

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Commission Meeting  
Monday, November 5, 2012  
Sgt. Mark Dunakin, Hearing Room 1  
6:30 p.m.



Commissioners: Richard Unger (Chair), Lloyd Farnham (Vice-Chair), Aspen Baker, Roberta Johnson, Benjamin Kimberley, Monique Rivera

Commission Staff: Whitney Barazoto, Executive Director  
City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

### MEETING AGENDA

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**

#### CONSENT ITEMS<sup>1</sup>

4. **Approval of Commission Draft Minutes.**
  - a. September 4, 2012, Meeting Minutes (Attachment 1)

#### ACTION ITEMS

5. **Complaint/Enforcement Program.** An updated list of pending cases is included. Commissioners may discuss the complaint process in general and may discuss any of the complaints listed in the attached spreadsheet. (Attachment 2)
  - a. **Dismissal of Complaints Not in Commission Jurisdiction.** Staff recommends dismissing the following cases on the grounds that each is outside of the Commission's jurisdiction (see Attachment 2 for more information):
    - i. **Complaint No. 12-09 (Parker),** alleging improper placement of campaign signs.
    - ii. **Complaint No. 12-10 (Juarez),** alleging check forgery and fraud in a real estate transaction.
6. **Commissioner Recruitment Process.** The Commission will discuss the Commissioner recruitment process and will establish an ad hoc subcommittee to interview and select nominees to fill a Commission-appointed term beginning in January 2013. (Attachment 3)

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<sup>1</sup> Consent items will be voted on all at once, unless a Commissioner requests removal of an item from consent prior to the vote.

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Commission Meeting  
Monday, November 5, 2012  
Sgt. Mark Dunakin, Hearing Room 1  
6:30 p.m.



- 7. Commission Complaint Procedures.** In order to begin the process of amending the Commission's General Complaint Procedures, the Commission will establish a subcommittee to discuss and draft amendments to recommend to the full Commission at a future regular meeting. Subcommittee meetings are anticipated to occur in December and January. A copy of the General Complaint Procedures is included. (Attachment 4)

## DISCUSSION ITEMS

- 8. Limited Public Financing Program.** Commission staff will provide an update on the Limited Public Financing Program, which comes to an end on November 5, 2012.

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted three minutes or less unless the Chairperson allocates additional time.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Public Ethics Commission or its Committees, please contact the Office of the City Clerk (510) 238-7370. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at [www.oaklandnet.com/pec](http://www.oaklandnet.com/pec).

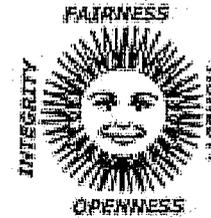
Approved for Distribution

10/26/12

Date

MEETING MINUTES  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Special Meeting  
Tuesday, September 4, 2012  
Sgt. Mark Dunakin, Hearing Room 1  
6:30 p.m.

DRAFT



Commissioners: Richard Unger (Chair), Lloyd Farnham (Vice-Chair), Aspen Baker, Roberta Johnson, Benjamin Kimberley, Monique Rivera

Commission Staff: Whitney Barazoto, Executive Director  
City Attorney Staff: Kathleen Salem-Boyd, Deputy City Attorney

### SPECIAL MEETING MINUTES

#### **1. Roll Call and Determination of Quorum**

The meeting was called to order at 6:35 p.m.

Members present: Unger, Farnham, Baker, Johnson, Kimberley and Rivera.

Staff present: Whitney Barazoto and Kathleen Salem-Boyd

#### **2. Staff and Commission Announcements**

No staff and Commission Announcements.

#### **3. Open Forum**

There were no speakers.

### **CONSENT ITEMS**

#### **4. Approval of Commission Draft Minutes**

The Commission approved 6-0 the August 6, 2012, special meeting minutes and the August 23, 2012, special meeting minutes.

#### **5. Dismissal of Complaints Not in Commission Jurisdiction**

Commission approved 6-0 the dismissal of Complaint No. 12-07 (Akopyan) on the grounds that the alleged violations are not in Commission jurisdiction.



## **ACTION ITEMS**

### **6. Complaint/Enforcement Program.**

Commission staff presented the Commission's list of pending cases. Executive Director Whitney Barazoto mentioned that if all items on the agenda for this meeting are approved, then all level-2 priority cases will have been dismissed.

