

RIVERDALE PARK ETHICS COMMISSION PROCEDURES
Adopted December 4, 2013

Investigation and Adjudication of Alleged Violations

Investigation and adjudication of alleged violations of Chapter 32 (Code of Ethics) of the Riverdale Park Town Code will be undertaken as set forth below.

A. Complaint.

(1) Who may file.

a. Any person may file a complaint with the Commission alleging a violation of any of the provisions of Chapter 32.

b. The Commission may consider possible violations of Chapter 32 on its own initiative. Within five working days of the Commission's decision to consider a possible violation, or as soon thereafter as is practicable, the Commission shall draft a written complaint specifying the section(s) of Chapter 32 alleged to have been violated and transmit a copy of such complaint, signed by the Chair, to the Town Attorney or other counsel representing the Commission (either hereinafter "Ethics Counsel").

(2) Contents.

a. A complaint must assert facts that if proven true would be a violation of the provisions of Chapter 32.

b. All complaints shall be in writing and signed under oath. Complaints initiated by the Commission shall be signed by the Chair.

c. The Commission, without further proceedings, may dismiss a complaint that does not assert sufficient facts to enable the Commission to evaluate whether the facts, if proven, would be a violation of Chapter 32.

(3) Ethics Counsel review.

a. The Commission shall immediately transmit a copy of a complaint to the Ethics Counsel. The Ethics Counsel shall review the complaint and, at his or her discretion, may prepare an addendum to the complaint. The purposes of this addendum are to ensure that the respondent has adequate notice of the specific Code provisions alleged to have been violated and to aid the Commission in limiting the scope of any preliminary hearing to relevant factual inquiries. Any addendum must be submitted to the Commission within 10 working days of receipt of the complaint by the Ethics Counsel.

(4) Limitation on actions.

a. A complaint must be filed within one year from the later of:

1. The date of the act or omission alleged to constitute a violation; or
2. The date that the act or omission alleged to constitute a violation became, or reasonably should have become, known to the general public if the act or omission was not known, or reasonably could not have been known, within one year from the date of the act or omission.

b. The Commission will not process a complaint that is not timely filed. If the timeliness of a complaint is not apparent from the face of the complaint, the Commission will determine the timeliness as part of the preliminary hearing under Paragraph D.

B. Notice to parties.

(1) Notice to respondent. Within 15 working days after the Commission transmits a complaint to its Ethics Counsel, the Commission shall provide the complainant with written acknowledgment of receipt of the complaint together with a copy of any Ethics Counsel addendum, and shall provide the respondent with copies of the complaint and any Ethics Counsel addendum by certified mail, return receipt requested and by first class mail.

(2) Notice of preliminary hearing. Within 10 working days after providing written acknowledgment that the Commission received a complaint, the Commission will provide written notice by first class mail to the complainant and to the respondent of the date for a preliminary hearing.

C. Representation by counsel.

(1) The complainant and the respondent shall have the right to be represented by counsel at any preliminary or final hearing. The Commission will be represented by Ethics Counsel.

(2) The Commission may determine that an attorney other than the Town Attorney should serve as Ethics Counsel because of potential conflicts of interest or appearances of improprieties. If the Commission makes such a determination the Commission will select another attorney and advise the Mayor, Town Council and Town Administrator to make the appropriate arrangements to engage such attorney.

(3) In complaints initiated by the Commission, the Commission shall have separate counsel appointed to present evidence and otherwise advocate to the Commission in support of the complaint. In such cases the Commission will select another attorney and advise the Mayor, Town Council and Town Administrator to make the appropriate arrangements to engage such attorney.

(4) In complaints not initiated by the Commission, the Commission may determine following a preliminary hearing that in the interests of justice the Commission should have separate counsel appointed to present evidence and otherwise advocate to the Commission in support of the complaint. In such cases the Commission will select another attorney and advise the Mayor, Town Council and Town Administrator to make the appropriate arrangements to engage such attorney.

D. Preliminary hearing.

(1) Closed hearing.

a. A preliminary hearing is closed to the public unless the respondent requests that the hearing be open to the public.

