

# **CITY OF SPOKANE ETHICS COMMISSION POLICY AND PROCEDURES MANUAL**

## **RULE 1 – GENERAL PRINCIPLES**

### **1.1 PURPOSE**

It is the purpose of the City of Spokane Ethics Commission (“Commission”) in adopting this policy and procedure manual to provide a method of conduct for its meetings, hearings and other activities. This policy and procedural manual shall not conflict with the City’s Code of Ethics contained in Chapter 1.04B SMC. In the event of a conflict, the Code of Ethics shall prevail.

### **1.2 ROBERT’S RULES OF ORDER**

Matters of procedure not otherwise provided for herein shall, insofar as practical, be determined by reference to Robert’s Rules of Order, Newly Revised.

## **Rule 2. Meetings**

**2.1 Scheduling and Announcement of Meetings.** The Ethics Commission shall schedule and announce its meet times consistent with City policy and the Open Public Meetings Act, Chapter RCW 42.30.

**2.2 Quorum- Voting.** Four members of the Commission shall constitute a quorum for transaction of business. A simple majority of the quorum is necessary to take action, other than action by the Commission in determining and issuing its written findings and conclusions regarding a complaint, inquiry or request for an advisory opinion, which shall require four affirmative votes of the Commission members present for the meeting.

**2.3. Meetings.** Regularly scheduled Commission meetings shall be held on the third Wednesday in March, June, September and December beginning at 4:00. P.M. Meetings shall be held in the Briefing Center located in the basement level of City Hall, W. 808 Spokane Falls Blvd.

A regular meeting may be cancelled or rescheduled or a special meeting scheduled at the direction of the chairperson consistent with the Open Public Meeting Act. All meetings of the Ethics Commission shall be open to the public.

**2.4 Agenda.** The chairperson shall prepare the meeting agenda with the assistance of City staff.

**2.5 Telephonic Participation.** Other than meetings to consider and decide complaints regarding violations of the Code of Ethics, Commission members may participate in meetings by phone with prior approval of the chairperson.

**2.6 Recusal.** Commission members who have a conflict regarding a specific complaint shall recusal himself or herself from hearing that complaint but shall remain a member of the Commission.

### **Rule 3. Commission Membership and Staff**

**3.1 Appointment and Terms.** Commission members' appointments and terms shall be in accordance with SMC 1.04B.080.

**3.2 Chairperson.** The Commission members shall elect a chair and vice-chair who shall serve for one year and may be reappointed by the Commission for one additional term.

**3.3 Restrictions on Commission Members.** Commission members are subject to certain restrictions relating to their employment and political activities as set forth in SMC 1.04B.090.

**3.4 Staff Director.** The staff director appointed by the City Attorney pursuant to SMC 1.04B.080 (E) shall assist the Commission, its chairperson and other assigned staff with its duties and obligations set forth in Chapter 1.04B SMC. As part of the employee training process under SMC 1.04B.110, the staff director may assist individual employees or officials with specific questions regarding compliance with the Code of Ethics that pertain to the employee or official. The staff director shall not provide direction or guidance to ethical issues related to allegations against employees or officials but shall direct those complaints to the Commission.

### **Rule 4. Complaint Process**

**4.1 Filing of Complaints.** Complaints shall be filed with the Ethics Commission chairperson or with the staff person assigned to assist the Commission pursuant to the process set forth in SMC 1.04B.140 and within three years of the date of the alleged violation. Complaints must be written, signed by the complainant and directed to the Commission. The complaint shall set forth the facts which the complainant believes substantiates a violation of the Code of Ethics and which provisions of the code the complainant believes were violated.

**4.2 Preliminary Review of a Complaint.** Upon receipt of a complaint, the City Attorney's Office shall complete a preliminary review to determine whether the allegations, if proven, establish a violation of the City's Code of Ethics.

If upon review, the City Attorney finds that the respondent is not subject to the Code of Ethics, the City Attorney shall within five business days provide the Ethics Commission with written notice of this finding along with a recommendation that the

Commission Chair summarily dismiss the complaint pursuant to SMC 1.04B.200 (A).

If upon review, the City Attorney finds that the complaint contains an allegation which, even if true, would not constitute prohibited conduct in violation of the Code of Ethics, the City Attorney shall within five business days provide written notification to the Ethics Commission of his or her opinion that the complaint be dismissed pursuant to SMC 1.04B.200 (B) and shall provide the Commission with a proposed order of dismissal.

