

RESOLUTION NO. 1-2015

A RESOLUTION ADOPTING MEDIATION PROCEDURES AND AFFIRMING THE ADOPTION OF THE RULES OF ADMINISTRATION AND PROCEDURE

WHEREAS, Section 3, Part A, Sub-Part 6, of the City of Reading Charter Board Ordinance, Bill No. 46-2005, as amended, permits the Charter Board to “[A]dopt rules and regulations to administer, implement, enforce and interpret” the Charter Board Ordinance;

WHEREAS, the Charter Board first adopted its Rules of Administration and Procedure by unanimous oral vote at a duly noticed and constituted meeting of the Board on April 15, 2008;

WHEREAS, the Charter Board last adopted modifications and amendments of its Rules of Administration and Procedure by unanimous oral vote at a duly noticed and constituted meeting of the Board on April 6, 2010;

WHEREAS, the Charter Board desires by this Resolution to affirm the adoption of the Rules of Administration and Procedure and its subsequent modification and amendment;

WHEREAS, further, the Charter Board desires by this Resolution to adopt certain modifications and amendments of its Rules of Administration and Procedure implementing mediation procedures; and

WHEREAS, by Bill No. 30-2015 City Council further amended Ordinance No. 46-2005 so as to permit the Charter Board to implement mediation procedures as part of the informal resolution of Charter Board complaints.

NOW THEREFORE, UPON A UNANIMOUS VOTE OF THE BOARD, LET IT BE RESOLVED THAT:

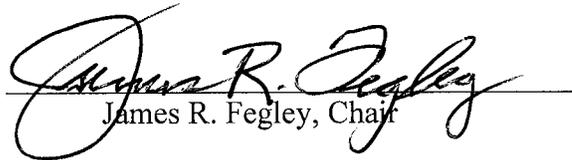
1. The adoption of the Rules of Administration and Procedure by unanimous oral vote at a duly noticed and constituted meeting of the Board on April 15, 2008 is hereby affirmed.

2. The adoption of certain modifications and amendments to the Rules of Administration and Procedure by unanimous oral vote at a duly noticed and constituted meeting of the Board on April 6, 2010 is hereby affirmed.

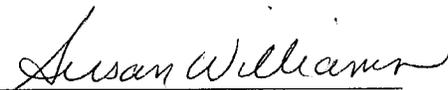
3. In accordance with Bill No. 30-2015, amending the Charter Board Ordinance, Bill No. 46-2005, the Board adopts new Section IV, entitled Mediation, the related renumbering of the former Section IV to Section V, entitled Rules of Practice and Procedure, and ancillary supporting provisions of the Rules of Administration and Procedure necessary to effect the aforementioned amendments and additions, with the newly adopted provisions attached hereto.

4. The Board makes this Resolution in accordance with the Charter Board Ordinance, Section III, Part A, Sub-Part 6, Ordinance No. 46-2005, as amended.

THE CITY OF READING CHARTER BOARD


James R. Fegley, Chair

Date: 7/7/15

ATTEST: 
Susan Williams, Vice-Chair

RULES OF ADMINISTRATION AND PROCEDURE
OF THE CITY OF READING CHARTER BOARD

I. PREAMBLE

The City of Reading Charter Board (“Board”) finds application of the Charter and the Charter Board Ordinance, Bill No. 46-2005, July 25, 2005, (“Ordinance”) and enforcement of the Charter and Administrative Code will be furthered by the promulgation of rules of administration and procedure.¹

II. PRELIMINARY MATTERS

A. Separation of Adjudicatory and Prosecutorial Functions. The Board and the Investigative Officer shall at all times observe and honor the separation of the adjudicatory and prosecutorial functions.

B. Interpretation and Application of Rules. These rules shall be liberally interpreted and shall not serve as a means to prevent an evidentiary hearing, resolution, dispensation of penalties, action by the Board, the issuance of a Final Opinion and Order, or serve as the grounds or basis for any appeal, absent a showing of actual prejudice to the complaining party.

C. Rules do not Impart Substantive Rights. These rules do not impart substantive rights to any party, subject, complainant or the Investigative Officer. These rules are intended to clarify practice and procedure before the Board and to be of instruction to those appearing before the Board. Nevertheless, failure to abide by these rules may result in rulings adverse to the non-complying party.

