Article 6: Board and Commissions

Division 4: Ethics Commission
(“Ethics Commission” added 6-5-2001 by O-18945 N.S.)

§26.0401 Purpose and Intent

It is the purpose and intent of the City Council to establish an Ethics Commission, which shall have the powers and duties set forth in this Division. The purposes of the Commission shall be to monitor, administer, and enforce the City’s governmental ethics laws, propose new governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics laws.
(Amended 2-11-2002 by O-19034 N.S.)

§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 means a final decision of the Commission containing a finding of a violation of Governmental Ethics Laws.

Administrative Hearing means an administrative hearing, open to the public, following the Commission’s determination that Probable Cause exists to believe that a violation of Governmental Ethics Laws has occurred.

Business day means any day except a Saturday, Sunday, or holiday listed in San Diego Municipal Code section 21.0104, unless otherwise specified.

City means the City of San Diego or any of its organizational subdivisions, agencies, offices, commissions, or boards. City includes corporations wholly owned by the City, such as the San Diego Data Processing Corporation, San Diego Convention Center Corporation, Centre City Development Corporation, Southeast Development Corporation, and any other corporations for which the City is the sole shareholder. City also includes the San Diego Housing Commission. City does not include any joint powers authority in which the City is a member, unless the agreement creating the particular authority requires the joint powers authority to comply with the City’s Governmental Ethics Laws.
Commission means the City of San Diego Ethics Commission created by City of San Diego Ordinance O-18945, codified in Chapter 2, Article 6, Division 4 of the San Diego Municipal Code.

Complainant means a person or entity that makes a complaint alleging violations of Governmental Ethics Laws.

Draft Administrative Complaint means a document prepared by the Executive Director that identifies the Governmental Ethics Laws allegedly violated by the Respondent, the acts or omissions with which the Respondent is charged, and the penalties the Commission is seeking to impose for each violation listed.

Elective governmental office means any city, county, state, or federal elective office. It includes an office held by an individual appointed to fill a vacancy in an elective office. It does not include an elective position on a city neighborhood planning group, planning area committee, town council, business improvement district, or similar group.

Exculpatory Information means information tending to show that the Respondent has not committed the alleged violations.

Executive Director means the Executive Director of the Commission who has been selected by the Commission and confirmed by a majority of the City Council in accordance with Section 26.0411, or the Executive Director’s designee.

Filing Officer means the Clerk of the City of San Diego charged with the duties and responsibilities prescribed in title 2, sections 18110 and 18115 of the California Code of Regulations.

Final Administrative Complaint means a document prepared by the Executive Director that identifies the Governmental Ethics Laws allegedly violated by the Respondent, the acts or omissions with which the Respondent is charged, the penalties the Commission is seeking to impose for each violation listed, and which is consistent with any findings made by the Commission following the Probable Cause Hearing.

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 means information tending to excuse or reduce the significance of the Respondent’s conduct.

Parties means the Commission, through actions of the Petitioner, and the Respondent.

Person means any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, or any other organization or group of persons acting in concert.

Petitioner means the Executive Director, or any other individual appointed by the Commission, who prepares and presents the case against the Respondent at the Probable Cause Hearing or at the Administrative Hearing.

Preliminary Review means an examination of the facts contained within a complaint for the sole purpose of determining whether the subject of the complaint is appropriate for consideration by the Commission.

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 means evidence sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a violation of Governmental Ethics Laws has been committed and that the Respondent committed or caused the violation.

Probable Cause Hearing means an administrative hearing, closed to the public unless otherwise requested by the Respondent, for the purpose of ascertaining whether Probable Cause exists.

Probable Cause Recommendation means a written report prepared by the individual or ad hoc subcommittee conducting the Probable Cause Hearing that contains a recommendation to the Commission regarding whether or not Probable Cause exists.
Probable Cause Report means a document prepared by the Executive Director following a formal investigation, and containing a summary of law and evidence gathered through the investigation, including any relevant Exculpatory Information and Mitigating Information.

Respondent means a person or entity that is alleged in a complaint to have violated Governmental Ethics Laws.

Subpoena means a written order requiring a witness’s appearance at a Probable Cause Hearing or Administrative Hearing to give testimony.

Subpoena duces tecum means a written order requiring the production of books, papers, records, or other items material to the violation of Governmental Ethics Laws at issue.

(Amended 4-7-2003 by O-19165 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)
(Amended 5-11-2011 by O-20049 N.S.; effective 6-10-2011.)

§26.0403 Ethics Commission Established

There is hereby created a City of San Diego Ethics Commission consisting of seven (7) members, who shall serve without compensation.

(“Ethics Commission Established” added 6-5-2001 by O-18945 N.S.)
§26.0404 Appointment

(a) The Mayor shall appoint all seven members of the Commission from a pool of nominees submitted by the members of the City Council and City Attorney. The Mayor’s appointments are subject to confirmation by a majority of the City Council.

(b) The Commission and its nominees for appointment shall reflect the diversity of the City which it serves. Priority consideration shall be given to nominees with familiarity and experience with campaign finance laws, government ethics and lobbying laws, and conflict of interest regulations. At least two of the members of the Commission shall have been a candidate for an elective governmental office, have worked as a treasurer or in another high-level position in a campaign for elective governmental office, or have held elective governmental office, and at least three of the members of the Commission shall be attorneys in good standing with the State Bar of California. No more than three members of the Commission shall be registered with the same political party. Each nominee shall be a qualified elector of the City, although when a person with unique qualifications is able to serve, and who is a qualified elector of San Diego County but not the City, an exception may be made and such person may be considered eligible for nomination to the Commission. No person who ran as a candidate against a current elected City Official, or who served in a staff capacity for the campaign of such a candidate, shall be eligible for nomination to the Commission. The members of the City Council and the City Attorney shall identify the requirements fulfilled by each of their nominees.

(c) The Mayor shall fill any subsequent vacancies on the Commission in the following manner. When a vacancy occurs, the Mayor shall send a memorandum to the City Attorney and City Council stating the requirements for the vacant position. Each member of the City Council and the City Attorney shall nominate one candidate for each vacancy on the Commission. The nominations and appointments shall be made so that the requirements of subsection (b) with respect to professional background and political party membership are maintained. If the Mayor reasonably believes that the pool of nominees is not large enough, or does not provide nominees who meet the professional background or political party requirements of subsection (b), the Mayor may call for additional nominees.
(d) The members of the Commission shall elect a Chairperson annually at a meeting held before the end of June, with the elected Chairperson’s term of office to begin on July 1. A member may serve as a Chairperson of the Commission for no more than two consecutive one-year terms; however, a member who has served two consecutive one-year terms as Chairperson is eligible to serve again as Chairperson after an interval of one year has passed.

(Amended 2-11-2002 by O-19034 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)
(Amended 9-20-2017 by O-20855 N.S.; effective 10-20-2017.)

