GROUNDS FOR DISMISSING COMPLAINTS

After carefully evaluating the evidence in accordance with these guidelines, the complaint or selected allegations of the complaint may be dismissed during the intake investigation screening process if it is determined that:

1. The complaint relates solely to the legitimacy of a criminal arrest or traffic citation. This applies to complaints that are subject to a judicial review which will explicitly or implicitly require a finding or ruling on the specific conduct that is the subject of the complaint. Generally the FPC will defer to the court on the legal issues and merits of the charges. The FPC may re-open a dismissed complaint if the judge, one of the attorneys, or the complainant renews the misconduct allegation after the judicial proceedings are finished and the allegation is supported by objective evidence.

2. Filing delay. It is desirable that complaints be filed soon after the incident. Memories are fresher, witnesses are easier to locate, and physical evidence may still be recoverable. If misconduct was committed, it is in the best interests of the department, the public, and the employee(s) to take disciplinary or corrective action as soon as possible. If misconduct was not committed, employees are entitled to swift exoneration. The FPC may waive the time requirement at any time for good cause. "Good cause" for a filing delay may include a defense attorney’s advice to the complainant to wait until criminal charges are resolved. Good cause may also include a language barrier, a physical or mental disability, confusion about how to file a complaint, a reasonable fear of retaliation, or a reasonable delay in the complainant’s discovery of the misconduct.
   a. Except for good cause, complaints of minor misconduct involving discourtesy, disparate treatment, department procedures, or department services should be filed within 60 days of the incident.
   b. Except for good cause, complaints of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rule violations should be filed within 6 months of the incident.
   c. There is no specific deadline for complaints alleging serious criminal conduct or corruption. Such complaints will be evaluated on their merits with due consideration for the quantity and quality of available evidence.

3. The complaint is trivial, frivolous, or not made in good faith.
   a. A complaint may be dismissed if it is determined that the allegations are intentionally and materially false.
   b. "Trivial" or "frivolous" complaints allege minor technical violations of procedural rules which have negligible adverse effects on the public or the credibility of the department. They are so trivial as to fall below the threshold for a minor complaint.
   c. A complaint is not "in good faith" if it is intentionally and materially inaccurate, misstated, or exaggerated. A complaint will not be dismissed solely because it is not made in good faith, but the complainant’s apparent bad faith may be considered for its effect on the credibility of the entire complaint.
4. *Grossly illogical or improbable.* Complaints that are grossly illogical or improbable may be dismissed during the intake investigation. Care and compassion is exercised with a complainant who may have a mental illness. The presence of a mental illness does not necessarily make a person less able to perceive, to recall, or to report. A complaint may be valid even if a complainant has difficulty communicating the essential facts. The FPC assumes that a person with a developmental disability, a neurological disorder, or a physical impairment that makes it difficult to communicate is as credible and reliable as any other person.

5. *Third-party complaints.* The FPC normally requires that a person have a reasonably direct relationship to an incident in order to proceed with a complaint. Complainants are considered to have a direct relationship if they were directly affected by the alleged misconduct, witnessed the alleged misconduct, or have special, professional, or organizational knowledge about the alleged misconduct, e.g., a lawyer, a judge, or an FPC employee. The purpose for requiring a reasonably direct relationship is to help the FPC respond effectively to complaints from persons who have the greatest interest in the outcome and who have the most reliable information about an incident. It is not intended to screen out otherwise reliable complaints that deserve investigation. Subject to the exceptions described below, third-party complaints may be dismissed. Third-party sources are persons who heard about an incident from someone else but did not witness the incident and do not have direct, special, professional, or organizational knowledge of the facts. Third-party complaints will not be dismissed if there is a reasonable explanation why a person with standing has not filed a complaint, e.g., the person who was directly affected is a minor child, is elderly, disabled or deceased, cannot communicate easily in English, is not a citizen, is wanted on criminal charges, or has been threatened.

6. *Complaints about repeatedly reviewed categories of department activity.* The FPC occasionally receives allegations about some categories of department action that in the past have been repeatedly reviewed, investigated, and subsequently dismissed by the FPC. The discretion to summarily resolve a category of complaints should be exercised carefully with due regard to the nature and seriousness of the complaints.