D. Confidentiality of Board Proceedings. All parties, complainants, subjects, Board members, counsel, witnesses, participants, court reporters, and Investigative Officers, involved in any part of a Board evidentiary hearing, or any phase of any investigation by the Investigative Officer, or the filing of a Board complaint,² shall keep said proceedings, filings, evidence and testimony confidential as provided by the Ordinance. The Board may communicate as necessary to enforce its Final Opinion and Order. The Board need not, but may, enforce the confidentiality provisions of the Ordinance.

¹ **Note – January 2008.** Section III(A)(6) and (7) of the Ordinance permit the Board to adopt rules and regulations and to have “other powers necessary and appropriate to effectuate the purposes” of the Ordinance and Amendment I to the Charter.

² **Note – May 2015.** The Board determined in Investigation No. 44, In re: Investigation of Aaron A. Thomas (Oct. 14, 2014), that, in accordance with *Stilp v. Contino*, 613 F.3d 405 (3d Cir. 2010), a complainant is not prohibited from disclosing the contents of his or her own complaint, the filing of such a complaint, and the complaint’s existence regardless of the confidentiality requirements of the Charter Board Ordinance or related rules.

E. Complaints.³

1. Board complaints are not pleadings and no responsive document shall be filed thereto. Further, Board complaints are not subject to the Pennsylvania Rules of Civil Procedure. Board complaints are documents intended to be “user-friendly” for lay person’s utilization without the need of counsel for the initiation of an investigation before the Board.

2. No objections to Board complaints shall be made other than as to the standing of the complainant, the subject matter jurisdiction of the Board, or the misuse of the Board process by the complainant.

3. Complainants need not make citation to precise Charter or Administrative Code provisions, but shall be required to demonstrate reasonable cause for an investigation on the face of the complaint.

4. If applicable, the complainant shall select a desired outcome on the complaint form, which outcome shall be compliant with the Charter and Administrative Code and shall be used in the informal resolution process as outlined in Section IV.

5. Coversheet.

a. There shall be appended to every complaint a mediation coversheet (“Coversheet”) to assist in 1) maintaining confidentiality of the complaint, 2) summarizing the alleged violations, 3) assisting in the mediation process, and 4) providing a uniform location for the report of the mediator.

b. The complainant shall provide the information sought on the Coversheet and shall certify that the complaint is not being filed for political purposes and is being filed only because of the Charter and Administrative Code violations alleged in the complaint. False certification will be a violation of the Charter and the Ordinance and shall be considered a wrongful use of Charter Board proceedings under the Ordinance.

b. The Coversheet shall not contain any identifying information about the subject, or the complainant.

³ **Note – March 2010.** In *In re: Investigation of Jatinder S. Khokhar*, Investigation Nos. 18 & 21, Final Opinion and Order of July 21, 2008, *aff’d* Berks Co. CCP No. 08-11100 (June 15, 2009), *aff’d in part, vac’d in part*, Pa. Commw. Ct., No. 1398 CD 2009 (Feb. 8, 2010), the Board stated “[t]he Charter enforcement process is to be ‘user friendly’ and is not a process aimed at dismissing legitimate allegations of Charter violations for mere non-prejudicial technicalities.” See also form complaint at ¶¶ 2, 3 (asking for citation to “feelings” and “beliefs,” respectively). See also Ordinance Section V(1)(a), (b), requiring a “reasonable belief” by complainant. Neither the Charter nor the Ordinance permit or require responsive pleading to a complaint.

III. INVESTIGATIVE OFFICER

A. Administrative Matters

1. Reporting pursuant to Section II(A)(8)(d)

a. As provided by the Ordinance, Section II(A)(8)(d), the Investigative Officer shall provide the Board a written summary of every complaint received, the substantive issue involved, its date of filing and current procedural status, and if the complaint has been dismissed, the substantive reasons for its dismissal. Said summary shall be provided every six (6) months and shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint. Such summaries shall be due to the Chairperson of the Board on April 30 and October 31 of each year.

b. Nothing shall prevent the Board from requesting further information from the Investigative Officer so long as such request is not violative of the Ordinance or the Charter.

