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# Item 8

## Action

### *Enforcement Regulations*

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**Executive Summary:** This item recommends improvements to the regulations that govern Ethics Commission enforcement matters.

**Recommended Action:** Adopt the regulations in Attachment A.

**Presenter:** Arman David Tarzi, Director of Policy  
Sergio Perez, Director of Enforcement

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# *Enforcement Regulations*

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## **A. INTRODUCTION**

City law provides criminal, civil, and administrative remedies for violations of laws within the Ethics Commission’s jurisdiction. *See, e.g.*, Los Angeles City Charter (Charter) §§ 470(o), 803(u); Los Angeles Municipal Code (LAMC) §§ 48.09, 49.5.16, 49.7.38. The Ethics Commission is required to conduct investigations of and enforce against violations of state and City laws relating to campaign financing, lobbying, conflicts of interests, and governmental ethics. Charter § 706.

Regulations to guide the Ethics Commission in its investigative and enforcement duties and to provide adequate due process for persons subject to administrative enforcement were first adopted in 1992. *See* Los Angeles Administrative Code (LAAC) §§ 24.21 *et seq.* The regulations govern the entire administrative enforcement process, from complaints to probable cause determinations to administrative hearings.

As with all of the laws within our jurisdiction, the enforcement regulations are periodically reviewed to evaluate whether there are improvements that should be made. The regulations were last amended in 2014, and this item recommends both technical and substantive changes based on our experiences since then.

The substantive changes are explained in Section C below, and a quick guide is provided in Attachment A. A clean version of the recommended regulations is provided in Attachment B, with a redline version in Attachment C.

## **B. AUTHORITY AND PROCESS**

The Ethics Commission is authorized to “adopt, amend and rescind rules and regulations ... to carry out the purposes and provisions of the Charter and ordinances of the City relating to campaign finance, conflicts of interest, lobbying, and governmental ethics and to govern procedures of the commission.” Charter § 703(a). The rules and regulations adopted by the Ethics Commission must be approved by the City Council, but the City Council cannot modify them. *Id.*

A specific time line applies to City Council action on Ethics Commission regulations. It must act to approve or disapprove the regulations within 60 days after the Ethics Commission adopts them. Charter § 703(b). If the City Council does not disapprove the regulations within that time frame, the regulations are sent to the Mayor for approval or veto. If the Mayor does not veto them, or the City Council overrides a veto, the regulations become law. *Id.* A violation of an Ethics Commission rule or regulation is subject to applicable penalties and remedies. *Id.*

## C. RECOMMENDATIONS

A number of the changes that we recommend are technical. They help to ensure consistent formatting and language, and they also re-number some of the sections to enhance organization. We also recommend substantive changes, which are identified below. They are addressed in the order in which they appear in the regulations.

### 1. Subpoena Objections

The Ethics Commission may issue subpoenas during the course of an investigation. Charter § 706(a)(3); LAAC § 24.24. The current regulations allow a person to file a written objection to a subpoena at least five calendar days before the date the person is required to attend or produce records. LAAC § 24.24(f)(1). The Executive Director is then required to rule on objections at least one calendar day before the attendance or production date. LAAC § 24.24(f)(2).

We recommend adjusting the objection deadline to ten days before the attendance or production date. *See* proposed LAAC § 24.24(f)(1); Attachment A, p. 2; Attachment B, p. 3. Additionally, we recommend adjusting the deadline for a ruling on an objection to three calendar days before the attendance or production date. *See* proposed LAAC § 24.24(f)(2); Attachment A, p. 2; Attachment B, p. 3. These adjustments will help prevent scheduling conflicts by creating more realistic time frames and will ensure that the respondent has sufficient notice of a ruling and, if an objection is denied, sufficient time to produce records.

### 2. Statute of Limitations

In keeping with Charter § 470(o)(2), the current regulations specify a four-year statute of limitations for enforcement actions. LAAC § 24.26(a)(2). The four-year period is tolled if the respondent engages in concealment or deceit or fails to comply with a subpoena. LAAC § 24.26(a)(2)(A)-(B).

We recommend expanding this provision to also toll the statute of limitations while a respondent is in negotiations with the Director of Enforcement regarding a stipulated order. *See* proposed LAAC § 24.26(2)(C); Attachment A, p. 2; Attachment B, p. 4. The tolling would begin when the Director of Enforcement initiates negotiations and would last until the date the resulting stipulated order is approved or the date that one of the parties gives the other a written determination that further negotiations will be unproductive. *Id.*

Without this additional tolling, negotiations that begin near the end of the statute of limitations can be unnecessarily hurried. In those circumstances, the staff is required to initiate an enforcement action to preserve a case, even when negotiations are moving along productively. This puts an unnecessary strain on staff resources, and it can also appear to respondents as a coercive or manipulative action on the part of the staff, which can make it more difficult to reach a settlement. We believe that adding the recommended tolling language will help to foster more objective and productive negotiations.

### 3. Statement of No Violation

When the members of the Ethics Commission determine that no violation has occurred, the Charter requires publication of a statement to that effect. Charter § 706(c)(3). We recommend adding a similar provision to the regulations. *See* proposed LAAC § 24.27(g)(4); Attachment A, p. 1; Attachment B, p. 11. This will enhance notice by ensuring that all related procedural requirements can be found in one body of law. It will also help to ensure the consistent and equitable handling of these situations by specifying a template form of the statement. *Id.*

### 4. Penalties

#### *a. Imposing Penalties*

The authority to determine whether violations have occurred and, if so, to impose remedies and penalties lies solely with the members of the Ethics Commission. Charter § 706(c); LAAC §§ 24.27(f)(2)(A), 24.27(f)(3)(B). However, when an administrative hearing is required, the members of the Ethics Commission may select an individual hearing officer to conduct the hearing and to make a recommendation regarding whether a violation occurred. LAAC §§ 24.27(a)(1), 24.27(f)(2)(B). The regulations are currently unclear regarding an individual hearing officer's role in shaping remedies and penalties (*see, e.g.,* LAAC §§ 24.27(f)(2)(B)(i), 24.27(f)(3)(A)), and we recommend clarifying that role.

We recommend specifying a clear process in which an individual hearing officer may weigh in on findings regarding violations but leaves remedies and penalties to the members of the Ethics Commission. *See* proposed LAAC § 24.27(h)(1); Attachment A, p. 1; Attachment B, p. 11. To ensure adequate due process for those subject to a penalty, we recommend that the parties be able to submit arguments and evidence regarding penalties in writing and verbally. *See* proposed LAAC § 24.27(h)(1)(B). This mirrors the process for party arguments regarding whether a violation occurred. *See* LAAC § 24.27(d)(1), 24.27(f)(1)(E).

We believe that this process is important because of the unique perspective that the members of the Ethics Commission have with regard to the entire scope of their penalty decisions. Administrative hearings are required very infrequently, and individual hearing officers are typically administrative law judges (ALJs) who rarely interact with Ethics Commission issues. While ALJs are adept at the more objective tasks of applying laws to facts, conducting hearings, and safeguarding the due process rights of parties, they do not share the experiences of the commissioners with regard to the more subjective task of imposing penalties.

For example, to help ensure consistency and equity and to encourage the most efficient use of resources, the Ethics Commission has established a penalty structure that is applied consistently from case to case. *See Overview of Enforcement Practices*, 10/21/2015, available at [ethics.lacity.org/PDF/agenda/2015/October/20151021-Item6-EnforcementPractices.pdf](http://ethics.lacity.org/PDF/agenda/2015/October/20151021-Item6-EnforcementPractices.pdf). While a penalty framework is extremely valuable, it is not a law that an ALJ is asked to apply. In addition, the penalty practices of the Ethics Commission evolve from time to time, to

accommodate changing circumstances and perspectives. This flexibility is important but, to protect the integrity of the program and the interests of respondents, is best implemented on a system-wide basis, rather than case by case. We believe that the members of the Ethics Commission are the individuals best equipped to understand the penalty framework in place at any given time and to impose consistent and equitable penalties within that framework.

*b. Paying Penalties*

When the members of the Ethics Commission determine that a violation has occurred, it may require a respondent to cease and desist the violation, file reports or documents, pay a monetary penalty, or perform a combination of those actions. Charter § 706(c). When penalties are imposed through a stipulated order, the Ethics Commission's long-standing practice is to require respondents to submit payment before the public meeting at which the stipulated order is considered. When penalties are imposed following an administrative hearing, however, the regulations are currently silent with regard to payment deadlines.

To ensure an efficient and fair process for collecting monetary penalties, we recommend requiring full payment of penalties within 21 calendar days after an order imposing the penalties is issued. *See* proposed LAAC § 24.27(h)(3); Attachment A, p. 2; Attachment B, p. 12. We also recommend authorizing payment plans over 12 calendar months or less for those who can document a significant financial hardship. *See* proposed LAAC § 24.27(h)(3)(A); Attachment A, p. 2; Attachment B, p. 12. These changes will clarify payment deadlines, provide accommodation for parties with financial challenges, and assist staff in the task of collecting outstanding penalties.

5. Orders

When the members of the Ethics Commission determine that a violation has occurred, they are required to issue an order that summarizes the facts, summarizes the conclusions of law, and may impose penalties. LAAC § 24.27(f)(3)(B). Currently, an order must be written but may be verbally entered into the record. *Id.*; LAAC § 24.27(f)(2)(C). If an order is verbally entered into the record, the staff is required to prepare a written order that reflects the verbal order. *Id.*

To reflect actual practice and to provide more clarity, we recommend specifying that orders are made verbally, are final when entered into the record, and must be memorialized with a written statement signed by the president of the Ethics Commission. *See* proposed LAAC § 24.27(i)(1); Attachment A, p. 1; Attachment B, p. 12.

