

ORDINANCE NO. 11-87

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN Brooks Compton ON THE
18th DAY OF May, 1987.

AN ORDINANCE ENACTING INVESTIGATIVE PROCEDURES

Whereas, pursuant to Sections 4.08 and 4.11 of the Centerville Charter the Council is required to pass an Ordinance relating to Council investigations; and

Whereas, the Centerville City Council wishes to comply with its Charter obligations;

NOW THEREFORE

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1. Chapter 127 of the Centerville Municipal Code is hereby adopted as follows:

127.01 DEFINITIONS

For the purposes of Chapter 127 the following words shall have the meaning given herein:

(a) "Complaint" means a formal written complaint filed with the City Manager in the form of an affidavit made on personal knowledge alleging misfeasance, malfeasance, or nonfeasance by a respondent in conduct of the municipal affairs or administration of the City.

(b) "Complainant" means any person who has filed such complaint.

(c) "Respondent" means any person, persons, municipal departments, divisions, boards, or commissions against whom a complaint has been filed.

127.02 COMPLAINT FOR INVESTIGATION

(a) A complaint filed with the City Manager shall be made under oath and shall set forth the following:

(1) A detailed description of the conduct alleged to constitute misfeasance, malfeasance, or nonfeasance including a reference to any law, ordinance, or regulations allegedly violated.

(2) The names of all individuals believed to have information concerning the alleged violation.

(b) Complaints shall be numbered consecutively and recorded under the complaint number in a permanent ledger. All subsequent action taken on each complaint shall also be recorded in that ledger. The ledger shall be kept by the City Manager.

127.03 PRESENTATION OF COMPLAINT TO COUNCIL

(a) The City Manager shall inform Council of the filing of a complaint and shall present the complaint at an executive session of Council pursuant to Ohio Revised Code Section 121.22(G)(1). Such executive session shall be held during the first Council meeting subsequent to receipt of a complaint by the Manager.

(b) (1) An investigation of any complaint so presented shall commence only upon an affirmative vote by at least four members of Council that the facts alleged in the Complaint, if true, constitute misfeasance, malfeasance or nonfeasance by the respondent in conduct of the municipal affairs or administration. Any such vote of Council shall be taken in a public meeting immediately following the executive session. If less than a majority of Council vote to commence an investigation, or if no vote is taken at that meeting, the complaint shall be deemed dismissed.

(2) If at least four members of Council vote to commence an investigation, a copy of the Complaint together with notice that an investigation is in process shall be provided to respondent within three (3) business days from said vote. Such service shall be upon respondent personally or by certified mail, return receipt requested, delivery restricted to addressee only, at his or her last known address on the records of the City.

(c) Neither the name of any respondent nor the allegations in the Complaint shall be referred to or discussed in public meeting; rather, the Complaint shall be identified only by its assigned number. This subsection shall prevail over any contrary provisions of the Council rules or any other ordinance of the City.

(d) Since Ohio Revised Code Section 121.22(G)(1) allows the investigation of complaints against public employees and officials and the consideration of dismissal or discipline of such employees and officials to be conducted in private, executive sessions, all records, proceedings, and documents relating to Complaints and any hearings thereon shall remain

confidential until the investigation is terminated or dismissed and as provided in Section 127.04(e) and 127.06(c).

127.04 INVESTIGATORY PROCEDURES

(a) The City Manager shall investigate the complaint, gathering all available evidence both supporting and refuting the complaint.

(b) The investigation by the City Manager shall be completed within six (6) weeks after the vote by Council to commence such investigation. An extension of this time may be granted by Council for good cause shown.

(c) The City Manager shall prepare a written report of the findings of the investigation. The report shall include a recommendation as to whether the investigation should be continued or the complaint be dismissed. The written report shall be presented and discussed at an executive session of the Council held during the first Council meeting subsequent to the completion of the investigation.

(d)

(1) If, in a public meeting immediately following the executive session, at least four members of Council vote that there is probable cause to believe the allegations occurred, the City Manager shall schedule an executive session hearing on the matter. If at least four members of Council do not vote that there is probable cause, or if no vote is taken at that meeting, the Complaint shall be deemed dismissed.

(2) The provisions of Section 127.03(c) shall apply to said public meeting.

(3) If the Complaint is not dismissed, written notice of the date, time, and place of the hearing thereon shall be served upon the respondent and Complainant within seven (7) working days of said public meeting, personally or by certified mail at the last known address of each on the records of the City, return receipt requested, delivery restricted to addressee only.

Such notice shall also include a statement of the alleged violation and shall inform the respondent and the Complainant of his or her right, and of the right of the City Manager, to be represented by Counsel, to examine evidence against him or her, to produce evidence, to call and subpoena

witnesses, to confront his or her accusers and to cross-examine witnesses.

(e) If the Complaint is dismissed, the Council and City Manager shall make a public report of the findings if requested to do so by any respondent. All evidence and other matters referred to in 127.03(d) shall remain confidential, however, unless a respondent specifically requests that it also be made public.