2. Reporting to the Board Upon Withdrawal or Dismissal of Complaint⁴

a. Lack of Jurisdiction. Should the Investigative Officer determine that a complaint does not fall within the jurisdiction of the Board, then, within seven (7) days of notifying the complainant that no jurisdiction exists, the Investigative Officer shall notify the Board in writing of the determination.

i. Notification to the Board shall include the substantive issues of the complaint, the precise question or issue presented by the complaint, and the basis for the determination of no jurisdiction, including citation to authority, if needed for the making of the Investigative Officer's determination.

ii. Notification of the finding of no jurisdiction shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint, and the complaint itself shall not be provided to the Board.

b. De minimis Infraction. Should the Investigative Officer decline to initiate a preliminary investigation and dismiss a complaint on the basis that the alleged infraction is *de minimis*, then, within seven (7) days of notifying the complainant of such

⁴ Note – January 2008, revised March 2010. The Board's power to issue Advisory Opinions upon a vote of the majority of the Board if they "deem it in the public interest" and to commence investigations on the Board's own motion is furthered by notification of determinations of no jurisdiction, complaint dismissals upon the finding of *de minimis* infractions and after preliminary investigations, and terminations and withdrawals of complaints. See Ordinance Sections III(B), V(A)(1), and VI. The intent of this provision is not to comment or inquire into the ongoing work of the Investigative Officer, but rather to further the Board's mandate and to obtain an understanding of the result of Investigative Officer's work, after the Investigative Officer has already made the relevant "final" determinations. The Board is required to remain insulated from the prosecutorial function of the Investigative Officer, but not from the result of the prosecutorial function.

dismissal and finding of a *de minimis* infraction, the Investigative Officer shall notify the Board in writing of the determination.

i. Notification to the Board shall include the substantive issues of the complaint, the precise question or issue presented by the complaint, and the basis for the determination that the infraction was *de minimis*, including citation to authority, if needed for the making of the Investigative Officer's determination.

ii. Notification of the finding of *de minimis* infraction and dismissal shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint, and the complaint itself shall not be provided to the Board.

c. Dismissal after Preliminary Investigation. Should the Investigative Officer, after conducting the preliminary investigation, determine that facts do not exist to support the complaint, and dismisses the complaint, then, within seven (7) days of notifying the complainant and subject of such dismissal the Investigative Officer shall notify the Board in writing of the determination.

i. Notification to the Board shall include the substantive issues of the complaint, the precise question or issue presented by the complaint, and the factual basis for the dismissal, including citation to authority, if needed for the making of the Investigative Officer's determination.

ii. Notification of the finding of such a dismissal shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint, and the complaint itself shall not be provided to the Board.

d. Termination after Full Investigation. Should the Investigative Officer terminate a full investigation, then, within seven (7) days of notifying the complainant and subject of said termination of a full investigation, the Investigative Officer shall notify the Board in writing of the termination.

i. Notification to the Board shall include the substantive issues of the complaint, the precise question or issue presented by the complaint, and the basis for the Investigative Officer's decision to terminate the full investigation, including citation to authority, if needed for the making of the Investigative Officer's determination.

ii. Notification of such a dismissal shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint, and the complaint itself shall not be provided to the Board.

e. Withdrawal of Complaint. Should the complainant withdraw the complaint at any time, the Investigative Officer shall, within seven (7) days of receipt of notice of the withdrawal, notify the Board in writing of complainant's withdrawal of the complaint.

- i. Notification to the Board shall include the substantive issues of the complaint and the precise question or issue presented by the complaint.
- ii. Notification of the withdrawal of a complaint shall not contain any identifying information of any person involved as a witness, complainant or subject of the complaint, and the complaint itself shall not be provided to the Board.⁵

3. Reporting to Complainant and Subject Upon Dismissal.

- a. Upon dismissal of the complaint under Section V(A)(4)(e) of the Ordinance, in notifying the complainant and subject of the dismissal, the notification shall state any technical defects of the complaint which contributed to the dismissal.

B. Intake, Investigation and Prosecution of Complaints

1. Generally

- a. The functions and duties of the Investigative Officer of intaking, investigating and prosecuting Charter complaints shall be undertaken in conformance with the Charter and the Ordinance.
- b. The Charter provides that the Board shall “hear and decide all cases alleging violations of the Charter or Administrative Code, except that its jurisdiction shall not extend to any case arising under the Ethics Code or the Personnel Code.”⁶
- c. The Ordinance provides:
 - i. that its purpose is to provide for the implementation of Amendment I of the Charter, which is entitled, “Enforcement of Charter;”
 - ii. at Section IV for the standards of interpretation of the Charter and Administrative Code

2. Determination of Jurisdiction

- a. The Investigative Officer’s determination of jurisdiction, in addition to the review of all other necessary documents, such as the Charter, the Ordinance, Pennsylvania statutory and common law, shall consider and take into account the Board’s

⁵ **Note – January 2008.** See Ordinance, Section V(A)(2)(c), providing that an “individual’s withdrawal of a complaint does not preclude further action by the Board on its own motion.”