All orders are imposed by the members of the Ethics Commission at a public meeting, following a discussion and a verbal vote. Because this is a dynamic process, it is impossible to have an entirely accurate written order on hand at the time of the vote. Therefore, the written version of the order is always created after the verbal decision is made, and it must be voted on at a subsequent public meeting. At that point, the administrative hearing and discussions regarding the validity of the decision are essentially reopened. This multiple-vote process is cumbersome and could become a perpetual cycle. It also creates ambiguity for respondents regarding when an

order is actually final, which affects their ability to properly appeal. *See* Cal. Code Civ. Proc. § 1094.6(b).

To address these concerns, we recommend clarifying for respondents that an order is final when it is verbally entered into the record. To memorialize the order (in addition to the meeting recordings that are posted online), we recommend a written statement signed by the Ethics Commission president, similar to a resolution. This process is used by civil courts when a judge enters a decision on the record and one party is subsequently required to document it. We believe this will better reflect the logistical realities of imposing orders. It will better inform respondents regarding effective dates, which is important for appeal purposes and for penalty payment purposes. *See* Section 4.b above; proposed LAAC § 24.27(h)(3). It will also create a more efficient system of resolving cases for both the Ethics Commission and respondents.

## 6. General Provisions

### a. *Cooperation*

Currently, the regulations require only City agencies and City personnel to cooperate with Ethics Commission investigations. LAAC § 24.29(d). We recommend specifying that all persons must timely cooperate. *See* proposed LAAC § 24.29(d)(1)-(3); Attachment A, p. 2; Attachment B, p. 14. We also recommend identifying specific actions that may be considered cooperative, such as timely complying with requests for information and making truthful statements. *Id.*

We believe that these changes will help to better define cooperation for respondents and witnesses who interact with the Ethics Commission. In addition, because the members of the Ethics Commission are required to consider a respondent's level of cooperation when framing a penalty, we also believe this level of specificity will provide better guidance regarding penalties. *See* LAAC § 24.27(f)(3)(A)(vi).

### b. *Reporting*

Currently, the enforcement regulations do not address the reporting of potential violations of laws under the purview of the Ethics Commission. However, a separate City law requires all City agencies and appointed offices to report potential fraud, waste, and abuse to the Ethics Commission. LAAC § 20.60.4.

We recommend that the existing reporting requirement be included in the enforcement regulations, so that all procedural requirements related to the Ethics Commission can be found in one law. *See* proposed LAMC § 24.29(e); Attachment A, p. 2; Attachment B, p. 14. In addition, we recommend specifying that all City agencies and appointed offices must also report to the Ethics Commission matters involving potential violations of the campaign finance laws, governmental ethics laws, and lobbying laws. *Id.* As with other laws regarding City personnel, the recommended reporting requirement notes that failing to report when required to do so may result, among other applicable penalties, in notice to the head of the agency. *Id.*

## **D. Conclusion**

We recommend that you adopt the language in Attachment B to update and reorganize the Ethics Commission's enforcement regulations. If amendments are adopted, we will transmit them to the City Council for approval. The City Council has 60 days to act; they may reject the adopted regulations but may not amend them.

### *Attachments:*

- A Quick Guide to Key Recommendations*
- B Recommended enforcement regulations (clean)*
- C Recommended enforcement regulations (redline)*

**Quick Guide to Key Recommendations:  
Enforcement Regulations**

February 21, 2017

<b>GENERAL PROVISIONS</b>					
<b>Topic</b>	<b>Report Section</b>	<b>Existing Regulation</b>	<b>Existing Citation</b>	<b>Proposed Regulation</b>	<b>Proposed Citation</b>
<b>Cooperation</b>	C.6.a. (p. 5)	City agencies, employees, and officials must cooperate with Ethics Commission investigations.	LAAC § 24.29(d)	All persons must timely cooperate with Ethics Commission investigations. Cooperation may include timely complying with requests for information, interviews, and subpoenas; and providing complete, true, and sworn statements.	LAAC § 24.29(d)
<b>Reporting</b>	C.6.b. (p. 5)	The regulations do not currently address reporting.	N/A	All City agencies and appointed offices must report to the Ethics Commission matters involving potential fraud, waste, or abuse within ten days of discovery, as required by Section 20.60.4. They must also report potential violations of the campaign finance, governmental ethics, and lobbying laws within ten days of discovery.	LAAC § 24.29(e)

<b>ORDERS</b>					
<b>Topic</b>	<b>Report Section</b>	<b>Existing Regulation</b>	<b>Existing Citation</b>	<b>Proposed Regulation</b>	<b>Proposed Citation</b>
<b>Format</b>	C.5 (p. 4)	Orders may be written or verbal. If an order is verbal, staff must prepare a written order consistent with the verbal entry.	LAAC §§ 24.27(f)(2)(C) 24.27(f)(3)(B)	Orders are made verbally and are final when entered into the record. Staff must prepare a written statement, signed by the president, to document the order.	LAAC § 24.27(i)(1)
<b>Statement of No Violation</b>	C.3 (p. 3)	The regulations do not address statements of no violation.	N/A	If the members of the Ethics Commission determine that no violation occurred, staff must publish a statement to that effect.	LAAC § 24.27(g)(4)

<b>PENALTIES</b>					
<b>Topic</b>	<b>Report Section</b>	<b>Existing Regulation</b>	<b>Existing Citation</b>	<b>Proposed Regulation</b>	<b>Proposed Citation</b>
<b>Arguments</b>	C.4.a. (p. 3)	The regulations do not specifically address arguments and evidence regarding penalties.	N/A	Parties may submit arguments and evidence regarding penalties both in writing and verbally.	LAAC § 24.27(h)(1)(B)
<b>Hearing Officer</b>	C.4.a. (p. 3)	An individual hearing officer must make a recommendation regarding whether a violation occurred and can recommend a proposed order.	LAAC § 24.27(f)(2)(B)	An individual hearing officer must make a recommendation regarding whether a violation occurred. Penalties and orders may be considered and imposed only by the members of the Ethics Commission.	LAAC § 24.27(g)(2)

**PENALTIES *cont'd***

<b>Topic</b>	<b>Report Section</b>	<b>Existing Regulation</b>	<b>Existing Citation</b>	<b>Proposed Regulation</b>	<b>Proposed Citation</b>
<b>Payments</b>	C.4.b. (p. 4)	The regulations do not address payments.	N/A	Full payment is required within 21 calendar days after an order imposing penalties. A payment plan of up to 12 calendar months may be established for those who prove financial hardship.	LAAC § 24.27(h)(3)

**STATUTE OF LIMITATIONS**

<b>Topic</b>	<b>Report Section</b>	<b>Existing Regulation</b>	<b>Existing Citation</b>	<b>Proposed Regulation</b>	<b>Proposed Citation</b>
<b>Tolling</b>	C. 2 (p. 2)	The four-year statute of limitations is tolled if the respondent engaged in concealment or deceit or fails to comply with a subpoena.	LAAC § 24.26(a)(2)	The four-year statute of limitations is tolled if the respondent engaged in concealment or deceit, fails to comply with a subpoena, or is in negotiations with the Director of Enforcement regarding a stipulated order.	LAAC § 24.26(a)(2)

**SUBPOENAS**

<b>Topic</b>	<b>Report Section</b>	<b>Existing Regulation</b>	<b>Existing Citation</b>	<b>Proposed Regulation</b>	<b>Proposed Citation</b>
<b>Objections</b>	C.1 (p. 2)	Written objections to a subpoena must be filed at least five calendar days before the response date.	LAAC § 24.24(f)(1)	Written objections to a subpoena must be filed at least ten calendar days before the response date.	LAAC § 24.24(f)(1)
<b>Ruling on Objections</b>	C.1 (p. 2)	A ruling on a written objection to a subpoena must be made at least one calendar day before the response date.	LAAC § 24.24(f)(2)	A ruling on a written objection to a subpoena must be made at least three calendar days before the response date.	LAAC § 24.24(f)(2)

## **Investigations and Enforcement Regulations**

*Los Angeles Administrative Code Division 24, Chapter 2*

### **Sec. 24.21. Definitions.**

- (a) “Commission” means the Los Angeles City Ethics Commission.
- (b) “Deputy Executive Director” means the Commission staff member who is authorized by the Executive Director to serve as the Commission’s executive officer when the Executive Director is absent or otherwise unable to serve.
- (c) “Director of Enforcement” means the Commission staff member who is in charge of enforcement matters.
- (d) “Ethics Officer” means a Commission staff member whose City job classification is ethics officer, including but not limited to Ethics Officer I, Ethics Officer II, and Ethics Officer III.
- (e) “Executive Director” means the Commission’s executive officer.

### **Sec. 24.22. Authority to Investigate and Refer.**

- (a) In connection with Commission investigations and enforcement actions, the Executive Director and the Commission staff may inspect books, records, and electronic data; receive and investigate complaints; administer oaths; certify to official acts; issue subpoenas for the attendance of witnesses or the production of books, accounts, documents, electronic data, or testimony in any relevant inquiry, investigation, hearing, or proceeding.
- (b) The Executive Director and the Director of Enforcement may administer oaths and affirmations on behalf of the Commission and may delegate that authority to any Ethics Officer.
- (c) The Executive Director and the Commission staff may divulge evidence of possible

unlawful conduct discovered during an investigation to the following:

- (1) A government attorney authorized by law to prosecute the unlawful conduct;
- (2) A government agency with the authority to investigate or enforce laws relating to the unlawful conduct; or
- (3) A government agency with the authority to discipline City employees for the unlawful conduct.

