

HAGERSTOWN ETHICS COMMISSION
RULES OF PROCEDURE

Authority: Code of City of Hagerstown, Chapter 33-3(b)(2) and (3)
Adopted by the Ethics Commission on March 4, 2024, Revised on August 11, 2025

01 Application.

The enforcement provisions of this chapter apply to alleged violations of the City Code of Ethics by any:

- A. Official or employee of the City;
- B. Appointees of any City Board, Commission or Authority;
- C. Person or entity subject to the lobbying provisions of the City Code of Ethics;
- D. Candidate for office as an official, who is required to file financial disclosure pursuant to the City Code of Ethics; or
- E. Other person or entity identified by the City Code of Ethics.

02 General Provisions.

A. Definitions.

- (1) "Hearing" means a hearing conducted by the Commission pursuant to the City Code of Ethics.
- (2) "Party" includes only the respondent and counsel advising the Commission.
- (3) "Respondent" includes, when appropriate to the context of these Rules, counsel speaking or acting on the respondent's behalf in connection with an enforcement matter subject to these Rules.

B. Confidentiality.

- (1) General Rules.
 - (a) Except as set forth in Rules B(2) and (4) of these Rules, following the filing of a complaint, the proceedings, meetings, and activities of the Commission and its members in connection with the complaint shall be conducted in a confidential manner.
 - (b) Except as set forth in Rules B(2) and (4) of these Rules, the Commission, City staff, the complainant, and the respondent may not disclose any information relating to the complaint, including the identity of the complainant and the respondent.

(2) Exceptions.

- (a) The Commission may release information at any time if the respondent has agreed in writing to the release.
- (b) The identity of the complainant shall be disclosed to the

respondent.

(c) Information may be disclosed by the Commission or the Commission's staff as necessary to conduct a hearing, or to issue subpoenas at the request of the respondent.

(d) Confidentiality does not apply to referral or release of information to a prosecuting authority pursuant to the City Code of Ethics.

(3) Confidentiality may be waived by the respondent, and information disclosed accordingly as part of a cure, settlement, or other prehearing resolution of an enforcement proceeding pursuant to Rule 06 of these Rules. A Complainant's failure to abide by the confidentiality requirements of these Rules may result in the dismissal of his/her Complaint.

(4) Information Provided to a Complainant.

(a) A Complainant shall be provided information regarding the status of an enforcement matter as set forth in Rule B(.3) of these Rules.

(5) Confidentiality after Hearing.

(a) The confidentiality requirements apply, as set forth in these Rules, to written reports setting forth findings of fact and conclusions of law required after a hearing by these Rules.

(b) When there is a finding that there was no violation of the City Code of Ethics, there may not be disclosure of information.

(c) When there is a finding of violation as to any allegation of the complaint, the written report of the Commission shall be a public record.

(6) Confidentiality of Advisory Opinions.

(a) Each advisory opinion shall be: (i) in writing; and (ii) published on the City's website, with a hard copy maintained in the Office of the City Clerk.

(b) Before an advisory opinion may be made public, the Commission shall delete: (i) the name of the person(s) who is/are the subject of the opinion; and (ii) to the fullest extent possible, any other information that may identify the person(s).

(c) The identity of the person(s) who is/are the subject of the opinion may not be disclosed, unless that person(s) consents in writing to disclosure or otherwise directs the Commission to disclose his/her identity in a proceeding before the Commission.

C. Subpoena Powers and Oaths.

(1) The Commission may:

(a) On its own or through its designee, administer oaths and affirmations; and

(b) On its own motion, issue subpoenas to compel the attendance and testimony of witnesses or for the production of books, papers, records, documents, or other

tangible objects.

(2) The respondent may, as set forth in these Rules, use the subpoena power of the Commission in preparation for any hearing to be held in accordance with these Rules.

(3) Respondent subpoenas pursuant to these Rules shall be issued only in response to a written request by or on behalf of the respondent received by the Commission not later than 10 working days before the date set for the hearing.

