

RESOLUTION ESTABLISHING RULES OF PROCEDURE

FOR PROCEEDINGS UNDER THE CODE OF ETHICS OF THE CITY OF TRENTON

WHEREAS, the Trenton Ethics Board was established by Ordinance No. 12-25, Codified as Chapter 70 of the Code of the City of Trenton; and

WHEREAS, the Trenton Ethics Board has adopted and promulgated a Code of Ethics for the City of Trenton; and

WHEREAS, the Trenton Ethics Board desires to adopt and promulgate Rules of Procedure for proceedings under the Code of Ethics of the City of Trenton

NOW, THEREFORE, BE IT RESOLVED, by the Trenton Ethics Board of the City of Trenton, that the following Rules of Procedure are hereby promulgated:

Section 1. Definitions

As used in these Rules of Procedure, the following terms shall have the meanings indicated:

BOARD – The Trenton Ethics Board as established pursuant to Chapter 70 of the Code of the City of Trenton.

CODE OF ETHICS – The Code of Ethics of the City of Trenton, Mercer County, New Jersey adopted by the Board pursuant to Chapter 70 of the Code of the City of Trenton.

COMPLAINT – an allegation that a local government officer or employee has violated either Section 2 or Section 4 of the Code of Ethics.

LOCAL FINANCE BOARD– The Local Finance Board of the Department of Community Affairs of the State of New Jersey.

LOCAL GOVERNMENT AGENCY – The City of Trenton, and any such agency, board, or commission or other instrumentality thereof, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board.

LOCAL GOVERNMENT EMPLOYEE – Any person, whether compensated or not, whether part time or full time, employed by or serving a local government agency, who is not a Local Government Officer, but shall not mean any employee or a school district.

LOCAL GOVERNMENT OFFICER – Any person, whether compensated or not, whether part time or full time:

- A. Elected to any office of the City of Trenton;
- B. Serving on a local governmental agency which has the authority to enact ordinances, approve development applications or grant zoning variances;
- C. Who is a member of an independent municipal, county or regional authority;
- D. Who is a managerial executive or confidential employee of a local government agency, as defined in Section 3 of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100 (N.J.S.A. 34:13A-3), and members of various boards, committees, authorities and commissions as set forth in the Rules and Regulations of the Board, but shall not mean any employees of a school district or member of a school board.

Section 2. Complaints; Procedure

- (a) Every complaint alleging that a local government officer or employee has violated the Code of Ethics shall be in writing and signed by the complainant. However, the Board may upon its own initiative initiate a complaint against a local government officer or employee, in which case the summary of the complaint shall be contained in the Board's minutes and the complaint shall proceed in accordance with these Rules of Procedure.
- (b) Complaints shall:
 - 1. State the point of the Code of Ethics alleged to be violated;
 - 2. State the name(s) and title(s) of the parties involved in the action and against whom the complaint is filed;
 - 3. Set forth in detail the pertinent facts surrounding the alleged violative action;
 - 4. Indicate whether the complaint concerns the complainant in any way and what, if any, relationship the complainant has to the subject of the complaint; and
 - 5. Indicate any other action previously taken in an attempt to resolve the issue and indicate whether the issue is the subject of pending litigation elsewhere.
- (c) The Board shall not proceed on a complaint on a matter which is pending in a court of law or administrative agency of the State until resolution of such matter before the court of law or administrative agency.

- (d) Within 30 days of receipt of the complaint the Board's Secretary shall acknowledge receipt of the complaint and the Chair of the Board shall assign the matter to a Board member to commence a preliminary inquiry as to whether the complaint is within the Board's jurisdiction or frivolous or without any reasonable factual basis.
- (e) Upon completion of the preliminary inquiry, the Board member conducting the preliminary inquiry shall report to the Board and the Board shall make a determination as to whether the complaint is outside its jurisdiction or frivolous or without any reasonable factual basis.
 - 1. If the Board concludes that the complaint is outside its jurisdiction, frivolous or without any reasonable factual basis, the Board's Secretary shall advise the complainant and the local government officer or employee, who is the subject of the complaint, in writing of the Board's conclusion.
 - 2. If the Board concludes that the complaint is within its jurisdiction, not frivolous, and having a reasonable factual basis, the Board shall direct a formal investigation be conducted, including determining the person or persons who shall conduct the formal investigation.
- (f) For complaints in which a formal investigation is conducted, the Board's Secretary shall notify the local government officer or employee who is the subject of the complaint of the nature of the complaint and the facts and circumstances surrounding the complaint.
 - 1. The local government officer or employee shall have the opportunity to present to the Board or the person or persons conducting the formal investigation on behalf of the Board any statements or other information concerning the complaint he or she wishes. Such statements or information shall be presented to the Board within 30 days of receipt of notification. Upon written application, the Board or the person or persons conducting the formal investigation on behalf of the Board may extend the time for filing such statement.
 - 2. The person or persons conducting the formal investigation on behalf of the Board shall obtain any further information or statements from any person with relevant information or from any other source, necessary to conduct the investigation.
- (g) For complaints in which a formal investigation is conducted, at the conclusion of the investigation the person or persons conducting the investigation on behalf of the

Board shall present to the Board the results of the investigation, which shall include any statements or information received from the local government officer or employee who is the subject of the complaint, and from any person or source with relevant information. The local government officer or employee who is the subject of the complaint may present the Board with any statement or information concerning the complaint which he or she wishes to present to the Board. The Board shall consider the matter based on the documents submitted to or obtained by the person or persons conducting the formal investigation on behalf of the Board.

