

# Investigations and Enforcement

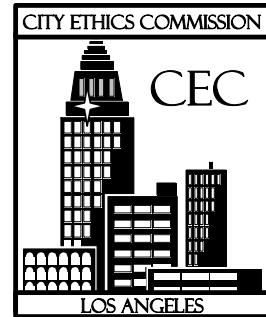
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## ◆◆◆ Los Angeles Administrative Code Section 24.1.2

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## **Investigations and Enforcement Regulations**

Los Angeles Administrative Code Chapter 5

*Added by Ordinance No. 167974, effective 7/08/92.*

*Amended by Ordinance No. 170385, effective 3/17/95.*

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### **Sec. 24.1.2 Investigations Pursuant to Charter Sections 470, 702 and 706, and Enforcement Proceedings Pursuant to Charter Section 706.**

In connection with investigations pursuant to Charter Sections 470, 702 and 706, and enforcement proceedings pursuant to Charter Section 706, the Executive Director and the staff of the Commission, as set forth more specifically in this section, may: inspect books and records; receive and investigate complaints; administer oaths; certify to official acts; issue subpoenas for the attendance of witnesses and the production of books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding pertinent or material thereto in any part of the State of California; and may divulge evidence of unlawful conduct discovered, to the City Attorney or to any other attorney authorized by law to prosecute the unlawful activity involved, or to any other governmental agency with authority to enforce laws relating to the unlawful activity or to impose discipline on City employees with respect to such conduct.

#### **(a) Complaints.**

- (1) Any person may file, or the City Ethics Commission (hereafter "**Commission**") may on its own initiate, a complaint alleging possible violations of state and City laws relating to campaign financing, lobbying, conflicts of interest, and governmental ethics.
- (2) It is recommended, although not required, that complaints be filed on a form specifically provided by the Commission. However, the Commission shall have no obligation to investigate or respond to any complaint that is not verified under penalty of perjury and does not contain the information required in Subdivision (3).
- (3) A complaint shall:
  - (A) be in writing;
  - (B) be signed and dated by the complainant;

- (C) provide, with as much detail and specificity as possible, all information requested on the form, including the name and address of the alleged violator, the provision(s) of law allegedly violated, facts constituting the alleged violation(s), the names and addresses of potential witnesses, additional information, if any, and an address and telephone number at which the complainant may be reached during normal business hours. All such information shall be provided to the best of the complainant's knowledge and belief.
  - (4) The City Ethics Commission staff (hereafter "staff"), under the direction of the Director in charge of enforcement (hereafter "Director of Enforcement"), shall process and review formal complaints filed pursuant to Subdivisions (2) and (3) above and may process and review the following:
    - (A) informal or unverified complaints made by telephone, facsimile, e-mail, in person, or in writing;
    - (B) staff referrals, including issues generated from other cases and referrals generated from audits;
    - (C) referrals from governmental and/or law enforcement agencies; and
    - (D) possible violations raised by news items or articles.
  - (5) Complaints should not be made at public meetings.
  - (6) Complaints filed with or initiated by the Commission or its staff shall be confidential.
- (b) **Review and Investigation of Complaints.**
- (1) Staff, under the direction of the Director of Enforcement, shall, in a timely fashion, process and review all complaints, and based on the information provided, shall
    - (A) investigate the allegations of the complaint; or
    - (B) determine that additional time or information is required to evaluate the complaint in order to determine whether a full investigation by the Commission should ensue, or
    - (C) refer the complaint or the complainant to another governmental or law-enforcement agency; or

- (D) take no action on the complaint because the allegations do not warrant further action for reasons which may include, but are not limited to, any or all of the following:
  - (i) the evidence does not support the allegations;
  - (ii) the complaint restates other complaints containing essentially similar or identical allegations which have already been disposed of, and the evidence presented does not warrant reopening the previous case;
  - (iii) the complaint contains an expression of opinions, rather than specific, actionable allegations;
  - (iv) the allegations contained in the complaint are already under investigation by the Commission or another governmental or law enforcement agency;
  - (v) the Commission has no jurisdiction.
  
- (2) If a complaint was filed under penalty of perjury and contains the information required in Subdivision (a)(3), staff shall, within 14 calendar days after receipt of the complaint and following approval of the Director of Enforcement, notify the complainant that the complaint has been received and is being processed pursuant to the applicable provisions of these regulations.
  