⁶ **Note – January 2008.** It is the opinion of the Board that the mere title of the City employee who is the subject of the complaint does not necessarily govern or control whether the complaint arises under the Personnel Code, therefore being outside of the jurisdiction of the Board. See Advisory Opinion No. 1 and reasoning of *In re: Investigation of Director of Community and Economic Development Adam Mukerji*, Investigation No. 6, Final Opinion and Order of July 24, 2006 and *Mukerji v. City of Reading Charter Review Board*, 941 A.2d 102 (Pa. Commw. 2008), *alloc. denied* 2008 WL 2600301 (Table) (Pa. 2008).

Advisory Opinions and Final Decisions and Orders entered at the time such determination of jurisdiction occurs.

b. The Investigative Officer's initial review of a complaint shall address only whether or not jurisdiction exists. If jurisdiction does exist, notwithstanding the finding of a *de minimis* violation, the Investigative Officer shall commence a preliminary investigation.⁷

3. Investigations.

a. Generally. During the course of a preliminary investigation, and at any other stage of the investigation or evidentiary hearing, the Investigative Officer shall investigate any other Charter or Administrative Code violations that may exist arising out of, or related to, the alleged violations, or the conduct, stated in the complaint, and any other Charter violation which may exist, against the subject, whether or not stated with specificity in the complaint.⁸

4. Request for Evidentiary Hearing. Within seven days of the date on which a subject requests an evidentiary hearing, the Investigative Officer shall transmit the complaint to the subject, or if represented, to counsel, and to the Solicitor for the Board.

IV. MEDIATION

A. Definition. "Informal Resolution"⁹ shall mean the mediation process set forth herein.

B. Scheduling and Conduct.

1. Upon the filing of a complaint, if the Investigative Officer determines that jurisdiction exists, the Solicitor shall schedule a mediation between the Investigative Officer and the subject with a qualified mediator ("Mediator") and with notice of such mediation being provided in writing to both the complainant and the subject.

2. The Solicitor's notice scheduling the mediation shall direct that the Investigative Officer shall issue to the Mediator and the subject a summary of the essential issues

⁷ **Note – March 2010.** Ordinance Section V(A)(3) provides that the only determination the Investigative Officer shall make when examining a complaint before initiating a preliminary investigation is a determination of jurisdiction. If jurisdiction is found to exist, the Investigative Officer "shall authorize a preliminary investigation." See Ordinance Section V(A)(3)(a). The Ordinance provides no opportunity for the Investigative Officer to dismiss a complaint prior to a preliminary investigation other than for lack of jurisdiction. *But see* Ordinance Section V(A)(4)(a), relating to *de minimis* violations.

⁸ *Cross-reference* Ordinance Section V(A)(2)(a), relating to the content of a Board complaint *and* Rule II(E)(1), (3).

⁹ As used in Ordinance Section V(A)(3)(b)-(c). See Bill No. 30-2015 (June 22, 2015) amending Ordinance Section V(A)(3)(b), relating to the informal resolution process.

raised in the complaint, however, the summary shall not limit the issues to be mediated or to be heard at an evidentiary hearing.

3. Together with the Investigative Officer's summary, the Mediator shall use such information indicated on the Coversheet as is appropriate in an attempt to resolve the complaint in a voluntary manner, compliant with the Charter, the Administrative Code, prior Board determinations and advisory opinions, and applicable law.

4. Prior to the mediation, the Mediator shall consult with the complainant regarding the disclosure of the complainant's identity which, under the Ordinance, must be kept confidential until the Investigative Officer authorizes a full investigation. The complainant may waive the confidentiality of identity in writing at any time. If the complainant does not waive confidentiality of identity, the Mediator shall take all necessary action to maintain the complainant's confidentiality throughout the mediation process.

5. At the mediation the Mediator shall initially confer with the Investigative Officer and the subject, explain that any resolution must be compliant with the Charter, Administrative Code, prior determinations and advisory opinions of the Board, Pennsylvania and Federal law, conduct a separate or joint conferences as the Mediator determines is most appropriate, conclude the mediation and, should the matter resolve, prepare a mediation report as provided herein.

6. The mediation shall be conducted "in person" and last not less than one hour, however, there is no obligation by the complainant or subject to continue to mediate longer than three hours.