(2) Issues.

a. The issues at a preliminary hearing are whether:

1. The complaint was timely filed; and
2. There exists reasonable grounds to believe that a violation of Chapter 32 has occurred.

(3) Stating the complainant's case.

a. The Ethics Counsel will state the alleged violation and will describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation as stated in the written complaint.

b. The complainant will then be given an opportunity to describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation.

(4) Respondent's right to respond.

a. The respondent will have the opportunity to respond but is not required to attend or make any statement.

b. The respondent may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation.

c. If the respondent agrees that a violation has occurred, the respondent may at any time waive the right to a final hearing and consent to a decision based on the facts alleged in the complaint or otherwise agreed upon. The disposition of any complaint without final hearing will be by written order of the Commission in the form specified by Paragraph E(5).

(5) Statements.

a. All statements at a preliminary hearing will be under oath administered by the Chair of the Commission. There will be no cross-examination. Members of the Commission may question the complainant, the Ethics Counsel or the respondent.

(6) Dismissing the complaint.

a. The Commission, at any time during the preliminary hearing, may dismiss a complaint if the complaint does not allege conduct which would be a violation of Chapter 32 or if the Commission determines that the complaint was not timely filed. Before a complaint is dismissed for failure to allege a violation, the Commission may afford the complainant one opportunity, within a time period to be specified by the Commission, to revise and resubmit the complaint.

b. The Commission also may dismiss a complaint if a complainant does not attend the preliminary hearing.

(7) Commission's decision.

a. At the conclusion of the preliminary hearing, the Commission will determine whether a final hearing should be held.

b. If the Commission does not determine that reasonable grounds exist to believe that a violation of Chapter 32 has occurred, or if the Commission determines that the complaint was not timely filed, the Commission will dismiss the complaint.

c. If the Commission decides that there are reasonable grounds to believe that a violation occurred, it will schedule a final hearing and provide notice of the date, time, place and purpose of the hearing to the complainant and respondent by certified mail, return receipt requested, and by first class mail.

d. A decision to conduct a final hearing is not a finding that a violation has occurred.

E. Final hearing.

(1) Timing.

a. A final hearing shall be held within 45 days, or as soon thereafter as practicable, following the preliminary hearing and a determination by the Commission that there are reasonable grounds to believe that a violation of Chapter 32 has occurred and that the complaint was timely filed.

b. The Commission may grant one postponement each to the complainant and to the respondent. Each postponement shall not exceed 30 days.

(2) Conduct of final hearing.

a. A final hearing is closed to the public unless the respondent requests that the hearing be open to the public.

b. An audio or video recording of the hearing shall be made and retained by the Commission.

c. The Chair of the Ethics Commission shall read the charges against the respondent. All parties may present opening statements. After opening statements the Ethics Counsel or other counsel appointed by the Commission shall present such testimony and other evidence necessary to prove the alleged violation as stated in the written complaint. The respondent will be afforded an opportunity to cross-examine witnesses and to present testimony and evidence. Ethics Counsel may cross-examine witnesses presented by the respondent. Ethics Counsel may present rebuttal testimony and evidence.

d. All witnesses shall give testimony under oath administered by the Chair of the Commission.

e. The Commission is not bound by strict rules of evidence and may accept testimony and evidence relevant to the complaint and respondent's defense, including hearsay that has probative value. Evidence which possesses probative value commonly accepted by reasonable and prudent people will be admitted. The rules of privilege will be in effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of copies or excerpts, or through incorporation by reference. The Commission may take notice of judicially cognizable facts of general, technical, or scientific facts within their specialized knowledge, and may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

f. Copies of each document that a party intends to introduce as evidence at a hearing shall be provided by that party to all other parties at least 7 days prior to the hearing. All such documents shall be confidential and not disclosed by any party to any person who is not a party to the proceeding. Except as allowed by the Commission for good cause shown or in the interests of justice, a party may not use a document as evidence unless the document has been provided to all other parties as provided in this paragraph

g. A copy of each document entered into evidence shall be made for each member of the Commission, the respondent, and Ethics Counsel, unless the Chair determines that producing that many copies would be cumbersome or wasteful. The copy given to the Chair shall be the official copy and shall be so marked.

