

ORDINANCE NUMBER O- 19165 (NEW SERIES)

ADOPTED ON APR 07 2003

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 2, ARTICLE 6, DIVISION 4, BY AMENDING SECTIONS 26.0402, 26.0413, 26.0414, 26.0421, 26.0422, 26.0423, 26.0425, 26.0430, 26.0435, AND 26.0450, ALL RELATING TO INVESTIGATION AND ENFORCEMENT PROCEDURES FOR THE CITY OF SAN DIEGO ETHICS COMMISSION.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 6, Division 4, of the San Diego Municipal Code is hereby amended by amending Sections 26.0402, 26.0413, 26.0414, 26.0421, 26.0422, 26.0423, 26.0425, 26.0430, 26.0435, 26.0450, to read as follows:

§26.0402 **Definitions**

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

Administrative Enforcement Order to Business Day [No change in text.]

City means the City of San Diego or any of its organizational subdivisions, agencies, offices, or boards.

Commission to Final Administrative Complaint [No change in text.]

Governmental Ethics Laws mean local laws governing campaign contribution limits, campaign contribution disclosure, campaign expenditure disclosure,

statements of economic interests, receipt and disclosure of gifts, conflicts of interest, lobbying registration and disclosure, and other matters proposed by the *Commission* and adopted by a majority of the City Council.

Mitigating Information to Subpoena duces tecum [No change in text.]

§26.0413 Jurisdiction of the Ethics Commission; Statute of Limitations

- (a) The authority of the Commission to conduct investigations and take administrative enforcement actions shall extend to all elected officials of the *City*; all candidates for *City* office; all committees required to file any disclosure forms with the Office of the City Clerk pursuant to Chapter 2, Article 7, Division 29 of this Code; all employees of the *City*, other than classified employees, who are required to file conflict of interest disclosure forms pursuant to a conflict of interest code; all consultants to the *City* who are required to file conflict of interest disclosure forms pursuant to a conflict of interest code; all members of *City* boards and commissions who are required to file conflict of interest disclosure forms pursuant to a conflict of interest code; all members of Project Area Committees; and all lobbyists registered with the *City* pursuant to Chapter 2, Article 7, Division 40, of this Code; and all former City Officials of the *City*, as those terms are defined and applied in Article 7, Division 35, of this Chapter.
- (b) [No change in text.]

(c) The *Commission* shall have no jurisdiction over actions or events that occurred prior to July 1, 2001, nor shall it have the authority to audit any records pertaining to actions or events that occurred prior to July 1, 2001.

(d) through (f) [No change in text.]

§26.0414 Responsibilities and Duties of the Ethics Commission

The *Commission* shall have the following responsibilities and duties:

(a) To provide training and education regarding *Governmental Ethics Laws* to *City* officials and employees, and candidates for *City* office and their staffs.

(b) To issue formal and informal advice and opinions to any person regarding the *Governmental Ethics Laws* within the *Commission's* jurisdiction. The *Commission* shall have the right to issue either informal advice or formal opinions at its discretion in response to requests for advice. The *Commission* may seek advice and opinions from the Fair Political Practices Commission as it deems appropriate. Elected officials of the *City* and *City* department heads, including the City Manager, may require the *Commission* to issue a formal opinion in response to an inquiry, provided that sufficient information is provided to the *Commission* to enable the *Commission* to provide a formal opinion.

No person who acts in good faith based upon a formal opinion issued to him or her by the *Commission* shall be subject to administrative penalties

for so acting, provided that the material facts are as stated in the opinion request.

- (c) To review campaign, lobbying, and conflict of interest disclosure forms, and to propose procedures for conducting audits of campaign, lobbying, and conflict of interest disclosure forms, subject to City Council approval. The Office of the City Clerk shall continue to be the central filing office for all campaign, lobbying and conflict of interest disclosure forms which must be filed with the *City*.

(d) through (e) [No change in text.]

- (f) To propose to the City Council, for its approval, an ordinance establishing civil fines or penalties for violations of the *City's Governmental Ethics Laws*, which the *Commission* shall have the power to levy or impose, and the procedures therefore.

- (g) To undertake a review of the *City's* existing Governmental Ethics Laws, and to propose updates to those laws to the City Council for its approval.