### **7. In the Matter of Complaint No. 12-06, filed by Ralph Kanz on June 19, 2012.**

Commissioner Baker moved, and Commissioner Johnson seconded a motion to dismiss Complaint No. 12-06 (Kanz) on the grounds that the facts fail to support a finding that a violation occurred. The motion passed 5-0, with Commissioner Kimberley abstaining.

### **8. In the Matter of Complaint No. 10-20, filed by Sanjiv Handa on August 2, 2010.**

Commissioner Rivera moved, and Commissioner Farnham seconded a motion to dismiss Complaint No. 10-20 (Handa) on the grounds that the complainant never completed the initial filing of the complaint. The motion passed 6-0.

## **DISCUSSION ITEMS**

### **9. Limited Public Financing Program.**

Ms. Barazoto updated the Commission on the status of the Limited Public Financing Program and informed the Commission that, of the 20 candidates for City Council, 14 candidates have opted into the program and potentially can receive approximately \$8,500 in public financing for their campaign expenditures.

### **10. Lobbyist Registration Program.**

Ms. Barazoto presented the status of lobbyist registration filings as of August 31, 2012.

The meeting adjourned at 7:40 p.m.

**Public Ethics Commission Pending Complaints**

Date Rec'd	Case#	Complainant	Respondents	Date of Alleged Violation	Alleged Violation	Status	Priority
9/28/12	12-09	Isabel Garcia Monge	Mario Juarez	May 2010	Alleges respondent committed check endorsement forgery and fraud in a real estate transaction.	Staff recommends dismissal (not in PEC jurisdiction)	
10/12/12	12-10	Blanche Malankowski-Smith	Barbara Parker	September 27, 2012	Alleges a campaign sign placement violation by the Barbara Parker for City Attorney Campaign.	Staff recommends dismissal (not in PEC jurisdiction)	
10/18/12	12-11	Scott Alonso	Ignacio De La Fuente	July 26, 2012	Alleges respondent used his Councilman elected position and City resources for a campaign press conference.	Staff is reviewing	H/S 2
09/12/12	12-08	Anonymous	Barbara Parker	August 4, 2012	Alleges respondent sent campaign donation solicitations to City employees at their City email addresses.	Staff is reviewing	H/S 2
4/26/12	12-04	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente		Alleges respondent failed to report \$37,500 in payments from a campaign group tied to a lobbyist for a group competing for the Coliseum mgmt contract (alleges failure to report payment and a COI issue)	Complaint received	H/L 4
4/4/12	12-03	City Auditor/ Anonymous	Downtown Oakland Association and Lake Merritt/Uptown District Assoc.	Dec 2009 and annually thereafter	Alleges respondents failed to provide adequate public notice about discussions and decisions related to the payment of "holiday bonuses," adds that discussion of bonuses was never put on open session agenda	Complaint received	M/M 4

\* Priority code is based on a dual determination: 1) level of priority (High, Medium or Low, based on criteria such as public interest, complainant interest, timing of complaint, statute of limitations, and impact of Commission decision), and 2) amount of staff time likely needed (Small, Medium, or Large amount of time).

8/23/11	11-03	City Auditor/ Anonymous	City Council Member Ignacio De La Fuente	June 2011	Complaint expresses concerns about the source of concert tickets allegedly in the possession of respondent	Complaint received	H/L 4
4-4-11	11-01	PEC initiated	ABC Security and/or Ana Chretien; Marina Security and/or Sam Tadesse	Various; approx. betw 3/1/10/7/10 and 7/27/10	Complaint alleges two contractors made impermissible campaign contributions to candidates in the Nov 2010 election (OCRA; §3.12.140)	Staff is investigating	H/L 4
12-7-10	10-30	Sanjiv Handa	Oakland Parking Division	Ongoing	Oakland Sunshine Ordinance -- Alleged failure to timely produce parking records	Staff is investigating	L/S 4
11-1-10	10-28	Ralph Kanz	Ala. Demo. Central Comm.; OakPAC	October 29, 2010	OCRA; §3.12.230 -- Alleges 1) failure to include written disclosure required by OCRA and 2) failure to file late contribution and independent expenditure reports	Staff is investigating	H/M 3
10-13-10	10-26	Ralph Kanz	Jean Quan Floyd Huen	June 30, 2010 and ongoing	OCRA; §3.12.050; 3.12.090 -- Alleges failure to report and include information regarding respondent's loans to own campaign	Staff is investigating	H/M 3
10-13-10	10-25	Ralph Kanz	Don Perata	June 30, 2010 and ongoing	OCRA; §3.12.090(A)(D) -- Alleges campaign was given extension of credit of over \$1500 for more than 90 days	Staff is investigating	H/M 3
9/14/10	10-21	Jean Quan	Don Perata, Paul Kinney; California Correctional Peace Officers Association; Ronald T. Dreisback; T. Gary Rogers; Ed DeSilva; Richard Lee	Ongoing	OCRA violations -- Alleges respondent campaign exceeded the voluntary expenditure limit during the November 2010 election	Staff is investigating	H/L 4
7/2/10	10-16	Gwillym Martin	Joseph Yew, Finance	June 18, 2010	Sunshine Ordinance; production of records -- Alleges department failed to provide electronic copy of City's Oracle database	Staff is investigating	H/M 3