7. The mediation shall commence and conclude and resolve or not resolve within thirty (30) days of the Investigative Officer's finding of jurisdiction.

C. Attendance.

1. The Investigative Officer and the subject shall attend the mediation, however, it is not mandatory that a resolution be reached during the mediation.¹⁰

2. The complainant shall not attend mediation unless directed to attend by the Investigative Officer, however, if the complainant states in a writing delivered in advance of the mediation to the Investigative Officer that the complainant declines to attend the mediation a) because complainant lacks representation by counsel, b) due to concern for complainant's employment, City services or other potential negative conduct done or caused, or that could be done or caused, as a result of the filing of the complaint, or c) due to concern that any of the conduct stated within the Ordinance regarding protection of a complainant may occur or has occurred, then complainant's non-appearance at mediation shall be excused and the matter shall continue to proceed in accordance with the Ordinance and these procedures.

¹⁰ It is the policy of the Board that, upon the filing of a Charter Board complaint and the determination of jurisdiction by the Investigative Officer, the complaint and allegations contained therein are the charge of the Investigative Officer to prosecute and not subject to compromise or withdrawal by the complainant.

3. Should the subject refuse to attend the mediation, the matter shall continue to proceed in accordance with the Ordinance.

D. Resolution and Report of the Mediation.

1. Should the matter resolve in its entirety as a result of the mediation, the Mediator shall prepare and present to the Solicitor a written mediation report, signed by the subject and Investigative Officer, with a copy of the Coversheet, which the Solicitor shall immediately present to the Board for review and approval.

2. Should the matter not resolve as a result of the mediation, the Mediator shall prepare and present to the Solicitor a statement on the Coversheet indicating only that the matter did not resolve at mediation, and that statement shall not state any particulars of the mediation, names, or identifying information of the parties, which the Solicitor shall immediately present to the Board for review. The matter shall then continue to proceed in accordance with the Ordinance.

3. Should the matter partially resolve as a result of the mediation, it shall proceed in accordance with Section E(5), below.

E. Effect of Mediation and Board Approval.

1. It shall be the sole province of the Board to determine if a mediated resolution is compliant with the Charter, Administrative Code, prior determinations and advisory opinions of the Board, Pennsylvania Law and Federal law.

2. Should the Board approve a mediated resolution of the entire matter, the Board shall issue a final order. In all respects, the general confidentiality provisions of the Ordinance shall apply. There shall be no release or settlement agreement.

3. Should the Board not approve a mediated resolution of the entire matter, the matter shall continue to proceed in accordance with the Ordinance, however nothing shall prevent the Investigative Officer and the subject from entering into a stipulated administrative settlement after the issuance of a findings report and a subject's demand for evidentiary hearing.

4. Should the matter not resolve at mediation, the matter shall continue to proceed in accordance with the Ordinance, however nothing shall prevent the Investigative Officer and the subject from entering into a stipulated administrative settlement after the issuance of a findings report and a subject's demand for evidentiary hearing

5. Partial resolution at mediation.

a. The subject of any complaint shall be permitted to admit to all or less than all of the alleged violations.

b. Should the subject admit violation of the all or less than all violations alleged, the Board shall take such admission under consideration in determining the

penalty or penalties to be assessed against the subject in accordance with the Ordinance, Section V(B)(2)(a)(i)(h), relating to other factors to consider in determining a penalty.

c. Should the matter partially resolve at mediation, the violation(s) admitted by the subject shall be considered resolved, reduced to writing signed by the IO and the subject, and the remaining issues in the matter shall continue to proceed in accordance with the Ordinance, however nothing shall prevent the Investigative Officer and the subject from entering into a stipulated administrative settlement after the issuance of a findings report and a subject's demand for evidentiary hearing. The admission(s) shall be presented to the Board only at the evidentiary hearing, or in the event that the parties seek an administrative settlement..

d. No other partial resolution shall be permitted at mediation except as provided herein.

F. General Matters.

1. All time periods within the Ordinance shall continue during, and operate concurrently with, the thirty (30) day period for mediation.

2. After the thirty (30) day period for mediation, there shall be no jurisdiction to further mediate between the complainant and subject and the matter shall continue to proceed in accordance with the Ordinance.

3. Any mediated resolution shall be compliant with the Charter, Administrative Code, prior Board determinations and advisory opinions, Pennsylvania law and Federal law.

4. Nothing herein shall prevent the Investigative Officer and the subject from entering into a stipulated administrative settlement after the issuance of a findings report and a subject's demand for evidentiary hearing.

