

Town of Kensington

TOK Ethics Procedures

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TOWN OF KENSINGTON ETHICS COMMISSION

Authority: Town of Kensington Code, Section 2-304(C)

Procedures

Chapter 01 General Provisions

.01 Purpose and Scope

- A. The purpose of these regulations is to set forth the procedures under which the Town of Kensington (TOK) Ethics Commission will implement the Public Ethics Code (“the Code”) outlined in TOK Code Chapter 2, Article 3 (2-300) as to persons and entities within its jurisdiction.
- B. The regulations apply to persons identified in TOK Code, 2-301

.02 Commission Responsibilities

The Code gives the Ethics Commission the following responsibilities:

- A. To devise, receive and maintain all administrative documents generated under the Code;
- B. To provide advisory opinions to persons subject to ethics complaints as to the applicability of the Code to them;
- C. To process and make determinations as to complaints filed by any person alleging violation of the Code;
- D. To develop and publish rules, regulations, and reporting forms relating to implementation of the Code.

.03 Town of Kensington Office Responsibilities

- A. To serve as the repository for the Commission’s records and files;
- B. To distribute and collect financial disclosure forms;
- C. To distribute ethics complaints received by the Town Office to the Ethics Commission;

- D. To maintain and keep current information about the Ethics Commission on the Town’s web site;
- E. To publish announcements of meetings and other public communications by the Commission.

.04 Meetings

- A. General
 - (1) The Commission shall meet at the call of the Chairman or a majority of its members.
 - (2) A quorum consists of two members.
 - (3) An affirmative vote of at least two members shall be necessary for any action of the Commission.
 - (4) The Chair of the Commission shall establish an agenda for each meeting
- B. Except as set forth in §§C and D of this regulation, the Commission shall meet in open session in accordance with the provisions of the Open Meetings Law. The Commission shall provide notice of its meetings and take and maintain minutes of its meetings.
- C. In addition to the exemptions to the open meetings requirement, the Commission may meet in closed session to consider an advisory opinion request under Section 2-304(c)(2) of the Code to the extent that consideration of the request would necessarily lead to identification of the subject of the request, and where the subject has not waived the right to protection of his identity. Otherwise, if a subject has waived the right to protection of his identity, meetings about advisory opinions are to be conducted in accordance with the Open Meetings Act.
- D. In addition to the provisions of Section .04(c), the Commission shall meet in closed session when considering a complaint in accordance with Section 2-304(c)(3) of the Code, until a final Commission determination is made regarding disposition of the complaint.

.05 Information Provisions

- A. Except as set forth in subsections B-G of this section, records of the Commission shall be maintained and made available for public inspection and copying at the Town Office
- B. Commission records pertaining to advisory opinion requests considered in accordance with Section 2-304(c)(2) of the Code may not be disclosed, to the extent that they include facts, discussion, or other material that would reveal the identity of the subject of the opinion, and the subject of the opinion has not waived the right to protection of his identity. Advisory opinion request records shall be considered by the Commission to be non-disclosable under this section until the right to the protection of the subject’s identity is expressly waived by the subject.

C. All Commission records pertaining to a complaint considered in accordance with Section 2-304(c)(3), including the complaint and final determination, shall, following the filing of a complaint and unless and until a finding of a violation is made, be treated confidentially and not disclosed to any person as follows:

(1) General Rules

- i. Except as set forth in § (2) (i)-(v) of this section, following the filing of the complaint, the proceedings, meetings, and activities of the Commission and its employees in connection with the complaint shall be conducted in a confidential manner.
- ii. Except as set forth in § (2) (i)-(v) of this section, the Commission, its staff, complainant, and the subject of the complaint may not disclose any information relating to the complaint, including the identity of the complainant and the subject of the complaint.
- iii. Although the original complaint and the final determination might be disclosed publicly under certain circumstances, the Commission's deliberations remain confidential.

(2) Exceptions

- i. The identity of the complainant shall be disclosed to the subject of the complaint at any time in response to a written request from the subject of the complaint.
- ii. Information may be disclosed by the Commission or the Commission's staff as necessary to conduct a preliminary inquiry, investigation, or hearing.
- iii. Confidentiality does not apply to referral or release of information to a prosecuting authority. Although the original complaint and the final determination might be disclosed publicly under certain circumstances, the Commission's deliberations remain confidential.
- iv. Confidentiality may be waived by the subject of the complaint, and information disclosed accordingly as part of a cure, settlement, or other prehearing resolution of an enforcement proceeding.
- v. Both complainant and the subject of the complaint waive their rights to protection of their identities.

