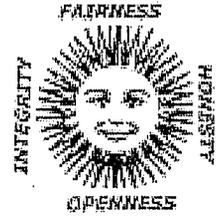


CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Subcommittee Meeting
Wednesday, October 30, 2013
11th Floor Conference Room
6:00 p.m.



Subcommittee Members: Lloyd Farnham (Chair), Roberta Johnson, Monique Rivera

Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Alix Rosenthal, Attorney

PEC COMPLAINT PROCEDURES SUBCOMMITTEE
MEETING AGENDA

This is a courtesy notice of the subcommittee meeting.

- 1. Public Ethics Commission General Complaint Procedures.** The subcommittee will review, discuss, and approve a final draft of revised complaint procedures before submitting the amended procedures to the full Public Ethics Commission for review and approval in December.' (Attachment 1 – Draft Revised Complaint Procedures; Attachment 2 – Existing Complaint Procedures, effective 2000)
- 2. Public Input.**

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 a maximum of three minutes 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) 238-3611. 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.

Approved for Distribution

10/18/13

Date

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CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
COMPLAINT PROCEDURES
Effective ... 2013



I. INTRODUCTION

The Public Ethics Commission adopts the following procedures applicable to the Commission's enforcement authority as granted by the Oakland City Charter and Oakland Municipal Code.

A. Purpose. These procedures are intended to ensure a fair, just, and timely process for the review, investigation, and hearing of complaints submitted to the Public Ethics Commission by doing the following:

1. Maintain objective standards for investigations and enforcement of the law,
2. Eliminate any improper influence in the investigation and resolution of complaints,
3. Provide a fair hearing for persons and entities accused of violations,
4. Ensure timely enforcement and complaint resolution, and
5. Coordinate with other governmental agencies to share enforcement responsibility in a manner most appropriate to ensure justice is served.

B. Enforcement Authority. These procedures are applicable to potential violations of the following laws:

1. The Oakland Campaign Reform Act;
2. The Oakland City Council Code of Conduct/Code of Ethics;
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. Lobbyist Registration Act;
7. False Endorsement in Campaign Literature Act; and
8. Any other law or policy over which the Public Ethics Commission has jurisdiction or with which the Commission is charged with overseeing compliance.

II. INTAKE

A. Complaints. A complaint alleging a violation of any law listed above may be submitted by any person, including a member of the public, any employee or official of the City of Oakland, or any member of the Commission.

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1. **Formal Complaints.** A formal complaint must be submitted either 1) in writing on a complaint form as prescribed by the Executive Director of the Commission, or 2) in a manner designated as a method for submitting a formal complaint as determined by the Executive Director. The forms and instructions will be available at the City Clerk's office, on the Commission website, and any other location as determined by the Executive Director.
 - a. **Contents of Formal Complaints.** A formal complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint also must include the following information:
 - i. name, address, and phone number of complainant
 - ii. name of the respondent, and any known addresses or phone numbers
 - iii. area of law allegedly violated,
 - iv. the facts of the alleged violation,
 - v. names and addresses of any witnesses, if known, and
 - vi. any documentation that might aid in the investigation of the alleged violation.
 - b. **Effect of Formal Complaints.**
 - i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
 - ii. The Executive Director shall process and review all formal complaints.
2. **Informal Complaints.** An informal complaint may be submitted by telephone, in person, or in writing.
 - a. **Contents of Informal Complaints.** An informal complaint should include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a formal complaint will be considered as an informal complaint.
 - b. **Effect of Informal Complaints.** The Executive Director has no obligation, but retains discretion, to process and review informal complaints.
 - i. In exercising discretion to process and review informal complaints, the Executive Director should consider the nature of the alleged violation, whether the information contained in the complaint permits review and investigation of the alleged violations, and whether the complainant is justified in submitting the complaint in a form other than the proscribed form.
3. **Anonymous Complaints.** A complaint may be submitted without a name or without identifying the complainant, and these complaints will be considered

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anonymous complaints. As a statement of policy, the Commission believes that the public, the Commission, and the fair administration of justice are better served when the complainant provides their identity, is available to provide further information regarding any alleged violations, and participates in the resolution of an alleged violation. An anonymous complaint shall be considered an informal complaint, whether submitted on a formal complaint form or in another form, and the processing of these complaints will be at the discretion of the Director.

- 4. Commission-initiated Complaints.** The Executive Director may initiate a complaint without conforming to any formal complaint requirements. A Public Ethics Commission member may submit a formal or informal complaint. A member of the Commission will be recused from all consideration, review, investigation, or hearing of any complaint submitted by the member, but may provide information or be called as a witness at any hearing on the complaint.
 - 5. Withdrawal of a Complaint.** If a complainant requests that his or her complaint be dismissed or withdrawn, the Commission may continue to review, investigate, and hold hearings or proceedings regarding the violations alleged in the complaint.
 - 6. Repetitive and Unmeritorious Complaints.** Any person who has submitted 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.” The fifth complaint submitted by a “repetitive unmeritorious complainant” during the twelve month period must be reviewed by the Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed and any additional complaint submitted by the complainant in the subsequent twelve month period shall also be rejected by the Commission. The Chair's decision shall be final and shall be reflected in the Commission's public report on pending complaints, and the Executive Director shall notify the complainant of the determination. If the Chair determines that there are grounds to investigate the fifth complaint, the complaint shall be forwarded to the Executive Director to receive and process the complaint.
 - 7. Ex-Parte Communications.** Once a complaint is submitted, no Commissioner 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. Preliminary Review of Complaints.** Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the person or entity accused of a violation, and any other reasonable inquiry to determine whether a full investigation is warranted.
- C. Intake Resolution.** After conducting a preliminary review of a complaint, the Executive Director shall determine whether to open a case for investigation or resolve the complaint by way of dismissal, recommended closure, and/or referral.

