



**BOSTON RESIDENCY COMPLIANCE COMMISSION
OFFICE OF HUMAN RESOURCES
Boston City Hall, Room 612
Boston, MA 02201
Michelle Wu, Mayor
(617) 635-3379 * Fax (617) 635-2950**

RULES OF PRACTICE AND PROCEDURE

(1) **Preamble.** These rules of practice and procedure are adopted and from time to time amended in accordance with the provisions of the City of Boston Code §5-5:3 (Ord. 1976 c.9, Ord. 1994 c.10, §§ 1-4) pertaining to the requirement that every person first employed by the City of Boston on or after July 1, 1976 shall be a resident of the City of Boston and in accordance with City of Boston Code §5-10 (Ord. 1994 c. 10 §5) pertaining to the creation of the Residency Compliance Commission to investigate and to make findings, relative to compliance with the Boston Residency Ordinance. These rules shall govern only proceedings commenced after the adoption of these rules, and shall be applicable to all hearings held pursuant to City of Boston Code §5-10.1. These rules shall be construed to secure a just and speedy determination of proceedings brought in connection with the Boston Residency Ordinance.

(2) **Definitions.** The following words in the rules, except as otherwise required by the context, shall have the following meaning:

Authorized Representative: An attorney, legal guardian or other person authorized by an Employee to represent him/her in any hearing before the Commission.

Commission: The Residency Compliance Commission, as established by City of

Boston Code §5-10.1 (Ord. 1994 c.10§5).

Compliance Unit: The Residency Compliance Unit as established by City of Boston Code 5-10.2 (Ord. 1994 c.10§5)

Employee: Any person receiving monies from the City of Boston or the Boston Water and Sewer Commission subject to withholding taxes by the State or Federal government, except principal employees and officers subject to the provisions of City of Boston Code §5-5.2.

Electronic Medium: Any device used to transmit information electronically, including but not limited to email, facsimile or audio recording.

Hearing: A proceeding before the Commission, the purpose of which is to investigate, determine and make findings relative to compliance with the Boston Residency Ordinance.

Hearing Officer: An individual authorized by law or designated by the Commission to conduct a Hearing.

Meeting: A gathering of a quorum of the Commission that is subject to the provisions of the Open Meeting Law, G.L. c. 39, §23B.

Motion: A request to the Commission or Hearing Officer to take a particular action.

Party: The specifically named Employee whose residency status is being determined, the Compliance Unit or any other person who is entitled by law to participate in a Hearing.

Residence: The actual principal residence of the individual, where he or she normally eats and sleeps and maintains his or her normal personal and household effects.

Service: Service by Electronic Medium is effective on the date and time of receipt. Service by United States mail or express mail service is effective upon placing the item to be served in the mail or delivering it to the authorized agent of the express mail service with postage prepaid and addressed to the last known address of the person. Personal service may be accomplished by either delivering the document to the person or by leaving the document at the person's last and usual place of abode. Whenever service is required or permitted to be made upon a Party represented by an attorney, the service shall be made upon the attorney unless service upon the Party is ordered by the Commission.

Time Periods: Unless otherwise specified, computation of any time period referred to in these rules of practice and procedure shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is included, unless it is a Saturday, Sunday, or legal holiday or any other day on which the City offices of the Compliance Unit are closed, when the period shall run until the end of the next following business day. When the time period is less than seven (7) days, intervening days when the City offices of the Compliance Unit are closed shall be excluded.

(3) Commencement of Proceedings. Upon receipt of information from the Compliance Unit concerning questionable claims of an Employee's residency, the Commission, upon a vote of at least four (4) of its members, may conduct a hearing to investigate and make findings concerning the Employee's compliance with the Boston Residency Ordinance. If less than four (4) members of the Commission vote to hold a hearing no hearing will be scheduled, subject to reconsideration of the matter by another vote of the Commission.

(4) Notice of Hearing. Upon a vote to conduct a hearing the Commission shall prepare a Notice of Hearing which shall be served on the Employee by his/her department head or designee, and which shall inform the Employee of the following:

- (a) that the Compliance Unit has determined that the Employee may not be in compliance with the Boston Residency Ordinance;
- (b) the date, time and place of hearing;
- (c) that the Employee has the right to be represented by an Authorized Representative;
- (d) that the hearing will be conducted in accordance with the provisions of these rules of practice and procedure;
- (e) that the Employee has the option of not attending the hearing nor of introducing any evidence on his/her behalf at the hearing.

(5) Service of Notice. The Notice of Hearing shall be served on the Employee by the Compliance Unit not less than fifteen (15) days before the scheduled hearing date. A notice of a continued hearing date shall be served not less than seven (7) days before the rescheduled hearing date.

(6) Administrative Leave. Upon receipt of the Notice of Hearing from the Commission for service on the Employee, the department head may place the Employee on leave with pay pending the determination by the Commission as to whether the Employee is in compliance with the Boston Residency Ordinance.

(7) Filings and Service.

- (a) Title.** Papers filed with the Commission shall state the docket number, if any,

and the name of the Party on whose behalf the filing is made and the name of the Employee whose residency is challenged.

(b) Signatures. Documents filed by Electronic Medium will be deemed to be signed by the sender, and must include the sender's email address, street address, and telephone number. Papers filed in paper form with the Commission shall be signed and dated by the Party on whose behalf the filing is made or by the Party's Authorized Representative, and shall state the address and telephone number of the Party signing the document. This signature constitutes a certification by the signer that he/she has read the document, knows the content thereof, and that all statements contained therein are true, that it is not interposed for delay and that, if the document has been signed by an Authorized Representative that he/she has full power and authority to do so.

(c) Manner of Filing. All documents may be filed by Electronic Medium. The Residency Compliance Unit must use all reasonable efforts to inform the general public of the appropriate email address where documents will be accepted, such as posting the email address on the Commission's website or by other means. Papers filed by Electronic Medium shall be deemed filed with the Commission on the date received during usual business hours. If a party lacks access to sufficient Electronic Medium, papers filed by U.S. mail shall be deemed filed on the date received during usual business hours. Papers received after usual business hours shall be deemed filed on the following business day.

(d) Service. Simultaneously with the filing of any and all papers with the Commission, the Party filing such papers shall serve a copy on the other Parties by Electronic Medium, by personal service, by United States mail or overnight express

carrier postage prepaid and properly addressed, or by service upon the Party's attorney. All papers filed with the Commission shall be accompanied by a certificate of service stating under the pains and penalties of perjury that copies have been sent, specifying the mode of service, date, the Party to whom sent, the sending Party's address, and address of service, and for documents served by Electronic Medium the date transmitted and the telephone number or electronic address used for transmittal. A certificate of service must bear the name of the person certifying that service has been made, but need not be signed or notarized. Failure to comply with this rule shall be grounds for refusal by the Commission to accept papers for filing.

(8) Discovery.

(a) *Request for Documents.* The Employee and/or the Compliance Unit may request another Party to produce or to make available for inspection, copying or photocopying any documents or tangible things, not privileged, not previously supplied, and which are in the possession, custody or control of the Party upon whom the request is made.

(1) *Procedure.* The request may be served upon the Compliance Unit or Employee after the Notice of Hearing has been received by the Employee and shall set forth the items to be inspected with reasonable particularity. Such inspection shall be made at the office of the Compliance Unit or such other place as the Commission shall designate. The Compliance Unit and/or Employee shall respond within a period of three (3) workdays, unless the Commission has established another time period.

(2) *Costs.* The Compliance Unit upon whom a request for production is

served shall be entitled to reasonable costs of reproducing documents and/or audio/visual recordings.

(b) *List of Proposed Exhibits.* Upon request of a Party, each Party shall prepare and serve upon the other Party a list of exhibits that a Party intends to introduce into evidence at the Hearing. The List of Proposed Exhibits must be received by the other Party not less than three (3) working days before the Hearing. Failure to comply with this rule may be grounds for refusal by the Commission or Hearing Officer to admit the proposed exhibit into evidence, unless the Commission or Hearing Officer finds good cause for non-compliance of this rule.

(c) *List of Proposed Witnesses.* Upon the request of a Party, each Party shall prepare and serve upon the other Party a list of witnesses that each Party intends to call at the Hearing. The List of Witnesses shall include a statement of the anticipated testimony of each proposed witness and an estimate of the anticipated length of time of each witness' testimony. The List of Proposed Witnesses must be received by the other Party not less than three (3) days before the Hearing. Failure to comply with this Rule may be grounds for refusal by the Commission or Hearing Officer to admit into evidence the testimony of the proposed witness, unless the Commission or Hearings Officer finds good cause for non-compliance with the Rule.

(d) *No Other Discovery.* No other forms of discovery may be conducted by the parties, unless the Commission otherwise allows, upon a showing of good cause by a Party.

(9) Hearings.

(a) **Hearing Officer.** Any number of the membership of the Commission may be present at a hearing.

(1) **Appointment.** The Chair of the Commission may appoint from within or without its membership a Hearing Officer to conduct a Hearing. No person who has a direct or indirect interest, personal involvement, conflict or bias with regard to any Party shall conduct a Hearing.

(2) **Duties and Powers at Hearings.** A Hearing Officer shall have the duty to conduct a fair Hearing to ensure that rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence, including examining witnesses; to exclude irrelevant or unduly repetitious evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; to direct that a fair, independent and impartial decision be made based upon the issues and evidence presented at the Hearing and in accordance with the law; and to reconvene the Hearing with notice to the parties at any time prior to the decision being issued.

(b) **When and Where Held.** Hearings will be held at a time and location designated by the Chair of the Commission, with notice to all members of the Commission.

(1) **Accommodation.** If any Party has a disability or is otherwise unable to appear at the designated site for reasons constituting good cause, that Party may request that the Hearing be held at another convenient location, which request may be granted by the Hearing Officer.