3/23/10	10-07	Sanjiv Handa	Victor Uno, Joseph Haraburda, Scott Peterson, Sharon Cornu, Barry Luboviski, Phil Tagami	January 1, 2007 to present	Lobbyist Registration Act -- Alleges respondents failed to register as lobbyists	Staff is investigating	H/L 4
3/3/10	10-05	David Mix	Oakland City Council	3/2/10	Oakland Sunshine Ordinance -- Alleges City Council Rules Committee failed to make an "urgency finding" to schedule a decision (per Section 2.20.080)	Staff was directed to explore settlement in lieu of hearing.	M/M 4
11/17/09	09-15	Anthony Moglia	Jean Quan	Ongoing	Alleges misuse of City resources by respondent by linking an offceholder website to the City website and then linking a campaign website to the offceholder site.	Staff was directed to develop guidelines for use of City's electronic media.	M/L 5
09/16/09	09-12	Marleen Sacks	Office of the City Attorney (Mark Morodomi)	ongoing	Sunshine Ordinance; Public Records Act -- Alleges failure to provide multiple public records upon request	Commission conducting hearings on public access in lieu of adjudication.	M/M 5
2/7/09	09-03	John Klein	City Council President Jane Brunner	February 3, 2009	Sunshine Ordinance -- Allocation of speaker time -- Alleges City Council 15-minute total time limit on Open Forum comments is inconsistent with the Sunshine Ordinance, which authorizes 2 minutes per person	Awaiting report from City Attorney	M/M 4



**CITY OF OAKLAND**  
**Public Ethics Commission**

Richard Unger, Chair  
Lloyd Farnham, Vice-Chair  
Aspen Baker  
Roberta Johnson  
Benjamin Kimberley  
Monique Rivera



Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Whitney Barazoto, Executive Director  
DATE: October 25, 2012  
RE: Commissioner Recruitment

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The Public Ethics Commission will have two open Commissioner terms beginning in January 2013. One is a mayoral appointment, and the other is a Commission-approved appointment. Commission staff posted an announcement for the latter in early October, with applications due by November 16, 2012.

**Review Process**

At the November 5 meeting, the Commission will need to select three Commissioners to convene as an ad-hoc subcommittee to review applications and conduct interviews of potential candidates. After the application deadline has passed, Commission staff will send copies of all applications to the subcommittee members to rank in order of preference. Staff will invite the top eight to ten candidates for an interview with the subcommittee members during the week of November 26-30. The subcommittee could provide an oral report at the December meeting, and the subcommittee's recommended three or four finalists would be invited to the January meeting for review by the full Commission.

Attached is a copy of the announcement and application for the Commissioner position.



## **CITY OF OAKLAND**

### **Public Ethics Commission**

Richard Unger, Chair  
Lloyd Farnham, Vice-Chair  
Aspen Baker  
Roberta Ann Johnson  
Benjamin Kimberley  
Monique Rivera



Whitney Barazoto, Executive Director

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One Frank Ogawa Plaza, 11<sup>th</sup> Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

## **OAKLAND PUBLIC ETHICS COMMISSION SEEKS CANDIDATES FOR COMMISSIONER POSITION [Application deadline is Friday, November 16, 2012]**

The City of Oakland Public Ethics Commission is accepting applications from qualified individuals for the position of Commissioner. The Public Ethics Commission consists of seven members -- three nominated for appointment by the Mayor and confirmed by the City Council, and four selected by the Commission as a whole. Commissioners receive no compensation and may serve no more than one consecutive three-year term.

The Commission was created by a voter-approved City Charter amendment in 1996 to “assure fairness, openness, honesty and integrity in City government.”

The Commission is currently seeking applications to fill one of the Commission-selected seats. The term will begin on January 22, 2013, and will expire on January 21, 2016.