§26.0405 Terms

The members of the Commission shall serve four-year terms beginning on July 1 and ending on June 30. Three of the Mayor’s initial seven appointees shall serve two-year terms. A member who has served two complete, consecutive four-year terms shall be ineligible for reappointment for four years after leaving office.

(Amended 2-11-2002 by O-19034 N.S.)

§26.0406 Qualification of Members

Each member of the Commission shall comply with the following qualifications during his or her tenure on the Commission:

(a) Each Commissioner shall be a qualified elector of the County of San Diego.

(b) Each Commissioner shall be of high moral character and integrity.

(c) No member of the Commission shall make a financial contribution to a candidate for City office.

(d) No member of the Commission shall participate in a campaign supporting or opposing a candidate for City office, nor shall any member of the Commission participate in a campaign supporting or opposing a City ballot measure unless such measure expressly pertains to the activities or authority of the Commission or to the laws under the jurisdiction of the Commission. Participating in a campaign includes engaging in fundraising activities and making public endorsements with regard to a City candidate or measure.
(e) No member of the Commission shall become a candidate for elective governmental office in the City during his or her tenure on the Commission, and for twelve months thereafter. Whether or not a Commissioner has become a candidate for elective governmental office in the City will be determined by applying the appropriate laws and regulations governing the office sought. Each prospective Commissioner shall sign a written declaration agreeing not to run for elective governmental office in the City for at least twelve months after completion of service on the Commission, and waiving the legal right to challenge this provision.

(f) No member of the Commission is permitted to act as a lobbyist required to register with the City pursuant to Chapter 2, Article 7, Division 40 of this Code.

§26.0407 Failure to Comply With Certain Qualifications; Automatic Resignation

A Commissioner’s failure to comply with the qualifications listed in Section 26.0406 (a) or (c) shall be treated as if the Commissioner had automatically resigned from the Commission. The City Clerk may post a notice of vacancy for the position on the Commission as if the Commissioner had resigned in fact.

§26.0408 Removal for Cause

Failure to comply with the qualifications listed in Section 26.0406(b), (d), (e), or (f) shall constitute cause for purposes of determining whether a member should be removed from the Commission. The City Council may remove a member of the Commission for cause by a vote of a majority of the members of the Council. Before the Council may remove a member of the Commission, written charges shall be made against the Commission member and an opportunity afforded for public hearing before the Council upon such charges.
§26.0409 Quorum

(a) Except as provided in Section 26.0409(b), four members shall constitute a quorum, and the concurring vote of at least four members shall be required to take any action.

(b) A vote to impose a sanction shall require the concurring vote of five members of the Commission. For purposes of this section, a sanction includes any civil fine or other penalty established by the City Council pursuant to Section 26.0414(f).

(Amended 2-11-2002 by O-19034 N.S.)

§26.0410 Reimbursement for Expenses

The members of the Commission shall be reimbursed for reasonable expenses incurred in the performance of their official duties, pursuant to City Administrative Regulations.

(Amended 2-11-2002 by O-19034 N.S.)

§26.0411 Staff and Budget

The Commission shall employ a staff consisting of no less than a full time Executive Director, a clerical assistant, and an investigator. The selection of an Executive Director shall be subject to confirmation by a majority of the City Council. The Commission shall retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties. The City Council shall appropriate a reasonable budget for the Commission.

(Amended 2-11-2002 by O-19034 N.S.)

(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)

§26.0412 Conflict of Interest Code

A conflict of interest code shall be adopted for the members and staff of the Commission, subject to City Council approval pursuant to Chapter 2, Article 6, Division 1 of this Code. All members of the Commission shall be required to complete and file statements of economic interests in accordance with the conflict of interest code.

(Amended 2-11-2002 by O-19034 N.S.)
§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 current and former

1. elected officials of the City;
2. candidates for City office;
3. persons regulated by or subject to Chapter 2, Article 7, Division 29 of this Code, including all committees and treasurers for committees required to file any disclosure form with the Filing Officer, as well as any person who makes a campaign contribution in support of or opposition to a City candidate or ballot measure;
4. employees of the City, other than classified employees as that term is defined in San Diego City Charter section 117, who are required to file economic interest disclosure forms pursuant to a conflict of interest code;
5. consultants to the City who are required to file economic interest disclosure forms pursuant to a conflict of interest code;
6. members of City boards and commissions who are required to file economic interest disclosure forms pursuant to a conflict of interest code;
7. officers, directors, members of boards of directors, employees, and consultants of the San Diego Housing Commission and of corporations wholly owned by the City who are required to file economic interest disclosure forms pursuant to a conflict of interest code;
8. members of Project Area Committees; and,
9. lobbyists registered, or persons required to be registered as lobbyists, with the City pursuant to Chapter 2, Article 7, Division 40, of this Code.

(b) The Commission’s investigative and enforcement authority is limited to violations of Governmental Ethics Laws that are not preempted by state or federal law.
(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) No administrative action alleging a violation of *Governmental Ethics Laws* shall be commenced more than three years after the date of the violation.

(e) The date of service of a *Draft Administrative Complaint* upon the *Respondent* constitutes the commencement of an administrative action.

(f) For the purposes of section 26.0413(d), the date of the violation means the earliest date when the *Filing Officer* or the *Commission* has, or reasonably should have, knowledge of the violation and its cause, and a suspicion of wrongdoing. Suspicion shall be determined from an objective standpoint of what is reasonable for the *Filing Officer* or the *Commission* to know or suspect under the facts of the situation.

(Amended 4-7-2003 by O-19165 N.S.)

(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)

§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. Any person who comes under the *Commission*’s jurisdiction as described in SDMC section 26.0413 may request that the *Commission* 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 perform ongoing review of the Commission’s procedures for conducting audits, to propose changes in those procedures as necessary, and to conduct audits of campaign and lobbying disclosure forms. Any change to the Commission’s audit procedures shall be subject to City Council approval. The Office of the City Clerk shall continue to be the central filing office for all campaign, lobbying, and statement of economic interest disclosure forms which must be filed with the City and shall continue to perform the duties required of the Clerk under SDMC section 27.2985.

(d) To perform ongoing review of the Commission’s formal complaint and investigation procedures for violations of the City’s Governmental Ethics Laws, and to propose changes to those procedures as necessary, subject to City Council approval.

The Commission shall ensure that any procedure it proposes includes reasonable safeguards for protecting candidates for elective office from frivolous complaints made during the last ninety days prior to an election, and provides procedural due process rights to individuals under investigation by the Commission. The Commission shall receive complaints from anyone wanting to report Governmental Ethics Law violations.

(e) To investigate and enforce violations of Governmental Ethics Laws, including referral to other enforcement agencies when appropriate. The Commission shall be empowered to subpoena documents and witnesses, in accordance with City Charter section 41(d) granting subpoena authority to the Commission. Subject to the California Public Records Act and City Charter section 216.1, no record or information contained in any investigation or investigatory file shall be disclosed to any person other than a respondent or his or her representative, the Commission’s enforcement staff, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a final determination as to its merit.

(f) To perform ongoing review of the City’s existing Governmental Ethics Laws and the Commission’s enforcement procedures, and to propose updates of those laws to the City Council for its approval.

(g) To publish an annual report describing the activities of the Commission during the previous year, including the number of complaints handled and investigations conducted, the types of violations alleged, and the action taken in response to complaints received and investigations conducted.
(h) To adopt additional rules and regulations, subject to approval of the City Council, to carry out the purposes of this Division.

(Amended 4-7-2003 by O-19165 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)

§26.0415 Interference With Complainants and Witnesses

It is unlawful to use or threaten to use any official authority, including discipline or termination, to discourage, restrain or interfere with any person acting in good faith to make a complaint or provide information to the Commission.

(Amended 2-11-2002 by O-19034 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)

§26.0420 Investigation and Enforcement Procedures

The Investigation and Enforcement Procedures of the Commission, set forth at Sections 26.0420 to 26.0456, are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of Governmental Ethics Laws by:

(a) Setting and maintaining objective standards for the investigation and enforcement of matters brought before the Commission; and

(b) Eliminating any political or improper influence in the investigation of persons accused of ethics violations; and

(c) Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality during the pendency of each proceeding; and

(d) Setting and enforcing reasonable time limits within which enforcement proceedings should be completed; and

(e) Coordinating and sharing with other governmental agencies the responsibility for investigating complaints, whenever consistent with the interests of justice.

(“Investigation and Enforcement Procedures” added 2-11-2002 by O-19034 N.S.)

§26.0421 Filing of Complaints

Complaints may be filed with the Commission in accordance with the following provisions:
(a) Any Person may file a formal complaint alleging violations of Governmental Ethics Laws. The Executive Director shall process and review all formal complaints. Formal complaints must be made in writing on a form specifically provided by the Commission, and must be dated, verified, and signed by the Complainant under penalty of perjury. If the Complainant is an entity, the complaint must be dated, verified, and signed under penalty of perjury by an authorized officer or agent of the entity. Formal complaints must include the following information, upon the Complainant’s information and belief:

1. The name and address of the Complainant, and the telephone number at which the Complainant may be reached during normal business hours; and
2. the name and any known addresses and telephone numbers of the Respondent; and
3. the title or position of the Respondent, if known; and
4. the Governmental Ethics Law allegedly violated; and
5. the facts constituting each alleged violation; and
6. the names, addresses, and telephone numbers of persons with knowledge of the facts constituting an alleged violation, if known; and
7. an identification of documents or other evidence that may prove the facts constituting the alleged violation, if known.

(b) Any person may file an informal complaint alleging violations of Governmental Ethics Laws. The Executive Director shall have no obligation, but has the discretion, to review and process informal complaints. Informal complaints include the following: written complaints that are not verified or signed under penalty of perjury; written complaints that do not contain all of the information required by Section 26.0421(a); unwritten complaints; anonymous complaints; and referrals from other governmental agencies.

(c) The Commission, individual Commissioners, the Executive Director, and the staff of the Commission, may submit a complaint for a Preliminary Review on their own initiative.

(d) The Commission shall not receive complaints at public meetings. The Commission shall urge the public in the strongest terms possible not to make complaints at public meetings.

(Amended 4-7-2003 by O-19165 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
§26.0422 Preliminary Review

(a) The Executive Director shall, within five business days of receipt of a formal complaint, issue a letter to the Complainant acknowledging that the complaint has been received and is being processed.

(1) The letter shall be in substantially the following form:

“The City of San Diego Ethics Commission has received your complaint alleging conduct by the above-named Respondent that may be within the Commission’s investigative and enforcement authority. The Ethics Commission is currently conducting a Preliminary Review of the information contained in the complaint. During the Preliminary Review, the Commission will not be investigating any facts alleged in your complaint, but will simply be making a determination regarding whether or not (a) the Commission has jurisdiction over the subject of the complaint; or (b) the complaint contains allegations already acted upon by the Commission; or (c) the Commission is presently investigating the same allegations from a different complaint; or (d) the complaint consists of opinions or frivolous accusations.

The Ethics Commission will make reasonable efforts to complete the Preliminary Review within thirty calendar days, or within fifteen calendar days if the complaint was received within ninety calendar days of a municipal election and alleges violations by a candidate seeking office at that election. After the Preliminary Review, your complaint may be presented to the Ethics Commission for a vote on whether or not to conduct a formal investigation.

Please do not provide any additional information to the Commission at this time. During the Preliminary Review process, the Ethics Commission will only consider information contained in the complaint.”

(2) The Executive Director shall have no obligation to send such notification to the Complainant if the complaint is an informal complaint filed with the Commission pursuant to Section 26.0421(b).
(b) The Executive Director shall make reasonable efforts to complete a Preliminary Review within thirty calendar days of the receipt of each complaint.

(1) Failure of the Executive Director to complete the Preliminary Review within thirty calendar days shall not preclude the Commission from pursuing administrative remedies against the Respondent in accordance with these procedures.

(2) The purpose of the Preliminary Review is not to determine the truth or falsity of the allegations, but to determine whether the subject of the complaint is appropriate for consideration by the Commission.

(c) Notwithstanding Section 26.0422(b), a Preliminary Review based on a formal complaint received by the Commission within ninety calendar days of a municipal election and alleging violations by a candidate seeking office at that election shall be completed by the Executive Director within fifteen calendar days of receipt of such complaint.

(d) Notwithstanding subsections (b) and (c) of this section, if the complaint alleges a violation of the Election Campaign Control Ordinance (Chapter 2, Article 7, Division 29 of the San Diego Municipal Code) 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(e)(1), (2), (4), (5), or (6), the Commission and its staff shall take no further action in the matter, except as follows:

(1) The Executive Director may refer the complaint to another governmental or law enforcement agency for appropriate action.

(2) The Executive Director shall issue a letter to the Complainant and Respondent within five business days of making the determination, indicating why a formal investigation by the Commission will not be conducted. Such a letter is not a conclusive finding and is not intended to be used as evidence in any enforcement action initiated by another agency.

(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.

(Amended 4-7-2003 by O-19165 N.S.)

(Amended 12-5-2005 by O-19448 N.S.; effective 1-11-2006.)

(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
§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) That the Commission initiate a formal investigation of the allegations made in the complaint; or

(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) If the Commission fails to vote in favor of commencing a formal investigation, the Commission and its staff shall take no further action in the matter, except as follows:

(1) The Commission may instruct the Executive Director to refer the complaint or the Complainant to another governmental or law enforcement agency for appropriate action.

(2) Within five business days of the Commission’s decision, the Executive Director shall issue a letter to the Complainant and Respondent indicating that no formal investigation of the complaint will be conducted.