- (3) **Subpoenas and *Subpoenas Duces Tecum*.**
  - (A) **Voluntary Compliance.** The staff, under the direction of the Executive Director, shall seek to obtain voluntary compliance with state and City laws relating to campaign finance, lobbying, conflicts of interest, and governmental ethics and shall investigate possible violations of those laws. The staff shall make a reasonable effort to obtain information on a voluntary basis prior to the issuance of an administrative subpoena or *subpoena duces tecum*. The Executive Director, in the exercise of his or her discretion, may forego such efforts at obtaining voluntary compliance with respect to an investigation in progress. The staff shall periodically report to the Commission on the status of all investigations, including the reasons for the issuance of any administrative subpoena or *subpoena duces tecum* without first making reasonable efforts to obtain the information voluntarily. Failure to report to the Commission concerning the issuance of subpoenas shall not affect the validity of any administrative subpoena or any enforcement action.

- (B) **Issuance of Subpoenas.** The Executive Director shall have the authority to issue subpoenas and *subpoenas duces tecum* on behalf of the Commission pursuant to Charter Sections 470 and 706(a)(3) in accordance with the provisions of these regulations and the California Administrative Procedures Act. These regulations are intended to supplement the California Administrative Procedures Act. In the event of a conflict between these regulations and the California Administrative Procedures Act, these regulations control. The Executive Director shall not issue a subpoena or *subpoena duces tecum* unless he or she finds, based on information submitted to him or her in writing, that the person to be subpoenaed, or the information to be requested in the *subpoena duces tecum*, is material to a specific matter then under investigation and/or that there is reason to believe that the person or entity to be subpoenaed has the information under his or her control. The Executive Director may delegate in writing the authority under this regulation to issue subpoenas and *subpoenas duces tecum* to any Deputy Director other than the Director of Enforcement.
- (C) **Notice to Consumers.** In the event a *subpoena duces tecum* seeks either the production of personal records of a consumer or the financial records of a customer, notice to the consumer or customer shall be given as required by California Code of Civil Procedure Section 1985.3 or Government Code Section 7460, et seq., whichever is applicable, or any successor or amended provision.
- (D) **Service of Subpoenas.** A subpoena or *subpoena duces tecum* may be personally served by any person who is not a party and is not less than 18 years of age. With the exception of the Commission's Executive Director and the Director of Enforcement, a subpoena or *subpoena duces tecum* may be personally served by any Commission employee. Service of a subpoena or a *subpoena duces tecum* upon a person named therein shall be made by delivering a copy thereof to such person, or that person's attorney or designated agent for service of process. In addition, if the person's name and address are known, a subpoena or *subpoena duces tecum* may be served by first-class, certified, registered or overnight mail. Delivery of a copy means handing it to the person, the person's attorney or the person's designated agent for service of process; or leaving it at the person's or attorney's or designated agent's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

Subpoenas shall be served at least 10 calendar days before the time required for attendance. *Subpoenas duces tecum* shall be served at least 20 calendar days before the time required for attendance and/or production of the requested documents. However, if the subpoena or *subpoena duces tecum* is served by mail, three calendar days shall be added to the prescribed period.

- (E) **Compliance with *Subpoenas Duces Tecum*.** 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 documents together with an affidavit in compliance with Section 1561 of the California Evidence Code.
- (F) **Witness Mileage and Fees.** A witness appearing pursuant to a subpoena or a *subpoena duces tecum*, other than an officer or employee of the City of Los Angeles, shall receive, upon request after complying with the subpoena or *subpoena duces tecum*, the same mileage and fees allowed by law to a witness in a civil case pending in the Los Angeles Superior Court.
- (G) **Objections to the Subpoena or the *Subpoena Duces Tecum* Prior to the Issuance of an Accusation.** A person served with a subpoena or *subpoena duces tecum* may object to its terms by filing written objections with the Commission's Executive Director no later than four calendar days before the time required for attendance and/or production of the requested documents. The Commission's Executive Director shall rule on the objections and/or issue an order in writing within two calendar days of receiving the written objections. Failure to file timely objections with the Commission's Executive Director waives all grounds for any objection. All petitions for judicial review of any Executive Director ruling or order concerning objections to a subpoena or *subpoena duces tecum* must be filed by the 10th calendar day following the date of the ruling or order by the Commission's Executive Director.
- (H) **Petition to Compel Attendance.** If any person refuses to attend or testify or produce any papers as required by such subpoena or *subpoena duces tecum*, the Executive Director on behalf of the Commission may petition the Los Angeles Superior Court for an order compelling the person to attend and testify and to produce the papers required by the subpoena, in accordance with the standards and procedures set forth in the California Administrative Procedures Act.