If upon review, the City Attorney determines that the complaint alleges facts that, if proven, establish an ethics violation, the complaint shall be referred to an independent investigator to commence an investigation for purposes of determining whether there is reasonable cause to believe that a violation of the Code of Ethics has occurred.

#### **4.3 Investigation and Hearing Process.**

If an investigation is commenced, the City Attorney shall provide written notification to the complainant and the subject of the complaint of his or her decision to refer the matter to an independent investigator for formal investigation to determine if a violation has occurred.

Once an independent investigator has been identified, a copy of the complaint shall be forwarded to the investigator, who shall contact and conduct interviews of the complainant, the subject of the complaint, and of any individuals with knowledge of the facts pertaining to the allegations in the complaint. The investigator shall also seek to obtain and evaluate any additional evidence, such as documentary evidence, in an effort to determine whether there is reasonable cause to believe the subject of the complaint has committed a violation of the City's Code of Ethics. Once the investigator has conducted interviews and has reviewed all other relevant evidence, he or she shall prepare an investigative report detailing his or her findings. The investigation of a complaint shall be completed, and the investigative report shall be submitted to the Ethics Commission, within 45 calendar days of the referral for the investigation. For good cause shown, the investigator appointed to conduct the investigation may request that the Ethics Commission grant an additional 30 days to complete the investigation.

#### **4.4 Post-Investigation Procedures.**

If the investigator finds that the evidence fails to establish that the subject of the complaint has committed prohibited conduct, the independent investigator shall prepare an investigative report with a recommendation that the complaint be dismissed. Whenever an investigator makes a recommendation of dismissal, the investigative report and copies of all documents relating to the investigation shall be forwarded to the Ethics Commission for a final decision on dismissal. Copies of the investigative report and all documents related to the investigation shall be served upon the complainant and the subject of the complaint. Upon receipt of an investigator's report and recommendation for dismissal, the Ethics Commission may

enter an order of dismissal, copies of which shall be served on the complainant and on the subject of the complaint. Such order shall be entered within ten business days.

If after investigation, the independent investigator determines that there is reasonable cause to believe the subject of the complaint has committed prohibited conduct in violation of the Code of Ethics, he or she shall prepare an investigative report detailing the evidence and stating the basis for his or her determination. The investigative report and copies of all documents relating to the investigation shall be forwarded to the Ethics Commission with a recommendation that a hearing be held. Copies of the investigative report and all documents related to the investigation shall be served upon the complainant and the subject of the complaint.

If the subject of the complaint accepts the findings of the investigative report, he or she may stipulate to the violation by submitting a letter to the Ethics Commission within ten business days indicating his or her agreement with the findings. In such instance, the matter will proceed to a hearing before the Ethics Commission for adoption of the stipulation and imposition of a penalty. The subject of the complaint may contest the findings of the investigative report by submitting a letter within ten business days to the Ethics Commission indicating his or her disagreement with the findings and requesting that a hearing be held to formally contest the findings. If the subject of the complaint contests the findings detailed within the investigative report or otherwise fails to respond within ten business days to the findings of the investigative report, the matter shall proceed to a contested hearing before the Ethics Commission.

#### **4.5 Complaint Hearing Process.**

Complaints that are not resolved through adjudication under SMC 1.04B.170 or the stipulation process under SMC 1.04B (C)(1), shall proceed to a hearing process pursuant to SMC 1.04B.180.

#### **4.6 Notice of Hearing and Respondent's Answer**

(1) The Commission shall provide notice of the public hearing to the complainant and the respondent.

(2) The notice shall include the Commission's determination regarding jurisdiction and the factual allegations, as well as the date, time and place for the hearing. The notice shall provide that the respondent shall be entitled to appear in person or otherwise, with or without counsel, submit testimony, be fully heard, and present and cross-examine witnesses.

(3) The respondent may file a written answer to the complaint with the Commission any time after receipt of the complaint but not later than ten business days prior to the hearing date.

(4) Notice of the hearing shall be provided to all parties no less than fourteen day before the hearing date, unless the parties stipulate otherwise.

#### **4.6 Conduct of Hearings**

Hearings shall be conducted consistent with SMC 1.04B.190.