(4) Respondent subpoenas pursuant to these Rules may be issued by the Commission or by the Commission Chairman acting on behalf of the Commission.

(5) Service and enforcement of any respondent subpoena issued pursuant to these Rules is the responsibility of the respondent or other person acting on respondent's behalf, not of the Commission.

(6) Subpoenas issued pursuant to this section are judicially enforceable.

D. Referral.

(1) If, while an enforcement matter is being considered, it is determined that there are reasonable grounds to believe that the respondent may have committed a criminal offense, the Commission shall refer the matter:

(a) Promptly to an appropriate prosecuting authority for an evaluation of whether criminal prosecution is appropriate; or

(b) Directly to the appropriate prosecuting authority for prosecution.

(2) When an enforcement matter is referred to a prosecuting authority for evaluation or prosecution, the Commission may suspend action by the Commission on the matter pending completion of action by the prosecuting authority.

(3) When an enforcement matter is referred to a prosecuting authority for evaluation or prosecution, the Commission shall make available to the prosecuting authority all pertinent evidence under the Commission's control.

(4) Commission staff may consult with a prosecuting authority in connection with the possible referral of a matter.

E. Counsel. The respondent in an enforcement matter conducted pursuant to these Rules is entitled to be represented by counsel for any purpose, including:

(1) Submission of any written or other materials on respondent's behalf in connection with the investigation; and

(2) Personal appearance on respondent's behalf at any stage of the matter

where respondent's appearance before the Commission is permitted or required.

F. Service.

(1) Except as set forth in Rule 02.F(2) of these Rules, service of any document required to be served by this chapter shall be by regular mail, postage prepaid, to the respondent or other addressee at their last known address.

(2) Instead of service by mail, the hearing notice may be served by:

(a) Personal service by an individual over 18 years old, as evidenced by an affidavit of personal service;

(b) Service by the Sheriff of the county of the addressee; or

(c) Registered or certified mail, restricted delivery, return receipt requested.

(3) If required service is to a person represented by an attorney, mail or delivery to the attorney's last known business address is considered satisfactory service.

G. Appointment of Interpreter. If a party or witness cannot readily hear, speak, understand, or communicate the spoken English language, the Commission may, of its own volition, or shall, upon written application of the party or witness, appoint a qualified interpreter to provide assistance during the hearing.

03 Complaints.

A. Complaints from a Person.

(1) A person may file a complaint with the Commission.

(2) A complaint filed by a person pursuant to this section shall:

(a) Be written, signed, and under oath and on the form prescribed by the Commission; and

(b) Allege a violation of the City Code of Ethics by an official, employee, or any other person subject to the jurisdiction of the Commission as set forth in Rule 01 of these Rules; and

(3) The Commission shall accept for further proceedings any complaint filed by a person pursuant to this section unless the complaint:

(a) Is plainly frivolous;

(b) Fails to state a violation of the Code; or

(c) Does not comply with the requirements of this section.

(4) The Commission shall notify the Complaint and the Respondent if a

complaint shall not be accepted for further proceedings.

B. Complaints by the Commission.

(1) The Commission may issue a complaint on its own motion, if:

(a) Informal review in connection with an advisory opinion request under the City Code of Ethics discloses information suggesting that past or continuing conduct of an official, employee, or other person subject to the City Code of Ethics may constitute a violation of the City Code of Ethics.

(2) A Commission complaint shall be:

(a) Signed on the Commission's behalf by the Chairman or another member as authorized by the Commission;

(b) Otherwise in the same format as a complaint from any other person as set forth in Rule 3.A(2) of these Rules; and

(c) Issued pursuant to action by the Commission taken consistent with the procedures set forth in these Rules.

C. A copy of any complaint accepted or issued by the Commission shall be served on the respondent as set forth in Rule 0.2.F of these Rules.

04 Hearing Notice.

A. A hearing shall be scheduled and a hearing notice shall be issued by the Chairman or other designated member acting on the Commission's behalf.