(f) If the City Manager is named as a respondent in any complaint or if Council finds that the City Manager has a personal interest in the results of any investigation, Council may remove the City Manager from all duties under this Chapter and appoint an independent investigator who shall assume all the duties and powers given the City Manager hereunder.

127.05 HEARING

(a) A hearing shall be set by the City Manager to be held no less than thirty (30) days nor more than forty-five (45) days after the Council meeting at which the investigation report is given and probable cause to proceed is found.

(b) The City Manager may grant continuances at the request of the respondent, the Complainant, the Council, or upon his or her own volition, if the interest of justice so requires. Such requests must be in writing and filed with the City Manager no later than seven (7) days prior to the scheduled hearing. Such request shall contain a brief written statement setting forth the reasons for the requested continuance. Each continuance granted by the City Manager shall be to a date certain, not to exceed forty-five (45) days after the previously scheduled hearing.

(c) All hearings under Section 127.05 shall be held in private executive session pursuant to Ohio Revised Code Section 121.22 unless the respondent requests a public hearing in which case the hearing shall be held in public.

(d) A record of all hearings shall be made, and the parties shall have the rights described in 127.04(d) above.

(e) The Council may appoint one of its members as presiding officer or may appoint as such officer any attorney at law licensed to practice in the State of Ohio whether or not that attorney is a member of Council. The activities of such a non-Council member presiding officer shall be limited to the administration of the hearing and decisions regarding

the procedure at the hearing. The City Manager shall present the evidence against the respondent or may delegate this task to an attorney named by the Manager for this task to the Complainant.

(f) All testimony given at any such hearing, whether public or in executive session, shall be taken under oath. The presiding officer shall conduct the hearing so as to afford due process of law to the respondent and the complaining party.

(g) Council shall serve as the hearing body in all investigations. Its decisions shall be final and there shall be no administrative appeal from any decision or recommendation of Council made in such capacity.

127.06 FINDING OF VIOLATION; DISMISSAL OF COMPLAINT

(a) If, upon evidence given at the hearing, at least four members of Council find by a preponderance of the evidence that the facts alleged in the complaint and/or in the investigation report are true and that such facts constitute misfeasance, malfeasance, or nonfeasance in the conduct of municipal affairs or administration, the Council shall state its findings of a violation and make a recommendation of appropriate action.

(b) If Council does not so find a violation by a preponderance of the evidence, the complaint shall be dismissed.

(c) If a complaint is dismissed after a hearing under 127.05, Council and City Manager shall make public the report of its findings if requested to do so by any respondent. All evidence, other matters referred to in 127.03(d), and the transcript of the hearing shall remain confidential, however, unless a respondent specifically requests that it also be made public.

127.07 POWERS OF INVESTIGATION

For the purpose of investigation and hearings hereunder, the Council shall be vested with the following rights, powers, and prerogatives, all of which may be exercised by the presiding officer appointed by Council:

(a) To compel the attendance of witnesses and the production of books, papers, and other evidence, and issue subpoenas or attachments therefore. No officer or employee of the City shall by virtue of such office or employment be exempt from being called as a witness. The Council, through its presiding officer, shall exercise the foregoing powers on behalf of and upon request of the City Manager and of any respondent.

(b) To appoint any police officer or other person to serve subpoenas for witnesses.

(c) To appoint any police officer or other person to maintain order and decorum at any hearing held by the Council.

(d) To appoint such clerks, stenographers, and other assistant as may be necessary in order to carry on the investigation at hand.

(e) To administer oaths.

127.08 WITNESS FEES

Each witness not an officer or employee of the City subpoenaed hereunder shall be entitled to receive a fee of \$12.00 for each day in attendance or \$6.00 for each half day in attendance at any hearing or deposition.

127.09 COMPENSATION OF AGENTS OF INVESTIGATING UNIT

The compensation to be paid for the service of subpoenas or the performance of any other acts or duties authorized or specified by this chapter shall be fixed by the City Manager on the approval of the City Council, except that no compensation in addition to his regular compensation shall be so allowed to any duly elected or appointed official or to any employee in the classified or unclassified service of the City.

127.10 WITNESS SHALL TESTIFY

No witness shall fail or refuse to testify on any matter under investigation of which he has knowledge, but such testimony shall not be used against him in any criminal prosecution except for perjury.

127.11 EXPENSE OF INVESTIGATION


All expenses of any investigation, including fees, compensation for services rendered, and all other expenses necessary and incidental thereto shall be vouchered in the usual manner then in use in the City and shall be paid by the City, on approval by Council, out of funds appropriated for that purpose by the Council.

127.99 PENALTY

Any person who fails to comply with a subpoena issued pursuant to the provisions of Section 127.07(a) after having been personally served therewith, and any person who violates the provisions of Section 127.10, shall be guilty of a misdemeanor of the first degree.

Section 2. This Ordinance shall be effective from and after the earliest date allowed by law.

PASSED this 18th day of May, 1987.


Mayor of the City of
Centerville, Ohio

ATTEST:


Clerk of the Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 11-87 passed by the Council of the City of Centerville, Ohio on 18th day of May, 1987.


Clerk of Council

ALTICK & CORWIN

Approved as to form, consistency with existing ordinances, the charter & constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney