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ORDINANCE NUMBER O- 20049 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 11 2011

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 4 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 26.0402 AND 26.0435, ALL RELATING TO THE ETHICS COMMISSION ENFORCEMENT PROCEDURES

WHEREAS, the San Diego Municipal Code provides that the Ethics Commission (Commission) shall appoint one or more hearing officers to conduct the Commission's administrative hearings; and

WHEREAS, at the discretion of the Commission, the administrative hearing may be conducted by: (1) the entire Commission sitting as a hearing panel; (2) an ad hoc subcommittee composed of three Commissioners; or (3) an individual selected from a list of volunteers; and

WHEREAS, the Commission reports that during the last year, it held several hearings that required volunteer Commissioners to spend a tremendous amount of time handling pre-hearing issues and attending hearings; and

WHEREAS, the Commission recommends an amendment to the San Diego Municipal Code to add the option of appointing an administrative law judge to conduct the Commission's administrative hearings; NOW, THEREFORE,

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 amended by amending sections 26.0402 and 26.0435 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 through Preliminary Review [No change in text.]

Presiding Authority means either one *Commissioner*, the full *Commission*, an ad hoc subcommittee of three *Commissioners*, someone selected by the *Commission* from a list of pre-qualified individuals, or an administrative law judge, to conduct the *Probable Cause Hearing* or the *Administrative Hearing*.

Presiding Authority's Recommendation means a written report prepared by the individual, administrative law judge, or ad hoc subcommittee conducting the *Administrative Hearing* that contains findings of fact, a summary of the evidence supporting each finding, a preliminary determination of whether or not the *Respondent* violated *Governmental Ethics Laws*, findings to support the preliminary determination, and a recommended penalty for each violation.

Probable Cause through Subpoena duces tecum [No change in text.]

§26.0435 Preparation for Administrative Hearing

- (a) Concurrent with electing to proceed with a public *Administrative Hearing*, the *Commission* shall:
- (1) direct the *Executive Director* to schedule an *Administrative Hearing* on a date no later than 120 calendar days from the date the *Commission* ordered the hearing, however such date may be extended beyond 120 calendar days upon a showing of good cause by either *Party* and the approval by the *Presiding Authority*.
 - (2) direct the *Executive Director* to prepare a *Final Administrative Complaint*.
 - (A) If the *Commission* finds that *Probable Cause* exists for every allegation listed in the *Draft Administrative Complaint*, then the *Final Administrative Complaint* will be substantially identical to the *Draft Administrative Report*.
 - (B) If the *Commission* finds that *Probable Cause* does not exist for one or more of the allegations listed in the *Draft Administrative Report*, it shall instruct the *Executive Director* to prepare a *Final Administrative Complaint* that does not contain such allegations.
 - (C) The *Executive Director* shall make available to the public a copy of the *Final Administrative Complaint*.
 - (3) direct the *Executive Director* to provide notice to the *Respondent* of the *Respondent's* right to have an administrative law judge serve as the *Presiding Authority* at the *Administrative Hearing*.

- (A) The *Executive Director* shall serve such notice on the *Respondent* within seven calendar days of the *Commission* electing to proceed with an *Administrative Hearing*.
 - (B) Any *Respondent* deciding to exercise his or her right to have an administrative law judge serve as the *Presiding Authority* must notify the *Executive Director* in writing of that decision no later than thirty calendar days of being served with the notice provided for in subsection (a)(3)(A).
 - (C) If the *Executive Director* is notified in accordance with subsection (a)(3)(B) that one or more *Respondents* have decided to have an administrative law judge serve as the *Presiding Authority*, the *Commission* shall comply with that decision when appointing the *Presiding Authority* under subsection (b)(2).
- (b) As soon as practicable, but no later than seventy-five calendar days after ordering that a public *Administrative Hearing* be conducted, the *Commission* shall take the following action:
- (1) Appoint a *Petitioner* to prepare and present the case against the *Respondent* to be heard at the *Administrative Hearing*. The *Executive Director* shall serve as the *Petitioner* unless the *Commission*, at its discretion, selects someone else from a list of pre-qualified individuals retained to serve as *Petitioners*.
 - (2) Appoint a *Presiding Authority* to conduct the *Administrative Hearing*. The appointment shall be at the discretion of the *Commission*, except as required by subsection (a)(3)(C). The *Presiding Authority* shall be one of the following:
 - (A) The entire *Commission* sitting as a hearing panel; or
 - (B) An ad hoc subcommittee composed of three Commissioners; or
 - (C) A hearing officer who is either an administrative law judge provided by the California Office of Administrative Hearings, or 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) through (h) [No change in text.]

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

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

APPROVED: JAN I. GOLDSMITH, City Attorney

By Catherine M. Bradley
Catherine M. Bradley
Chief Deputy City Attorney

CMB:sc
02/24/11
03/15/11 REV.
04/06/11 COR. COPY
Or.Dept:EthicsCommission
PL#:2010-03922

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of APR 26 2011.

ELIZABETH S. MALAND
City Clerk

By Carmina L. Trojans
Deputy City Clerk

Approved: 5-11-11
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor