: public meetings, printed materials such as inserts in tax and water bills; handbooks; web site; community newsletter; interactive local television programming.

(2) Funds shall be made available to the Board for the ongoing educational program of the public and members of City government.