- (4) **Administration of Oaths and Affirmations.** In connection with the conduct of an investigation pursuant to Charter Sections 470 and 706(a)(3), including testimony pursuant to subpoena, the Executive Director shall have the authority to administer oaths and affirmations on behalf of the Commission. The Executive Director may delegate in writing the authority to administer oaths and affirmations to any Deputy Director including the Director of Enforcement.
- (c) **Preliminary Enforcement Determination.** Based on a review of the evidence gathered through the course of an investigation, the Director of Enforcement shall determine whether some enforcement action, either by way of administrative penalties pursuant to Charter Section 706, or otherwise, should be initiated.
- (1) If the Director of Enforcement determines that no enforcement action should be taken, he or she shall make that recommendation to the Executive Director. If the Executive Director concurs, the Commission and its staff shall take no further action in the matter, except that the Executive Director may determine to refer the information to another agency for its appropriate action. A determination by the Executive Director that no further action should be taken by the Commission at that time shall not prevent any other government agency from initiating other enforcement action, including disciplinary action, based on the same allegations and facts.
  - (2) If the Director of Enforcement determines that enforcement proceedings pursuant to Charter Section 706 should be commenced, those proceedings shall be governed by Subsections (d) and (e) of this section. The procedures and requirements of Charter Section 706(b) and (c) and of Subsections (d) and (e) of this section shall be applicable only to enforcement proceedings to impose administrative penalties and orders pursuant to Charter Section 706 and shall not be applicable to any other type of investigative, enforcement or disciplinary action.
  - (3) If the Director of Enforcement determines that some type of enforcement action and/or disciplinary action by the appointing authority of a City employee, other than administrative enforcement pursuant to Charter Section 706, may be appropriate, he or she shall make that recommendation to the Executive Director. If the Executive Director concurs that such action may be appropriate, the Executive Director shall refer the matter to the appropriate government agency or agencies.
  - (4) If the Executive Director determines that a civil action by the Commission pursuant to Los Angeles Municipal Code Sections 49.5.19B, 49.7.28B or 48.09C, may be appropriate, the Executive Director shall refer the matter to the Commission. The Commission shall consider the matter in closed session and shall decide whether to authorize the filing of such an action. Regardless of the Commission's decision, if a matter is referred to the

Commission pursuant to this subdivision, no administrative enforcement proceeding pursuant to Charter Section 706 may be initiated based on the same allegations.

- (5) A referral to another agency pursuant to Subdivision (3) shall state that an investigation has taken place and that the agency may wish to consider appropriate action within its jurisdiction. A copy of all information gathered by the staff in the course of the investigation shall be sent to the other agency along with the referral.

(d) **Administrative Enforcement Proceedings - Probable Cause Determination.**

(1) **Probable Cause Report.**

- (A) Based on a review of evidence gathered through the course of an investigation, the Director of Enforcement may decide that administrative enforcement proceedings pursuant to Charter Section 706 should be commenced. In that event, he or she shall direct staff to prepare a written report, hereafter referred to as “the probable cause report.” The probable cause report shall be submitted to the City Ethics Commission Executive Director (hereafter “**Executive Director**”).
- (B) The probable cause report shall contain a summary of law and evidence gathered through the investigation, including exculpatory and mitigating information of which the staff has knowledge. The evidence may include hearsay, including declarations of investigators or others relating to the statements of witnesses or concerning the examination of physical evidence. The probable cause report shall contain sufficient information to justify the issuance of an accusation.
- (C) Following the filing of the probable cause report with the Executive Director, the respondent(s) shall be served with the following materials:
  - (i) a copy of the probable cause report; and
  - (ii) notification that the respondent has the right to respond in writing to the probable cause report and to request a probable cause conference at which the respondent may be present in person and represented by legal counsel or any representative of his or her choosing.