(3) A letter from the Executive Director indicating that no formal investigation will be conducted by the Commission is not a conclusive finding and is not intended to be used as evidence in any enforcement action initiated by another government agency.
(d) If the Commission votes in favor of conducting a formal investigation of the complaint, the Commission shall instruct the Executive Director to commence a formal investigation.

(e) Public disclosure of documents related to the disposition of matters at the Preliminary Review stage is subject to the provisions of Section 26.0455.

(Amended 4-7-2003 by O-19165 N.S.)

§26.0424 Formal Investigation

(a) The Executive Director shall make reasonable attempts to complete a formal investigation into the allegations contained in the complaint within 180 calendar days of the Commission’s decision to commence the investigation, but in no event shall the formal investigation take more than 360 calendar days to complete.

(b) Failure of the Executive Director to complete a formal investigation within 360 calendar days shall not preclude the Commission from pursuing administrative remedies against the Respondent in accordance with these procedures.

(c) As part of a formal investigation, the Executive Director may interview Persons with knowledge of the facts alleged in the complaint, and may seek the production of books, papers, records, and other items material to the investigation of a complaint.

(1) The Executive Director shall make a reasonable effort to obtain such books, papers, records, and other items on a voluntary basis.

(2) The Executive Director, in his or her discretion, may seek the issuance of a Subpoena duces tecum to obtain books, papers, records, and other items.

(3) A Subpoena duces tecum shall be issued only at the discretion of the Commission, following a concurring vote of at least four of the Commissioners in closed session.

(4) All Subpoenas duces tecum issued pursuant to this section shall be processed in accordance with the procedures set forth at Section 26.0445.
(d) The Executive Director shall periodically report to the Commission, in closed session, on the status of all pending matters, both during and after a formal investigation. Failure to report to the Commission concerning the status of an investigation shall not affect the validity of any information or documentation obtained during the investigation.

(“Formal Investigation” added 2-11-2002 by O-19034 N.S.)

§ 26.0425 Determination Following Investigation

(a) At the conclusion of the formal investigation, the Executive Director shall present to the Commission all relevant evidence obtained during the course of the investigation. The presentation shall be made in closed session pursuant to Section 54956.9 of the California Government Code.

(b) Based on a review of the evidence presented by the Executive Director, the Commission shall, by a concurring vote of at least four members, determine whether there is cause to believe that the Respondent violated Governmental Ethics Laws; and, if so, whether to pursue administrative remedies against the Respondent.

(1) If the Commission determines there is no cause to believe that the Respondent violated Governmental Ethics Laws, then the Commission shall take no further action in the matter, except that the Commission may refer the matter to another agency for appropriate action.

(2) If the Commission determines there is cause to believe that the Respondent violated Governmental Ethics Laws, but decides not to pursue administrative remedies against the Respondent, the Commission shall take no further action in the matter, except that the Commission may refer the matter to another agency for appropriate action.

(3) If the Commission determines there is cause to believe that the Respondent violated Governmental Ethics Laws and also decides to pursue administrative remedies against the Respondent, the Commission shall order that a Probable Cause Hearing be conducted.

(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:
§26.0430 Preparation for Probable Cause Hearing

(a) Concurrent with ordering that a Probable Cause Hearing be conducted, the Commission shall:

(1) Direct the Executive Director to schedule a Probable Cause Hearing on a date no later than ninety calendar days from the date the Commission ordered the hearing, however such date may be extended beyond ninety 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 Probable Cause Report and a Draft Administrative Complaint. The Probable Cause Report shall contain sufficient information to justify the issuance of a Draft Administrative Complaint.
(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) Appoint a Petitioner to prepare and present the case against the Respondent to be heard at the Probable Cause 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 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) A copy of the Probable Cause Report; and
(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) These materials may be served in accordance with the provisions set forth in Section 26.0443.

(d) The Respondent may submit a written response to the Probable Cause Report. The response may contain legal arguments, a summary of evidence, and any Exculpatory Information or Mitigating Information. Each response must be filed with the Executive Director and served on all other Respondents listed in the Probable Cause Report, at least twenty-one calendar days prior to the date of the Probable Cause Hearing.

(e) The Petitioner may collect evidence to refute statements made in the Respondent’s response, and may submit a written rebuttal to the Respondent’s response. The Respondent shall be served with a copy of such rebuttal at least ten calendar days prior to the date of the Probable Cause Hearing.

(f) The Petitioner and Respondent may seek a Subpoena or Subpoena duces tecum in connection with the Probable Cause Hearing pursuant to the provisions of Section 26.0445. Procedures for issuing, serving, objecting to, or enforcing a Subpoena or Subpoena duces tecum in connection with the Probable Cause Hearing shall be as set forth in Section 26.0445.

(g) At the Presiding Authority’s discretion, additional material may be submitted as part of the response or rebuttal.

(h) The time limitations of this section may be extended or shortened by the Presiding Authority for good cause shown.
(i) The Petitioner or Respondent may request that preliminary matters, not related to the merits of the hearing, be heard by the Presiding Authority prior to a Probable Cause Hearing in accordance with Section 26.0447.

(Amended 4-7-2003 by O-19165 N.S.)

§26.0431 Probable Cause Hearing

(a) The Probable Cause Hearing shall be closed to the public unless the Respondents named in the Probable Cause Report request in writing or on the record at the hearing that the Probable Cause Hearing be held in public. If there are multiple Respondents in disagreement regarding whether or not to hold the Probable Cause Hearing in public, the Presiding Authority shall bifurcate the hearing to satisfy each Respondent’s request for a public or private hearing.

(b) Formal rules of the California Evidence Code shall not apply to a Probable Cause Hearing held pursuant to these procedures.

(c) The Presiding Authority shall have the authority to administer oaths and affirmations at the Probable Cause Hearing.

(d) The Presiding Authority may continue the Probable Cause Hearing based on good cause shown by one of the Parties to the hearing, if the Presiding Authority determines that due process has not been adequately afforded.

(e) The Presiding Authority shall find that Probable Cause exists only if the Presiding Authority determines that the evidence is sufficient to lead a person of ordinary caution and prudence to believe that a violation has been committed and that the Respondent may have committed or caused the violation.

(1) If the Presiding Authority is one Commissioner, the Presiding Authority shall take the matter under submission, and make a recommendation regarding whether or not probable cause exists. Reasonable effort shall be made to submit a Probable Cause Recommendation to the Commission within thirty calendar days of the conclusion of the Probable Cause Hearing.
If the Presiding Authority is an ad hoc subcommittee composed of three Commissioners, such subcommittee shall take the matter under submission and, based on the concurrence of at least two members of the subcommittee, make a recommendation regarding whether or not probable cause exists. Reasonable effort shall be made to submit a Probable Cause Recommendation to the Commission within thirty calendar days of the conclusion of the Probable Cause Hearing.