All hearings conducted under this section are open to the public. The Commission's deliberations on a complaint shall be conducted consistent with SMC 1.04B.190 (A) (1), the Open Public Meeting Act and other applicable regulations.

The respondent shall be a party to the hearing and permitted to testify before the Commission. All parties involved in the complaint are prohibited from ex parte communication with the Commission. Neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the Commission beyond that which is permitted by Chapter 1.04B SMC.

The Commission decides issues before it based upon the preponderance of the evidence standard. That is, a violation must be more likely than not to have occurred before the Commission will hold for the complainant. The Commission shall rely, for its ultimate decision, upon evidence, whether or not technically admissible into evidence in a court of law, on which a reasonably prudent person would base significant decisions affecting his or her person or business.

#### **4.7 Prehearing Conferences**

In any proceeding, the Commission on its own motion or upon request by a party or their authorized representative may direct the parties to appear at a specified time and place for a conference to consider:

- 4.7.1 Simplification of issues;
- 4.7.2 The necessity of amendments to the hearing notice;
- 4.7.3 The possibility of obtaining stipulations, admissions of facts and of documents;
- 4.7.4 Limitation on the number of witnesses; and

4.7.5 Procedural and such other matters as may aid in the disposition of the proceeding.

Following the prehearing conference, the chairperson shall issue an order reciting the action taken and decisions made at the conference.

The format of the Prehearing Order shall be substantially the same in format and content as the specimen prehearing order attached as Exhibit "A" to these Rules.

**Rule 5. Procedures Applicable to Advisory Opinions**

The Commission shall issue advisory opinions upon request with regard to the application of the Code of Ethics pursuant to Chapter 1.04B.130 SMC and the rules adopted under the chapter. The following procedures apply to requests for advisory opinions:

- (1) Requests for advisory opinions may be made by any person subject to the Code of Ethics. A request must be stated hypothetically unless the individual requests a specific opinion concerning his or her own conduct and situation. Requests must be written, signed, and directed to the chair of the Commission. Requests shall supply such information as the Commission requires enabling it to issue the opinion.
- (2) Within five business days of the filing of the request for an advisory opinion with the Commission, the Chairperson, or his or her designee, shall inform the party filing the request that the Commission has received the request and of any subsequent meeting.
- (3) The Commission shall within sixty calendar days either:
  - (a) Issue a written advisory opinion; or
  - (b) notify the person requesting such opinion that the request is denied and the reason(s) for the denial.
- (4) Upon receipt, requests shall be assigned a reference number. The Commission shall maintain and keep current for public inspection a status sheet, which shall contain with respect to each request: Its reference number, the date received by the Commission, and its present status.
- (5) The Commission shall make available to the public copies of the status sheets and advisory opinions issued by the Commission.

## **Rule 6. Penalties**

**6.1 Purpose.** The purpose of this rule is to set forth the criteria that the Commission may consider when imposing penalties for a violation of chapter 1.04B SMC.

### **6.2. Criteria for Determining Sanctions.**

In determining the appropriate penalties, including the amount of any civil penalty, the Commission may consider the following factors, as well as other factors, which the Commission may find appropriate in a particular case:

- (1) The monetary cost of the violation, including:
  - (a) The cost of the violation to the City;
  - (b) The value of anything received or sought in the violation;
  - (c) The amount of any damages incurred by the City as a result of the violation;
  - (d) The costs incurred in enforcement, including reasonable investigative costs;
- (2) The nature of the violation, including whether the violation:
  - (a) Was continuing in nature;
  - (b) Was motivated by financial gain;
  - (c) Involved criminal conduct;
  - (d) Impaired a function of the agency;
  - (e) Tended to significantly reduce public respect for or confidence in city government or city government officers or employees;
  - (f) Involved personal gain or special privilege to the violator;
- (3) Aggravating circumstances, including whether the violator:
  - (a) Intentionally committed the violation with knowledge that the conduct constituted a violation;
  - (b) Attempted to conceal the violation prior to the filing of the complaint;
  - (c) Was untruthful or uncooperative in dealing with the Commission or the Commission's staff;
  - (d) Had significant official, management, or supervisory responsibility;
  - (e) Had committed prior violations found by the Commission;
  - (f) Incurred no other sanctions as a result of the violation;
- (4) Mitigating factors, including:

- (a) Prior corrective action taken against the violator;
- (b) Prior recovery of damages to the state;
- (c) The unethical conduct was approved or required by the violator's supervisor or agency;
- (d) The violation was unintentional;
- (e) The violator relied on advice from Commission staff or designated ethics advisers;
- (f) Other mitigating factors deemed relevant by the Commission.