These materials may be personally served by any person who is not a party and is not less than 18 years of age. With the

exception of the Commission's Executive Director and the Director of Enforcement, these materials may be personally served by any Commission employee. Service of process upon a respondent shall be made by personally delivering a copy of these materials to such respondent, or that respondent's attorney or designated agent for service of process. In addition, if the respondent's name and address are known, these materials may be served by first-class, certified, registered or overnight mail. Delivery of a copy means handing it to the person, person's attorney or designated agent for service of process; or leaving it at the person's or attorney's or designated agent's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(2) **Response to Probable Cause Report.**

- (A) Each respondent may submit a written response to the probable cause report, which may request a probable cause conference. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information.
- (B) Each response, and each request for a probable cause conference, must be filed with the Executive Director and, on the same date, served on all other respondents listed in the probable cause report, not later than 21 calendar days following service of the probable cause report. If the probable cause report is not personally served, three calendar days shall be added to the prescribed period.

(3) **Rebuttal.**

- (A) The Director of Enforcement may submit to the Executive Director any evidence or argument in rebuttal to the response not later than ten calendar days following his or her receipt of the respondent's response to the probable cause report.
- (B) The respondent(s) shall be served with a copy of the rebuttal on the same date that it is filed with the Executive Director.

(4) **Extension of Time Limitations.** The time limitations of this subsection may be extended by the Executive Director for good cause shown.

- (5) **Additional Information.** At his or her discretion, the Executive Director may allow additional material to be submitted as part of the response or rebuttal.
  
- (6) **Probable Cause Conference.**
  - (A) If requested, the probable cause conference shall be held at a time fixed by the Executive Director and shall be conducted informally by the Executive Director. Each respondent shall be given at least 14 calendar days notice of the date, time and location of the conference.
  - (B) Formal rules of evidence shall not apply to such a conference.
  - (C) The conference shall be closed to the public unless a respondent otherwise requests and all other respondents agree to a public conference.
  - (D) If the conference is not public, only members of the Commission staff, any respondent and his or her legal counsel or representative shall have the right to be present and participate. However, at the discretion of the Executive Director, witnesses may be allowed to attend and participate in part or all of the probable cause conference. 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.
  - (E) The probable cause conference shall be tape-recorded, and the tape shall be retained by the Commission. A copy of the tape shall be provided to each respondent. A respondent additionally may ask that a certified court reporter attend and record the conference. In such event, 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 such record.
  - (F) The Executive Director shall make a determination as to probable cause based solely on the probable cause report, any responses or rebuttals filed, and any arguments and evidence presented at the probable cause conference by the parties.
  - (G) If the Executive Director determines that additional information is needed before probable cause can be determined, he or she may permit any party to submit additional evidence at the probable cause conference.

**(7) Findings of Probable Cause.**

- (A) No finding as to probable cause shall be made until at least 21 calendar days after the service of the probable cause report.
- (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 person of ordinary caution and prudence to believe or entertain a strong suspicion 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:
  - (i) the respondent consulted with the staff of the Commission in good faith; and
  - (ii) the respondent disclosed truthfully all the material facts pertinent to the case; and
  - (iii) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the advice of the Commission staff, or because of the failure of the Commission staff to provide advice.
- (E) The Executive Director shall make a written determination as to probable cause no later than 30 calendar days after the probable cause hearing, or if no probable cause hearing was held, no later than 30 calendar days after receiving a copy of the last pleading filed in the matter. The Executive Director shall notify all respondents and the Director of Enforcement within five calendar days of making the determination of probable cause. If the determination of probable cause is not made by a probable cause officer within 30 calendar days, the Director of Enforcement, upon written notification to the probable cause officer and the respondent(s), may randomly select a new probable cause officer to make the determination of probable cause.

**(8) Accusations.**

- (A) If the Executive Director makes a finding of probable cause, he or she shall direct the Director of Enforcement to prepare an accusation. The

accusation shall be prepared by the Director of Enforcement within 14 calendar days of being notified of the determination of probable cause.