If the Presiding Authority is an individual selected pursuant to Section 26.0430(b)(2)(C), such individual shall take the matter under submission and make a recommendation regarding whether or not probable cause exists. Reasonable effort shall be made to submit a Probable Cause Recommendation to the Commission within thirty calendar days of the conclusion of the Probable Cause Hearing.

(“Probable Cause Hearing” added 2-11-2002 by O-19034 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)

§26.0432 Probable Cause Determination

(a) As soon as practicable following the Probable Cause Hearing and the receipt of any Probable Cause Recommendation, the Commission shall make a Probable Cause determination.

(1) The determination shall be made in closed session pursuant to California Government Code section 54956.9 by a concurring vote of at least four Commissioners.

(2) If an individual was selected from a pre-qualified list to serve as Presiding Authority pursuant to Section 26.0430(b)(2)(C), the Commission may request that such individual attend the closed session meeting to discuss any issue relevant to the Probable Cause Hearing.

(3) The Commission shall find that Probable Cause exists only if it determines that the evidence is sufficient to lead a person of ordinary caution and prudence to believe that a violation has been committed and that the Respondent may have committed or caused the violation.

(4) Any member of the Commission may be disqualified from participating in the Probable Cause determination in accordance with the provisions set forth in Section 26.0447(b).
(5) A determination by the Commission regarding the existence of Probable Cause shall be based on the entire record of the proceedings. Each Commissioner who participates in the determination shall state for the record that he or she personally heard or read the testimony (either in person or by listening to a recording or by reading a transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

(6) The Commission may elect to remand the matter to the Presiding Authority for further proceedings.

(b) If the Commission determines that Probable Cause does not exist, the Commission shall take no further action on the complaint and the Executive Director shall notify each Complainant and Respondent in writing of the Commission’s decision within five business days of the decision.

(c) If the Commission determines that Probable Cause exists, the Commission shall announce in open session that it has determined there is Probable Cause to believe that the Respondent may have violated a Governmental Ethics Law and that the matter shall be heard at a public Administrative Hearing. The announcement shall contain a summary of the allegations and a cautionary statement that the Respondent is presumed to be innocent unless and until such time that the allegations are proven to be a violation at the Administrative Hearing.

(d) Public disclosure of records relating to the Probable Cause Hearing is subject to the provisions of Section 26.0455.

(“Probable Cause Determination” added 2-11-2002 by O-19034 N.S.)

§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:
San Diego Municipal Code  Chapter 2:  Government

(10-2017)

(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) The Executive Director shall cause the Respondent to be served with the following materials, in accordance with Section 26.0443, at least sixty calendar days prior to the date of the Administrative Hearing:

(1) A copy of the Final Administrative Complaint; and

(2) written notice of the date, time, and location of the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a public 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 Final 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 and will be given an 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, papers, records, or other items by applying to the Presiding Authority in care of the City of San Diego Ethics Commission on or before (date).”

(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) The Petitioner and Respondent may seek Subpoenas and Subpoenas duces tecum in connection with the Administrative Hearing pursuant to the provisions of Section 26.0445. Procedures for issuing, serving, objecting to, or enforcing a Subpoena or Subpoena duces tecum in connection with the Administrative Hearing shall be as set forth in Section 26.0445.

(f) Not later than seven calendar days prior to the public Administrative Hearing, the Petitioner shall, and any Respondent may, submit an administrative hearing brief to the Presiding Authority.

(1) Any brief shall outline significant legal arguments and evidence to be presented at the hearing.

(2) A brief shall not exceed twenty-five pages in length except by permission of the Presiding Authority and by a showing of good cause.

(3) When a brief is submitted by any Party pursuant to this subsection, a copy shall be served on the same date of the submission to all other Parties to the Administrative Hearing.

(g) The time limitations of this section may be extended or shortened by the Presiding Authority for good cause shown.

(h) The Petitioner or Respondent may request that preliminary matters, not related to the merits of the hearing, be heard by the Presiding Authority prior to an Administrative Hearing in accordance with Section 26.0447.

(Amended 4-7-2003 by O-19165 N.S.)

(Amended 5-11-2011 by O-20049 N.S.; effective 6-10-2011.)
§26.0436 Administrative Hearing

(a) The Administrative Hearing shall be open to the public.

(b) The Presiding Authority is authorized and empowered to administer oaths and affirmations.

(c) The Petitioner bears the burden of proof at the Administrative Hearing to establish, by a preponderance of the evidence, the existence of a violation of Governmental Ethics Laws.

(d) The rules relating to the admissibility of evidence at the Administrative Hearing are set forth as follows:

(1) 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.

(2) Any relevant evidence shall be admitted if it is the sort of evidence that responsible persons are accustomed to relying upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil or criminal action.

(3) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil or criminal action. An objection is timely if it is made before the Presiding Authority takes the case under submission.

(4) The Presiding Authority has the discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will require an undue consumption of time.

(e) The Administrative Hearing shall be recorded, and the recording shall be retained by the Commission.

(1) A copy of the recording shall be provided to the Respondent upon request.
(2) The Respondent may ask that a certified court reporter attend and make a transcript of the hearing. In such event, the Respondent shall provide copies of the transcript to the Commission and any other Respondents. The costs of making the transcript and making copies of the transcript shall be borne by the Respondent requesting the court reporter.

(f) The Presiding Authority may continue the Administrative Hearing based on good cause shown by one of the Parties to the hearing if the Presiding Authority determines that due process has not been adequately afforded.

(g) At the conclusion of the Administrative Hearing, the Presiding Authority shall act as follows:

(1) If the Presiding Authority is the entire Commission sitting as a hearing panel, it shall conclude the Administrative Hearing by conducting deliberations in accordance with the provisions of Section 26.0438.

(2) If the Presiding Authority is an ad hoc subcommittee composed of three Commissioners, such subcommittee shall take the matter under submission and, based on the concurrence of at least two members of the subcommittee, make a recommendation regarding whether a violation has been committed, whether the Respondent committed or caused the violation, and what penalty, if any, should be imposed. The recommendation shall be submitted to the Commission in accordance with Section 26.0437.

(3) If the Presiding Authority is an individual selected pursuant to Section 26.0435(b)(2)(C), such individual shall take the matter under submission and make a recommendation regarding whether a violation has been committed, whether the Respondent committed or caused the violation, and what penalty, if any, should be imposed. The recommendation shall be submitted to the Commission in accordance with Section 26.0437.

(“Administrative Hearing” added 2-11-2002 by O-19034 N.S.)
§26.0437 Presiding Authority’s Recommendation

(a) The Presiding Authority shall make reasonable efforts to provide the Commission with a Presiding Authority’s Recommendation within twenty calendar days of the conclusion of the Administrative Hearing.

(b) The Presiding Authority’s Recommendation shall, at a minimum, contain findings of fact, a summary of the evidence supporting each finding, conclusions of law, a preliminary determination of whether or not the Respondent violated Governmental Ethics Laws, and a recommended penalty for each violation.