B. A hearing notice shall include a:

(1) Statement of the time, place, and nature of the hearing;

(2) Statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) Reference to the relevant sections of the City Code of Ethics and Rules of Procedure involved;

(4) Short and simple statement of the matters asserted;

(5) Statement that failure to appear for the scheduled hearing may result in adverse action against the respondent;

(6) Statement that the respondent may agree to the evidence and waive the right to appear at the hearing; and

(7) Statement of the respondent's right to:

- (a) Call witnesses and submit documents or other evidence as provided in Rule 0.8 of these Rules,
- (b) Use the subpoena power of the Commission as set forth in Rule 02.C of these Rules,
- (c) Receive a copy of the Commission's enforcement procedures found in this chapter if not otherwise provided, and
- (d) Be represented by counsel in the hearing.

C. If, in a hearing notice issued pursuant to Rule 0.4.B of these Rules, the Commission is unable to state the matters in detail at the time the hearing notice is served, the initial notice may be limited to a statement of issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

D. A hearing notice issued pursuant to Rule 04.B of this Rule shall be served on the respondent as set forth in Rule .02F of these Rules.

05 Settlements.

A. At any time after a matter is initiated and before a final determination by the Commission, the Commission and respondent may develop a proposed settlement of the matter.

B. A proposed settlement may:

- (1) Be based on admissions or stipulations of fact or law;
- (2) Recite actions taken or agreed to be taken by the parties;
- (3) Include any sanction, penalty, or action agreed to be imposed or taken as a result of Commission acceptance of the proposed settlement; and
- (4) Include any other provisions allowable by law that would define the framework for resolution of the matter.

C. A proposed settlement shall be in writing, agreed to by the Commission and the respondent, and may be by:

- (1) Stipulation;
- (2) Consent order;
- (3) Waiver of hearing;
- (4) Settlement agreement; or

(5) Other appropriate format.

D. Commission Action.

(1) A settlement accepted by the Commission may form the basis for final action by the Commission to be reflected in a final order issued pursuant to Rule 09 of these Rules.

E. Offers of settlement or compromise which are not accepted by the Commission may not be made a part of the case record or otherwise admitted into evidence in the hearing.

06 Prehearing Process.

A. Discovery and Disclosure.

(1) The respondent and the complainant shall submit to the commission and to opposing party, at least 10 working days before the scheduled date of the hearing:

(a) A proposed list of their witnesses and possible documentary evidence to be introduced at the hearing; and

(b) An estimate of the anticipated length of the presentation of their case.

(2) The Chairman may prohibit the introduction of documentary or testimonial evidence not disclosed before the hearing.

B. Postponement.

(1) Upon request from the complainant or the respondent, the Chairman may grant a postponement of the hearing for good cause as set forth in this section.

(2) Requests for postponement shall be confirmed in writing, served on the opposing party as set forth in Rule 02.F of these Rules, and shall include:

(a) The reason for the request; and

(b) When appropriate, a list of at least three dates within the 60-day period following the day on which the hearing was originally scheduled on which the party would be available for a hearing.

(3) Requests for postponement shall:

(a) Be granted only if the party requesting the postponement clearly demonstrates that the request is made in good faith and that:

(i) Hardship will result from its denial, or

(ii) Postponement is required as part of a settlement consideration.

(4) Whenever feasible, a postponed hearing that is to be held shall be rescheduled within 60 days of the date the hearing was originally scheduled.

07 Conduct of Hearing.

A. Failure to Attend Hearing, and Default.

(1) If after receiving proper notice a party fails to attend or participate in the hearing, the party shall be considered in default and the hearing may be conducted and the issues finally determined in the defaulting party's absence.

(2) Within 10 days after mailing of a final decision following a default, the party may file a written request that the decision be vacated, stating the reasons relied upon.

(3) The final decision may be vacated by the Commission if it is found in its sole discretion that there is an:

- (a) Actual controversy in the matter; and
- (b) Reasonable and good faith excuse for the default.