### **QUALIFICATIONS**

Each member of the Commission must be a resident of Oakland and registered to vote in Oakland.

During his/her tenure and for one year thereafter, no member of the Commission may:

- Be employed by the City or have any direct and substantial financial interest in any work or business or official action by the City;
- Seek election to any other public office; participate in, or contribute to, an Oakland municipal campaign; or

- Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election. [Oakland Municipal Code §2.24.050]

### **DUTIES**

- Attend monthly PEC meetings and one or more committee meetings;
- Oversee compliance with the Oakland Campaign Reform Act, Oakland Sunshine Ordinance, Limited Public Financing Act, Code of Conduct for City Officials, Conflict of Interest regulations, Lobbyist Registration Act, and Oakland False Endorsement In Campaign Literature Act;
- Review ethics laws and recommend amendments to the City Council;
- Develop informational, training, and public outreach programs concerning the Commission's activities; and
- Annually adjust City Council salaries

### **HOW TO APPLY**

Fill out the attached Application and submit it, together with a resume, to:

City Of Oakland, Public Ethics Commission  
One Frank Ogawa Plaza, Eleventh Floor  
Oakland, CA 94612

**COMPLETED APPLICATIONS AND RESUMES MUST BE RECEIVED NO LATER THAN:  
Friday, November 16, 2012 at 5:00 p.m.**

**You may also fax your application and resume to:  
510-238-3315**

**or**

**You may email your application and resume to:  
ethicscommission@oaklandnet.com**

For more information, please contact Whitney Barazoto at 510-238-3593.

*(Note: Persons interested in serving on the Commission are strongly encouraged to visit the Commission's website at [www.oaklandnet.com](http://www.oaklandnet.com) (click link under "Boards and Commissions") and to attend at least one meeting each of the Commission and City Council.)*

### **Commissioner Recruitment Tentative Timeline:**

Selected applicants will be invited to interview during the week of November 26 – 30, 2012.

**CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION**



**APPLICATION FOR COMMISSIONER**

Please fill out the form below and submit it with a copy of your resume to: City Of Oakland, Public Ethics Commission, One Frank Ogawa Plaza, Eleventh Floor, Oakland, CA 94612. Applications and resumes may also be faxed to: (510) 238-3315. **Your completed application and resume must be received no later than 5:00 p.m. on Friday, November 16, 2012 at 5:00 p.m., to be considered.**

Please type or print legibly. Try to limit your answer to the space provided, but you may attach additional sheets as necessary.

Please note: This application and supporting materials is not confidential and may be subject to public inspection upon request.

**Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Daytime Phone:** \_\_\_\_\_ **Evening Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Are you an Oakland resident? Yes/No**      **Years of Residency in Oakland:** \_\_\_\_\_

1. Why do you want to serve on the Public Ethics Commission?

2. What skills and qualifications will you bring to the Commission?

3. What interests would you like to pursue while serving on the Commission?

4. Please list any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.

5. Please list the names, addresses and telephone numbers of two references.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_

**CITY OF OAKLAND**  
**PUBLIC ETHICS COMMISSION**  
**GENERAL COMPLAINT PROCEDURES**  
*Effective November 10, 2000*



**I. SCOPE OF RULES.**

A. This procedure is for the review, investigation and hearing of alleged violations of:

1. The Oakland Campaign Reform Act;
2. The Oakland City Council Code of Conduct;
3. Conflict of interest regulations as they pertain to City of Oakland elected officials, officers, employees, and members of boards and commissions
4. The Oakland Limited Public Financing Ordinance;
5. The Oakland Sunshine Ordinance;
6. City of Oakland Code of Ethics, if adopted by the City Council;
7. Requirements concerning the registration of lobbyists, if adopted by the City Council; and
8. Any other law or regulation over which the Public Ethics Commission has jurisdiction.

B. To the extent a law or regulation set forth above contains specific procedures or rules that conflict with these General Complaint Procedures, the more specific provisions provided in the laws or regulations set forth above shall control.

C. Upon filing of a complaint by a member of the public, a City of Oakland employee, or upon the initiation or referral by any member of the Public Ethics Commission ("Commission") or elected official, the Commission may consider whether an individual or entity, including but not limited to elected officials, city officers and employees, is culpable of a violation of any of the laws or regulations set forth in Section I.A. above and subject to any remedy, fine or penalty which the Commission is authorized to impose.

D. Complaint forms shall be made available at the office of the Commission and posted online. The complaint shall not exceed ten (10) pages in length, not including supporting documentation.

