

# Pierce County Ethics Commission

## Administrative Procedures

(Promulgated pursuant to Pierce County Code Ch. 3.12)

Revised December 13, 2017

### **I. GENERAL RULES AND PROCEDURES**

#### **1.1 Description of Organization**

The Pierce County Ethics Commission ("Commission") was established in 1982 pursuant to the Pierce County Charter. The five members of the Commission ("Members") are appointed by the Pierce County Executive and confirmed by the Pierce County Council. The Commission appoints a Hearing Officer to investigate complaints alleging violation of the Ethics Code. The Commission receives legal advice and representation from the Office of the Prosecuting Attorney.

#### **1.2 Meetings**

1. Regular meetings of the Commission shall be held monthly at the Wheelock Branch of the Tacoma Public Library or at such other place as may be designated by the Chair of the Commission ("Chair").
2. Special meetings of the Board may be called by the Chair or any three members of the Board with 24 hours prior written notice, mailed, hand-delivered, faxed or e-mailed to all Commission members and posted on the official Commission website. The notice shall include the time and place of the meeting.
3. All meetings of the Commission shall be open meetings in accordance with the State Open Meetings Act, RCW 42.30.110.
4. The Chair, or designee, shall be present in-person at all regular and special meetings of the Commission
5. An agenda or standing agenda and summary minutes shall be produced for all meetings and after approval of the majority of Commission Members present, shall be posted electronically on the Commission website. These may be redacted by the Chair at the discretion of the Commission.

#### **1.3 Virtual Participation at Meetings**

1. The Commission may hold meetings in which, for some or all of the meeting, members other than the Chair are present and voting by telephone or other electronic conference media. Such attendance shall be designated "virtual" on the meeting minutes.
2. A virtual meeting shall be deemed to take place in the meeting place designated on the agenda, where the Chair or their designee is physically present, the total of members in-person and via conference line shall add to at least a quorum and where there shall be a telephone or other conferencing device on which the voices of all Commission members are clearly audible to everyone present in the meeting room and by all other Commission members on the conference line. Each Commission member who is on the conference line shall identify himself or herself before speaking, and shall notify the others if he or she is about to disconnect from the call.
3. A Commission member who is connected remotely on the conference line to the meeting place shall be considered to be actually present at that meeting for the period of

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time he or she is so connected and that presence shall count toward a quorum of the Commission for all purposes.

### **1.4 Quorum and Voting**

1. Three members of the Commission are required for a quorum.
2. Any matter coming before the Commission may be decided by majority vote of those members present and voting, provided that the quorum requirements are met.
3. Voting by Commission members shall be by voice vote.

### **1.5 Leadership of the Commission**

1. The Commission shall annually elect a Chairperson at its regular December meeting who will take office on January 1 of the following year or as soon thereafter as is practicable. If election of a Chair becomes necessary due to absence caused by the Chair's end of term, lack of reappointment for a second term or any other circumstances then the Commission shall elect a new Chair at its earliest convenience. In the case of an election outside the annual cycle, the annual December vote may be used as either a vote of confidence or for the election of a new Chair at the will of a majority of the Commission.
2. Commission members may request to be excused from a meeting for bona fide reasons by requesting same of the Chairperson in advance of the meeting. The Chair may excuse the absence during roll call unless an opposing motion from the Commission is passed.
3. Unexcused absences will be reflected in the meeting minutes. In the event any member of the Commission has three unexcused absences, as deemed by the Chair, within a one year period, they will be recorded in the minutes and the Commission shall report such fact to the Pierce County Executive along with the request that removal proceedings be initiated.

### **1.6 Public Records**

All records of the Commission are deemed to be available for public inspection except as specifically exempted by the Pierce County Code of Ethics ("Code") or Chapter 42.56 RCW, or other applicable law. The Pierce County Executive's Designee is the records custodian for the Commission's public records.

### **1.7 Commission Website**

The Commission shall post the following records on the Commission website.

1. Findings of violations of the Ethics Code and related Order containing the final disposition including any sanctions imposed.
2. Redacted Advisory Opinions
3. Other records the Commission determines would be beneficial for public availability.