(c) If the Presiding Authority is an individual selected pursuant to Section 26.0435(b)(2)(C), such individual shall include in the Presiding Authority’s Recommendation an initial determination regarding whether or not the Respondent violated Governmental Ethics Laws, but shall have no vote in the final decision of the Commission.

(d) Within five business days of the Commission’s receipt of the Presiding Authority’s Recommendation, the Executive Director shall serve or mail a copy of this document to the Respondent, as well as to the Petitioner, if the Executive Director is not serving in the capacity of Petitioner.

(e) Within ten business days of the service or mailing of the Presiding Authority’s Recommendation, the Petitioner and the Respondent may submit to the Commission a brief of no more than fifteen pages in response to the Presiding Authority’s Recommendation.

(f) Within forty-five calendar days of the mailing of the Presiding Authority’s Recommendation, the Commission shall conduct an open meeting to discuss and vote on whether or not the Respondent violated Governmental Ethics Laws. As soon as practicable, the Executive Director shall serve or mail notice of the open meeting to the Respondent and the Complainant.

(g) At the open meeting, prior to the Commission making a final determination regarding whether or not the Respondent committed a violation of Governmental Ethics Laws, each Party shall be allowed oral argument of no more than twenty minutes.

(h) At the open meeting, the Commission shall discuss and consider the Presiding Authority’s Recommendation and any responsive briefs, and after hearing any oral argument by the Respondent or Petitioner, shall deliberate in accordance with Section 26.0438.
(i) The provisions of this section do not apply when the Presiding Authority is the entire Commission sitting as a hearing panel.

(“Presiding Authority’s Recommendation” added 2-11-2002 by O-19034 N.S.)

§26.0438 Deliberation of the Commission

(a) For every allegation contained in the Final Administrative Complaint, the Commission shall discuss and vote, in open session, whether or not the Respondent committed a violation of Governmental Ethics Laws.

(b) In accordance with the provisions set forth in Section 26.0447(b), for any new grounds arising after the Probable Cause Hearing, any member of the Commission may be disqualified from participating in the open meeting discussion and vote on whether or not the Respondent violated Governmental Ethics Laws.

(c) Notwithstanding subsection (a), the Commission, by the concurring vote of at least four Commissioners, may, in lieu of finding a violation of Governmental Ethics Laws, refer all or part of the matter to the Presiding Authority for further proceedings.

(d) Regardless of whether the Commission sat as the hearing panel or acted on the recommendation of an ad hoc subcommittee or an individual, it shall require the concurring votes of at least four Commissioners to find a violation of Governmental Ethics Laws.

(e) A determination by the Commission that the Respondent violated Governmental Ethics Laws 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 votes shall state for the record that he or she personally heard or read the testimony (either in person or by listening to a recording or by reading a transcript prepared by a court reporter) and reviewed the exhibits admitted into evidence, or otherwise reviewed the entire record of the proceedings.

(f) For each finding of a violation of Governmental Ethics Laws, the Commission shall vote on the penalty to be imposed. In determining the penalty to be imposed, the Commission shall consider all of the relevant circumstances surrounding the matter, including, but not limited to:

(1) the severity of the violation; and
(2) the presence or absence of any intention to conceal, deceive, or mislead; and
(3) whether the violation was deliberate, negligent, or inadvertent; and
(4) whether the Respondent demonstrated good faith by consulting the Commission staff for written advice, and such written advice does not constitute a complete defense; and
(5) whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of Governmental Ethics Laws; and
(6) the existence of any Mitigating Information; and
(7) the degree to which the Respondent cooperated with Commission staff by providing full disclosure, remedying a violation, or assisting with the investigation.

(g) Regardless of whether the Commission sat as the hearing panel or acted on the recommendation of an ad hoc subcommittee or an individual, it shall require the concurring votes of at least five Commissioners to impose a penalty on the Respondent.

(h) A final decision made by the Commission regarding whether or not the Respondent committed a violation of Governmental Ethics Laws shall be expressed in a written resolution containing the results of the voting and identifying the vote or abstention of each Commissioner who participated in the proceedings.

(“Deliberation of the Commission” added 2-11-2002 by O-19034 N.S.)

§26.0439 Administrative Enforcement Order

(a) A final decision of the Commission that contains a finding of a violation of Governmental Ethics Laws shall be expressed in writing in an Administrative Enforcement Order prepared by the Commission.

(b) The Administrative Enforcement Order may contain orders and penalties that:

(1) require the violator to cease and desist the violation; and/or
(2) require the violator to file any reports, statements, or other documents or information required by law; and/or

(3) require the violator to pay a monetary penalty to the General Fund of the City of San Diego in accordance with the provisions of Section 26.0440; and/or

(4) publicly reprimand the Respondent.

(c) The Administrative Enforcement Order shall become final on the date it is served on the Respondent. The order shall be served on the Respondent pursuant to the provisions of Section 26.0443.

(d) Failure of the Respondent to comply with the terms of an Administrative Enforcement Order is a misdemeanor and subjects the Respondent to the penalties set forth in Chapter 1 of this Code.

(e) The ninety-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.

(“Administrative Enforcement Order” added 2-11-2002 by O-19034 N.S.)

§26.0440 Administrative Fines

(a) The maximum fine for any violation of Governmental Ethics Laws is $5,000. The actual fine imposed for any violation may range from zero ($0) to five thousand dollars ($5,000), in accordance with the Commission’s assessment of the severity of the violation.

(b) Failure of the Respondent to pay any fine assessed by the Commission is a misdemeanor and subjects the Respondent to the penalties set forth in Chapter 1 of this Code.

(“Administrative Fines” added 2-11-2002 by O-19034 N.S.)

§26.0443 Service of Documents

(a) Service of any document relating to the procedures set forth in this Division may be made by any individual who is not less than eighteen years of age. Documents may be served by any Commission employee.
(b) Service may be made by personally delivering a copy of materials to a Person. Personal delivery means handing the materials to a Person or the Person’s attorney or designated agent for service of process; or leaving it at the Person’s office or at the Person’s 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 leaving it at the Person’s dwelling house or usual place of abode with some person at least eighteen years of age then residing therein.

(c) Service may also be made by certified mail return receipt requested or by overnight mail to a Person if his or her name and address are known, or to a Person’s attorney or designated agent for service of process. If service is made by mail, three calendar days shall be added to the period prescribed for a response. Service by mail is complete upon mailing.

(“Service of Documents” added 2-11-2002 by O-19034 N.S.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)

§26.0445 Subpoenas and Subpoenas Duces Tecum

(a) The Commission has the authority to issue subpoenas and subpoenas duces tecum pursuant to Section 41(d) of the San Diego Charter, and in accordance with the procedures in this Division. The Commission may refer to the California Administrative Procedures Act for guidance in exercising its authority to issue subpoenas and subpoenas duces tecum.