**II. ACTION TO BE TAKEN UPON RECEIPT OF COMPLAINT.**

A. All complaints shall be date stamped at the time of receipt and immediately provided to the Executive Director to the Commission ("Executive Director"), who shall open a file for the complaint and enter the complaint into the Commission's

tracking system. The Executive Director shall timely and reasonably apprise the Commission of all complaints filed. The Executive Director shall provide to any respondent(s) named within the complaint a copy of the complaint and supporting documents within three (3) business days from the date the complaint is received. The Executive Director shall provide all parties with a copy of these procedures. Whether or not named in the complaint, a copy of the complaint shall also be delivered to the Department or Agency head, Board or Commission Chair, or other person responsible for the official conduct of individuals who allegedly violated the laws or regulations under the Commission's jurisdiction.

B. A reporting log shall be maintained by the Commission's staff that chronologically records each complaint that is received, the person, department, agency, board, or commission involved, the nature of the complaint and what resolution or action was taken. A copy of the log shall be provided to the Commissioners at each regular Commission meeting.

### III. PRELIMINARY REVIEW OF COMPLAINTS.

A. The Executive Director shall process, review and make recommendations on all complaints expeditiously, and in any event no more than thirty (30) business days of receipt, unless additional time not to exceed fifteen (15) business days is provided by the Chairperson of the Commission ("Chair"). No further extensions shall be permitted except upon approval of the Commission as a whole.

B. After review by the City Attorney for form and legality, the Executive Director may recommend in writing, after an investigation, that:

- (1) The complaint be dismissed for any or all of the following reasons:
  - (a) The Commission has no jurisdiction;
  - (b) The complaint fails to state a basis for relief;
  - (c) The complaint restates other complaints containing substantially similar or identical allegations which have already been determined and the evidence does not warrant reopening the previous case;
  - (d) The allegations contained in the complaint are already under investigation by the Commission;
  - (e) The complaint should be referred to another governmental or law enforcement agency better suited to address the issue;
  - (f) The complaint is time-barred;

(g) The facts fail to support a finding that a violation occurred following an investigation described in subsection C herein; or

(h) The complaint has been resolved pursuant to the procedures set forth in Section IV.

(2) The complaint be referred to the Commission for hearing pursuant to Section VI below.

C. In order for the Executive Director to make his or her recommendation under Section III.B.(1)(g) above, the Executive Director shall first conduct an investigation. Such an investigation shall include, but not necessarily be limited to, an interview of the parties and any witnesses, and the review of documentary and other evidence. The Executive Director may consider statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. When the investigation is concluded, the Executive Director shall include in his or her written recommendations a summary of evidence gathered and any conclusions. The written recommendation shall conclude whether to dismiss the complaint pursuant to Section III.B.(1)(g) or set the complaint for hearing pursuant to Section VI, below. The written recommendation shall generally not exceed ten (10) pages excluding attachments.

D. The Executive Director's recommendation pursuant to subsections B.(1) or (2) above, shall be placed on the consent calendar for the next regular Commission meeting for approval, unless scheduled for a special meeting at the discretion of the Chair to occur prior to the next regular meeting. If the item is not pulled for discussion and is approved by the Commission, then the Commission's action on the recommendation shall be final. Any two or more members of the Commission may cause the item to be removed from the consent calendar for further discussion and action.

E. The Executive Director shall distribute his or her written recommendation to the complainant and each respondent no later than the last date for completion of a recommendation as specified in Section III.A.

#### IV. REMEDIAL ACTION

A. For any complaint alleging violation(s) of any city law or regulation to which these procedures apply in which the amount at issue totals \$1,500.00 or less per violation or \$5,000.00 in the aggregate, or for a complaint alleging violation(s) of the Oakland Sunshine Ordinance, the respondent(s) shall have thirty (30) days from the date the complaint is filed to undertake and complete any corrective or remedial action necessary, in the opinion of the Chair or his or her designee, to resolve the dispute. Additional time not to exceed fifteen (15) days may be granted by the Chair if the required corrective or remedial action cannot be reasonably accomplished in the time originally provided. No further extensions shall be permitted except upon

approval by the Commission as a whole. Upon proof of the corrective or remedial action made to the satisfaction of the Chair or his or her designee, the complaint shall be dismissed.

## V. REPETITIVE AND UNMERITORIOUS COMPLAINTS

A. Any person who has filed four (4) complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a "repetitive unmeritorious complainant."