### **6.3. Process for Implementing Decision.**

The Commission may utilize all available procedures to implement its decision including providing a copy of the decision to the appropriate administrative officer or commission or board chairperson.



EXHIBIT A to Ethics Commission Policy and Procedures Manual

CITY OF SPOKANE ETHICS COMMISSION

\_\_\_\_\_,  
vs. \_\_\_\_\_,  
Complainant,  
Respondent

**FINAL PREHEARING ORDER**

The Spokane Ethics Commission met on \_\_\_\_\_, 20\_\_, and after input from the parties and their representatives, now, therefore, enters the following pretrial order:

**I. Date, time and location of full hearing:**

The full hearing on this matter will be held on: \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ p.m. at Spokane City Hall, Council Chambers, or as otherwise directed.

**II. Subpoenas for witnesses to attend hearing:**

Proposed subpoenas must be provided to the Spokane Ethics Commission two weeks in advance of the hearing. The Commission will meet in special session two weeks before the hearing to decide whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission does not guarantee the attendance of witnesses; its subpoenas are not self-executing.

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### III. Preliminary Order

(i) This Order shall control the conduct of the full hearing of this matter.

(ii) Only parties of record may present argument or witnesses at the full hearing.

(iii) All witnesses shall testify under oath.

(iv) The Chair may cause the removal of any person who is being disruptive at the full hearing.

(v) The parties should assume that members of the Commission have read the document commonly known as the “\_\_\_\_\_,” or have at least some familiarity with such Report. However, the Commission recognizes that the Report is not evidence, and advises the parties not to rely on the Report when deciding whether to call witnesses or offer exhibits.

(vi) The Commission has dismissed Count \_\_ of Complainant’s \_\_\_\_\_, 20\_\_ Complaint, as clarified or amended without objection, on a voice vote. Entry of appropriate written findings and conclusions regarding Count \_\_ will take place following the full hearing of this matter, or otherwise at an open meeting properly noticed pursuant to applicable law.

(vii) All pending motions are hereby dismissed, without prejudice to any party’s ability to re-file or re-open motions on leave of the Commission. Any motion any party wishes to be heard must be made in writing to the Commission, with copies served on all parties. No action will be taken on any motion unless the motion is filed on or before \_\_\_\_\_, 20\_\_.

### IV. Conduct of hearing:

**1. Allocation of time at full hearing:** Each side is allotted 90 minutes. Each side may use the allotted time in any manner chosen. Staff will keep track of each party’s time, and will notify the Commission and parties when the allotted time is completed. Opening statement, direct and cross examination of witnesses, argument over objections, and closing argument will all be allocated to the party examination of the witness, making the argument, arguing the objection, or otherwise addressing

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the Commission, as in opening or closing. Once the party's 90 minutes is completed, that party may not present further evidence or argument.

**2. Commission participation:** Members of the Commission will be allowed to ask questions. Such questioning will not count against any party's allotted time. Parties are permitted to follow up on questions asked by Commissioners and answers received, but the time used in any follow-up questions, and answers, will be charged against the party asking following up.

### **3. Exhibits and Briefs:**

**A. Service and filing of exhibits:** Exhibits shall be served and filed two weeks in advance of the full hearing. Electronic delivery is preferred, but hard/paper copies will be accepted.

**B.** Objections to exhibits must be filed one week prior to the full hearing. Responses are due 48 hours before the full hearing.

**C. Admissibility of exhibits:** Any exhibit not objected to will be deemed admissible. Objections to exhibits will be argued on the day of the full hearing, in advance of the presentation of testimony. Exhibits shall be offered at the full hearing by number; no objections will be permitted during the full hearing to the admissibility of the exhibit used, except as set forth below (impeachment exhibits).

**D. Numbering exhibits: exhibit lists:** Complainant will use exhibit numbers 1-20, Respondent will use exhibit numbers 21-40. Each submitting party will pre-number and pre-mark exhibits, and shall submit a list of all exhibits simultaneously with the exhibits served.