5. Knowledge by the Board of the identity of the complainant or subject is permitted, provided that the identity of the complainant or subject is revealed to the Board only through a mediation report.

6. Nothing herein shall preclude the Board from taking any action permitted by the Charter, Administrative Code, Pennsylvania law or Federal law with respect to the mediation, any resolution, and the issues raised in a complaint.

7. Concurrent with the attempt at mediation and 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.

8. All mediations, and all information exchanged, created, or transmitted in any way involving a mediation under these procedures, shall be confidential except as provided by the Ordinance.

9. No mediator shall be permitted or compelled to testify in any proceeding, before any court, tribunal, hearing board, including the Charter Board, concerning any aspect of a mediation.

G. Mediators.

1. With the advice and consent of the Board, the Solicitor shall select, retain and utilize on a rotating basis not more than three mediators that meet the qualifications set forth herein. The Solicitor shall not participate in any mediation other than to provide interpretation of any pertinent Board procedures or Charter or Administrative Code provisions. The Solicitor shall not be informed of the identity of any party, or of the substance of any of the alleged violations except as otherwise permitted herein or by the Ordinance.

2. Qualifications. All mediators shall have devoted a substantial portion of their legal to municipal law and practiced municipal law for not less than 5 years and 1) have at least two courses involving mediation or alternative dispute resolution (“ADR”) during law school and current, relevant practical experience in the role as a mediator or neutral, or 2) 4 hours of CLE concerning mediation or ADR within the last 3 years and current, relevant practical experience in the role as a mediator or neutral, or 3) other current certification by a reputable ADR organization, or 4) attendance at training and educational sessions conducted by the Solicitor and the Board.

3. All mediators shall be attorneys in good standing and admitted to practice in the Commonwealth of Pennsylvania.

4. All mediators shall be familiar with the Charter, Ordinance and Administrative Code as well as the Board’s advisory opinions and Final Opinions and Orders.

5. All mediators shall consult and utilize the Charter, Ordinance and Administrative Code, as well as the Board’s advisory opinions and Final Opinions and Orders, in performance of their duties.

6. Mediators shall be entitled to receive a reasonable hourly rate, to be set by the Board, for their time spent preparing for the mediation, conducting the mediation, and preparing their report of the mediation, not to be in excess of \$1,000 per mediation.

7. Mediators shall, at the request of the Board and not more than once per year, attend an educational session prepared by the Board and Solicitor.

8. Mediators shall be bound by the same prohibitions as the Board, as set forth in the Ordinance at Section II(B).

H. Confidentiality, Wall of Separation.

1. The Mediator shall not exchange any information with the Board, Solicitor or Investigative Officer concerning the mediation except as reduced to writing as provided in section IV(D).

2. At all times, as between the Mediator and the Board, Solicitor and Investigative Officer shall form, keep and maintain a wall of separation between themselves as it pertains to any information obtained, learned, reported, supplied, or otherwise brought forth at the mediation except as reduced to a writing as provided in section IV(D).

I. Re-submission to Mediation. At the Board's sole discretion and direction, for a limited period of time, it may re-submit a matter to mediation to resolve any aspect of a mediated resolution that is not complaint with Charter, Administrative Code, Pennsylvania law or Federal law, or as the Board may desire for other administrative reasons.

V. RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD

A. Pre-hearing Procedure

1. Access to Evidence, Complaints. The subject of the investigation shall have reasonable access to any evidence intended to be used at the hearing, including the Board complaint that is the subject of the evidentiary hearing, all of which shall be transmitted to the subject, or to subject's counsel, at the same time as the Pre-hearing Memorandum provided for in no. 2, below.

2. Pre-hearing Memorandum, Exchange of Information and Stipulations.

a. Memorandum. Upon the direction of the Board, the Investigative Officer and the subject, or the subject's counsel, shall each provide the Solicitor to the Board and each other a pre-hearing memorandum containing the following information:

- i. a summary statement of the facts;
- ii. any admissions, and the basis for the admission;
- iii. stipulations desired, or which may be reasonably reached in writing prior to the hearing;
- iv. the name and title, if any, of each witness expected to be called;
- v. a listing of the exhibits reasonably expected to be offered into evidence, with a copy attached thereto, together with a brief offer of proof as to the purpose of the exhibit and the fact for which it will be offered to prove.
- vi. anticipated legal and evidentiary issues, if any;
- vii. any special problems anticipated by the parties or counsel;

- vii. the expected length of hearing; and
- viii. citation to all applicable statutory, Charter, Administrative Code, and/or case law authorities.