B. If a complainant seeks to file a complaint during the twelve (12) months following the date that he or she has been deemed a repetitive unmeritorious complainant, the additional complaint will be forwarded to the Chair or his or her designee.

C. If the Chair determines that the additional complaint is unmeritorious on its face, the complaint shall be returned unfiled. In addition, the stated twelve (12) month prohibition shall begin anew from the date the Chair determines that the additional complaint is unmeritorious. The complainant shall be duly notified of the determination. The Chair's decision shall be final and shall be reflected in the Commission's public report on pending complaints.

D. If the Chair determines that there are grounds to proceed to a hearing, the complaint shall be forwarded to the Executive Director to be handled in accordance with the procedures provided in Section VI.

## VI. DETERMINING WHETHER TO HOLD A HEARING.

A. For any complaint recommended for hearing by the Executive Director or pulled from the consent calendar pursuant to Section III.D., the Commission may:

- (1) Dismiss the complaint;
- (2) Schedule the complaint for hearing; or
- (3) Refer the complaint back to the Executive Director for further investigation.

B. If the Commission decides to dismiss the complaint, no further action shall be taken [other than the possible referral of the matter to another body as stated in Section III.B.(1)(e) and the Executive Director shall notify the parties in writing of the Commission's determination]. The Commission's decision is final and represents closure of the administrative process.

C. If the Commission decides to schedule a hearing, then a hearing shall be scheduled and conducted pursuant to Section IX. If in a particular case it appears the complainant is not capable of prosecuting the case before the Commission, the Chair

may request that the Executive Director and/or the City Attorney assist the complainant in bringing the matter before the Commission for final adjudication.

## VII. CONTINUING JURISDICTION OVER WITHDRAWN COMPLAINTS

A. If the complainant voluntarily requests that his or her complaint be dismissed, the Commission may nevertheless retain jurisdiction over the matter and pursue all or portions of the complaint for a final determination. If so, the Executive Director and/or the City Attorney may be requested by the Chair to cause adjudication of the complaint.

## VIII. MEDIATION.

A. Upon the filing of any complaint, the Executive Director shall assist the parties in resolving the dispute. The parties may at any time agree to mediation of any dispute. The Executive Director shall assist the parties in selecting a mediator, if necessary. The mediator shall contact the parties and attempt to resolve the dispute under any procedures which the mediator believes are appropriate.

B. The mediator shall attempt to resolve the dispute within fourteen (14) days of being selected, unless a request to extend time is submitted to the Chair or his or her designee. The Chair or designee retains the discretion to extend time up to thirty (30) days. An extension beyond thirty days may be granted only by the Commission.

C. At the request of the Chair and with the consent of the parties, the mediator shall issue a written report briefly outlining the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts the mediator would recommend to resolve the dispute. The report shall be filed with the Commission, provided to all parties and made available for public inspection.

D. Costs of mediation shall be borne by the Commission to the extent permitted by available funds.

## IX. HEARING PROCEDURE.

A. Selection Of Hearing Panel Or Examiner. If the Commission decides to schedule a hearing pursuant to Section VI.A.(2), the Commission shall decide at that time whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing examiner.

(1) If the Commission decides to utilize a hearing examiner, the Executive Director shall select the hearing examiner at random from a pre-approved list. The selected hearing examiner shall disclose any actual or potential conflicts of interest he or she might have with the City of Oakland, the parties, or a Commissioner. In the event a hearing examiner is unavailable or conflicted,

another hearing examiner shall be randomly selected from the pre-approved list.

B. Notice Of Hearing. The Executive Director shall deliver written notice of the date, time and location of the hearing to each party at least thirty (30) days prior to the date of the hearing. A copy of the notice shall be posted publicly and filed with the Office of the City Clerk at least seven (7) days before the hearing. The notice shall be in substantially the following form:

"You are hereby notified that a hearing will be held before the Ethics Commission [or name of the hearing examiner or assigned Commissioner(s)] on \_\_\_\_ (date) at the hour of \_\_\_\_, at \_\_\_\_ (location), upon the charges made in Complaint No. \_\_\_\_\_. At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before \_\_\_\_\_."

C. Subpoenas of Persons or Documents. Any party requesting subpoenas to bring people or documents to the hearing shall notify the Commission's staff no later than fourteen (14) days before the hearing date. The request shall be accompanied by a written statement specifying the name and address of the witnesses, and the importance of their testimony. If the request is for a document subpoena, it shall be accompanied by a statement which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued by the Chair or his or her designee only upon the above showing of good cause. The party requesting the subpoena shall be responsible for its service on the appropriate persons and shall provide a copy to all opposing parties.