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### **II. ENFORCEMENT PROCEDURES**

Enforcement of the Ethics Code by the Ethics Commission is through the complaint and investigation process set forth in Pierce County Code 3.12.080 *et. seq.*

As provided in the Ethics Code, a complaint alleging violation of the Code by any Pierce County employee or elected or appointed official ("Pierce County Personnel") may be filed with the Commission by submitting such complaint in writing on a completed *Complaint of An Alleged Ethical Violation Form* to the address indicated on the form. (PCC 3.12.080).

All complaints filed with the Commission shall be considered part of the Commission's investigative record and shall be public record and subject to public disclosure unless subject to exemption pursuant to the Code or state law.

### **III. CONDUCT OF HEARINGS FOLLOWING PRELIMINARY FINDING OF PROBABLE CAUSE**

#### **3.1 General**

After investigation, if the Hearing Officer finds probable cause to believe a violation of the Ethics Code has occurred and the Commission decides to retain the matter for its own formal investigation pursuant to PCC 3.12.080.F.2, such hearings shall be subject to the following procedures.

- A. Hearings conducted by the Commission shall be informal with technical rules of evidence not applying to the proceedings except the rules of privilege recognized by law. The respondent may be represented by legal counsel and/or by his or her bargaining representative and may present and cross-examine witnesses and give evidence before the Commission. The Commission may call witnesses on its own motion and compel the production of any documents or materials, including electronic, paper, or other evidence needed. To that end the Ethics Commission shall issue subpoenas and subpoenas *duces tecum* at the request of the Commission or the person complained against. All testimony shall be under oath administered by a member of the Commission. The Commission may adjourn its hearing from time to time in order to allow for the orderly presentation of evidence.
- B. Upon motion of respondent or upon its own motion, the Commission may temporarily stay or permanently suspend its investigation when, in its informed discretion, the manifest needs of justice and fairness will be better served thereby.
- C. Briefs, memoranda, documentation, and related materials the respondent submits for review by the Commission must be submitted to the Chair in writing no later than 10 business days prior to the scheduled hearing.
- D. Commission shall prepare an official record of the hearing, including all testimony which shall be recorded manually or by mechanical device, and exhibits; provided, the Commission shall not be required to transcribe such records unless an individual entitled to knowledge of the contents of the record presents a request accompanied by payment of the cost of transcription.
- E. A hearing shall include, but not be limited to, the following elements:
  - A brief introductory statement by the Chair;
  - Presentation of the Complaint and supporting evidence by the Hearing Officer;
  - Response to the charges and response to the Commission's preliminary findings by the respondent and presentation of supporting evidence if desired.

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For good cause shown, the order of presentation of evidence may be altered by the Chair.

- F. Hearings shall be open to the public, except the Commission may hold executive sessions pursuant to RCW 42.30.110(1)(f) and (2). Because the nature of such hearings are quasi-judicial, public participation is not allowed; only the parties, their representatives or witnesses called by the parties may address the Commission. Deliberations by the Commission will be conducted in closed executive session. Executive session is a “closed to the public” portion of the meeting.
- G. The final decision of the Commission shall be made by motion and vote in an open public meeting.

### **3.2 Oath**

All testimony before the Board shall be taken under oath or affirmation, administered by the presiding official.

### **3.3 Presiding Officials**

- 1. The Chair shall preside over all hearings. If the Chair is absent or disqualified, the remaining members shall appoint a member of the Commission who shall preside as the Hearing Chair.
- 2. Commission has the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of the proceedings, and to maintain order. The Chair or the appointee shall have all powers necessary to that end, including the following:
  - a. Administering oaths and affirmations;
  - b. Ruling on offers of proof and receiving evidence;
  - c. Regulating the course of hearings and the conduct of parties and their agents including the determination, either before or during the hearing, of the length of time appropriate for all hearing presentations;
  - d. Considering and ruling on all procedural and other motions appropriate to the proceedings;
  - e. Making and issuing written determinations and recommendations.
- 3. Any Commission member may, on his or her own initiative, recuse him or herself in the event of a conflict of interest, bias or prejudice, or the appearance thereof.
- 4. A complainant or respondent may file a request that a Commission member recuse him or herself, by stating that a fair and impartial hearing cannot be had by reason of the conflict of interest, bias, or prejudice of that Commission member. The request must set forth facts and reasons for the belief that the conflict of interest, bias, or prejudice exists. The request shall be filed not less than ten (10) business days before the date of the hearing. After consultation with the Commission members identified in the request and any others the Chair deems necessary, the Chair shall rule on the request prior to making any other ruling and prior to the hearing. Such ruling need only be communicated to all Commission members via email or telephone conversation at least 24 hours prior to commencement of the hearing.

