CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

COMPLAINT PROCEDURES

Effective February 1, 2014

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.

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. the facts of the alleged violation,

        iv. area of law allegedly violated, if known,

        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

anonymous complaints. 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 Executive 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." Any subsequent complaint submitted by a "repetitive unmeritorious complainant" during the twelve month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. The Commission 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 Commission Chair determines that there are grounds to investigate any subsequent 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 open a case for investigation, resolve the complaint by way of dismissal, or recommended closure. The Executive Director shall notify the complainant of the result of the preliminary review in writing.

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. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
    d. 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 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.

F. 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 Commission 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 submitted, 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 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. **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 refer the matter to an administrative hearing.

V. ADMINISTRATIVE HEARING PROCESS

A. **Selection of Hearing Panel or Examine**r. 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 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).

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 provide 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 Commission 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 Commission 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 Commission 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 Commission 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. The Commission, and any individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
3. 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.
4. Special accommodations for disabled persons may be made by providing the Executive Director seventy-two (72) hours advanced notice.
5. 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 three full business days' 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 Commission 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 Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Commission 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 Commission Chair. Any other party shall have seven (7) days from receipt of the written request to submit written opposition or support to the Commission Chair.

    c. If the Commission 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 Commission Chair.

    d. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission 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 Commission 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 will make its findings and recommendations public.

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 the resolution of any complaint 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.

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.