- (B) The accusation shall clearly specify the provisions of the City Charter or ordinance(s) which were allegedly violated and shall set forth the acts or omissions with which the respondent is charged.
  - (C) The Accusation shall be served on the respondent who is the subject of the probable cause finding within 10 calendar days of being prepared. Service of process upon a respondent shall be made by personally delivering a copy of the Accusation to such respondent, or that respondent's attorney or designated agent for service of process. In addition, if the respondent's name and address are known, the Accusation may be served by first-class, certified, registered or overnight mail. Delivery of a copy means handing it to the person, the person's attorney or the person's designated agent for service of process; or leaving it at the person's or attorney's or designated agent's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.
  - (D) The finding of probable cause shall be announced publicly by the Executive Director or his or her designee no later than 10 calendar days after service of the Accusation unless the parties execute a settlement agreement during this time period. 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 such time that the violation is proved in a subsequent administrative hearing held pursuant to Charter Section 706(c). The announcement shall not be made until all respondents have been served with the Accusation. For purposes of this provision, service of process by mail is complete three days after mailing.
- (9) **Recusal of the Executive Director.** In the event the Executive Director determines that he or she will be unavailable, cannot be fair and impartial with respect to a particular matter, or for any other reason determines he or she should not make the probable cause determination, the Executive Director's authority to conduct a probable cause conference pursuant to this subsection with respect to that matter shall be exercised by a person randomly selected by the Director of Enforcement from a list previously approved by the Commission. That list shall consist of persons who are

former government attorneys. The person randomly selected to act in a particular matter shall have the same authority as the Executive Director to conduct the probable cause conference and to make the determination of probable cause, utilizing the procedures and based on the criteria contained in this subsection. Upon selection to act in a particular matter, such person shall possess the same exemption from civil service as the Executive Director and shall be considered a temporary employee of the Commission for the purpose of carrying out such duties. His or her compensation shall consist solely of a salary established in section 4.61 of this Code and shall not include any other form of economic benefit or compensation.

A respondent served with a probable cause report may seek the recusal of the Executive Director from making a probable cause determination by filing a written recusal request with the Commission's Executive Director within ten calendar days after being served with the probable cause report. The recusal request shall state the reasons why the Executive Director cannot be fair and impartial with respect to a particular matter, and therefore should not make the probable cause determination. The Executive Director shall, within seven calendar days of receiving the request, make a written determination as to the recusal request and notify the respondent of the ruling or order. Failure to submit the recusal request with the Commission's Executive Director within ten calendar days after being served with the probable cause report waives all grounds for recusal. All petitions for judicial review of any Executive Director ruling or order concerning recusal of the Executive Director must be filed with a court within ten calendar days following the date of the ruling or order.

- (10) **Statute of Limitations for Administrative Enforcement Actions.** No administrative enforcement action brought by the City Ethics Commission shall be commenced more than four years after the date on which the violation occurred. The service of the probable cause report upon the person alleged to have violated the law shall constitute the commencement of the administrative enforcement action. If the person alleged to have violated the law engaged in the concealment of his or her acts, the four-year period shall be tolled for the period of concealment. If upon being ordered by a court to produce any person, witness or document sought by a subpoena, the person alleged to have violated the law fails to appear, or produce any witness or document in response to the order by the date ordered to comply therewith, the four-year period shall be tolled for the period of delay from the date the person or witness was originally scheduled to appear, or the document was to be produced, pursuant to the subpoena until the date the person appears, or the witness or document is produced.

(e) **Administrative Enforcement Proceedings - Administrative Hearings.**

(1) **Hearing Panel/Officer.** The Executive Director shall present to the Commission the following options from which to select and/or compose an administrative hearing panel to hear the case:

- (A) The Commission may sit as the hearing panel to hear the case, without an outside hearing officer presiding;
- (B) The Commission may sit as the hearing panel to hear the case, with an outside hearing officer presiding; or
- (C) The Commission may select an outside hearing officer to hear the case and to file a report and recommendation for decision by the Commission.

The Commission shall select one of the above options for the administrative hearing. In the event the Commission selects option (B) or (C), the Commission shall appoint a hearing officer.

(2) **Administrative Prosecution.** The Executive Director shall direct the Director of Enforcement to prepare and present the case in support of the accusation to be heard at the administrative hearing.

(3) **Discovery.** The parties shall be entitled to pre-hearing discovery in accordance with the provisions for discovery set forth in the California Administrative Procedures Act. However, upon request, the Commission or its designated hearing officer may, at its discretion, allow the parties to conduct additional discovery other than what is provided for in the California Administrative Procedures Act. The Commission or its designated hearing officer shall resolve any discovery dispute.