1. If the Board determines, based upon the results of the formal investigation, that no violation of the Code of Ethics has been committed by the local government officer or employee, the Board shall issue a Notice of Dismissal to the individual and provide a copy to the complainant.
 2. If the Board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with or has violated the Code of Ethics, the Board shall conduct a hearing concerning the possible violation and any other facts and circumstances which may have come to the attention of the Board with respect to the conduct of the local government officer or employee.
- (h) The hearing shall be conducted in conformity with the rules and procedure, insofar as they may be applicable, of the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.* The Board in its discretion may direct the complainant, the local government officer or employee who is the subject of the complaint, or any other person with relevant information to appear before the Board or to provide to the Board any additional information, and may issue subpoenas for the production of documents and the attendance of witnesses. The local government officer or employee who is the subject of the complaint may request to appear before the Board, and shall be permitted to testify if the local government officer or employee so elects. However, such appearance is not required unless directed by the Board.
1. If the Board determines, based upon the hearing, that no violation of the Code of Ethics has been committed by the local government officer or employee, the Board shall issue a Notice of Dismissal to the individual and provide a copy to the complainant.
 2. If the Board determines, based upon the hearing, by a two-thirds vote that a violation of the Code of Ethics has been committed by the local government

officer or employee, the Board shall issue a Final Decision to the individual containing the nature of the violation, assessing a penalty, and advising the individual of his or her opportunity to appeal.

3. The Final Decision shall be transmitted to the local government officer or employee by regular and certified mail or by personal service.
4. The Final Decision together with any findings of the Board shall be reported to the office or agency having the power of removal or discipline of any appointed local government officer or employee and may recommend that further disciplinary action be taken.
5. The penalty shall be a fine not less than \$100.00 nor more than \$500.00.
5. The local government officer or employee may appeal the Final Decision to the Local Finance Board in accordance with state statutes and the rules and regulations of the Local Finance Board.

Section 3. *Advisory Opinions*

- (a) A local government officer or employee may request from the Board an advisory opinion as to whether any proposed activity or conduct constitutes a violation of the Code of Ethics.
 1. The request shall be in writing signed by the local government officer or employee who is the subject of the request or his or her attorney.
 2. The request shall set out the factual situation in detail, the specific question(s) of the requester, and whether there is any pending litigation or action relevant to the facts of the inquiry. The Board will not proceed on an advisory opinion request on a matter pending in a court of law or an administrative agency of the State.
 3. The Board will not consider a request for an advisory opinion regarding activity or conduct that has already occurred, unless the requester certifies that the activity or conduct is likely to be of a continuing nature.
 4. The Board will not consider a request for an advisory opinion from a local government officer or employee, or his or her attorney, who is not the subject of the proposed activity or conduct.
- (b) The Board's Secretary shall acknowledge receipt of the request within 30 days of receipt of the request.

- (c) The Chair of the Board shall assign the matter to a Board member to review whether the request for advisory opinion is within the Board's jurisdiction and complies with Section 3(a) of these Rules of Procedure.
- (d) The Board shall determine whether in its opinion the proposed activity or conduct constitutes a violation of the Code of Ethics. The Board's determination shall be reduced to writing and provided to the requester.
- (e) Advisory opinions shall not be made public unless two-thirds of the Board directs that the opinion be made public. Public advisory opinions shall not disclose the requester's identity, unless the Board in making the advisory opinion public also determines by a two-thirds vote to disclose the requester's identity. Discussions of advisory opinions by the Board shall be conducted in executive session, unless the requester requests that the Board's discussion be in the public session of the Board's meeting.
- (f) Unless the Board determines that the advisory opinion be made public, the request for the advisory opinion and all allied documents or information obtained or prepared by the Board or persons acting at the direction of the Board staff shall remain confidential and not subject to public disclosure.
- (g) If the request for the advisory opinion reports conduct or activity that has already occurred, the Board in its discretion may initiate a complaint against the requester if the Board believes that a violation of the Code of Ethics may have occurred.

Section 4. Confidentiality

- (a) Any complaints, statements, information, or documents obtained or prepared by the Board or persons acting at the direction of the Board are deemed confidential and not subject to public disclosure during the course of the preliminary inquiry or formal investigation to determine whether a violation of the Code of Ethics has occurred, except as necessary for the Board or persons acting at the direction of the Board to conduct the preliminary inquiry or formal investigation.
- (b) The Board's discussion regarding a preliminary inquiry or formal investigation shall be in executive session. However, any vote by the Board regarding a preliminary inquiry or formal investigation shall be in public session. In public session, the complaint shall only be identified by a docket number.
- (c) The Notice of Dismissal or Final Decision, the complaint and allied statements or information obtained by the Board during the course of the preliminary inquiry or

formal investigation are subject to public disclosure 30 days after mailing a Notice of Dismissal or a Final Decision.

This Resolution was adopted at a Meeting of the Trenton Ethics Board of the City of Trenton on March 5, 2014.

Chair

Attest:

Secretary