### **Sec. 24.23. Complaints.**

- (a) A complaint alleges possible violations of state or City laws relating to campaign financing, lobbying, conflicts of interests, or governmental ethics.
  - (1) Any person may file a complaint with Commission staff.
  - (2) Commission staff may internally initiate a complaint based on personal knowledge, an audit, a staff referral, a referral from another government or law enforcement agency, a news article, or another source of information that may indicate a possible violation.
  - (3) Concerns raised at public meetings or to members of the Commission are not complaints.
  - (4) Complaints are confidential and are not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.
- (b) Commission staff will process and review all complaints.

- (c) A complaint is most helpful if it is in writing, is dated by the complainant, and contains the following information with as much detail and specificity as possible and to the best of the complainant's knowledge and belief:
- (1) The name and address of the alleged violator;
  - (2) The provisions of law allegedly violated;
  - (3) Facts evidencing the alleged violations;
  - (4) The names and addresses of potential witnesses; and
  - (5) An address, telephone number, and email address at which the complainant may be reached during normal business hours.
- (d) Based on the initial review of a complaint, Commission staff may do one or more of the following:
- (1) Continue to investigate the allegations in the complaint;
  - (2) Refer the complaint or the complainant to another government or law enforcement agency;
  - (3) Take no action for reasons which may include, but are not limited to, the following:
    - (A) The complaint does not contain sufficient facts or information to pursue an investigation;
    - (B) The evidence does not support the allegations;
    - (C) The complaint expresses opinions rather than specific, actionable allegations;

- (D) The allegations in the complaint have already been disposed of as a result of another complaint or are already under investigation by the Commission or another government or law enforcement agency; or
- (E) The Commission has no jurisdiction over the allegations in the complaint.

**Sec. 24.24. Subpoenas and Subpoenas Duces Tecum.**

(a) **Issuing Subpoenas.**

- (1) The Director of Enforcement may issue subpoenas and *subpoenas duces tecum* on behalf of the Commission. The Director of Enforcement may delegate this authority in writing to any Ethics Officer.
- (2) A subpoena or *subpoena duces tecum* may not be issued unless the Director of Enforcement finds that the person to be subpoenaed or the information to be requested in the *subpoena duces tecum* is material to a specific matter under investigation or subject to enforcement action or that the person or entity to be subpoenaed controls material information.

(b) **Notice to Consumers.** If a *subpoena duces tecum* seeks the production of either personal or financial records from a third party, notice to the consumer shall be given as required by California Government Code Sections 7460, *et seq.* A consumer who objects to the production of personal or financial records shall file written notice with the custodian of the records and Commission staff at least ten calendar days prior to the production date specified in the *subpoena duces tecum*.

(c) **Service.** Subpoenas shall be served at least 15 calendar days before the time required

for attendance. *Subpoenas duces tecum* shall be served at least 25 calendar days before the time required for attendance or production of the requested documents.

(d) **Compliance.**

(1) If the Director of Enforcement consents, the custodian of records or documents that is the subject of a *subpoena duces tecum* may satisfy the *subpoena duces tecum* by delivering the requested records or documents together with an affidavit in compliance with Section 1561 of the California Evidence Code.

(2) If any person refuses to attend or testify or timely produce any records or documents required by a subpoena or *subpoena duces tecum*, the Executive Director may petition the Los Angeles Superior Court for an order compelling the person to comply with the subpoena or *subpoena duces tecum*.

(3) Failure to timely comply with a subpoena or *subpoena duces tecum* without lawful excuse is both of the following:

(A) A violation of these regulations and subject to sanctions under the Los Angeles Administrative Code (LAAC) Section 24.29(e); and

(B) A violation of and subject to enforcement under LAAC Section 19.21.

(e) **Witness Mileage and Fees.** A witness appearing pursuant to a subpoena or a *subpoena duces tecum*, other than a party, is entitled to receive the same mileage and fees allowed by law to a witness in a civil case pending in the Los Angeles Superior Court. This does not apply to officers and employees of the City of Los Angeles. Mileage and fees may be received once the witness has complied with the subpoena or

*subpoena duces tecum* and submitted a written request.

(f) **Objections.**

(1) A person served with a subpoena or *subpoena duces tecum* may object to its terms by filing written objections with the Executive Director at least ten calendar days before the time required for attendance or production of the requested documents.

(2) The Executive Director shall rule on the objections and issue an order in writing at least three calendar days before the time required for attendance or production of the requested records or documents. A petition for judicial review of the Executive Director's ruling must be filed within ten calendar days of the date the ruling is issued.

(3) Failure to file timely objections with the Executive Director waives all grounds for any objection.

**Sec. 24.25. Preliminary Enforcement Determination.**

(a) Based on a review of the evidence gathered through the course of an investigation, the Director of Enforcement shall determine whether enforcement action should be initiated and whether a referral to another government or law enforcement agency is appropriate for enforcement or disciplinary purposes.

(b) The Director of Enforcement shall obtain the Executive Director's concurrence prior to initiating enforcement action, making a referral, or closing a case.

(1) If a referral is made, information gathered by Commission staff in the course of the investigation may be provided to the other government or law enforcement agency.

- (2) A determination that no further action should be taken by Commission staff at that time shall not prevent any other government agency from initiating other enforcement or disciplinary action based on the same allegations and facts.
- (c) The Executive Director may determine that a civil action by the Commission is appropriate or may refer the matter to the members of the Commission, who shall consider the matter in closed session and decide whether such an action is appropriate. If the Commission commences a civil action to pursue substantive civil penalties, it may not initiate an administrative enforcement proceeding based on the same allegations against the same respondent.
  - (i) A copy of the probable cause report;
  - (ii) Notification that the respondent has the right to respond in writing to the probable cause report; and
  - (iii) Notification that the respondent has the right to request a probable cause conference, at which the respondent may be present in person and represented by legal counsel or another representative.

- (2) A probable cause report may not be served to commence administrative enforcement proceedings more than four years after the date of an alleged violation. This four-year period is tolled for the following periods:

**Sec. 24.26. Probable Cause Determination.**

**(a) Probable Cause Report.**

- (1) The Director of Enforcement must file a written probable cause report with the Executive Director to commence administrative enforcement proceedings.
  - (A) The probable cause report shall identify the alleged violations and contain a summary of law and evidence gathered through the investigation, including exculpatory and mitigating information of which the staff has knowledge, that is sufficient to justify the issuance of an accusation. The report may include hearsay, including declarations of investigators or others relating to the statements of witnesses or the physical evidence.
  - (B) After the probable cause report is submitted to the Executive Director, the respondent shall be served with the following:
    - (A) If the respondent engaged in concealment or deceit, for the period of concealment or deceit. Concealment or deceit may occur as part of an alleged violation, such as with money laundering or the falsification of records, or may occur as conduct following a complaint.
    - (B) If the respondent fails to comply with a subpoena or *subpoena duces tecum*, from the date the compliance was originally required until the date compliance is achieved.
    - (C) If the Director of Enforcement and the respondent are in negotiations regarding a stipulated order under Section 24.27(i)(2), from the date the Director of Enforcement initiates the negotiations until the date the resulting stipulated order is approved by the members of the Commission or the date that

either party determines that further negotiations will be unproductive and notifies the other party in writing of that determination.

(3) A respondent may submit a written response to the probable cause report.

(A) The response may request a probable cause conference.

(B) A response, including a request for a probable cause conference, must be filed with the Executive Director and served on all other respondents listed in the probable cause report on the same day, and not later than 21 calendar days following service of the probable cause report.

(4) The Director of Enforcement may submit a rebuttal to the response. A rebuttal must be served on the respondents on the same day that it is filed with the Executive Director, and not later than ten calendar days following receipt of the response to the probable cause report.

(b) **Probable Cause Conference.**

(1) If requested by a respondent, a probable cause conference shall be held at a time and location and in a method fixed by the Executive Director.

(A) The probable cause conference shall be conducted informally by the Executive Director. Formal rules of evidence shall not apply.

(B) Notice of the date, time, location, and method of the conference shall be served on each respondent at least 14 calendar days before the conference.

(2) The probable cause conference shall be closed to the public unless a

respondent otherwise requests and all other respondents agree to a public conference. If a conference is closed to the public, only Commission staff, respondents, and respondents' legal counsel or representatives have the right to attend.

(3) The Executive Director may allow witnesses to attend and participate in part or all of the probable cause conference, regardless of whether the conference is public. In making this determination, the Executive Director shall consider the relevancy of the proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate.

(4) The probable cause conference shall be recorded.

(A) The Commission shall retain the recording and provide a copy to each respondent.

(B) A respondent may ask that a certified court reporter attend and record the probable cause conference. That respondent shall provide copies of any transcript to the Executive Director and all other respondents. The cost of such a record shall be borne by the respondent requesting the record.

(c) **Probable Cause Determination.**

(1) The Executive Director shall make a written determination regarding probable cause.

(A) The determination shall be based solely on the probable cause report, any responses or rebuttals, and any arguments and

evidence presented by the parties.

- (B) The Executive Director may find there is probable cause to believe a violation has occurred only if the evidence is sufficient to lead a reasonable person to believe that a violation has been committed and that the respondent committed or caused the violation.
  - (C) A finding of probable cause by the Executive Director does not constitute a finding that a violation has actually occurred.
  - (D) The Executive Director shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, prior to the alleged violation, the respondent obtained formal advice under Charter Section 705(b) regarding the same facts, truthfully disclosed all material and pertinent facts, and acted in accordance with the formal advice.
- (2) The Executive Director shall make the determination regarding probable cause within 45 calendar days after the later of the date the probable cause report was served, the date the probable cause conference was held, or the date the last pleading was received if no probable cause conference is held. The Executive Director shall not make a determination regarding probable cause before the respondent's deadline to respond to the probable cause report.
- (3) The Executive Director shall serve notice of the determination regarding probable cause on all respondents and the Director of Enforcement within five calendar days of making the determination.