D. Resolution of Preliminary Matters. No later than seven (7) days before the hearing date, any party may submit in writing preliminary matters for determination by the hearing examiner. If the complaint is to be heard by the full Commission, or by one or more Commissioners, preliminary matters shall be determined by the Chair or his or her designee. The party submitting any preliminary matter for determination shall demonstrate that an attempt to resolve the preliminary matter was made with any opposing party and that copies of the request were delivered to any opposing party. The opposing party shall be allowed to address a request to hear a preliminary matter. The hearing examiner or the Chair may determine preliminary matters upon submission of the written requests and without an oral hearing. Preliminary matters may include, but are not limited to, the following:

1. Whether multiple claims within a single complaint may be scheduled separately;
2. Whether similar complaints filed by separate individuals or entities may be joined;
3. Scheduling of witnesses;
4. Production of documents and issuance of subpoenas;
5. Scheduling of pre-hearing conferences.
6. Disqualification of any member of the Commission from participation in the hearing on the merits; and
7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

E. Conduct of Hearings; Submission of Written Materials. All materials to be considered at a hearing and not otherwise subpoenaed shall be submitted to the person(s) conducting the hearing, the Executive Director, and to all opposing parties no later than five (5) days prior to the hearing. A written argument need not be submitted. Any written argument submitted shall not exceed fifteen (15) pages, including all supporting documentation. Documentation in excess of fifteen (15) pages is allowed only upon prior approval of the Chair or his or her designee. The relevance of each item submitted shall be clearly indicated.

F. Conduct of Hearings; Presentation of Testimony; Rules of Evidence. The hearing on the complaint shall be open to the public, provided that witnesses may be excluded at the discretion of the person(s) conducting the hearing. A period of time will be allowed for public comment. The person(s) conducting the hearing shall brief the audience at the beginning of the hearing on applicable procedures.

(1) The hearing shall not be subject to the formal rules of evidence. Documentation and written testimony not in compliance with subsection E. above may be excluded at the discretion of the person(s) conducting the hearing.

(2) Oral and written testimony shall be received under penalty of perjury. Although the proceedings are informal, testimony shall be brief and confined to the issues. Oral testimony may be excluded if duplicative, irrelevant, or disruptive to the conduct of the meeting. The person(s) conducting the hearing may ask questions of both sides to further clarify facts and viewpoints. Any party may bring a representative and/or interpreter to speak on his or her behalf, but the person(s) conducting the hearing retains the authority to put questions to any party.

(3) Special accommodations for disabled persons may be made by providing the Executive Director seventy-two (72) hours notice in advance.

(4) While there is no right to cross-examination, the parties shall be allowed the opportunity for rebuttal, and the parties, through the person(s) conducting the hearing, may ask questions of any witness. Except for raising preliminary matters as provided by these procedures, no party may communicate with any Commissioner or hearing examiner regarding a complaint outside of the formal public hearing.

G. Record of Proceedings. Proceedings shall be recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least one full business day's notice to Commission staff, and at that party's own expense.

H. Continuation and Postponement of Hearings. A postponement may be granted prior to the hearing only upon written request to the Chair or hearing examiner. At the hearing a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.

I. Action Upon Conclusion of Hearing. Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing shall be closed.

(1) If the complaint was heard by a hearing examiner, single member of the Commission or Commission panel, he, she or they may take the matter under submission for a period of no more than fourteen (14) days before delivering to the Executive Director proposed Findings Of Fact and Conclusions. Any deliberations by two or more Commissioners shall be done publicly. Upon receipt, the Executive Director shall deliver a copy of the proposed Findings Of Fact and Conclusions to all parties.

a. No later than seven (7) days after delivery, any party may submit a written request to the Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Chair may accept the proposed Findings Of Fact and Conclusions as correct unless the party making the request for re-hearing demonstrates that: 1) the proposed Findings Of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions, or 2) the Conclusions are not supported by substantial evidence.

b. The party making the request shall provide a complete copy of the written request to all other parties by the time the written request is submitted to the Chair. Any other party shall have seven (7) days from

receipt of the written request to submit written opposition or support to the Chair.

c. If the Chair determines there are no grounds to rehear all or portions of the complaint, he or she shall notify the Executive Director, who shall place the proposed Findings Of Fact and Conclusions on the consent calendar for approval at the next regular Commission meeting or any special meeting called by the Chair.

d. If the Chair determines that grounds exist to rehear all or portions of the complaint, the Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence shall be received, and a timetable for re-submitting any revised Findings Of Fact and Conclusions to the Executive Director.

e. The decision of the Chair on any request for re-hearing shall be final.