**E. Impeachment exhibits:** Any party may impeach any witness by exhibits offered to reflect on the credibility of the witness. Newspaper articles and other, similar documents may not be used for impeachment purposes unless the document was submitted in advance of, and opportunity was given for argument prior to, the full hearing. These are the only impeachment documents which must be pre-disclosed, in advance of the full hearing.

**F. The full hearing will commence with argument over objections to exhibits and/or**

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**witnesses.** Time spent in such argument will be limited by the Chair to no more than ten minutes per side, but this time will not be counted toward the 90-minute allocation for each party. Time-counting will commence with item 5(A)(2), below.

**G. Hearing Briefs:** Parties must serve and file any briefing they wish the Commission to consider on week prior to the full hearing. No later-filed brief shall be considered by the Commission, unless prior to the full hearing, the Commission approves of such late filing.

### **4. Witnesses lists:**

**A.** Witness lists shall be served on each party and filed with staff on or before \_\_\_\_\_, 20\_\_\_. Any objections must be served and filed on or before \_\_\_\_\_, 2017. Requests for subpoenas shall be served and filed on or before \_\_\_\_\_, 20\_\_\_. The Commission will hold a special meeting on \_\_\_\_\_, 20\_\_\_, two weeks before the full hearing, in order to issue subpoenas if requested, *inter alia*.

**B.** Witnesses shall testify under oath.

### **5. Conduct of hearing:**

**A. Presentation of testimony and argument** at the full hearing shall occur as follows, subject to the time allocations and limitations set forth above:

1. Introduction of hearing by Commission Chair.
2. Opening Statement (non-argumentative summary of evidence to be presented) by Complainant. Time shall be counted toward party's allotted 90 minutes.
3. Presentation of Complainant's Case (Presentation of Witness and Documentary Evidence). Complainant calls witnesses.
4. Cross Examination of witnesses by Respondent.
5. Questions by Commission. (Time not counted against either party's allocation.)

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6. Follow-up Questions by Complainant and Respondent.
7. Complainant rests.
8. Opening Statement (non-argumentative summary of evidence to be presented) by Respondent. Time shall be counted toward party's allotted 90 minutes.
9. Presentation of Respondent's Case (Presentation of Witness and Documentary Evidence). Respondent calls witnesses.
10. Cross Examination of witnesses by Complainant.
11. Questions by Commission. (Time not counted against either party's allocation.)
12. Follow-up Questions by Complainant and Respondent.
13. Respondent rests.
14. Final Arguments.

**B. Rules of evidence:** It is the intention of the Ethics Commission to hear all relevant evidence. Lack of conformity to state or federal rules of evidence goes to the weight, not the admissibility, of evidence. However, questions with the purpose or effect of harassing or intimidating a witness will not be tolerated. Cumulative or argumentative testimony, speculations of a witness, and testimony based solely upon hearsay are not helpful to the truth-finding process and may therefore be excluded, in the discretion of the Chair. Counsel is encouraged to point out to the Commission that the opposing party's evidence, in whole or in part, consists of evidence that could be deemed inadmissible under evidentiary rules applicable in other fora.

**C.** Motions to dismiss shall not be made or considered during the full hearing.

**6. Evidentiary objections at full hearing:** It is a part of the purpose of this Order to minimize the objections made at hearing to preserve the flow of evidence and complete the full hearing in a timely manner. However, parties retain the right to object when it is deemed advisable to do so.

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1 Objections shall be directed to the Chair, who will alone determine the appropriate response to the  
2 objection. The Chair may consult with Commission counsel before ruling but need not do so.

3 **V. Issue to be decided following full hearing:**

4 Whether Respondent \_\_\_\_\_ violated SMC 01.04B.020 \_\_ (State Facts of Alleged  
5 Conduct.)

6 **VI. Waiver of Right to Hearing Prior to Date and Time Scheduled for Full Hearing, and**  
7 **Waiver of Objection of Same:**

8  
9 At prior hearings in this matter, the parties were given opportunity to object to the delays  
10 incurred in bringing this matter to full hearing. The delays have been caused by a desire to provide a  
11 fair hearing by accommodating both counsel. No party has objected. Accordingly, it is ordered that the  
12 parties and their attorneys have waived the right, if any, to have this matter heard prior to the date and  
13 time set forth in this Prehearing Order.

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15 Approved by unanimous vote on the tenth day of \_\_\_\_\_, 20\_\_.

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19 Chair, Spokane Ethics Commission  
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