(d) **Accusation and Announcement.**

- (1) If the Executive Director determines that probable cause exists, the Director of Enforcement shall prepare an accusation within 14 calendar days of being served with the determination of probable cause.
- (2) The accusation shall clearly specify the provisions of law that were allegedly violated and set forth the acts or omissions with which the respondent is charged.
- (3) The accusation shall be served on the respondent within ten calendar days of being completed.
- (4) The Executive Director shall publicly announce the determination of probable cause no later than ten calendar days after service of the accusation, unless the parties stipulate to the entry of an order under Section 24.27(f)(3)(C) during this time period.
  - (A) The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Charter or ordinances unless and until the violation is proved in a subsequent administrative hearing.
  - (B) The announcement shall not be made public until all respondents have been served with the accusation.

(e) **Recusal of the Executive Director.**

- (1) If the Executive Director determines that he or she will be unavailable, cannot be fair and impartial, or for any other reason should not make the probable cause determination, the probable cause conference shall be conducted by a person selected by the

Deputy Executive Director from a list of former Executive Directors, former members of the Commission, and current and former Ethics Officers.

- (A) The person selected shall have the same authority as the Executive Director to conduct the probable cause conference and to make the determination of probable cause.
- (B) The person selected is subject to the prohibitions in Charter Section 700(d) from the date of selection until the enforcement matter is resolved.

(2) A respondent may seek the recusal of the Executive Director by filing a written recusal request with the Executive Director within ten calendar days after being served with the probable cause report.

- (A) The request shall state the reasons why the Executive Director cannot be fair and impartial with respect to a particular matter and should not make the probable cause determination.
- (B) The Executive Director shall make a written determination regarding the request and serve the respondent with notice of the determination within seven calendar days.
- (C) Failure to file the request with the Executive Director within ten calendar days after being served with the probable cause report waives all grounds for recusal.
- (D) A petition for judicial review of a determination concerning recusal of the Executive Director must be filed with a court within ten

calendar days following the date of notice of the determination.

- (E) If the request is granted, the probable cause conference shall be conducted in the same manner as under paragraph (1).
- (f) The Executive Director may extend the time limits in this section for good cause.
- (g) The Executive Director may permit or request any party to file additional material related to a probable cause determination and may specify a reasonable deadline for the filing.

### **Sec. 24.27. Administrative Hearings.**

#### **(a) Hearing Officer.**

- (1) After an accusation has been issued, an administrative hearing shall be conducted. The Director of Enforcement shall present to the members of the Commission the following options from which the members must select an administrative hearing officer:
  - (A) The members of the Commission may sit as the hearing officer, either with or without an individual hearing officer presiding;
  - (B) The members of the Commission may select an individual, who may be one member of the Commission, to sit as the hearing officer.
- (2) If they elect to use an individual hearing officer, the members of the Commission shall appoint the individual. However, if they elect to use an individual hearing officer provided by an outside entity, that entity shall appoint the individual.
- (3) The members of the Commission shall appoint an individual, who may be the

individual hearing officer or a member of the Commission, to decide preliminary hearing matters and requests for reconsideration under Subsection (e). However, if the individual hearing officer is provided by an outside entity, that entity shall appoint the individual. The same individual may be appointed to decide both preliminary hearing matters and requests for reconsideration.

(b) **Scheduling and Notice.**

(1) The hearing officer shall schedule the administrative hearing and shall serve notice of the hearing on all respondents at least 21 calendar days prior to the scheduled hearing. If the hearing officer is one or more members of the Commission, the Executive Director may provide notice.

(2) The notice shall be in substantially the following form, but may contain additional information:

“A hearing regarding the charges made in the accusation against you will be held before the Los Angeles City Ethics Commission (or [name of individual hearing officer]) at [time] on [date], at [location]. You may be present at the hearing, may be represented by counsel, may present any relevant evidence, and will be given a full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses or the production of documents and records by applying in writing to the Ethics Commission (or [name of individual hearing officer]).”

(c) **Discovery.**

(1) The parties shall be entitled to pre-hearing discovery of relevant, non-privileged records that are not

confidential pursuant to City Charter Section 706.

(2) The person designated by the members of the Commission to resolve preliminary hearing matters shall resolve discovery disputes.

(3) The hearing officer may issue subpoenas and *subpoenas duces tecum* upon the request of any party.

(A) A party seeking a subpoena shall file a written request with the Executive Director, who shall promptly forward the request to the hearing officer.

(B) A request for a subpoena shall be accompanied by a declaration specifying the name and address of the witness and setting forth the materiality of the witness’s testimony.

(C) A request for a *subpoena duces tecum* shall identify the requested documents or records with specificity, set forth the materiality of the items, and state that the witness possesses or controls the items.

(D) The hearing officer may deny a request after considering the relevancy of the evidence, privileges and confidentiality, the potential for the request to be unduly burdensome, and the overall interests of justice.

(E) The provisions of Section 24.24 apply, except that the Director of Enforcement’s role shall be conducted by the hearing officer.

(F) The costs of a subpoena or *subpoena duces tecum* shall be borne by the party requesting it.

(d) **Administrative Hearing Brief.**

- (1) The Director of Enforcement shall and any respondent may file with the hearing officer an administrative hearing brief that outlines significant legal arguments and evidence to be presented at the hearing.
- (2) Briefs shall not exceed 25 pages in length, except by permission of the hearing officer and by a showing of good cause.
- (3) Briefs shall be filed with the hearing officer and all other parties to the administrative hearing at least seven calendar days prior to the hearing.
- (4) An opposing party may file a written response to a brief. The response may not exceed 10 pages in length except by permission of the hearing officer and by a showing of good cause. The response must be filed with the hearing officer and all other parties to the administrative hearing at least two calendar days prior to the hearing.

(e) **Hearing on Preliminary Matters.**

- (1) The Director of Enforcement or any respondent may request a hearing on preliminary matters prior to the hearing on the merits. Preliminary matters may include, but are not limited to, the following:
  - (A) Procedural questions;
  - (B) The validity or interpretation of the applicable laws;
  - (C) The disqualification of a member of the Commission from participating as a hearing officer;
  - (D) Discovery; and
  - (E) Any other matter not related to the truth or falsity of the factual

allegations in the accusation or to a possible penalty.

- (2) Motions requesting a hearing on preliminary matters and on the matters themselves shall be filed at least 14 calendar days prior to the hearing on the merits. The preliminary hearing shall be conducted by the individual appointed to decide preliminary hearing matters under Subsection (a)(3).
- (3) Any party may file a written request for reconsideration regarding any decision on preliminary matters with the individual appointed to decide requests for reconsideration under Subsection (a)(3).
  - (A) The request shall set forth the reasons for the request and any supporting legal arguments and affidavits.
  - (B) The request shall be filed at least seven calendar days prior to the administrative hearing on the merits.
  - (C) The individual appointed to decide requests for reconsideration, in the individual's discretion, may either reconsider a decision regarding a preliminary matter on its merits or deny a request for reconsideration. The individual need not determine whether a decision on preliminary matters was correct and need not give reasons for denying a request. The individual shall make a ruling and serve notice of the ruling on all parties within five calendar days of making the ruling.

(f) **Procedural Issues.**

- (1) Any member of the Commission, the Executive Director, the secretary of the

Commission, or an individual hearing officer may administer oaths and affirmations for an administrative hearing.

- (2) All relevant, non-privileged evidence may be admissible in the administrative hearing.
  - (A) All parties shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter even if that matter was not covered in direct examination, to impeach any witness, and to rebut evidence presented against the party.
  - (B) Evidence may be excluded if its probative value is substantially outweighed by the probability that it will result in the undue consumption of time.
  - (C) The hearing officer shall rule on procedural matters and on the admission and exclusion of evidence.
- (3) The hearing shall be recorded, and the recording shall be provided to the Commission. The Commission shall retain the recording and provide a copy to each respondent.
- (4) A respondent may ask that a certified court reporter or translator attend and record the hearing. The costs of such services shall be borne by the respondent requesting them. A respondent who uses a court reporter shall provide copies of the transcript to the Commission and all other parties.
- (5) Each party shall be allowed oral argument of no more than 20 minutes.

- (6) The hearing officer may extend the time limits in this section for good cause.

(g) **Findings.**

- (1) Determinations regarding findings shall be made only by the members of the Commission based on a preponderance of the evidence.
  - (A) The votes of at least three members are required to find a violation or remand the case to an individual hearing officer.
  - (B) Each member who participates in the determination shall certify that he or she either heard the testimony in person or reviewed the entire record of the proceedings.
- (2) When an individual hearing officer alone hears a case, he or she shall make a recommendation regarding whether a violation occurred.
  - (A) The individual hearing officer shall provide a written report that contains proposed findings of fact, conclusions of law, and a summary of the evidence supporting each proposed finding. Copies of the hearing officer's report shall be filed with the Executive Director and each respondent. The Executive director shall provide copies to the members of the Commission.
  - (B) Within seven calendar days of the date the report is filed with the Executive Director, any party may file with the Executive Director a brief of no more than 15 pages in response to the report.
  - (C) Based on the individual hearing officer's report and the record of

the proceedings, the members of the Commission shall make a final determination concerning whether a violation has occurred and may do so without further oral argument by the parties.

- (D) If the members of the Commission determine that the individual hearing officer's report and the record of the proceedings are not sufficient to enable them to make a determination concerning whether a violation has occurred, they may remand the case to the individual hearing officer who heard the case or to a new hearing officer, with instructions for further proceedings.

- (3) A determination by the members of the Commission that a violation occurred shall be supported by the relevant facts and laws, shall be based on the entire record of the proceedings, and shall be incorporated into the order required by Subsection (i).

