

Drafted by: Council Staff
Sponsored by/ Referred by: Board of Ethics
Introduced on: November 28, 2016
Advertised on: December 5, 2016

BILL NO. 67 -2016
AN ORDINANCE

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF READING, BERKS COUNTY, PENNSYLVANIA, CHAPTER 5 ADMINISTRATIVE CODE, PART 10 CODE OF ETHICS, SECTION 5-1004 STATEMENT OF FINANCIAL INTERESTS BY CLARIFYING WHO MUST FILE AND SECTION 5-1009 COMPLAINT AND INVESTIGATION PROCEDURE BY CREATING A MEDIATION PROCESS

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Code of Ordinances of the City of Reading, Berks County, Pennsylvania, shall be and is hereby amends Chapter 5 Administrative Code, Part 10 Code of Ethics, Section 5-1004 Statement of Financial Interests by clarifying who must file and Section 5-1009 Complaint and Investigation Procedure by creating a mediation process as set forth in Exhibit A attached hereto and made a part hereof.

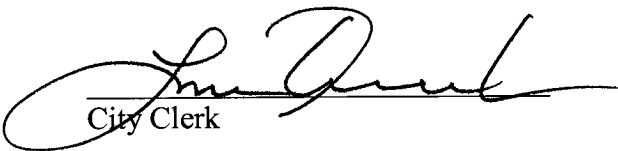
SECTION 2. All other items, parts, sections, etc. of the Code of Ordinances of the City of Reading, Berks County, Pennsylvania, shall remain in effect unchanged and likewise are ratified.

SECTION 3. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

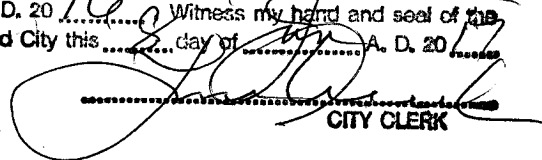
Enacted: Dec 19, 2016


Vice President of Council

Attest:


City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original passed by the Council of the City of Reading, on the 19 day of Dec A. D. 20 16. Witness my hand and seal of the said City this 19 day of Dec A. D. 20 16.


CITY CLERK

Submitted to Mayor: [Signature]

Date: 12/28/16

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: [Signature]

Date: 12-28-16

Vetoed by Mayor: _____

Date: _____

Chapter 5
Administrative Code

Part 10
Code of Ethics

SECTION 5-1004 Statement of Financial Interests

Any official or employee of the City or authorities or boards with decision-making authority, *including advisory boards*, shall file with the City Clerk a Statement of Financial Interests for the preceding calendar year by May 1 of each year, as defined by the State Code of Ethics. Any individual appointed to such a position after May 1 has fifteen working days to file the Statement of Financial Interest. All statements must be made available for public inspection and copying at an amount not to exceed actual costs.

SECTION 5-1009 Complaint and Investigation Procedure

A. Who May File

Any person may file a complaint about alleged ethics violations of the Reading Code of Ethics or the City Charter. In addition, the Board may initiate proceedings. A person signing a complaint shall:

1. Reasonably believe in the existence of facts upon which the claim is based; and
2. Reasonably believe that the complaint may be valid under the ethics provisions of the Code of Ethics and the City Charter.

B. How to File

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 P.O. Box through which to receive complaints. This P.O. Box shall be generally accessible by the investigative officer and/or the secretary, provided that the secretary is not a Board member.

Complaints must be filed within one year (365 days) of the date on which the alleged ethics violation that is the subject of the complaint occurred. Any complaint filed after this date shall be rejected.

C. Jurisdiction; Preliminary Investigation

1. Each complaint filed with the Board shall be immediately directed to and preliminarily reviewed by an investigating officer appointed by the Board

(the "Officer") to determine whether the complaint falls within the jurisdiction of the Board. The aforesaid determinations shall be made within 30 days of the filing of the complaint. If the 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 Officer determines that the complaint falls within the jurisdiction of the Board, the Officer shall authorize a preliminary investigation.

2. The preliminary investigation shall be initiated and accomplished at the sole direction of the Officer. If the Officer, in his/her sole discretion, finds that the violation(s), as alleged in the complaint, would, if proved, constitute a de minimis infraction, he/she may decline to initiate a preliminary investigation and dismiss the complaint, if to do so would be in the best interest of the citizens of the City of Reading.
3. 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.
4. The preliminary investigation shall be completed within 60 days of the Officer's finding of jurisdiction.
5. If at any time during the preliminary investigation, an extension is necessary and justified, the Officer shall have additional time in 30-day segments. The Officer shall timely notify both the complainant and the subject of the investigation of each such extension.
6. 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 of the complaint. 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.