(b) During the formal investigation of a complaint, the Executive Director may seek Subpoenas duces tecum by submitting a written request to the Commission. The Commission shall grant the request only after a concurring vote of at least four of the Commissioners in closed session. The Commission shall not issue a Subpoena duces tecum during a formal investigation unless it finds, based on information submitted to it in writing, that the information to be requested in the Subpoena duces tecum is material to a specific matter then under investigation.

(c) After the Commission has appointed a Presiding Authority to conduct the Probable Cause Hearing or Administrative Hearing, the Petitioner and Respondent may seek Subpoenas and Subpoenas duces tecum in accordance with the following procedures:
(1) All requests for a Subpoena must be submitted no later than twenty calendar days before a scheduled hearing; all requests for a Subpoena duces tecum must be submitted no later than thirty-five calendar days before a scheduled hearing.

(2) The Petitioner may seek Subpoenas and Subpoenas duces tecum by submitting a written request to the Commission. The Commission shall grant or deny the request within five calendar days of receipt of the request following a concurring vote of at least four of the Commissioners in closed session.

(3) The Respondent may seek Subpoenas and Subpoenas duces tecum by submitting a written request with the Executive Director, who shall promptly forward the request to the Presiding Authority. The Presiding Authority shall grant or deny the request within five calendar days of receipt of the request.

(4) All requests for a Subpoena or Subpoena duces tecum shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the production of documents or records is sought, 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.

(5) A Subpoena or Subpoena duces tecum shall not be issued unless the information submitted pursuant to Section 26.0445(c)(4) states that the Person to be subpoenaed, or the information to be requested in the Subpoena duces tecum, is material to a specific matter at issue in the Probable Cause Hearing or Administrative Hearing.

(6) The subpoenaing Party must serve a copy of the Subpoena or Subpoena duces tecum on every other Party to the administrative proceeding.

(d) In the event a Subpoena duces tecum seeks either the production of personal or financial records of a consumer, as that term is defined in California Code of Civil Procedure section 1985.3, notice to that consumer shall be given as required by Section 1985.3.
(e) **Subpoenas** shall be served at least ten calendar days before the time required for attendance. **Subpoenas duces tecum** shall be served at least twenty-five calendar days before the time required for the production of the requested documents. A **Subpoena** or **Subpoena duces tecum** shall be served in accordance with the provisions set forth in Section 26.0443.

(f) A **Person** served with a **Subpoena** or **Subpoena duces tecum** may object to its terms by filing written objections with the **Commission** no later than seven calendar days before the time required for attendance and/or production of the requested documents. If the **Subpoena** or **Subpoena duces tecum** was issued by a **Presiding Authority** other than the full **Commission**, the written objection shall be promptly forwarded to the **Presiding Authority**.

1. If the **Subpoena** or **Subpoena duces tecum** was issued by the **Commission** at the request of the **Executive Director** or **Petitioner**, the **Commission** shall rule, in closed session, on the objections at a regular or special meeting on or before the date of the **Commission**’s next regularly scheduled meeting, or as soon thereafter as practicable. The **Commission** shall issue a written order on its ruling within five calendar days of making the ruling, and the **Executive Director** shall promptly serve the order on the **Person** making the objections.

2. If the **Subpoena** or **Subpoena duces tecum** was issued by the **Presiding Authority** at the request of the **Respondent**, the **Presiding Authority** shall rule on the objections and/or issue an order in writing within five calendar days of receiving the written objections.

3. All obligations to respond to **Subpoenas** or **Subpoenas duces tecum** that are subject to written objections shall be stayed pending the ruling by the **Commission** or **Presiding Authority** pursuant to subsection (f)(1) or (f)(2).

4. A failure to file a timely objection with the **Commission** or **Presiding Authority** constitutes a waiver of all grounds for any objection.

5. All petitions for judicial review of any **Commission** or **Presiding Authority** ruling or order concerning objections to a **Subpoena** or **Subpoena duces tecum** must be filed by the tenth calendar day following the date of the ruling or order by the **Commission** or **Presiding Authority**.
(g) If the Party serving the Subpoena duces tecum 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 California Evidence Code section 1561.

(h) It is unlawful for any Person to refuse to obey a Subpoena or Subpoena duces tecum issued by the Commission or Presiding Authority. Failure to obey a Subpoena or Subpoena duces tecum constitutes contempt and may be prosecuted as a misdemeanor.

(i) If any Person refuses to attend or testify or produce any papers as required by a Subpoena or Subpoena duces tecum, the Executive Director, on behalf of the Commission or Presiding Authority, may petition the San Diego Superior Court for an order compelling the person to attend and testify and to produce the papers required by the Subpoena or Subpoena duces tecum, in accordance with the standards and procedures set forth in the California Administrative Procedures Act.

(j) A witness, other than an officer or employee of the City of San Diego, appearing pursuant to a Subpoena, shall receive, upon request after complying with the Subpoena, the same mileage and fees allowed by law to a witness in a civil case pending in the San Diego Superior Court.

(k) All costs related to a Subpoena or Subpoena duces tecum, including photocopying, service, witness, and mileage fees, shall be borne by the Party requesting the Subpoena or Subpoena duces tecum.

(l) The Commission shall develop policies and procedures relating to the issuance of Subpoenas and Subpoena duces tecum in formal investigations, Probable Cause Hearings, and Administrative Hearings, including the form of such documents and related costs.

(“Subpoenas and Subpoenas Duces Tecum” added 2-11-2002 by O-19034 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)
§26.0447 Pre-Hearing Matters

(a) The Petitioner or Respondent may request that preliminary matters, not related to the merits of the hearing, be heard by the Presiding Authority prior to a Probable Cause Hearing or an Administrative Hearing. If the request is granted, those motions or matters shall be noticed in a timely fashion, and a preliminary hearing shall be held and conducted by the Presiding Authority. Such preliminary matters may include, but are not limited to, the following:

(1) Motions regarding procedural matters; and

(2) disqualification of any Person from participation in the Probable Cause Hearing or the Administrative Hearing; and

(3) discovery; and

(4) any other matters not related to the truth or falsity of allegations made in the Probable Cause Report, the Draft Administrative Complaint, or the Final Administrative Complaint.

(b) Any member of the Presiding Authority is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge maybe disqualified in a court of law.

(1) A member of a Presiding Authority may voluntarily disqualify himself or herself and withdraw from the proceedings for any reason, including reasons based on bias, prejudice, or interest in the proceeding. Once disqualified, that individual shall not participate in any discussion, deliberation, or voting pertaining to the pending complaint.

(A) Notwithstanding Section 26.0447(b)(1), the Parties may choose to accept any member of the Presiding Authority by waiving the disqualification in a written statement, signed by all Parties, that recites the grounds for disqualification.

(B) A waiver is effective only when signed by all Parties, accepted by the Presiding Authority, and included in the record.