- (4) If the members of the Commission determine that no violation occurred, staff shall publish a statement to that effect, in substantially the following form:

"On [date], the members of the Los Angeles City Ethics Commission considered whether [name of respondent or respondents] had violated City law by [summary of allegations]. The members of the Ethics Commission determined that no violation occurred."

(h) **Penalties.**

- (1) Penalties may be imposed only by the members of the Commission, based on their determination under Subsection (g) regarding whether a violation occurred and on the arguments and

evidence submitted by the parties regarding penalties.

- (A) The votes of at least three members are required to impose a penalty.

- (B) The parties may submit arguments and evidence regarding penalties.

- (i) Each party may file a brief that is no more than ten pages in length. Briefs shall be filed with the Executive Director and the opposing party at least 15 calendar days prior to the date the members of the Commission will consider penalties. The Executive Director shall provide copies of any briefs to the members of the Commission.

- (ii) The members of the Commission may permit the parties to provide oral argument of no more than ten minutes each.

- (2) In framing a penalty, the members of the Commission shall consider the relevant circumstances surrounding the case, including but not limited to the following:

- (A) The severity of the violation;

- (B) Whether the violation was deliberate and whether the violator intended to conceal or deceive;

- (C) Whether the violator demonstrated good faith by consulting the Commission staff in a manner not constituting a complete defense under Charter Section 705;

- (D) Whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of the laws within the Commission's jurisdiction;
  - (E) The degree to which the violator cooperated with Commission staff in order to provide full disclosure, remedy a violation, or cooperate voluntarily with an investigation; and
  - (F) The overall interests of justice.
- (3) If the members of the Commission impose monetary penalties, the penalties must be paid in full within 21 calendar days after the date the order imposing the penalties is issued under Subsection (i).
- (A) If a party who is ordered to pay penalties can demonstrate through documentary evidence that paying the total amount of penalties within 21 calendar days poses a significant financial hardship, staff may recommend that a payment schedule be established by the members of the Commission. Any payment schedule must require payment in full within 12 calendar months after the date the order imposing the penalties is issued.
  - (B) If a party fails to pay penalties within 21 calendar days or, if a payment plan is established, fails to make a scheduled payment, the entire amount outstanding on the penalties shall become immediately due and payable in full.
  - (C) The Commission may pursue all available remedies to collect penalties.
- (i) **Orders.**
- (1) Following the finding of a violation, the members of the Commission shall issue a final verbal order that includes a summary of facts and the conclusions of law and, after considering the relevant circumstances in Subsection (h)(2), may impose penalties consistent with Charter Section 706(c). Staff shall prepare a written statement that is consistent with the order and signed by the president of the Commission or, if the president is required to be recused from the matter, by the vice president or another member in order of seniority.
  - (2) At any time before or during an administrative hearing or in lieu of such a hearing, the Director of Enforcement and any respondent may stipulate to the entry of an order.
    - (A) A stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the members of the Commission.
    - (B) A stipulated order may resolve the violation only or both the violation and the penalty.
    - (C) A stipulated order has the full force of an order issued under paragraph (B) when it is approved by the members of the Commission.
    - (D) An agreement regarding a stipulated order suspends further procedural requirements regarding a probable cause hearing or an administrative hearing for that enforcement matter and tolls the statute of limitations.

- (3) Enforcement orders shall be announced publicly.

administrative hearing or approve a stipulated order.

**Sec. 24.28. Default Proceedings.**

- (a) If a respondent fails to timely respond or file a defense to a probable cause report or pleadings in an administrative hearing, the Director of Enforcement may pursue a default order.
  - (1) The Director of Enforcement shall serve the respondent with notice and a copy of the proposed default order, which must include a summary of facts and evidence and the conclusions of law, at least 15 calendar days before the proposed order is heard by the members of the Commission.
  - (2) The Director of Enforcement shall serve a copy of the proposed default order on the members of the Commission at least six calendar days before the proposed order is heard.
- (b) The respondent may file a written response to the proposed default order at least three calendar days before the proposed order is heard.
- (c) If the members of the Commission approve the default order, the Director of Enforcement shall make a reasonable effort to serve the respondent with notice and a copy of the signed order within seven calendar days of the date the default order is signed.
- (d) The respondent may file a written motion requesting that a default order be vacated and stating the reasons relief should be granted. The motion must be filed with the Executive Director within 15 calendar days after the default order is signed.
  - (1) On a showing of good cause, the members of the Commission, in their discretion, may vacate the default order and either grant an

- (2) A motion to vacate a default order is the only administrative remedy available to a respondent after entry of a default order.

**Sec. 24.29. General Provisions.**

(a) **Service.**

- (1) Service may be made in the following ways:
  - (A) Personally, by any individual who is not a party to the matter and is at least 18 years of age, including any Commission employee other than the Executive Director or the Director of Enforcement;
  - (B) By first-class, certified, registered, or overnight mail; or
  - (C) By another method agreed upon by the parties, such as electronic mail.
- (2) Service is completed in the following ways:
  - (A) Personal service is complete when a copy of the document is delivered to the named person at the named person's residence or office, the office of the named person's attorney, or the office of the named person's designated agent for service of process.
    - (i) When delivered to an office, the document must be left with a clerk, with an individual in charge of the office, or in a conspicuous place in the office.

- (ii) When delivered to the named person's residence, the document must be left with an individual of suitable age and discretion who resides there.
  - (B) Service by mail is complete upon mailing.
  - (C) Service by another method is complete when the criteria agreed upon by the parties have been met.
- (b) **Filings.** A filing is complete when the document or complaint is received by the party to whom it must be submitted.
- (c) **Confidentiality.**
- (1) Unless they are deemed public by another provision of these regulations, records and information relating to an enforcement matter are confidential and not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.
  - (2) Records and information may be disclosed to a respondent, an individual designated in writing by a respondent as the respondent's counsel or representative, a witness, a court, a prosecution or law enforcement agency, or otherwise as necessary to conduct an investigation.
  - (3) Commission staff may periodically report the number and types of enforcement cases, as well as other statistical enforcement data, to the members of the Commission.
- (d) **Cooperation.** All persons shall timely cooperate with Commission investigations. Examples of what may constitute cooperation include the following:
- (1) Timely complying with requests for information, requests for interviews, subpoenas, and *subpoenas duces tecum*.
  - (2) Providing complete, truthful and, during investigations and formal proceedings, sworn statements.
- (e) **Reporting.** As required by Section 20.60.4, all City agencies and appointed offices shall report to the Commission matters involving potential fraud, waste, or abuse within ten days after discovery. All City agencies and appointed offices shall also report to the Commission matters involving potential violations of the campaign finance, governmental ethics, conflict of interests, and lobbying laws within ten days after discovery. In addition to other applicable penalties, failing to report may result in notice to the head of the agency.
- (f) **Sanctions.**
- (1) A person is subject to contempt sanctions for any of the following:
    - (A) Disobeying or resisting a lawful order of the Commission or the hearing officer without substantial justification.
    - (B) Failing or refusing to timely comply with a lawful discovery order, subpoena, or *subpoena duces tecum* without substantial justification.
    - (C) Refusing to take the oath or affirmation as a witness or, after doing so, refusing to be examined.
    - (D) Engaging in disorderly, contemptuous, or insolent behavior toward the hearing officer during the hearing.
    - (E) Breaching the peace or engaging in boisterous or violent conduct during the hearing.

- (F) Unlawfully obstructing, interrupting, or interfering with the hearing or investigation.
- (2) The hearing officer or Director of Enforcement may request that the superior court impose contempt sanctions.
  - (A) The hearing officer or Director of Enforcement shall certify the facts that justify a contempt sanction.
  - (B) The superior court may issue an order directing the person to appear at a specified time and place and show cause why the person should not be punished for contempt.
- (C) The court order and the certified statement shall be served on the person. Upon service, the superior court has jurisdiction over the contempt matter.
- (D) The same procedures apply and the same penalties may be imposed as if the person had committed contempt in the trial of a civil action before the superior court.
- (g) **Deadlines.** If a deadline identified in this chapter falls on a City holiday, a Saturday, or a Sunday, the deadline shall be moved to the next business day.
- (h) **Public Meetings.** When the members of the Commission must act as a body, the action must be taken at a public meeting.

## **Investigations and Enforcement Regulations**

*Los Angeles Administrative Code Division 24, Chapter 2*

### **Sec. 24.21. Definitions.**

- (a) “Commission” means the Los Angeles City Ethics Commission.
- (b) “Deputy Executive Director” means the Commission staff member who is authorized by the Executive Director to serve as the Commission’s executive officer when the Executive Director is absent or otherwise unable to serve.
- (c) “Director of Enforcement” means the Commission staff member who is in charge of enforcement matters.
- (d) “Ethics Officer” means a Commission staff member whose City job classification is ethics officer, including but not limited to Ethics Officer I, Ethics Officer II, and Ethics Officer III.
- (e) “Executive Director” means the Commission’s executive officer.

### **Sec. 24.22. Authority to Investigate and Refer.**

- (a) In connection with Commission investigations and enforcement actions, the Executive Director and the Commission staff may inspect books, records, and electronic data; receive and investigate complaints; administer oaths; certify to official acts; issue subpoenas for the attendance of witnesses or the production of books, accounts, documents, electronic data, or testimony in any relevant inquiry, investigation, hearing, or proceeding.
- (b) The Executive Director and the Director of Enforcement may administer oaths and affirmations on behalf of the Commission and may delegate that authority to any Ethics Officer.
- (c) The Executive Director and the Commission staff may divulge evidence of possible

unlawful conduct discovered during an investigation to the following:

- (1) A government attorney authorized by law to prosecute the unlawful conduct;
- (2) A government agency with the authority to investigate or enforce laws relating to the unlawful conduct; or
- (3) A government agency with the authority to discipline City employees for the unlawful conduct.