(2) Any proposed Findings Of Fact and Conclusions may be removed from the consent calendar for discussion and determination pursuant to Section III.D. The Commission shall either adopt the proposed Findings Of Fact and Conclusions in their entirety or adopt the Findings Of Fact and reach additional or different conclusions consistent with the Findings of Fact.

(3) If the complaint was heard by the full Commission, the Commission shall decide, upon conclusion of the hearing and by majority vote of those Commissioners who have heard the evidence, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director to prepare a Findings Of Fact and Conclusions for consideration at the next Commission meeting.

(4) The Commission shall determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.

(5) Any Findings Of Fact and Conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions (penalties and fines) in accordance with the adopted findings and consistent with Commission authority. The Commission shall not order or make recommendations imposing discipline for city personnel. The Commission may inform the public of its findings and recommendations by any means appropriate.

(6) The Commission's decision following a hearing shall be final and shall constitute closure of the administrative process with respect to any complaint.

X. COURT REVIEW (INJUNCTIVE RELIEF; WRIT OF MANDAMUS).

Upon conclusion of the administrative process, any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within ninety (90) days as provided by law.

XI. RECUSAL OF COMMISSIONERS OR COMMISSION STAFF.

A Commissioner or a member of the Commission's staff shall recuse himself or herself from participating in any decision in which he or she has a conflict of interest or in which he or she, by reason of interest or prejudice, cannot perform his or her duties in an impartial manner and free from bias.

XII. MISCELLANEOUS PROVISIONS.

A. Ex Parte Communications. Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside a hearing, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary to investigate, remediate, enforce or enter into a stipulated order regarding the alleged violation.

B. Access to Complaints and Related Documents and Deliberations. Complaints, responses thereto, and all related documents shall be public records subject to the provisions of the Oakland Sunshine Ordinance and/or the California Public Records Act [Government Code Sections 6250 et. seq.]

C. Oaths and Affirmations. The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

D. Powers and Duties of Independent Hearing Examiners and Commission Panels.

(1) Unless otherwise provided, whenever the Commission assigns a Commissioner, a panel of Commissioners, or hearing examiner to hear any matter under these procedures, the assigned Commissioner, panel or hearing examiner shall have the same authority, and be subject to the same restrictions, as the Commission.

E. Referrals to Other Enforcement Agencies. At any time after the Commission takes jurisdiction over a complaint, the Commission shall refer the matter to another government agency or official if the Commission determines that the agency or official is more likely to resolve the allegations in the complaint or appropriately enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

F. Stipulated Orders.

(1) At any time after a complaint has been filed, the Chair or his or her designee may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

(a) The proposed stipulation, decision and order is subject to approval by the Commission;

(b) The respondent knowingly and voluntarily waives any and all procedural rights under the law and these procedures;

(c) The respondent understands and acknowledges that any stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;

(d) The respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and,

(e) In the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

(2) The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority.

(3) Stipulated orders must be approved by the Commission and, upon approval, be announced publicly. The stipulated order shall have the full force of an order of the Commission.

G. Place of Service or Delivery. The Commission, its members, or the Executive Director, may be served, and delivery shall be effected, at the Commission office.

H. Time To Initiate A Complaint. Except as herein provided, a complaint alleging violation of any ordinance, regulation or resolution under the jurisdiction of the Commission shall be filed within the time specified in said ordinance, regulation or resolution. If no time period is specified, the complaint must be filed within four (4) years. A complaint alleging violation of the Oakland Sunshine Ordinance shall be filed within sixty (60) days of the alleged violation. Failure to initiate a complaint within

the time provided shall be grounds for dismissal of the complaint pursuant to Section III.B.(f).

I. Waiver. Except as otherwise provided herein, the failure to comply with the time limitations set forth in these procedures shall constitute a waiver of any respective right to which said time limitations apply.

### XIII. REPEAL.

Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including, without limitation, the so-called "Sunshine Ordinance Complaint and Hearing Procedures," are hereby repealed.

### XIV. SEVERABILITY.

If the legislature, court or other entity determines that any portion of these rules is invalid, the other remaining rules shall not be affected and will continue in effect.