D. Once a complaint is filed or initiated by the Commission, the proceedings, meetings, and activities of the Commission and staff in connection with the complaint shall be conducted in a confidential manner. The Commission, its staff, the complainant and the subject of the complaint shall not disclose any information relating to the complaint with the exceptions identified in this section, including the identity of the subject of the complaint or the complainant. The matter remains confidential until the Commission finds that the Code has been violated or refers the matter for prosecution. If the Commission finds that there has been no violation of the Code, it will issue a written decision and the name of the individual who was the subject of the complaint and the complainant will remain confidential.

- E. Except to confirm or deny the existence of a document or to disclose the name and limited identifying information, Commission members will not disclose any information contained in financial disclosure and lobbying disclosure statements filed pursuant to the Code.
- F. The Commission shall review the annual financial disclosure statements as required by the Code. Supplemental filings shall be examined in a timely manner. All examinations of such documents shall take place in closed session.
- G. The Chair of the Commission shall send all formal and administrative communications from the Commission. Administrative communications are communications that do not require a vote by the Commission. Formal communications constitute all other communications. The Chair may respond to or initiate administrative communications unilaterally.
- H. The Commission shall restrict itself exclusively to matters authorized under the Town of Kensington Code.

.06 Financial Disclosure Forms

- A. The financial disclosure forms are drafted by the legal advisor and the Commission and are approved by the Commission members.
- B. The Town Office sends the annual financial disclosure forms to the elected officials, appointed officials, and town employees designated in the Code in early January of each year. The annual financial disclosure forms are to be completed and returned to the Town Office by January 31 of that year. When past due, the Town Office will send reminders to the persons who have not returned their forms, as deemed necessary.
- C. Candidates for office must complete and submit the financial disclosure form with their certificate of nomination for candidacy. Proposed appointees must submit the form at the time of their nomination.
- D. The Commission will meet to review the completed financial disclosure forms and take any actions based on the information contained in the forms. The Commission may ask the legal advisor or the Town Clerk to obtain additional information if the information provided is incomplete, unclear or raises questions under the Code.
- E. Financial disclosure statements filed by Town officials pursuant to the Code may be examined by the public only in person at the Town Offices.

.07 Guidelines for Use in Conflict of Interest Situations

The following guidelines will be used in making decisions on conflict of interest questions brought to the Commission:

- A. If a member recognizes that he or she cannot render a fair and impartial decision based on the facts presented due to a financial or personal conflict in a case then that member shall disqualify himself from participating in that case prior to becoming involved in a hearing or voting on a case.
- B. If the member recognizes a conflict, or the appearance of a conflict, the member shall state this conflict before the hearing and physically remove himself from the hearing room and avoid discussion of the case with fellow officials until a decision is made.

Chapter 02 Advisory Opinions

.01 Application

The advisory opinion provisions of this chapter apply to any person subject to the Code.

.02 Request and Timeliness

- A. Any person subject to the Code may request an advisory opinion. The Commission shall accept and process these advisory opinion requests in accordance with the procedures set forth in this chapter. All requests for advisory opinions shall be in writing, signed, and addressed to the Ethics Commission at the Town Office.
- B. Advisory opinions may be requested by an official or employee of the Town as to matters covered by the Code concerning another official or employee. These requests shall be accepted and processed by the Commission in accordance with this chapter.
- C. The Commission shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission.

.03 Relationship to Investigatory Process.

It shall be the general practice of the Commission to consider advisory opinion requests dealing with non-speculative fact situations and to render opinions having prospective application. If an advisory opinion request requires consideration of past behavior or events, the Commission may consider the request in the context of a preliminary inquiry.

Chapter 03 Complaints

.01 Application

- A. The complaints provision of this chapter applies to any person subject to the Code and against whom a complaint has been made.
- B. Any person or persons may lodge an ethics complaint with the Commission. The Commission shall accept and process the complaint in accordance with the procedures set forth in this chapter.