### **Sec. 24.23. Complaints.**

- (a) A complaint alleges possible violations of state or City laws relating to campaign financing, lobbying, conflicts of interests, or governmental ethics.
  - (1) Any person may file a complaint with Commission staff.
  - (2) Commission staff may internally initiate a complaint based on personal knowledge, an audit, a staff referral, a referral from another government or law enforcement agency, a news article, or another source of information that may indicate a possible violation.
  - (3) Concerns raised at public meetings or to members of the Commission are not complaints.
  - (4) Complaints are confidential and are not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.
- (b) Commission staff will process and review all complaints.

(c) A complaint is most helpful if it is in writing, is dated by the complainant, and contains the following information with as much detail and specificity as possible and to the best of the complainant's knowledge and belief:

- (1) The name and address of the alleged violator;
- (2) The provisions of law allegedly violated;
- (3) Facts evidencing the alleged violations;
- (4) The names and addresses of potential witnesses; and
- (5) An address, telephone number, and email address at which the complainant may be reached during normal business hours.

(d) Based on the ~~information provided in initial review of~~ a complaint, Commission staff may do one or more of the following:

- (1) ~~Initiate an investigation of~~ **Continue to investigate** the allegations in the complaint;
- (2) Refer the complaint or the complainant to another government or law enforcement agency;
- (3) Take no action for reasons which may include, but are not limited to, the following:
  - (A) The complaint does not contain sufficient facts or information to pursue an investigation;
  - (B) The evidence does not support the allegations;
  - (C) The complaint expresses opinions rather than specific, actionable allegations;

(D) The allegations in the complaint have already been disposed of as a result of another complaint or are already under investigation by the Commission or another government or law enforcement agency; or

(E) The Commission has no jurisdiction over the allegations in the complaint.

#### **Sec. 24.24. Subpoenas and Subpoenas Duces Tecum.**

##### **(a) Issuing Subpoenas.**

(1) The Director of Enforcement may issue subpoenas and *subpoenas duces tecum* on behalf of the Commission. The Director of Enforcement may delegate this authority in writing to any Ethics Officer.

(2) A subpoena or *subpoena duces tecum* may not be issued unless the Director of Enforcement finds that the person to be subpoenaed or the information to be requested in the *subpoena duces tecum* is material to a specific matter under investigation or subject to enforcement action or that the person or entity to be subpoenaed controls material information.

(b) **Notice to Consumers.** If a *subpoena duces tecum* seeks the production of either personal or financial records from a third party, notice to the consumer shall be given as required by California Government Code Sections 7460, *et seq.* A consumer who objects to the production of personal or financial records shall file written notice with the custodian of the records and Commission staff at least ten ~~(10)~~ calendar days prior to the production date specified in the *subpoena duces tecum*.

(c) **Service.** Subpoenas shall be served at least 15 calendar days before the time

required for attendance. *Subpoenas duces tecum* shall be served at least 25 calendar days before the time required for attendance or production of the requested documents.

(d) **Compliance.**

(1) If the Director of Enforcement consents, the custodian of records or documents that is the subject of a *subpoena duces tecum* may satisfy the *subpoena duces tecum* by delivering the requested records or documents together with an affidavit in compliance with Section 1561 of the California Evidence Code.

(2) If any person refuses to attend or testify or timely produce any records or documents required by a subpoena or *subpoena duces tecum*, the Executive Director may petition the Los Angeles Superior Court for an order compelling the person to comply with the subpoena or *subpoena duces tecum*.

(3) Failure to timely comply with a subpoena or *subpoena duces tecum* without lawful excuse is both of the following:

(A) A violation of these regulations and subject to sanctions under the Los Angeles Administrative Code (LAAC) Section 24.29(e); and

(B) A violation of and subject to enforcement under LAAC Section 19.21.

(e) **Witness Mileage and Fees.** A witness appearing pursuant to a subpoena or a *subpoena duces tecum*, other than a party, is entitled to receive the same mileage and fees allowed by law to a witness in a civil case pending in the Los Angeles Superior Court. This does not apply to officers and employees of the City of Los Angeles. Mileage and fees may be received once the witness has complied with the subpoena or

*subpoena duces tecum* and submitted a written request.

(f) **Objections.**

(1) A person served with a subpoena or *subpoena duces tecum* may object to its terms by filing written objections with the Executive Director at least ~~five~~ ten calendar days before the time required for attendance or production of the requested documents.

(2) The Executive Director shall rule on the objections and issue an order in writing at least ~~one (1)~~ three calendar days before the time required for attendance or production of the requested records or documents. A petition for judicial review of the Executive Director's ruling must be filed within ten ~~(10)~~ calendar days of the date the ruling is issued.

(3) Failure to file timely objections with the Executive Director waives all grounds for any objection.

**Sec. 24.25. Preliminary Enforcement Determination.**

(a) Based on a review of the evidence gathered through the course of an investigation, the Director of Enforcement shall determine whether enforcement action should be initiated and whether a referral to another government or law enforcement agency is appropriate for enforcement or disciplinary purposes.

(b) The Director of Enforcement shall obtain the Executive Director's concurrence prior to initiating enforcement action, making a referral, or closing a case.

(1) If a referral is made, information gathered by Commission staff in the course of the investigation may be provided to the other government or law enforcement agency.

- (2) A determination that no further action should be taken by Commission staff at that time shall not prevent any other government agency from initiating other enforcement or disciplinary action based on the same allegations and facts.
- (c) The Executive Director may determine that a civil action by the Commission is appropriate or may refer the matter to the members of the Commission, who shall consider the matter in closed session and decide whether such an action is appropriate. If the Commission commences a civil action to pursue substantive civil penalties, it may not initiate an administrative enforcement proceeding based on the same allegations against the same respondent.
- (i) A copy of the probable cause report;
- (ii) Notification that the respondent has the right to respond in writing to the probable cause report; and
- (iii) Notification that the respondent has the right to request a probable cause conference, at which the respondent may be present in person and represented by legal counsel or another representative.

- (2) A probable cause report may not be served to commence administrative enforcement proceedings more than four years after the date of an alleged violation. This four-year period is tolled for the following periods:

**Sec. 24.26. Probable Cause Determination.**

**(a) Probable Cause Report.**

- (1) The Director of Enforcement must file a written probable cause report with the Executive Director to commence administrative enforcement proceedings.
  - (A) The probable cause report shall identify the alleged violations and contain a summary of law and evidence gathered through the investigation, including exculpatory and mitigating information of which the staff has knowledge, that is sufficient to justify the issuance of an accusation. The report may include hearsay, including declarations of investigators or others relating to the statements of witnesses or the physical evidence.
  - (B) After the probable cause report is submitted to the Executive Director, the respondent shall be served with the following:
    - (A) If the respondent engaged in concealment or deceit, for the period of concealment or deceit. Concealment or deceit may occur as part of an alleged violation, such as with money laundering or the falsification of records, or may occur as conduct following a complaint.
    - (B) If the respondent fails to comply with a subpoena or *subpoena duces tecum*, from the date the compliance was originally required until the date compliance is achieved.
    - (C) If the Director of Enforcement and the respondent are in negotiations regarding a stipulated order under Section 24.27(i)(2), from the date the Director of Enforcement initiates the negotiations until the date the resulting stipulated order is approved by the members of the Commission or the date that

either party determines that further negotiations will be unproductive and notifies the other party in writing of that determination.

(3) A respondent may submit a written response to the probable cause report.

(A) The response may request a probable cause conference.

(B) A response, including a request for a probable cause conference, must be filed with the Executive Director and served on all other respondents listed in the probable cause report on the same day, and not later than 21 calendar days following service of the probable cause report.

(4) The Director of Enforcement may submit a rebuttal to the response. A rebuttal must be served on the respondents on the same day that it is filed with the Executive Director, and not later than ten ~~(10)~~ calendar days following receipt of the response to the probable cause report.

(b) **Probable Cause Conference.**

(1) If requested by a respondent, a probable cause conference shall be held at a time and location and in a method fixed by the Executive Director.

(A) The probable cause conference shall be conducted informally by the Executive Director. Formal rules of evidence shall not apply.

(B) Notice of the date, time, location, and method of the conference shall be served on each respondent at least 14 calendar days before the conference.

(2) The probable cause conference shall be closed to the public unless a

respondent otherwise requests and all other respondents agree to a public conference. If a conference is closed to the public, only Commission staff, respondents, and respondents' legal counsel or representatives have the right to attend.

(3) The Executive Director may allow witnesses to attend and participate in part or all of the probable cause conference, regardless of whether the conference is public. In making this determination, the Executive Director shall consider the relevancy of the proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate.

(4) The probable cause conference shall be recorded.

(A) The Commission shall retain the recording and provide a copy to each respondent.

(B) A respondent may ask that a certified court reporter attend and record the probable cause conference. That respondent shall provide copies of any transcript to the Executive Director and all other respondents. The cost of such a record shall be borne by the respondent requesting the record.

(c) **Probable Cause Determination.**

(1) The Executive Director shall make a written determination regarding probable cause.

(A) The determination shall be based solely on the probable cause report, any responses or rebuttals, and any arguments and

evidence presented by the parties.

- (B) The Executive Director may find there is probable cause to believe a violation has occurred only if the evidence is sufficient to lead a reasonable person to believe that a violation has been committed and that the respondent committed or caused the violation.
  - (C) A finding of probable cause by the Executive Director does not constitute a finding that a violation has actually occurred.
  - (D) The Executive Director shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, prior to the alleged violation, the respondent obtained formal advice under Charter Section 705(b) regarding the same facts, truthfully disclosed all material and pertinent facts, and acted in accordance with the formal advice.
- (2) The Executive Director shall make the determination regarding probable cause within 45 calendar days after the later of the date the probable cause report was served, the date the probable cause conference was held, or the date the last pleading was received if no probable cause conference is held. The Executive Director shall not make a determination regarding probable cause before the respondent's deadline to respond to the probable cause report.
- (3) The Executive Director shall serve notice of the determination regarding probable cause on all respondents and the Director of Enforcement within five ~~(5)~~ calendar days of making the determination.