B. Conduct of the Hearing by the Chairman or Designee.

(1) A Commission hearing conducted pursuant to this chapter shall be conducted by the Chairman or another member designated by the Commission. The member so designated may exercise all powers assigned to the Chairman by this section.

(2) The Chairman shall convene the hearing and shall place the complaint, hearing notices, and other appropriate documents in the record.

(3) The Chairman has the power to:

- (a) Conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of proceedings, and maintain order;
- (b) Rule on offers of proof and receipt of evidence in accordance with the general principles set forth in 08.D of these Rules;
- (c) Consider and rule upon all motions appropriate to the proceedings; and
- (d) Recess the hearing for any reasonable purpose, for example:
 - (i) In response to requests of the parties,
 - (ii) To allow the parties to prepare final argument, or
 - (iii) To enable the Commission to consider action on motions or undertake preliminary consideration of the case.

C. Rights of Parties. Each party to the hearing has the right to:

- (1) Present opening and closing statements;
- (2) Call witnesses and present evidence;
- (3) Cross-examine every witness called by the Commission or any other party;
- (4) Impeach any witness regardless of which party first called the witness to testify; and
- (5) Rebut all evidence presented.

D. Presentation of Evidence.

(1) The complainant may present evidence either through counsel or on the complainant's own behalf that is:

- (a) Relevant to the matters at issue as set forth in the hearing notice; or
- (b) Otherwise allowed by the Chairman.

(2) The respondent may present evidence either through counsel or on the respondent's own behalf that is:

- (a) Relevant to the matters at issue as set forth in the hearing notice; or
- (b) Otherwise allowed by the Chairman.

(3) Evidence shall be received by the Commission in accordance with the following principles:

(a) The hearing need not be conducted according to the technical rules of evidence, and any relevant evidence, including hearsay of probative value, may be admissible.

(b) Oral evidence shall be taken only on oath or affirmation.

(c) Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs may be admitted and given probative value. The rules of privilege shall be given effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded.

(d) All evidence shall be offered and made a part of the record in the case. Other factual information or evidence may not be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation reference.

(e) The existence of offers of settlement or compromise considered in the preliminary enforcement process are considered privileged communications and may not be admitted into evidence at the hearing.

E. At the completion of the hearing the Chairman may, in the Chairman's own discretion or at the request of the parties, declare the record to be open for a specified period to

enable the parties to submit written arguments or other documents that are relevant to the issues presented in the hearing.

F. Hearing Record.

(1) Verbatim Record.

(a) A verbatim record shall be taken of the entire hearing. In addition to the stenographic or recorded record of testimony in the case, a verbatim record shall include motions by the parties and rulings by the Chairman, the opening and closing arguments of the parties, and any oral decisions of the Commission that are made in the context of the hearing.

(b) A stenographic or recorded verbatim record, or the minutes of a hearing, need not be transcribed unless requested by a party or the Commission. The party requesting the transcript shall pay in full for the cost of transcription, before it is ordered by the Commission. Failure to pay for a transcript shall be a basis to dismiss an appeal, either at the request of the non-appealing party or *sua sponte* by the Commission.

(2) An official record of the hearing shall be developed, including the following:

- (a) All pleadings, motions, and intermediate and final rulings;
- (b) Documentary evidence received or considered;
- (c) Any written arguments or documents submitted by a party after the hearing;
- (d) The decision of the Commission issued pursuant to Rule .08 of these Rules.

08 Commission Decision.

A. A Commission decision following a hearing shall be:

(1) Made in accordance with its regular procedures as set forth in these Rules and the City Code of Ethics; and

(2) Based on a preponderance of the evidence presented at the hearing as set forth in Rule 07.D of these Rules.

B. If, after a hearing, the Commission finds that a respondent has violated the City Code of Ethics, the Commission shall issue a written report that:

(1) Includes findings of facts and conclusions of law for each of the violations alleged in the hearing notice; and

(2) Disposes of all disputed issues referenced in the hearing notice.