.02 General Provisions

- A. All Commission communications with regards to a complaint shall be marked “STRICTLY CONFIDENTIAL” and state “In accordance with Town of Kensington Ethics Commission procedures, this matter remains confidential” at the closing.
- B. The Commission will decide all matters by a majority vote.
- C. The Commission may adopt additional policies and procedures related to the advisory opinion request process.
- D. The Commission may refer a complaint to the town attorney, or other legal counsel if appropriate, for investigation and review.

.03 Complaint Process

The Complaint process consists of five stages:

- A. Complaint Origination: Acceptance of a written complaint;
- B. Complaint Review: Assessing the substance of a complaint and whether the complaint, if true, would constitute an ethics violation;
- C. Preliminary Inquiry: The process by which a matter may be considered by the Commission for preliminary review to determine whether the matter should be processed as a complaint;
- D. Investigation: Gathering and reviewing evidence that proves or disproves the complaint;
- E. Hearing: A formal process where evidence and testimony are given and from which a finding of an ethics violation may occur.

.04 Complaint Origination

- A. Complaints must be made in writing and addressed to the Town of Kensington Ethics Commission at the Town Office. Electronic scans of a signed complaint are also acceptable.
- B. Written complaints shall be signed by the complainant under oath or affirmation.
- C. The Commission shall establish and maintain a standardized Ethics Complaint Form. All complaints shall be submitted and filed using this form.
- D. Anonymous complaints and unsigned complaints will not be accepted and, if possible, will be returned with an administrative explanation. The Commission is under no obligation to respond to communications that are not directly related to a formal complaint or an advisory opinion.
- E. The Commission may initiate a complaint on its own if deemed necessary and should submit a formal complaint signed by the members voting in favor of the complaint.

.05 Complaint Review

If a complaint is properly filed, it will be reviewed by the Commission to determine if the alleged actions constitute an ethics violation.

.06 Preliminary Inquiry

The complaint will be reviewed to determine if the allegations are sufficient to warrant further proceedings. The Commission may collect and review information pertaining to a preliminary inquiry. The subject of the complaint shall be notified of the complaint and offered an opportunity to respond. The Commission may terminate a preliminary inquiry and dismiss the complaint if the Commission determines that the information presented does not support the filing of a complaint; or the complaint is unfounded, or if it finds that the facts alleged would not constitute a violation of the Code, and shall so notify the person who made the complaint.

.07 Investigation

- A. If the Commission does not dismiss the complaint, a formal investigation is commenced.
- B. If, after the investigation, the Commission finds that the subject of the complaint has not violated the Code, it shall dismiss the complaint and notify the person who made the complaint.
- C. If the Commission finds the complaint to be substantiated by evidence, then prior to scheduling a hearing, the Commission shall notify the subject of the complaint and invite a formal response. The subject of the complaint has a right to be represented by counsel.

- D. Notwithstanding the confidentiality provision, a copy of the complaint will be given to the subject of the complaint prior to a scheduled hearing on the complaint and the identity of the person making the complaint will be released to the subject of the complaint if the latter person makes such a request in writing.
- E. Decisions on complaints should be issued in a timely manner and without unnecessary delay.
- F. If the allegations in the complaint or the facts obtained during the Commission's investigation suggest that criminal conduct may have occurred, the Commission will refer the matter to the Office of the Attorney General, the State Prosecutor, or the State's Attorney for a determination as to whether a criminal investigation is warranted. Only after the referral for possible criminal prosecution is resolved will the Commission take action on the complaint.

.08 Hearings

- A. If the Commission concludes that sufficient evidence exists to determine that an ethics violation has occurred a closed hearing shall be conducted according to the Hearing Procedures documented in paragraph .09 of this chapter.
- B. The subject of the complaint has the right to be represented by counsel and to be heard at the hearing.
- C. If the Commission votes that no ethics violation has occurred, the complainant will be notified in writing with a copy to the subject of the complaint.
- D. If the Commission votes that an ethics violation has occurred, the Commission must take remedial action.
- E. A final determination of a violation resulting from the hearing shall include findings of facts and conclusions of law.

.09 Hearing Procedures

- A. **Convening the hearing.** The Commission's chair shall convene the hearing and shall briefly state the charges against the subject of the complaint.
- B. **Quorum.** Two members of the Commission shall constitute a quorum for the purpose of conducting a hearing and reaching a conclusion on the complaint.
- C. **Conducting the hearing.** The Commission's chair shall:
 - (1) Conduct a fair and impartial hearing;
 - (2) Take action to avoid unnecessary delay in the disposition of hearings;
 - (3) Maintain order;
 - (4) Grant postponements of the hearing or any other matter, for good cause, at the discretion of the chair.

- (5) Advise each witness that the hearing and all matters related to the complaint are to be kept confidential in accordance with Commission procedures and that the witness may not disclose to any other person any information about the complaint or the hearing or the names of the people involved.

D. Ex parte communications. After a notice of hearing has been sent to the subject of the complaint, none of the parties or their representatives may communicate on an *ex parte* basis with the Commission, on any substantive matter pertaining to the complaint. All substantive communications to the Commission pertaining to the complaint shall be sent to the Commission and shall be directed to the chair. Copies shall be sent to the subject of the complaint or his representative.

E. Offers of proof and receipt of evidence. The Commission's chair shall have the power to rule on offers of proof and receipt of evidence in accordance with the following general principles:

- (1) The hearing need not be conducted according to technical rules of evidence, and any relevant evidence, including hearsay of probative value, shall be admissible.
- (2) Oral testimony shall be taken only under oath or affirmation.
- (3) Evidence which possesses probative value commonly accepted by reasonable and prudent people shall be admitted. The rules of privilege shall be in effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded.
- (4) Documentary evidence may be received in the form of copies or excerpts, or through incorporation by reference. A copy of each document entered into evidence shall be made for each member of the Commission, the subject of the complaint, and the counsel to the Commission, unless the chair determines that producing that many copies would be cumbersome or wasteful. In that case, the Commission members and their counsel may share the number of copies that the chair shall have directed to have made. The copy given to the chair shall be the official copy and shall be so marked.
- (5) 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. Opening statements. The Commission's chair may make a brief opening statement followed by a brief opening statement given by or on behalf of the subject of the complaint.

G. Presentation of evidence:

- (1) The chair shall present the case to the Commission.
- (2) The subject of the complaint may be represented by an attorney, and may cross examine any witnesses presented by the chair.
- (3) After cross examination by the subject of the complaint, the Commission's chair may re-direct questions to the witness.
- (4) After the chair has presented his case before the Commission, the subject of the complaint may present any witnesses, or any other evidence.
- (5) The chair may cross examine any witness presented by the subject of the complaint.
- (6) After cross examination by the chair, the subject of the complaint may re-direct questions to the witness.

(7) Rebuttal evidence shall be admissible, but evidence raising new issues shall not be permitted upon rebuttal.

- H. **Closing statement.** At the conclusion of the presentation of all the evidence, the chair and the subject of the complaint may, in that order, present a brief closing statement.
- I. **Consideration of the evidence.** In its deliberations, the Commission may consider only evidence that is in the record. The record shall consist of only that evidence which was presented during the hearing, and shall not include any previously submitted reports. The Commission shall recess to deliberate in closed session once all evidence has been presented by all parties and witnesses have given testimony under oath. A vote will then be taken in the presence of the subject of the complaint and the hearing will conclude.
- J. **Hearing Records:** All evidence presented in the hearing and a recording of the hearing shall be kept in the Town Office for four years.

.10 Remedies

- A. Once the Commission votes that an ethics violation has occurred, remedies are pursued as warranted by the Code.
- B. The Commission shall develop a written account of the hearing and shall publish it.
- C. The Commission shall issue a cease and desist order to the subject of the complaint.
- D. If the Commission, by vote, finds the subject of the complaint continues to violate the Code in similar ways, it will publish another statement acknowledging the ongoing activity of the subject and will seek enforcement of the cease and desist order in court.
- E. Subsequent violations may result in a request by the Commission for the resignation of the subject of the complaint.
- F. A finding of a violation is public information and will be released publicly by the Commission.
- G. Public disclosures by the Commission shall minimally include:
 - (1) Town's official web site;
 - (2) Town's e-mail announcement list;
 - (3) Town Hall posting.