(d) **Accusation and Announcement.**

- (1) If the Executive Director determines that probable cause exists, the Director of Enforcement shall prepare an accusation within 14 calendar days of being served with the determination of probable cause.
- (2) The accusation shall clearly specify the provisions of law that were allegedly violated and set forth the acts or omissions with which the respondent is charged.
- (3) The accusation shall be served on the respondent within ten ~~(10)~~ calendar days of being completed.
- (4) The Executive Director shall publicly announce the determination of probable cause no later than ten ~~(10)~~ calendar days after service of the accusation, unless the parties stipulate to the entry of an order under Section 24.27(f)(3)(C) during this time period.
  - (A) The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Charter or ordinances unless and until the violation is proved in a subsequent administrative hearing.
  - (B) The announcement shall not be made public until all respondents have been served with the accusation.

(e) **Recusal of the Executive Director.**

- (1) If the Executive Director determines that he or she will be unavailable, cannot be fair and impartial, or for any other reason should not make the probable cause determination, the probable cause conference shall be conducted by a person selected by the

Deputy Executive Director from a list of former Executive Directors, former members of the Commission, and current and former Ethics Officers.

(A) The person selected shall have the same authority as the Executive Director to conduct the probable cause conference and to make the determination of probable cause.

(B) The person selected is subject to the prohibitions in Charter Section 700(d) from the date of selection until the enforcement matter is resolved.

(2) A respondent may seek the recusal of the Executive Director by filing a written recusal request with the Executive Director within ten ~~(10)~~ calendar days after being served with the probable cause report.

(A) The request shall state the reasons why the Executive Director cannot be fair and impartial with respect to a particular matter and should not make the probable cause determination.

(B) The Executive Director shall make a written determination regarding the request and serve the respondent with notice of the determination within seven ~~(7)~~ calendar days.

(C) Failure to file the request with the Executive Director within ten calendar days after being served with the probable cause report waives all grounds for recusal.

(D) A petition for judicial review of a determination concerning recusal of the Executive Director must be filed with a court within ten ~~(10)~~

calendar days following the date of notice of the determination.

(E) If the request is granted, the probable cause conference shall be conducted in the same manner as under paragraph (1).

(f) The Executive Director may extend the time limits in this section for good cause.

(g) The Executive Director may permit or request any party to file additional material related to a probable cause determination and may specify a reasonable deadline for the filing.

### **Sec. 24.27. Administrative Hearings.**

#### **(a) Hearing Officer.**

(1) After an accusation has been issued, ~~the an administrative hearing shall be conducted.~~ The Director of Enforcement shall present to the members of the Commission the following options from which the members must select an administrative hearing officer:

(A) The members of the Commission may sit as the hearing officer, either with or without an individual hearing officer presiding;

(B) The members of the Commission may select an individual, who may be one member of the Commission, to sit as the hearing officer.

(2) If they elect to use an individual hearing officer, the members of the Commission shall appoint the individual. However, if they elect to use an individual hearing officer provided by an outside entity, that entity shall appoint the individual.

(3) The members of the Commission shall appoint an individual, who may be the

individual hearing officer or a member of the Commission, to decide preliminary hearing matters and requests for reconsideration under Subsection (e). However, if the individual hearing officer is provided by an outside entity, that entity shall appoint the individual. The same individual may be appointed to decide both preliminary hearing matters and requests for reconsideration.

(b) **Scheduling and Notice.**

(1) The hearing officer shall schedule the administrative hearing and shall serve notice of the hearing on all respondents at least 21 calendar days prior to the scheduled hearing. If the hearing officer is one or more members of the Commission, the Executive Director may provide notice.

(2) The notice shall be in substantially the following form, but may contain additional information:

“A hearing regarding the charges made in the accusation against you will be held before the Los Angeles City Ethics Commission (or [name of individual hearing officer]) at [time] on [date], at [location]. You may be present at the hearing, may be represented by counsel, may present any relevant evidence, and will be given a full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses or the production of documents and records by applying in writing to the [Ethics](#) Commission (or [name of individual hearing officer]).”

(c) **Discovery.**

(1) The parties shall be entitled to pre-hearing discovery of relevant, non-privileged records that are not

confidential pursuant to City Charter Section 706.

(2) The person designated by the members of the Commission to resolve preliminary hearing matters shall resolve discovery disputes.

(3) The hearing officer may issue subpoenas and *subpoenas duces tecum* upon the request of any party.

(A) A party seeking a subpoena shall file a written request with the Executive Director, who shall promptly forward the request to the hearing officer.

(B) A request for a subpoena shall be accompanied by a declaration specifying the name and address of the witness and setting forth the materiality of the witness’s testimony.

(C) A request for a *subpoena duces tecum* shall identify the requested documents or records with specificity, set forth the materiality of the items, and state that the witness possesses or controls the items.

(D) The hearing officer may deny a request after considering the relevancy of the evidence, privileges and confidentiality, the potential for the request to be unduly burdensome, and the overall interests of justice.

(E) The provisions of Section 24.24 apply, except that the Director of Enforcement’s role shall be conducted by the hearing officer.

(F) The costs of a subpoena or *subpoena duces tecum* shall be borne by the party requesting it.

(d) **Administrative Hearing Brief.**

- (1) The Director of Enforcement shall and any respondent may file with the hearing officer an administrative hearing brief that outlines significant legal arguments and evidence to be presented at the hearing.
- (2) Briefs shall not exceed 25 pages in length, except by permission of the hearing officer and by a showing of good cause.
- (3) Briefs shall be filed with the hearing officer and all other parties to the administrative hearing at least seven ~~(7)~~ calendar days prior to the hearing.
- (4) An opposing party may file a written response to a brief. The response may not exceed 10 pages in length except by permission of the hearing officer and by a showing of good cause. The response must be filed with the hearing officer and all other parties to the administrative hearing at least two ~~(2)~~ calendar days prior to the hearing.

(e) **Hearing on Preliminary Matters.**

- (1) The Director of Enforcement or any respondent may request a hearing on preliminary matters prior to the hearing on the merits. Preliminary matters may include, but are not limited to, the following:
  - (A) Procedural questions;
  - (B) The validity or interpretation of the applicable laws;
  - (C) The disqualification of a member of the Commission from participating as a hearing officer;
  - (D) Discovery; and
  - (E) Any other matter not related to the truth or falsity of the factual

allegations in the accusation or to a possible penalty.

- (2) Motions requesting a hearing on preliminary matters and on the matters themselves shall be filed at least 14 calendar days prior to the hearing on the merits. The preliminary hearing shall be conducted by the individual appointed to decide preliminary hearing matters under Subsection (a)(3).

- (3) Any party may file a written request for reconsideration regarding any decision on preliminary matters with the individual appointed to decide requests for reconsideration under Subsection (a)(3).

- (A) The request shall set forth the reasons for the request and any supporting legal arguments and affidavits.
- (B) The request shall be filed at least seven ~~(7)~~ calendar days prior to the administrative hearing on the merits.

- (C) The individual appointed to decide requests for reconsideration, in the individual's discretion, may either reconsider a decision regarding a preliminary matter on its merits or deny a request for reconsideration. The individual need not determine whether a decision on preliminary matters was correct and need not give reasons for denying a request. The individual shall make a ruling and serve notice of the ruling on all parties within five ~~(5)~~ calendar days of making the ruling.

(f) **Hearing on the Merits Procedural Issues.**

- (1) **Procedural Issues.**

~~(A)~~ Any member of the Commission, the Executive Director, the secretary of the Commission, or an individual hearing officer may administer oaths and affirmations for an administrative hearing.

~~(B2)~~ All relevant, non-privileged evidence may be admissible in the administrative hearing.

~~(iA)~~ All parties shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter even if that matter was not covered in direct examination, to impeach any witness, and to rebut evidence presented against the party.

~~(iiB)~~ Evidence may be excluded if its probative value is substantially outweighed by the probability that it will result in the undue consumption of time.

~~(iiiC)~~ The hearing officer shall rule on procedural matters and on the admission and exclusion of evidence.

~~(C3)~~ The hearing shall be recorded, and the recording shall be provided to the Commission. The Commission shall retain the recording and provide a copy to each respondent.

~~(D4)~~ A respondent may ask that a certified court reporter or translator attend and record the hearing. The costs of such services shall be borne by the respondent requesting them. A respondent who uses a court reporter shall provide copies of ~~any the~~ transcript to the Commission and all other parties.

~~(E5)~~ Each party shall be allowed oral argument of no more than 20 minutes.

~~(F6)~~ The hearing officer may extend the time limits in this section for good cause.

## ~~(2g)~~ Findings.

~~(A1)~~ Determinations regarding findings, ~~orders, and penalties~~ shall be made only by the members of the Commission based on a preponderance of the evidence.

~~(iA)~~ The votes of at least three members are required to find a violation, ~~impose an order,~~ or remand the case to an individual hearing officer.

~~(iiB)~~ Each member who participates in the determination shall certify that he or she either heard the testimony ~~either~~ in person or reviewed the entire record of the proceedings.

~~(B2)~~ When an individual hearing officer alone hears a case, he or she shall make ~~an initial determination as to a~~ recommendation regarding whether a violation occurred ~~and shall recommend a proposed order.~~

~~(iA)~~ The individual hearing officer shall provide a written report that contains proposed findings of fact, conclusions of law, and a summary of the evidence supporting each proposed finding. Copies of the hearing officer's report shall be filed with the Executive Director and each respondent. The Executive director shall provide copies to the members of the Commission.