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- 1. Dismissal.** The Executive Director may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to the following:
 - a. The allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction.
 - b. The complaint does not include enough information to support further investigation.
 - c. Readily accessible evidence clearly refutes the allegations.
 - d. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
 - e. The complaint should be referred to another governmental or law enforcement agency better suited to address the issue.
 - 2. Closure.** The Executive Director may recommend closure of a complaint upon intake if it falls within the Commission's jurisdiction but there is reason to support closure as an alternative to opening an investigation. The Commission shall review the Executive Director's determination at a subsequent Commission meeting and must take formal action in order to close the complaint. The Executive Director's recommendation to close the complaint may include one or more of the following actions:
 - a. Close with no action
 - b. Close with advisory letter
 - c. Close with warning letter
 - d. Close with additional Commission action, such as holding an informational hearing or providing follow-up training or communications on a matter
 - 3. Referral.** The Executive Director may refer a complaint to the appropriate enforcement authority instead of or in addition to dismissal, closure, or the opening of an investigation.
- D. Report to the Commission.** The Executive Director shall notify the Commission of all dismissals by reporting the information, including the action taken and the reason for dismissal, on the next complaint tracking document posted in advance of the Commission's subsequent Commission meeting.
- E. Notification to Complainant.** After the preliminary review of the complaint, the Executive Director shall notify the complainant of the outcome in writing.
- F. Notification to Respondent.** After the preliminary review of the complaint, if the Executive Director dismisses the complaint, then the Executive Director may notify the respondent of the receipt and dismissal of the complaint. If the Executive Director recommends closure, referral, or the opening of an investigation, then the Executive Director shall notify the respondent of the complaint and the status in writing.

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- G. Final Closure.** A dismissal, after notification to the Commission pursuant to subsection II(D), or a closure of a complaint is a final decision and represents closure of the administrative process, and no further action shall be taken other than possible notification to the complainant or respondent or referral of the matter to another entity.

III. INVESTIGATION

- A. Investigation.** If the Executive Director determines that the allegations in the complaint warrant further inquiry, the Executive Director shall open an investigation regarding the violations alleged in the complaint. An investigation may include, but not be limited to, interviews of the complainant, respondent and any witnesses and the review of documentary and other evidence.
- B. Subpoenas During Investigation.** At the request of the Executive Director, the Chair may issue subpoenas during an investigation of a complaint, including subpoenas compelling production or inspection of documents or the appearance of a witness for an interview or testimony.
- C. Written Summary.** After an investigation, the Executive Director shall prepare a written report that includes a summary of the evidence gathered and a recommendation of whether there is probable cause to believe that a violation occurred.
- D. Audit Program.** Commission staff may initiate routine investigations or audits as part of its enforcement program. Such investigations may use a streamlined review process to determine compliance with City ordinances and need not include a full investigation or written summary. Commission staff may create standard forms for summarizing and communicating the audit findings.

IV. RESOLUTION

- A. Commission Review.** Upon review of the Executive Director's written report and recommendation of whether there is probable cause to believe that a violation occurred, the Commission may decide to dismiss, close, request further investigation, request that the Executive Director or designee seek a settlement, or refer the matter to an administrative hearing.
- B. Settlement.** At any time after a complaint has been filed, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulated agreement, followed by Commission approval of the decision.
1. **Stipulation.** Any proposed stipulation shall explicitly state that:
 - a. The proposed stipulation is subject to approval by the Commission;
 - b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under 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

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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.

1. **Commission Decision and Order.** The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority. Stipulated agreements must be approved by the Commission and, upon approval, be announced publicly.

C. Mediation. A complainant who alleges a violation of the Oakland Sunshine Ordinance and whose public records request was denied by a local agency or department may demand mediation of the request with the Executive Director or a mutually agreed upon volunteer mediator.¹

1. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable.²
2. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendations shall not be binding on any party.³
3. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.⁴
4. No person may file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation.⁵
5. At the conclusion of mediation, the mediator shall issue a written summary of 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. The Commission may decide to dismiss, close, or request further action on the mediated issue.

D. Hearing. After an investigation pursuant to section III of these Complaint Procedures, if the Executive Director recommends in a written report to the Commission that there is probable cause to believe that a violation occurred, the Commission may decide to refer the matter to an administrative hearing.

1 OMC 2.20.270(C)(1).
2 OMC 2.20.270(C)(2).
3 OMC 2.20.270(C)(3).
4 OMC 2.20.270(C)(3).
5 OMC 2.20.270(F).

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V. ADMINISTRATIVE HEARING PROCESS

A. **Selection of Hearing Panel or Examiner.** If the Commission decides to schedule a hearing pursuant to Section IV(D), 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

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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 advanced notice.

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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 agenda 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

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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. 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 Facts 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 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.

VI. COURT REVIEW

- A. **Remedies.** 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.

VII. COMMISSIONER RECUSAL

- A. **Conflict of Interest or Bias.** 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.

VIII. REPEAL, SEVERABILITY, CONFLICT, AND COMMISSION AUTHORITY

- A. **Repeal.** Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including are hereby repealed.
- B. **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.

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- C. **Conflict with Law.** 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.
- D. **Commission Authority.** Nothing in these complaint procedures limits the Commission's ability to review, refer, make recommendations, or take other actions regarding an issue that does not fall within its enforcement authority but which may fall within its general authority to ensure fairness, openness, honesty, and integrity in City government.

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.