D. Full Investigation

If a 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 (3) 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 ninety (90) days. Within one hundred eighty (180) days of the initiation of the full investigation, the Officer must either terminate the investigation or issue a findings report to the subject.

E. **Findings Report**

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. The subject of the investigation may, within 30 days of the report, request an evidentiary hearing, unless an extension is obtained from the Officer. When such a request is received by the Officer, the Officer shall immediately notify the Board of the request for a hearing, and the names of the parties involved. The Board shall upon receipt of such notice engage two attorneys: one to represent the facts in support of the complaint; and one to advise the Board in matters related to the evidentiary hearing. The Board solicitor shall not have any involvement in a particular matter once the findings report has been issued.

F. **Evidentiary Hearing**

1. **Timing.** An evidentiary hearing must be held within forty-five (45) days of the filing of a request for the same.
2. **Evidence.** The subject of the investigation shall have reasonable access to any evidence intended to be used at a 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 of confrontation and the like afforded him/her by the United States Constitution and the Pennsylvania Constitution.
3. **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 (5) days before the hearing.

G. **Decision by the Board; Final Order.**

At the conclusion of the evidentiary hearing, the Board will determine by majority vote of those members presiding whether the evidence supports a finding that the subject of the complaint violated provision(s) of either the Charter or the Code.

Upon reaching a determination on the complaint, the Board shall issue a final order. A copy of said final order shall be immediately delivered to both the complainant and the subject of the complaint.

H. **Petition for Reconsideration.**

A subject, having been found to have violated a provision of the Charter or Code, may file a petition for reconsideration of the Board's decision. Such petition shall be filed with the Board within ten (10) days of the day the Board issues its final order.

I. 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 providing information or testifying in any Board proceeding.

J. Mediation

- 1. *In addition to the procedures set forth above regarding preliminary investigation, full investigation, and findings report, the Officer may, in his/her sole discretion, engage in mediation of a complaint at any time prior to the issuance of the findings report. The purpose of mediation would be to resolve the complaint in a voluntary manner, compliant with the Charter and the Code.***
- 2. *In the event the Officer determines that mediation would be useful, he/she shall notify both the complainant and the subject of the investigation of his/her intent to mediate and obtain the consent of both parties to mediate. If the complainant and the subject agree to mediation, the Officer shall conduct the mediation in whatever manner he/she deems best under the circumstances, considering the time in the investigative process when the mediation will take place.***
- 3. *If a resolution is achieved following mediation, the Officer shall prepare and present to the Solicitor a written mediation report, which shall be signed by the subject and the Officer. The Solicitor shall immediately present the mediation report to the Board for review and approval.***

If a complete resolution is not achieved following mediation, the Officer shall prepare and present to the Solicitor a statement indicating only that mediation occurred, but the matter was not resolved at mediation. The statement shall not state any particulars of the mediation, names, or identifying information of the parties. The Solicitor shall immediately present such statement to the Board for review. The matter shall then continue to proceed in accordance Subsections A to I above.

- 4. *Any mediated resolution must be compliant with the Charter and the Code. It shall be the sole province of the Board to determine if a mediated resolution is compliant with the Charter and the Code. At the Board's sole discretion and direction, it may re-submit a matter to mediation to resolve any aspect of a mediated resolution that is not compliant with the Charter or Code or as the Board may desire for other administrative reasons.***
- 5. *If the Board approves a mediated resolution of the entire matter, the Board shall issue a final order. A copy of said final order shall be immediately delivered to both the complainant and the subject of the complaint. In all respects, the general confidentiality provisions of the Code shall apply. There shall be no release or settlement agreement. If***

the Board does not approve a mediated resolution of the entire matter, the matter shall continue to proceed in accordance with Subsections A to I above. However, nothing in this Subsection J shall prevent the 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.

6. *The timeframes set forth above in subsections C to E shall be tolled while any mediation is taking place. However, the Officer shall ensure that mediation does not unduly delay the process set forth in Subsections A to I above*

7. *Miscellaneous Matters.*

- a. *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.*
- b. *Nothing herein shall preclude the Board from taking any action permitted by the Charter or Code with respect to the mediation, any resolution, and the issues raised in the complaint.*
- c. *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 Code.*
- d. *The Officer shall not be permitted or compelled to testify in any proceeding, before any court, tribunal, or hearing board, including the Board, concerning any aspect of mediation.*
- e. *The Officer/Mediator shall not exchange any information with the Board or Solicitor concerning the mediation except as reduced to writing as provided in paragraph 3 above.*
- f. *At all times, as between the Officer and the Solicitor and/or Board, the Officer shall form, keep and maintain a wall of separation between him/herself 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 paragraph 3 above.*