~~(iiB)~~ Within seven ~~(7)~~ calendar days of the date the report is filed with the Executive Director, any party may file with the Executive Director a brief of no more than

15 pages in response to the report.

~~(iiiC) The members of the Commission shall consider the individual hearing officer's determination and recommendation.~~ Based on the individual hearing officer's report and the record of the proceedings, the members of the Commission shall make a final determination concerning whether a violation has occurred and ~~impose an order~~ may do so without further oral argument by the parties.

~~(ivD)~~ If the members of the Commission determine that the individual hearing officer's report and the record of the proceedings are not sufficient to enable them to make a determination concerning whether a violation has occurred, they may remand the case to the individual hearing officer who heard the case or to a new hearing officer, with instructions for further proceedings.

~~(E3)~~ A determination by the members of the Commission that a violation occurred shall be supported by the relevant facts and laws, shall be based on the entire record of the proceedings, and ~~may be written or verbally entered into the record~~ shall be incorporated into the order required by Subsection (i).

(4) If the members of the Commission determine that no violation occurred, staff shall publish a statement to that effect, in substantially the following form:

"On [date], the members of the Los Angeles City Ethics Commission considered whether [name of respondent or respondents] had violated City law by [summary of

allegations]. The members of the Ethics Commission determined that no violation occurred."

(h) ~~Orders and Penalties.~~

~~(A1) Penalties may be imposed only by the members of the Commission, based on their determination under Subsection (g) regarding whether a violation occurred and on the arguments and evidence submitted by the parties regarding penalties.~~

~~(A) The votes of at least three members are required to impose a penalty.~~

~~(B) The parties may submit arguments and evidence regarding penalties.~~

~~(i) Each party may file a brief that is no more than ten pages in length. Briefs shall be filed with the Executive Director and the opposing party at least 15 calendar days prior to the date the members of the Commission will consider penalties. The Executive Director shall provide copies of any briefs to the members of the Commission.~~

~~(ii) The members of the Commission may permit the parties to provide oral argument of no more than ten minutes each.~~

~~(2) In framing a proposed order or a penalty, the hearing officer members of the Commission shall consider the relevant circumstances surrounding the case, including, but not limited to, the following:~~

~~(iA) The severity of the violation;~~

~~(ii) The presence or absence of any intention to conceal, deceive, or mislead;~~

~~(iiiB) Whether the violation was deliberate, negligent, or inadvertent and whether the violator intended to conceal or deceive;~~

~~(ivC) Whether the violator demonstrated good faith by consulting the Commission staff in a manner not constituting a complete defense under Charter Section 705;~~

~~(vD) Whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of the laws within the Commission's jurisdiction;~~

~~(viE) The degree to which the violator cooperated with Commission staff in order to provide full disclosure, remedy a violation, or cooperate voluntarily with an investigation; and~~

~~(viiE) The overall interests of justice.~~

(3) If the members of the Commission impose monetary penalties, the penalties must be paid in full within 21 calendar days after the date the order imposing the penalties is issued under Subsection (i).

(A) If a party who is ordered to pay penalties can demonstrate through documentary evidence that paying the total amount of penalties within 21 calendar days poses a significant financial hardship, staff may recommend that a payment schedule be established by the members of the Commission. Any payment

schedule must require payment in full within 12 calendar months after the date the order imposing the penalties is issued.

(B) If a party fails to pay penalties within 21 calendar days or, if a payment plan is established, fails to make a scheduled payment, the entire amount outstanding on the penalties shall become immediately due and payable in full.

(C) The Commission may pursue all available remedies to collect penalties.

(i) Orders.

(B1) Following the finding of a violation, the members of the Commission shall issue a ~~written final verbal~~ order that includes a summary of facts and the conclusions of law and, after considering the relevant circumstances in ~~paragraph (A) Subsection (h)(2)~~, may impose penalties consistent with Charter Section 706(c). ~~If the members of the Commission verbally enter the order into the record, they shall direct staff to shall~~ prepare a written ~~order statement that is~~ consistent with the ~~verbal entry order~~ and signed by the president of the Commission or, if the president is required to be recused from the matter, by the vice president or another member in order of seniority.

(E2) At any time before or during an administrative hearing or in lieu of such a hearing, the Director of Enforcement and any respondent may stipulate to the entry of an order.

(iA) A stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the members of the Commission.

(~~#~~B) A stipulated order may resolve the violation only or both the violation and the penalty.

(~~##~~C) A stipulated order has the full force of an order issued under paragraph (B) when it is approved by the members of the Commission.

(~~iv~~D) An agreement regarding a stipulated order suspends further procedural requirements regarding a probable cause hearing or an administrative hearing for that enforcement matter and tolls the statute of limitations.

(~~D~~3) Enforcement orders shall be announced publicly.

#### Sec. 24.28. Default Proceedings.

(a) If a respondent fails to timely respond or file a defense to a probable cause report or pleadings in an administrative hearing, the Director of Enforcement may pursue a default order.

(1) The Director of Enforcement shall serve the respondent with notice and a copy of the proposed default order, which must include a summary of facts and evidence and the conclusions of law, at least 15 calendar days before the proposed order is heard by the members of the Commission.

(2) The Director of Enforcement shall serve a copy of the proposed default order on the members of the Commission at least six (~~6~~) calendar days before the proposed order is heard.

(b) The respondent may file a written response to the proposed default order at least three

(~~3~~) calendar days before the proposed order is heard.

(c) If the members of the Commission approve the default order, the Director of Enforcement shall make a reasonable effort to serve the respondent with notice and a copy of the signed order within seven (~~7~~) calendar days of the date the default order is signed.

(d) The respondent may file a written motion requesting that a default order be vacated and stating the reasons relief should be granted. The motion must be filed with the Executive Director within 15 calendar days after the default order is signed.

(1) On a showing of good cause, the members of the Commission, in their discretion, may vacate the default order and either grant an administrative hearing or approve a stipulated order.

(2) A motion to vacate a default order is the only administrative remedy available to a respondent after entry of a default order.

#### Sec. 24.29. General Provisions.

(a) **Service.**

(1) Service may be made in the following ways:

(A) Personally, by any individual who is not a party to the matter and is at least 18 years of age, including any Commission employee other than the Executive Director or the Director of Enforcement;

(B) By first-class, certified, registered, or overnight mail; or

(C) By another method agreed upon by the parties, such as electronic mail.

- (2) Service is completed in the following ways:
- (A) Personal service is complete when a copy of the document is delivered to the named person at the named person's residence or office, the office of the named person's attorney, or the office of the named person's designated agent for service of process.
    - (i) When delivered to an office, the document must be left with a clerk, with an individual in charge of the office, or in a conspicuous place in the office.
    - (ii) When delivered to the named person's residence, the document must be left with an individual of suitable age and discretion who resides there.
  - (B) Service by mail is complete upon mailing.
  - (C) Service by another method is complete when the criteria agreed upon by the parties have been met.
- (b) **Filings.** A filing is complete when the document or complaint is received by the party to whom it must be submitted.
- (c) **Confidentiality.**
- (1) Unless they are deemed public by another provision of these regulations, records and information relating to an enforcement matter are confidential and not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.
- (2) Records and information may be disclosed to a respondent, an individual designated in writing by a respondent as the respondent's counsel or representative, a witness, a court, a prosecution or law enforcement agency, or otherwise as necessary to conduct an investigation.
  - (3) Commission staff may periodically report the number and types of enforcement cases, as well as other statistical enforcement data, to the members of the Commission.
- (d) **Cooperation.** All persons City agencies, employees, and officials shall timely cooperate with Commission investigations. Examples of what may constitute cooperation include the following:
- (1) Timely complying with requests for information, requests for interviews, subpoenas, and subpoenas duces tecum.
  - (2) Providing complete, truthful and, during investigations and formal proceedings, sworn statements.
- (e) **Reporting.** As required by Section 20.60.4, all City agencies and appointed offices shall report to the Commission matters involving potential fraud, waste, or abuse within ten days after discovery. All City agencies and appointed offices shall also report to the Commission matters involving potential violations of the campaign finance, governmental ethics, conflict of interests, and lobbying laws within ten days after discovery. In addition to other applicable penalties, failing to report may result in notice to the head of the agency.
- (ef) **Sanctions.**
- (1) A person is subject to contempt sanctions for any of the following:
    - (A) Disobeying or resisting a lawful order of the Commission or the

hearing officer without substantial justification.

facts that justify a contempt sanction.

(B) Failing or refusing to **timely** comply with a lawful discovery order, subpoena, or *subpoena duces tecum* without substantial justification.

(B) The superior court may issue an order directing the person to appear at a specified time and place and show cause why the person should not be punished for contempt.

(C) Refusing to take the oath or affirmation as a witness or, after doing so, refusing to be examined.

(C) The court order and the certified statement shall be served on the person. Upon service, the superior court has jurisdiction over the contempt matter.

(D) Engaging in disorderly, contemptuous, or insolent behavior toward the hearing officer during the hearing.

(D) The same procedures apply and the same penalties may be imposed as if the person had committed contempt in the trial of a civil action before the superior court.

(E) Breaching the peace or engaging in boisterous or violent conduct during the hearing.

(F) Unlawfully obstructing, interrupting, or interfering with the hearing **or investigation**.

**(fg) Deadlines.** If a deadline identified in this chapter falls on a City holiday, a Saturday, or a Sunday, the deadline shall be moved to the next business day.

(2) The hearing officer or Director of Enforcement may request that the superior court impose contempt sanctions.

**(gh) Public Meetings.** When the members of the Commission must act as a body, the action must be taken at a public meeting.

(A) The hearing officer or Director of Enforcement shall certify the