The memorandum should not exceed 7 pages double spaced (excluding any exhibits) and must be served on the opposing party or, if represented, counsel.

b. Exchange of Information. At the time of the service of the Pre-hearing memorandum the parties shall exchange all exhibits to be offered at the time of the evidentiary hearing, including the Board complaint that is the subject of the hearing. The Investigative Officer shall also provide the Board with a copy of the Board complaint at the time of serving the Pre-hearing Memorandum.¹¹

c. Stipulations. The parties shall make every effort to enter into written stipulations on matters that can be stipulated by the time of the evidentiary hearing. Such stipulations shall be entered on the record at the hearing.

3. Pre-hearing Motions and Objections. The rules of pleading under the Pennsylvania Rules of Civil Procedure do not apply to Charter Board evidentiary hearings, nor do formal motion or petition practice. Nevertheless, the Board will consider motions presented to it in accordance with these rules that is appropriately filed in local agency proceeding. All pre-hearing motions and objections desired to be heard by any party to an evidentiary hearing shall be made in writing to the Board Solicitor not less than seven days prior to the evidentiary hearing. Should such a motion or objection not be raised as provided herein, it shall be deemed waived. All such motions or objections shall be no more than three pages, double spaced, in length and shall contain 1) a clear statement of the relief sought and 2) citation to Authority providing the basis for the relief sought.¹²

4. Correspondence to the Board. All correspondence to the Board shall be addressed to the Solicitor of the Board and all other parties, or if represented, counsel, shall be carbon copied.

B. Conduct of Evidentiary Hearing.

1. General.

a. 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. Nevertheless, the Board may be asked to exercise judicial notice by a party or the parties, or may exercise judicial notice on its own motion.

¹¹ Cross reference Rule IV(B)(2)(f).

¹² Cross reference Rule IV(B)(2)(e).

b. Testimony shall be given under oath or affirmation, and witnesses shall be subject to cross-examination. A stenographic record shall be taken of all evidentiary hearings.

c. The hearing shall be closed to the public unless the subject requests an open hearing in writing to the Board at least 5 days before the hearing.

d. In the case where more than one Board complaint is filed against a specific subject and the evidentiary hearings may be held together without prejudice to the subject, the evidentiary hearings may be consolidated and heard at one time.

e. In the case where Board complaints are filed against more than a single subject, all arising from the same transaction or occurrence, the same alleged violation, or the same or similar conduct, and the evidentiary hearings may be held together without prejudice to the multiple subjects, the evidentiary hearings may be consolidated and heard at one time.

f. All proceedings before the Board are confidential. All witnesses, other than the subject and including the complainant, shall be sequestered outside of the evidentiary hearing.

2. The Role of the Board

a. The Charter Board proposes all powers ordinarily granted to quasi-judicial bodies, including the power to control the flow and order of testimony, and the power to keep order and control of proceedings.

b. The Chair conducts and controls the hearing, with the advice of the Solicitor.

c. The ultimate authority on legal, procedural, and evidentiary issues is vested with the majority of the Board, as articulated by the Chair.

d. Interaction with Solicitor:

(i) Legal, procedural, and evidentiary issues should be referred by the chair to the Solicitor for rulings. The Solicitor will attempt to preliminarily discuss these issues with the Board before ruling.

(ii) As appropriate, the Board, or any member thereof, may take executive sessions and may consult with counsel. At its discretion, the Board may clear the hearing room of all parties, counsel and witnesses to engage in executive sessions or to otherwise consult with counsel.

e. All members of the Board may ask questions of witnesses or consult with the Solicitor or each other, as appropriate, in the order permitted by the Chair. As a rule, Board members should wait until examination and cross examination are complete before

questioning witnesses. They may, however, interrupt witnesses at any time to ask for clarification of testimony.

f. Seating. The Charter Board will sit together and will face the litigants and their counsel, seated in their customary positions. The Chair will sit in the center of the fully seated Board.