(h) through (i) [No change in text.]

§26.0421 Filing of Complaints

Complaints may be filed with the *Commission* in accordance with the following provisions:

(a) through (b) [No change in text.]

- (c) Notwithstanding the provisions of Section 26.0421(a) and (b), the *Commission*, individual Commissioners, the *Executive Director*, and the

staff of the *Commission*, shall not commence enforcement proceedings on their own initiative unless such enforcement proceedings arises from the discovery of an apparent material violation of *Governmental Ethics Laws* in the course of an official *Commission* investigation; or audit. In such cases, the *Commission* shall vote in closed session whether the apparent material violation warrants the; *Commission's* exercise of its enforcement authority and, upon the concurring vote of at least four Commissioners, shall instruct the *Executive Director* to either initiate a formal investigation or prepare a *Draft Administrative Complaint and Probable Cause Report*.

(d) [No change in text.]

§26.0422 Preliminary Review

(a) through (c) [No change in text.]

(d) Notwithstanding subsections (b) and (c) of this Section, if the complaint alleges a violation of the Election Campaign Control Ordinance (San Diego Municipal Code sections 27.2901 through 27.2974) and the *Respondent* is the subject of a pending *Commission* audit, the deadline for completing *Preliminary Review* may, at the discretion of the *Executive Director*, be suspended until thirty calendar days following the submittal of the applicable final audit report to the *Commission*.

- (e) After completing a *Preliminary Review*, the *Executive Director* may determine that the allegations in the complaint do not warrant a formal investigation for any of the following reasons:
- (1) The *Commission* has no jurisdiction over the allegations made in the complaint. A matter is outside the jurisdiction of the *Commission* if:
 - (A) the subject of the complaint is a *Person* who is not identified in Section 26.0413(a) as being within the scope of the *Commission's* investigative and enforcement authority; or
 - (B) the complaint does not allege a violation of *Governmental Ethics Laws*; or
 - (C) the allegations made in the complaint pertain to actions or events that occurred prior to July 1, 2001.
 - (2) The complaint restates other complaints containing essentially similar or identical allegations that have already been disposed of, and the evidence presented does not warrant reopening the previous case; or
 - (3) The allegations contained in the complaint are already under investigation by the *Commission*; or
 - (4) The complaint consists of speculation, opinion, frivolous contentions, or absurd accusations; or

- (5) The complaint consists entirely of one or more non-material violations that were previously discovered in a *Commission* audit and, in the *Executive Director's* judgment, were appropriately excused or remedied; or
- (6) The complaint consists entirely of one or more material findings of a *Commission* audit, and the *Commission* has already voted against initiating an enforcement action based on those findings.
- (f) If, after completing the *Preliminary Review*, the *Executive Director* determines that a formal investigation is not warranted for one or more of the reasons set forth in Section 26.0422(d), the *Commission* and its staff shall take no further action in the matter, except as follows:
 - (1) through (2) [No change in text.]
- (g) Public disclosure of documents related to the disposition of matters at the *Preliminary Review* stage is subject to the provisions of Section 26.0455.

§26.0423 Determination Following Review

- (a) If the *Executive Director* determines that the allegations in the complaint warrant further action, the *Executive Director* shall make a recommendation to the *Commission* within thirty calendar days of the completion of the *Preliminary Review*. The recommendation shall be made in closed session pursuant to section 54956.9 of the California Government Code. The *Executive Director* shall recommend one of the following courses of action:

- (1) [No change in text.]
 - (2) that the *Commission* take no further action on the complaint; or
 - (3) that the *Commission* take no further action on the complaint, but instead refer the complaint or the *Complainant* to another governmental or law enforcement agency
- (b) After hearing the *Executive Director's* recommendation, the *Commission* shall vote in closed session on whether to conduct a formal investigation, to take no further action on the complaint, or to refer the matter to another agency. Either action shall require the concurring vote of four members of the *Commission*.
- (c) through (e) [No change in text.]