h. The Chair of the Commission will rule on all objections and procedural matters during a hearing.

i. The Commission will be the judge of the credibility of all witnesses who testify at a hearing.

j. The Commission may adopt such orders or directives intended to maintain the confidentiality of documents and other evidence presented at a hearing.

k. At the conclusion of the hearing the Commission Chair may keep the hearing record open for a specified time, and under such conditions as the Commission may prescribe, to allow the parties to submit written arguments or other documents that are relevant to the issues presented in the hearing.

l. The Commission Chair may regulate the conduct of the hearing in all respects not provided for in these procedures.

(3) Failure to attend.

a. If, after proper notice of the hearing, a complainant fails to attend a final hearing, the Commission may proceed without the presence of the complainant, or may dismiss the complaint if the complainant has material evidence or testimony necessary to the Commission's decision regarding the complaint. However, if the complainant provides reasonable cause, in advance, for a failure to attend the hearing, the Commission may reschedule the hearing.

b. If, after proper notice of the hearing, the respondent fails to attend a final hearing without reasonable cause the respondent will be deemed in default and the hearing may proceed without the respondent's presence. If the respondent provides reasonable cause, in advance, for a failure to attend the hearing, the Commission may reschedule the hearing.

(4) Standard of proof.

a. The issue at a final hearing is whether a violation of Chapter 32 has occurred.

b. The Commission shall make its determination based on the preponderance of the evidence in the record of such hearing.

(5) Decision and disposition.

a. After consideration of the testimony, documentary evidence and all other matters of record, the Commission will prepare a written report setting forth its findings of fact and conclusions of law with respect to each of the alleged violations.

b. As part of the Commission's written report, the Commission will provide for such remedial action or sanctions as authorized by Chapter 32 if the Commission determines that a violation of Chapter 32 has occurred.

c. Within five working days after the Commission issues its report, the Commission will mail a copy of the report to the complainant and respondent. If the Commission determines that a violation of Chapter 32 has occurred, the Commission will provide copies of the report to the Mayor, Town Council and Town Administrator, and will make a copy available to the public by posting on the Town's website. Prior to dissemination of its report to the Mayor, Town Council and Town Administrator, and posting on the Town's website, the Commission may redact the report to protect confidential or sensitive information or to avoid an unwarranted invasion of privacy of any individual referred to in the report. If the Commission redacts its report, the unredacted version of the report remains the Commission's official report.

F. Settlement.

(1) At any time after a complaint is filed and before a final determination by the Commission, the Commission and respondent may enter into a settlement of the complaint under such terms and conditions as the Commission determines to be appropriate and in the public interest, including the waiving of confidentiality.

(2) Any settlement will be evidenced in a consent order or other appropriate document approved by the Commission and signed by the respondent which will constitute a final order of the Commission.

G. Ex Parte Communications.

(1) A respondent, respondent's counsel, complainant or complainant's counsel may not have any ex parte communications with any member of the Commission regarding any question of law or fact in connection with a complaint filed with the Commission.

(2) Any communication from a respondent, respondent's counsel, complainant or complainant's counsel shall be in writing addressed to the Commission and to Ethics Counsel.

H. Confidentiality.

(1) Following the filing of a complaint, all meetings and activities of the Commission in connection with the complaint, any preliminary hearing and any final hearing will be conducted in a confidential manner and closed to the public, except that:

a. The Commission may release information at any time if the respondent has agreed in writing.

b. The Commission will disclose the identity of the complainant to the respondent in response to a written request.

c. The Commission may release information as necessary to conduct a preliminary or final hearing.

d. The Commission may release information to a prosecuting authority if the Commission believes that criminal conduct may have occurred.

(2) The Commission, the complainant and the respondent may not disclose any information relating to the complaint, except that the Commission may release any information agreed upon in writing by the respondent, and the Commission may disseminate its decision as provided in Paragraph E(5)c.