3. Order of Proceedings Before the Board. The order of proceedings before the Board shall be generally as follows:

a. Call to Order. The Chair shall call the evidentiary hearing to order and state the title and date of the case, and the matter of the hearing.

b. Roll Call. The Chair will call the roll of the members of the Board and its Solicitor.

c. Pledge of Allegiance.

d. Calling of the Case. The Chair will then call the case before it and give any preliminary remarks concerning procedural matters and ground rules for the hearing. This may include: the expected overall time for the hearing, when breaks will occur, the order of proceedings, the fact that the proceedings are confidential and the responsibility of counsel to advise their witnesses of same, and the fact that witnesses will be sequestered until they are needed to testify.

e. Pre-hearing Motions. Pre-hearing motions submitted in writing in accordance with these rules shall be considered by the Board and ruled upon. The Board in its discretion may rule upon pre-hearing motions, or other motions made during the evidentiary hearing, at the time it issues its Final Opinion and Order. The Board, may, in its discretion, deny pre-hearing motions not made in conformance with these rules.¹³

f. Stipulations. All stipulations reached prior to evidentiary hearings shall be reduced to writing and incorporated into the record of the evidentiary hearing. All stipulations reached at or during the evidentiary hearing shall be stated on the record as soon as practical after the stipulation is reached.¹⁴

g. Opening Statements. The Investigative Officer will proceed first, followed by the subject or subject's counsel.

h. The Hearing.

(i) The Investigative Officer's case will proceed first, followed by the subject's case.

¹³ Cross reference Rule IV(A)(3).

¹⁴ Cross reference Rule IV(A)(2)(c).

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(ii) All witnesses, as they are called shall be sworn or affirmed under oath by the Court Reporter.

(iii) Examination shall proceed in the customary format of direct examination, cross examination, re-direct examination and re-cross examination.

(iv) Exhibits.

(a) At the appropriate and customary times, parties may move for the admission of exhibits.

(b) The parties shall have enough copies of exhibits offered as evidence for each other party and their counsel, the Court Report, the examined witness, if any, the Board Solicitor and each member of the Board.

(c) Although the strict rules of evidence do not apply to evidentiary hearings under these rules, before an exhibit may be offered into evidence without a witness who will explain or testify about the exhibit, the party offering the exhibit shall provide an offer of proof and explanation of the exhibit and state on the record: 1) why the exhibit is being offered; 2) what the exhibit is; 3) for what proposition the exhibit stands; and 4) from where the exhibit was obtained.

i. Closing Arguments. Both parties are entitled to make closing arguments, beginning with the Investigative Officer and ending with the subject.

C. Post-hearing Procedure.

1. Announcements. At the conclusion of each evidentiary hearing, the Chair shall announce:

a. That the Board will deliberate on the evidence presented at the evidentiary hearing and that it shall render its decision and issue a Final Opinion and Order within 30 days of the evidentiary hearing, upon a majority vote of those members present at the hearing;

b. That the Final Opinion and Order of the Board shall comply with the Local Agency Law, 2 Pa. C.S. § 555, and shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail;

c. That any person aggrieved by an adjudication of the Board shall have the right to appeal to the Berks County Court of Common Pleas.

2. Post-Hearing Memorandum. At the Board's discretion, before a Final Opinion and Order are issued, the Board may require that the parties submit proposed findings of

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fact, proposed conclusions of law, and case and statutory citation supportive of their respective positions.

3. Transcript. A verbatim transcript taken by a court reporter shall be made of all evidentiary hearings. The record of the evidentiary hearing must remain confidential and shall not be disclosed. The court reporter shall not issue a copy of the transcript of the evidentiary hearing, or of the exhibits, except to the Board or its Solicitor. Upon request of the subject, or counsel for the subject, the Board shall authorize the release of a copy of the transcript and exhibits to the subject or subject's counsel, at the subject's own cost.

4. Final Opinion and Order.

a. Content. The Final Opinion and Order shall contain the following sections, and may contain other sections or subsections as determined to be necessary by the Board or the Board's Solicitor:

- (i) Findings of Fact;
- (ii) Conclusions of Law;
- (iii) Determination of the Board;
- (iv) Penalties Imposed and an explanation of the basis for the penalties;
- (v) the Final Order.

b. Delivery. A copy of the Final Opinion and Order shall be delivered immediately to both the complainant and the subject of the complaint by certified mail, the Investigative Officer, counsel for the subject, and others a required or permitted by the Ordinance.

5. Appeal. The right of appeal shall arise only from the issuance of a Final Opinion and Order of the Board.

6. Confidentiality.¹⁵ Confidentiality of evidentiary proceedings and other Board information continues until a final determination is made by the Board.

¹⁵ *Cross-reference with Note 2, May 2015. Also see, Bill No. 16-2013, amending confidentiality provisions.*