7. *History of unfounded complaints.* Occasionally, a single individual repeatedly files nonmeritorious, unfounded, or duplicative complaints, diverting time, attention, and resources from other complaints. The Director may authorize that repeated complaints from specifically-named individuals receive special handling. Special handling may mean that designated persons are required to file their complaints in person or that they not be interviewed as part of the intake investigation. The discretion to specially handle complaints from named individuals is exercised with great care and only with a supporting record. This procedure may be used if a person:
   a. Has a history of filing unverifiable, non-credible, or non-meritorious complaints and was cautioned that the filing of similar complaints in the future may result in special handling or other specified actions; or
   b. Previously filed a demonstrably false complaint.
8. **Significant imbalance between workload and resources.** If the workload at the FPC significantly exceeds available resources and the current screening criteria are insufficient to re-balance the caseload with existing resources, the Director may authorize in writing special criteria to focus available resources on the most serious and most provable allegations. The Director will notify the Common Council and the FPC citizen board in writing of the nature and scope of the workload problem, the actions taken to control the workload, and recommendations for a solution. This procedure is an extraordinary remedy to be invoked only if the FPC faces a significant long-term shortage of staff or other resources which cannot be corrected by other internal measures.

9. **The complainant withdraws the complaint.** A complaint may be dismissed if the complainant requests that it be withdrawn or explicitly agrees that his or her concern has been resolved and that the FPC need not take any further action on the complaint.

10. **The complainant fails to complete the necessary complaint steps.** The complaint may be dismissed if the complainant cannot be located, does not respond to requests for information, or fails to complete other necessary steps in the complaint process. In these cases, the FPC will demonstrate a good faith effort to communicate with the complainant. The FPC staff takes care to locate and communicate with complainants and makes significant efforts to assist them throughout the process.

11. **The employee is no longer employed by the department.** The FPC lacks jurisdiction to discipline persons it no longer employs. A complaint may be dismissed if the employee resigns, retires, or will no longer be employed by the department by the time the investigation and discipline process can be completed. However, in cases of serious misconduct by former employees, the FPC may:
   a. Conduct an investigation and place the findings in the employee’s personnel file; or
   b. Review the actions of the employee’s supervisors; or
   c. Review the department’s policies and training curriculum.
   The FPC may forward complaints of less serious misconduct to the department for information.

12. **The identity of the employee cannot be determined.** Occasionally a complaint is received in which there is no reasonable means of identifying the employee who is alleged to have committed misconduct. Depending on the nature of the complaint, dismissal may be prudent and proper to conserve limited public resources. A complaint may be dismissed if, after an exhaustive and good faith effort, the investigation cannot identify the involved employee and also concludes that it would be unlikely that a continued investigation would be able to identify the employee. Even if the complaint is dismissed, it may be forwarded to the department for information.

13. **The complaint was previously adjudicated by the FPC.** Complaints or allegations that were previously reviewed and decided by the FPC may be dismissed. This circumstance may arise if a second person files a complaint about an incident that was previously resolved. It might also arise if the same complainant files a second complaint about a matter that was previously decided.
14. *Other jurisdiction.* Complaints over which the FPC has no jurisdiction will be dismissed, including complaints against persons who were not employed or supervised by the FPC at the time the alleged misconduct was committed. If possible, the FPC will refer the complainant to the proper department or agency.

15. *Complaints about a department policy generally, not related to the actions of a specific employee during a specific incident.* A complaint that a department policy violates the law or is simply a poor policy may be dismissed provided that it does not include an allegation of employee misconduct in a specific incident. It may also be dismissed and referred to the FPC citizen board or department for information, action, or response to the complainant.

16. *Complaints alleging conduct that clearly does not violate a law, rule, policy, or procedure.* A complaint may be dismissed during the intake investigation if the facts are undisputed and it is clear that the alleged conduct does not violate a law, rule, policy, or procedure.

17. *Complaints seeking reimbursement or money damages.* The FPC cannot award money damages. A complaint may be dismissed if its only claim is to seek a monetary award or reimbursement for damages and does not include an allegation of employee misconduct.

18. *Dismissal based on the evidence.* After evaluating the evidence in accordance with these guidelines, the complaint may be dismissed if it is determined that:
   a. It is more likely than not that no misconduct was committed; and
   b. It is unlikely that additional investigation, including FPC citizen board trial, would reach a different conclusion.