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### **3.4 Time Limit on Oral Testimony**

1. The Chair may impose time limitations on oral testimony as necessary to expedite proceedings and avoid continuation of a hearing. The Chair will provide as much advance notice as is practicable when time limits are imposed.
2. This time limit may be announced at the beginning of the hearing and shall be enforced by the Chair in a fair and equitable manner. The time limit may be extended or limited at the discretion of the Chair for good cause shown.

### **3.5 Rights of Parties**

Every party shall have the right of due notice, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Since hearings are conducted by the Commission to receive evidence and testimony for their determination of violations of the Code, Cross-examination may be permitted by the Chair, but is not a required element of the hearing process.

At the close of a hearing, the Commission may allow for arguments or request summary briefs. If briefs are requested they must be filed with the Chair by noon on the fifth business day following the hearing. The Commission may accept and deliberate on these briefs in executive session.

### **3.6 Role of Complainant**

When a complaint has been filed 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. The complainant or any other person wishing to be heard in a hearing may request permission of the Commission at least 15 business in advance of such a hearing and the Commission may grant such person a reasonable opportunity to be heard on relevant issues. The Chair will not entertain a motion for expansion or restriction of the 15 day limitation absent extraordinary circumstances.

The Complainant or other person with relevant information may submit relevant written factual or legal statements to the Commission at least 15 business days prior to the Commission's hearing. The Chair shall rule on the admissibility of the statements prior to the hearing and shall, if admitted, provide copies of the information to the Respondent 10 business days prior to the Hearing and allow Respondent the opportunity to respond to them at the hearing.

These time frames shall not be expanded or restricted absent extraordinary circumstances.

### **3.7 Ex Parte Communications**

1. "Ex Parte Communications" for purposes of this section means a communication with the complainant, respondent, a witness, or any other person regarding a pending complaint when that communication takes place outside of a scheduled hearing.
2. Unless required for the disposition of administrative matters or unless necessary to procedural aspects of maintaining an orderly process, a Commission member shall not engage in ex parte communications.
3. A Commission member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all

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written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the Commission member received an ex parte communication.

4. If necessary to eliminate the effect of an ex parte communication received in violation of this section, a Commission member who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by order of the Chair.

### **3.8 Commission Determinations**

1. Within 30 calendar days after the conclusion of the hearing, the Commission shall, based upon a preponderance of the evidence, make and fully record, in its permanent records, findings of fact, conclusions of law, and an order containing the final disposition including where appropriate the civil sanction(s) imposed. A copy of the findings, conclusions and order shall, within a reasonable time thereafter, be served by certified mail to the complainant and to the respondent at addresses provided by both persons to the Commission or by personal service.
2. Any person found, by final written order of the Commission, to be in violation of this Code of Ethics may seek judicial review of the Commission's decision in the manner and form as provided by RCW 42.17A.755(6) (Laws of Washington, 2010 c204 s. 1003).
3. If no appeal is perfected within the 30 calendar days following the date of service on Respondent of the Commission's final order, and voluntary compliance with the order does not occur, the County Prosecutor shall petition in Superior Court for enforcement of the Commission's order in a manner patterned after that which is currently provided for enforcement of orders entered by the State Public Disclosure Commission in RCW 42.17A.760 (Laws of Washington, 2010 c204 s. 1003).

## **IV. ADVISORY OPINIONS**

### **4.1 Advisory Opinions**

The Commission is authorized to issues opinions in accordance with Pierce County Code 3.12.035.

- A. Any person subject to or affected by PCC [3.12.030](#) of this Code of Ethics may request a written advisory opinion. The request must be in writing and shall explain all the pertinent facts and circumstances. Advisory opinions are intended to assist the person seeking advice and to guide future conduct.
  1. The Commission shall consider requests for advisory opinions at the next regularly scheduled meeting following receipt of the request, or as soon thereafter as practicable.

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- B. The Commission retains the sole discretion to determine in which cases an advisory opinion will be issued. Factors the Commission may consider when determining in which cases an advisory opinion will be issued include, but are not limited to, whether the issue presented is one of general application, one that has been recently addressed by the Commission, or one that is likely to be the subject of controversy or dispute.
  - 1. If the Commission chooses to respond to a request for an advisory opinion, in whole or in part, the Chair may designate one or more members to draft the opinion.
  - 2. Draft opinions shall be presented to the Commission at the next regularly scheduled meeting or at a special meeting called by the Chair. The full Commission may adopt or modify the draft or may ask the drafter(s) to revise the draft to address specific concerns.
- C. If the Commission chooses not to issue an Advisory Opinion, the requestor shall be notified in writing within 30 days of its decision.
- D. No advisory opinion issued by the Commission shall be binding or limit the Commission's ability to conduct further proceedings in accordance with this Chapter.

## **V. MEETINGS AND PUBLIC PARTICIPATION**

### **5.1 Public Participation**

Regular meetings of the Commission shall be open to the public and will always have time designated on the agenda for Public Input. This shall be an opportunity for interested parties to address the Commission on issues of concern, problems or to provide feedback on issues related to the Code or its enforcement. It is an official "on the record" communication designed to provide Commission members with pertinent information to consider during their decision making processes. This oral process is not intended to either replace or append the formal written filing of a Complaint or its follow-up.

- 1. When the Chair announces the time for Public Input, those wishing to speak should raise their hands and once recognized by the Chair should come to the designated seat at the Commission table. The speaker will be asked to state their full name, relationship to the County, (eg. citizen, employee, staff person, business representative, elected official etc.), and the topic of their presentation or request.
- 2. A time limit of three (3) minutes will be announced by the Chair to each speaker prior to their participation. The Chair shall have the discretion to slightly extend this time limit.
- 3. It is best practice that the speaker's presentation be mailed in a letter to the Commission Chair prior to the meeting. This is particularly true for longer presentations reviewing a significant number of facts and better ensures such information can be organized and considered efficiently. The Chair may request a speaker to put their comments in writing to the Commission during or after their presentation in order to receive the Commission's full consideration.
- 4. Once the speaker has used the allotted time, the Commission members may ask questions and the speaker may respond. The Chair, at his or her discretion, may cut off the remaining time for any speaker.

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5. If a member of the public wishes to have an item scheduled on an agenda, it should be submitted in writing to the Chair no later than 20 business days prior to the meeting. Such submissions do not obligate the Chair or Commission to consider the item or to place it on the agenda.

Meetings of a quasi-judicial nature may be open to the public but, due to their nature, public participation is not allowed. Only the parties, their representatives, or witnesses called by the parties may address the Commission.

### **5.2 Executive Session**

Executive Session is a "closed to the public" portion of the meeting for discussion of confidential matters or for deliberations. No vote or final action will be taken in Executive Session. When the Chair convenes the Commission into Executive Session, the purpose and expected ending time of the session will be announced. If further time is required past this limit, a member of the Commission shall announce the extended time limitation to any waiting members of the public. The Chair has the discretion to extend Executive Session for a full and reasonable opportunity to discuss all pertinent matters. Only the Commission members, the Hearing Officer and/or Advisor and Legal Counsel and those invited by the Chair for assistance to the topic being discussed will be allowed to attend or participate in Executive Session. When the Commission returns from Executive Session, the regular meeting will be reconvened and any decisions related to the Executive Session topic(s) will be made in regular session where the Public may attend. Executive sessions may be called for discussion of the following topics or as otherwise allowed by state law:

1. Ethics complaints or charges brought against a public officer or employee
2. Qualifications of an applicant for membership on the Commission
3. Performance of a public employee where Probable Cause is being or has been determined
4. Commission enforcement actions which require the presence of a legal counsel
5. Current or potential litigation which requires the presence of a legal counsel
6. Legal risks of current or proposed actions, which requires the presence of legal counsel