C. If the Commission finds that the respondent has not violated any of the provisions

of the City Code of Ethics, as alleged in the hearing notice, the Commission shall:

- (1) Issue an order denying the complaint; and
- (2) Promptly send a copy of the order to the complainant and the respondent.

D. Sanctions.

(1) If the Commission finds that the respondent has violated any of the provisions of the City Code of Ethics on may take any action authorized in the City Code of Ethics.

(2) In determining the sanctions to impose in a matter involving a finding of a violation of the City Code of Ethics, the Commission may consider all relevant factors, including:

- (a) The extent to which the respondent derived financial benefit from the prohibited conduct;
- (b) Any history of violations of the City Code of Ethics by the respondent;
- (c) The severity of the violation; and
- (d) The necessity to protect the public interest and the integrity of the governmental process.

E. If the Commission finds that the respondent has violated the financial disclosure or lobbying reporting provisions of the City Code of Ethics, the Commission shall impose a fine, not to exceed \$5,000.

F. An order issued by the Commission pursuant to this Rule shall be served on the parties as set forth in Rule 02.F of these Rules.

G. A final default order issued pursuant to Rule 07A of these Rules shall be issued as a final decision consistent with this Rule.

H. The Commission may seek judicial enforcement of any order issued pursuant to this Rule, or any other relief as provided in the City Code of Ethics.

9 Judicial Review.

A. If aggrieved by a final order of the Commission, the respondent may request judicial review in accordance with the provisions of the Administrative Procedure Act, State Government Article, §10-222, Annotated Code of Maryland.

B. The final order of the Commission shall be stayed automatically until the time for seeking judicial review has expired.

C. If a timely appeal for judicial review is filed, action to implement the final order shall be stayed until the final disposition of the matter by the court.

D. The Commission may take action to seek judicial imposition of fines as set forth in City Code of Ethics .

10 **Rules for Electronic Meetings.**

A. **Meetings Held Electronically.** Meetings of the Commission may be conducted by internet (a) when the Chair has obtained written consent from a majority of the Commission Members; (b) when so directed by the Commission. Electronic meetings of the Commission shall be subject to all rules adopted by the Council, not otherwise in conflict with this Section 11.

B. **Login Information.** The City Clerk shall send by e-mail to every member of the Council, at least 48 hours before each meeting, the time of the meeting, the URL, and codes necessary to connect to the Internet meeting service, and, as an alternative and backup to the audio connection included within the Internet service, the phone number and access code(s) the Commission Member needs to participate aurally by telephone. The City Clerk shall also post notice of the meeting through email and on the City of Hagerstown website

C. **Login Time.** The City Clerk shall schedule Internet meeting service availability to begin at least 15 minutes before the start of each meeting.

D. **Signing In and Out.** Commission Members shall identify themselves as required to sign in to the Internet meeting service, and shall maintain Internet and audio access throughout the meeting whenever present, but shall sign out upon any departure before adjournment.

E. **Quorum Calls.** The presence of a quorum shall be established by audible roll call at the beginning of the meeting. Thereafter, the continued presence of a quorum shall be determined by the online list of participating Commission Members, unless any member demands a quorum count by audible roll call. Such a demand may be made following any vote for which the announced totals add to less than a quorum.

F. **Technical Requirements and Malfunctions.** Each Commission Member is responsible for his or her audio and Internet connections; no action shall be invalidated on the grounds that the loss of, or poor quality of, a Commission Member's individual connection prevented participation in the meeting.

G. **Obtaining the Floor.** To seek recognition by the chair, a Commission Member shall address the chair and state his or her own name.

H. **Voting Methods.** All votes shall be taken by roll call. Unless the Commission orders a fully recorded roll-call vote, only the number of votes on each side and the number of Commission Members present but not voting shall be entered in the minutes. Business may also be conducted by unanimous consent.