§ 26.0425 Determination Following Investigation

- (a) through (b) [No change in text.]
- (c) Notwithstanding the provisions of Section 26.0425(b), the *Commission* shall not order that a *Probable Cause Hearing* be conducted and shall not refer the matter to another agency if it is presented with clear and convincing evidence that, prior to the alleged violation:
- (1) [No change text.]
 - (2) The *Respondent*, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case; and
 - (3) The *Commission* or its staff issued a formal, written opinion; and

- (4) The *Respondent* committed the acts or violations alleged in the complaint in good faith reliance upon the formal, written opinion of the *Commission* or its staff.

(d) through (e) [No change in text.]

§26.0430 Preparation for Probable Cause Hearing

- (a) [No change in text.]
- (b) As soon as practicable, but no later than thirty calendar days after ordering that a *Probable Cause Hearing* be conducted, the *Commission* shall take the following action:
 - (1) [No change in text]
 - (2) Appoint a *Presiding Authority* to conduct the *Probable Cause Hearing*. At the discretion of the *Commission*, the *Presiding Authority* shall be one of the following:
 - (A) One Commissioner; or
 - (B) An ad hoc subcommittee composed of three Commissioners; or
 - (C) An individual selected from a list of volunteers who have been pre-qualified to meet or exceed minimum qualification criteria for training and experience as established by the *Commission*.

(c) The *Executive Director* shall cause the *Respondent* to be served with the following materials at least sixty calendar days prior to the date of the *Probable Cause Hearing*:

- (1) [No change in text.]
- (2) A copy of the *Draft Administrative Complaint*; and
- (3) Written notice of the date, time, and location of the *Probable Cause Hearing*. The notice shall be in substantially the following form:

"You are hereby notified that a hearing will be held before a Presiding Authority appointed by the City of San Diego Ethics Commission on the ____ day of ____, 20____, at the hour of ____, at (location), upon the allegations made in the Draft Administrative Complaint. You have a right to attend the hearing, and may be represented by legal counsel or any other representative of your choosing. You may present any relevant evidence, including the testimony of witnesses, and will be given an opportunity to cross-examine all witnesses testifying against you. The hearing shall be closed to the public unless each person named as a Respondent in the Probable Cause Report requests in writing that the hearing be open to the public."

- (4) Written notice that the *Respondent* has the right to respond in writing to the *Probable Cause Report*; and

(5) Written notice that the *Respondent* has a right to attend the *Probable Cause Hearing* and be represented by legal counsel or any representative of his or her choosing.

(6) [No change in text.]

(d) through (i) [No change in text.]

§26.0435 Preparation for Administrative Hearing

(a) [No change in text.]

(b) As soon as practicable, but no later than thirty calendar days after ordering that a public *Administrative Hearing* be conducted, the *Commission* shall take the following action:

(1) [No change in text.]

(2) Appoint a *Presiding Authority* to conduct the Administrative Hearing. At the discretion of the *Commission*, the *Presiding Authority* shall be one of the following:

(A) [No change in text.]

(B) An ad hoc subcommittee composed of three Commissioners; or

(C) An individual selected from a list of volunteers who have been pre-qualified to meet or exceed minimum qualification criteria for training and experience as established by the *Commission*.

(c) [No change in text.]

(d) The *Parties* shall be entitled to pre-hearing discovery in accordance with the provisions for discovery set forth in the official Hearing Procedures adopted by the *Commission*. However, upon request, the *Presiding Authority* may, at its discretion, allow the *Parties* to conduct additional discovery other than what is provided for in the Hearing Procedures. The *Presiding Authority* shall resolve any discovery dispute.

(e) through (h) [No change in text.]

§26.0450 Settlements

Settlement negotiations and settlement of pending matters may occur at any point after *Preliminary Review*, subject to the following:

(a) through (g) [No change in text.]

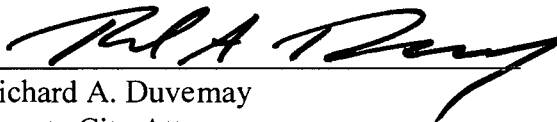
(h) The *Commission's* approval of a stipulation shall be expressed in a written statement containing the results of the voting and identifying the vote or abstention of each Commissioner who participated in the proceeding.

(i) through (j) [No change in text.]

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvemay
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02/18/03
Or.Dept:Mayor
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