(2) **Schedule Change.** Upon request made by a Party and for good cause shown, the Hearing Officer may, with notice to the Chair and the members of the

Commission, advance a case for Hearing or may postpone a scheduled Hearing, provided a postponed Hearing is rescheduled for a date that is no more than thirty (30) days from the original scheduled date except for good cause shown.

(c) ***Conduct of Hearings.***

(1) **General.** Hearings shall be as informal as may be reasonable and appropriate under the circumstances.

(2) **Decorum.** All Parties, Authorized Representatives, witnesses and other persons present at a hearing shall conduct themselves in manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Commission or Hearing Officer may take appropriate action.

(d) ***Presentation.***

(1) **Rights of Parties.** All Parties shall have the right to present evidence, cross-examine, make observation, bring motions and make oral arguments.

Cross-examination shall occur immediately after any witness' testimony has been received. Whenever appropriate, the Hearing Officer shall permit redirect and recross-examination.

(2) **First Presentation.** The Compliance Unit shall have the right to present its position through evidence and testimony first.

(3) **Second Presentation.** The Employee shall have the right to present his/her position upon completion of the Compliance Unit's case.

(e) ***Witnesses and Evidence.***

(1) **Oath.** A witness' testimony shall be under oath or affirmation by the

Hearing Officer.

(2) Evidence. The Commission need not observe the rules of evidence observed by courts. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Weight to be given evidence presented will be within the discretion of the Commission or Hearing Officer.

(3) Offer of Proof. An offer of proof made in connection with an objection taken to a ruling of the Hearing Officer rejecting or excluding proffered testimony shall consist of a statement of the substance of the evidence which the Party contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(f) Evidence Included. All evidence, including any records, investigative reports, documents, stipulations or other tangible things which is to be relied upon in making a Decision, must be offered and made part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

(g) Subpoenas. In conducting Hearings, the Commission or Hearing Officer may issue, vacate, modify and enforce subpoenas requiring the attendance and testimony of witness and/or the production of documents or other evidence in accordance with the following provisions:

(1) Issuance. A Party may have a subpoena issued by a Notary Public or

Justice of the Peace in the name of the Commission. Every subpoena shall show on its face the name and address of the requesting Party. Notice shall not be required for issuance of a subpoena. The Commission may prescribe the form, but insofar as practicable, such form shall adhere to the form used in civil cases before the courts.

(2) Motion to Vacate or Modify. Any person to whom a subpoena is directed may, within a reasonable period, file in writing a motion that the subpoena be vacated or modified. The Commission or Hearing Officer shall give prompt notice to the Party who requested issuance of the subpoena. The Commission or Hearing Officer may grant such motion in whole, or in part, upon a finding that the testimony, or the evidence, whose production is requested, does not relate with reasonable directness to any matter in question or upon a finding that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

(3) Costs. Witnesses summoned by the Commission or Hearing Officer shall be paid the same fees for attendance and travel as in civil cases before the courts. The requesting Party shall pay all costs involved with the subpoena, including fees for attendance and travel.

(h) *The Hearing.*

(1) The Record. All documents and other evidence offered or taken shall become part of the record. The record shall further contain tape or other

Electronic Medium recordings, or transcripts, of the proceeding and all exhibits and documents introduced at the hearing. The record shall be the exclusive source of the decision and shall at all times be open for inspection by any Party or his/her Authorized Representative to the Hearing during reasonable business hours.

(2) Recording and Transcripts. Testimony and argument at the Hearing shall be recorded electronically. The Employee, upon motion, may order a stenographer to transcribe the proceedings, at his/her own expense. In such event, a stenographic record shall be provided to the Commission at no expense to the Commission, and upon such other terms as the Commission or Hearing Officer shall order.

(i) *Proposed Findings of Fact.* At the close of the evidence, the Commission or Hearing Officer may request proposed findings of fact from either Party or both Parties and fix the terms for the filing of the proposed findings.

(j) *Continuances.* A Hearing may be continued at the discretion of the Commission or a Hearing Officer. All Parties and/or their authorized representatives shall be notified as to the time, date, and place of the continued Hearing.

(k) *Decisions.*

(1) *General.* After a review of the record, a majority of the members of the Commission present at a hearing or meeting, but not less than 4 (four), must decide that an Employee is not in compliance with the residency ordinance in order for the Commission to instruct the department head to remove the Employee from the payroll. The Commission shall render a written decision as promptly as

administratively feasible and shall send it to the Parties.

(2) According to Law. The decision must be rendered in accordance with the law. The law includes the State Constitution and United States Constitution, statutes, and duly promulgated regulations as well as decisions of the State and Federal Courts.

(3) Preponderance of the Evidence. The decision shall be based upon a fair preponderance of the evidence.

(4) Civil Service. In appropriate cases, decisions of the Commission shall comply with the notice and hearing provisions of the Massachusetts Civil Service Law, G.L. c. 31, §§41–45.

Effective as of Date of Last Amendment and Adoption: September 9, 2021