(2) Any Party may seek to compel the disqualification of any member of the Presiding Authority by filing an affidavit with the Commission, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the member should be disqualified.
(A) Where the request seeks to compel the disqualification of a member of the Commission, the disqualification shall be determined by a concurring vote of at least four members of the Commission. The Commissioner who is the subject of the request for disqualification shall not participate in the vote or in any deliberations or discussions preceding the vote.

(B) Where the request seeks to compel the disqualification of an individual appointed pursuant to Section 26.0430(b)(2)(C) or Section 26.0435(b)(2)(C), the disqualification shall be determined by a concurring vote of at least four members of the Commission.

(3) If any disqualified Commissioner was part of a three-member ad hoc subcommittee of the Commission appointed pursuant to Section 26.0430(b)(2)(B) or Section 26.0435(b)(2)(B), the disqualified Commissioner may be replaced by a substitute Commissioner appointed by the Commission.

(c) At any time before or during the Probable Cause Hearing or the Administrative Hearing, the Petitioner and Respondent may propose a stipulation as to any procedural matter, fact, or substantive matter, and upon the approval of the Presiding Authority such stipulation shall have the full force of an order of the Presiding Authority.

(“Pre-Hearing Matters” added 2-11-2002 by O-19034 N.S.)

§26.0450 Settlements

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

(a) All settlement negotiations shall be conducted on behalf of the Commission by the Executive Director in accordance with this section.

(b) The Executive Director may enter into a proposed stipulation with the Respondent with regard to anything that could be ordered by the Commission under its authority pursuant to San Diego Municipal Code section 26.0414, including partial or full settlement of a matter.
(c) Before presentation to the Commission, any proposed stipulated settlement negotiated between the Executive Director and Respondent shall:

1. contain a recitation of the facts pertinent to the violation; and
2. refer to each violation and state whether or not the stipulation will cause the discharge of each such alleged violation; and
3. include an Order reflecting any obligations of the Respondent, including the payment of any monetary fine.

(d) In any proposed stipulation presented to the Commission, the Respondent shall acknowledge by signing such document, that he or she:

1. agrees to hold the City harmless, waiving any right to challenge any procedural rights provided by the San Diego Municipal Code; and
2. agrees to abide by all terms of the stipulation.

(e) A proposed stipulated settlement shall have no force and effect until approved by the Commission as provided in subsection (g).

(f) The Executive Director shall, without unreasonable delay, submit any proposed stipulation signed by the Respondent, to the Commission for consideration at a closed session meeting of the Commission.

(g) A proposed stipulation shall become final only if the Commission approves the stipulation by a concurring vote of four Commissioners, except that if the stipulation imposes a penalty on the Respondent, it shall become final only if approved by a concurring vote of five Commissioners.

(h) The Commission’s approval of a stipulation shall be reflected in the Commission’s report regarding closed session actions.

(i) The Executive Director is authorized to sign a stipulation on behalf of the Commission upon approval of the stipulation by the Commission as set forth in subsection (g).

(j) Every stipulation approved by the Commission shall be made available to the public.

(Amended 4-7-2003 by O-19165 N.S.)
(Amended 12-6-2006 by O-19555 N.S.; effective 1-5-2007.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)
§26.0455 Disclosure of Commission Records

(a) The purpose of this section is to advance the public’s interest under the Public Records Act to access information concerning the conduct of the Commission in a manner that will not compromise the Commission’s ability to conduct effective and confidential investigations into alleged violations of Governmental Ethics Laws.

(b) The Commission and its staff shall not make public comments regarding a pending matter until the Commission has made a Probable Cause determination regarding the matter or until the matter is closed.

(c) Members of the public shall not be granted access to any document prepared by, or received by, the Commission, including investigatory files, related to a pending matter, until a Probable Cause determination has been made regarding the matter or until the matter is closed, at which time such documents shall be made available to the public in accordance with subsections (d) and (e).

(d) Following the Commission’s Probable Cause determination, members of the public shall have access to the Final Administrative Complaint, but shall not be granted access to any other document prepared by, or received by, the Commission, including investigatory files related to a pending matter, except in accordance with subsection (e) below.

(e) When a matter is closed by the Commission prior to the initiation of a formal investigation and the matter is not referred to any other governmental or law enforcement agency, the complaint and any documents prepared by the Commission relative to the disposition of the matter shall be made available to the public. Records arising from, or relating to, any matter where a formal investigation has been initiated or any matter that has been referred to another governmental or law enforcement agency shall not be disclosed to the public until all of the following occurrences have taken place:

1. The Commission has closed the matter; and
2. the statute of limitations applicable to the Commission’s enforcement of the alleged violation has expired; and
3. the statute of limitations applicable to all governmental or law enforcement agencies that have jurisdiction over the alleged violation has expired; and
(4) all litigation and administrative proceedings initiated by any other governmental or law enforcement agency with jurisdiction over the alleged violation have reached final conclusion.

(f) When Commission materials are requested by members of the public, the Executive Director shall review the requested materials prior to its release and prior to any claim of exemption in order to determine that the requirements of the Public Records Act have been satisfied.

(g) Documents made available to the public by this section may be examined in the offices of the Commission following a request made in writing specifically identifying the documents sought.

(h) Documents made available to the public by this section may not be removed from the offices of the Commission, but may be copied by Commission staff as soon as practicable following a request made in writing specifically identifying the documents sought. Any person requesting copies of materials pursuant to this subsection shall reimburse the Commission $0.10 per page for each page copied.

(i) A matter is considered closed for the purposes of this section if the Commission makes a determination that it will take no further action on the alleged violation by declining to pursue administrative enforcement or by issuing an Administrative Enforcement Order.

(j) Notwithstanding the disclosure provisions of this section, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the Executive Director determines that the public interest in non-disclosure clearly and substantially outweighs the public interest in disclosure:

(1) the names of juvenile witnesses; or

(2) personal or otherwise private information related or unrelated to the investigation if the disclosure would constitute an unwarranted invasion of privacy; or

(3) the identity of a confidential source; or

(4) the identity of the Complainant; or
(5) secret investigative techniques or procedures; or

(6) information which, if disclosed, would create a credible risk of endangering any individual; or

(7) information which, if disclosed, would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

(“Disclosure of Commission Records” added 2-11-2002 by O-19034 N.S.)
(Amended 11-13-2008 by O-19797 N.S; effective 12-13-2008.)

§26.0456 Other Governmental and Law Enforcement Agencies

(a) No action or inaction by the Commission or the Executive Director shall prevent any other governmental or law enforcement agency from pursuing a separate enforcement action based on the same allegations and facts presented to the Commission.

(b) Nothing in this Division creates a duty on the part of the Commission or the Executive Director to refer any matter to any other governmental or law enforcement agency.

(“Other Governmental and Law Enforcement Agencies” added 2-11-2002 by O-19034 N.S.)