(4) **Administrative Hearing Brief.** Not later than seven calendar days prior to an administrative hearing, the Director of Enforcement shall, and any respondent may, submit to the Commission and/or to the outside hearing officer, if such was selected pursuant to option (B) or (C) above, an administrative hearing brief (hereafter "brief"). The brief shall outline significant legal arguments and evidence to be presented at the hearing. The brief shall not exceed 25 pages in length except by permission of the hearing panel or the outside hearing officer, if he or she sits alone, and by a showing of good cause. Prior to the hearing, when a brief is submitted by any party pursuant to this subsection, a copy shall be served on the same date of [t]he submission to all other parties to the administrative hearing.

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

- (A) Regardless of whether a hearing panel is established or an outside hearing officer is selected, the Director of Enforcement or any respondent may recommend to the Commission that preliminary matters, not related to the merits of the accusation, shall be heard by an outside hearing officer or by a designated Commissioner prior to the hearing on the merits. Such preliminary matters may include, but are not limited to, the following:
- (i) motions regarding procedural matters;
  - (ii) the validity or interpretation of the applicable provisions of the Charter and/or ordinances;
  - (iii) disqualification of any member of the Commission from participation on the administrative hearing panel;
  - (iv) discovery; and
  - (v) any other matters not related to the truth or falsity of the factual allegations in the accusation.
- (B) If the Commission accepts the recommendation of the Director of Enforcement or respondent, those motions or matters shall be noticed in a timely fashion, and a preliminary hearing shall be held and conducted by an outside hearing officer or the designated Commissioner selected by the Commission.
- (C) The Director of Enforcement and any respondent may request reconsideration by the Commission of any decision by an outside hearing officer or designated Commissioner on preliminary matters. Any party requesting reconsideration shall submit a written request for reconsideration at least 14 calendar days prior to the administrative hearing on the merits. The request shall set forth the reasons for the request and any supporting legal arguments and affidavits. The Commission, in its discretion, may either consider the outside hearing officer's or designated Commissioner's decision on its merits, or deny a request for reconsideration without having to determine whether the decision by the outside hearing officer or designated Commissioner on a preliminary matter was correct or not. The Commission shall issue a ruling and notify all parties in a timely fashion. The Commission need not give reasons for its decision to deny a request for reconsideration.

(6) **Stipulated Orders.** At any time before or during an administrative hearing or in lieu of such a hearing, the Executive Director and any respondent may stipulate to the entry of an order. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter Section 706(c). The stipulated order must be approved by the Commission, shall be announced publicly and shall have the full force of an order of the Commission.

(7) **Hearing on the Merits.**

(A) **Scheduling and Notice of Hearing.** The Commission or, if applicable, the outside hearing officer, shall schedule the administrative hearing and shall give notice of the hearing to all respondents at least 21 calendar days prior to the scheduled hearing. The notice shall be in substantially the following form but may contain additional information:

“You are hereby notified that a hearing will be held before the Commission (or name of hearing officer) at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at the hour of \_\_\_\_\_, at (location of hearing), upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the (Commission or name of hearing officer).”

(B) **Subpoenas and Oaths.**

(1) The Commission, or an outside hearing officer appointed to conduct an administrative hearing, is authorized and empowered to issue subpoenas for the attendance of witnesses and for the production of documents and records, upon the request of any party. A party seeking a subpoena shall file a written request with the Executive Director, who shall promptly forward the request to the Commission or hearing officer. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the party seeks the production of documents or records, the declaration shall identify those items with specificity, set forth the materiality of the items and state that the witness has the items in his or her possession or under his or her control.

- (2) The Commission, any member of the Commission, the secretary of the Commission, or a hearing officer appointed to conduct an administrative hearing, is authorized and empowered to administer oaths and affirmations.
  - (3) The procedure for issuing, serving, objecting to or enforcing an administrative subpoena in connection with an administrative hearing after an accusation is served shall be the same as set forth in Section 24.1.2(b)(4) of this Code except that the Executive Director's role will be conducted by the Commission, designated Commissioner or the outside hearing officer.
- (C) **Standard of Proof.** When an administrative hearing is conducted pursuant to Charter Section 706(c), determinations shall be made based on a preponderance of the evidence. All evidence admissible in an administration proceeding governed by the provisions of the California Administrative Procedures Act shall be admissible in the administrative hearing. 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 though that matter was not covered in direct examination, to impeach any witness and to rebut evidence presented against the party. The hearing shall be tape-recorded, and the tape shall be retained by the Commission. A copy of the tape shall be provided to each respondent. A respondent additionally may ask that a certified court reporter attend and record the hearing. In such event, the respondent shall provide copies of any transcript to the Commission and all other respondents. The costs of such a record shall be borne by the respondent requesting such record.
- (D) **Finding of Violation.**
- (i) The outside hearing officer, if presiding over the panel, shall rule on procedural matters and on the admission and exclusion of evidence, but shall have no role in the decision.
  - (ii) When the outside hearing officer alone hears a case, he or she shall make an initial determination as to whether a violation occurred and shall recommend a proposed order. The report of the hearing officer shall contain proposed findings of fact and conclusions of law and shall include a summary of the evidence supporting each finding. Copies of the hearing officer's report shall be mailed to the Executive Director and each respondent. Within seven calendar days of mailing the report, each party may file with the Commission a brief of no

more than 15 pages in response to the report. The Commission shall consider the hearing officer's determination and recommendation and shall make a final determination concerning whether a violation has occurred and impose an order, based on the report of the hearing officer and the record. If the Commission determines that the outside hearing officer's report and the record of the proceedings are not sufficient to enable the Commission to make a determination concerning whether a violation has occurred, the Commission may remand the case to the outside hearing officer who heard the case, or to a new hearing officer, with instructions for further proceedings.

- (iii) Prior to a decision by the Commission, each party shall be allowed oral argument to the Commission of no more than 20 minutes.
  - (iv) Regardless of whether the Commission or a hearing officer hears the evidence, a determination by the Commission of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify that he or she personally heard the testimony (either in person or by listening to a tape recording of the proceeding) and reviewed the exhibits admitted into evidence, or otherwise reviewed the entire record of the proceedings.
  - (v) Whether the Commission sits as the hearing panel or acts on the recommendation of an outside hearing officer, it shall require the votes of three Commissioners to find a violation and to impose an order, or to remand the case to an outside hearing officer for further proceedings.
- (E) **Factors to be Considered.** In framing a proposed order or penalty following a finding of a violation, the Commission or outside hearing officer shall consider all the relevant circumstances surrounding the case, including but not limited to:
- (i) the severity of the violation;
  - (ii) the presence or absence of any intention to conceal, deceive, or mislead;
  - (iii) whether the violation was deliberate, negligent or inadvertent;

- (iv) whether the violator demonstrated good faith by consulting the Commission staff in a manner not constituting a complete defense under Charter Section 705;
- (v) whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of the City Charter, ordinances or similar laws; and
- (vi) 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.

(F) **Administrative Orders and Penalties.** Following the finding of a violation, and pursuant to Charter Section 706(c), the Commission may issue orders and penalties which shall require the violator to:

- (i) cease and desist the violation; and/or
- (ii) file any reports, statements or other documents or information required by law; and/or
- (iii) pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

(G) **Statute of Limitations.** With the exception of judicial review of enforcement decisions or rulings involving requests to recuse the Executive Director, or objections to subpoenas or subpoenas duces tecum, the 90-day statute of limitations contained in California Code of Civil Procedure Section 1094.6 shall apply to judicial review of enforcement decisions made pursuant to this section.

(f) **Access To Documents.**

- (1) Complaints, responses thereto, and investigative files and information contained therein shall be available for public inspection in accordance with the requirements of the California Public Records Act (Government Code Section 6250, et seq.). No record or information contained in any enforcement file shall be disclosed to any person other than a respondent or his or her representative, the City Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a determination concerning probable cause.

- (2) When release of material is requested pursuant to Subdivision (1), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.
  - (3) Requests for access and/or copies pursuant to Subdivision (1) shall be made in writing and shall specifically identify the documents sought. The person requesting copies shall pay 10 cents per page for copies of public records on State-generated forms or \$1.00 plus 10 cents per page for copies of public records on City-generated forms.
- (g) This section does not govern the duties of the Commission pursuant to Charter Section 702(e) and (g).

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