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.

COMMENT:

This section should be updated to include 1) The False Endorsement In Campaign Literature Act and 2) The Lobbyist Registration Act.

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.

COMMENT:

This section provides that the Commission may consider whether an individual or entity violated a law over which the Commission has enforcement

authority 1) upon the filing of a complaint by a member of the public, or 2) upon the "initiation or referral" by any member of the Commission or an elected official. This language raises the question of whether individual members of the Commission or elected officials need to file formal complaints before invoking the Commission's jurisdiction. Additionally the Commission has historically voted as a body whether to initiate a complaint.

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.

COMMENT:

The current complaint form requests the complaining person to provide his or her name and address, the law violated, the date of violation, where the violation occurred, facts necessary to describe the complaint, responsible parties, and any witnesses or persons who could provide further information. The GCPs should probably specify what information is required to initiate a complaint, even if those requirements are merely consistent with the current form.

An additional issue for the Commission to consider is whether the Commission or the Executive Director should have an obligation to investigate unwritten (verbal) or anonymous complaints.

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.

COMMENT:

Occasionally Commission staff has had a problem determining who should receive notice of the complaint. Extending the deadline from 3 business days to 5-7 business days would be helpful.

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.

COMMENT:

The processing and review of complaints can be a very time-intensive activity that is increasingly stretching the resources of Commission staff. Historically, the "30 business day" deadline is often not met. The Commission should consider whether to extend this deadline in light of its current staff resources.

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.

COMMENT:

Under the current set of procedures, whenever a complaint is filed it automatically triggers the preparation of a preliminary staff report. Other state and local ethics commissions authorize their executive director to make an "administrative dismissal" whenever the complaint, on its face, is deficient in one or more essential respects, such as the failure to allege a violation of law, filing a complaint that has already been determined, failing to provide factual allegations, etc. Only those complaints for which an administrative dismissal has not been issued are investigated and subject to a preliminary staff report. The Commission may wish to consider comparable provisions provided adequate safeguards are included to avoid an abuse of the Executive Director's discretion.

(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.

COMMENT:

The above paragraph establishes a "consent calendar" for complaints in which the Executive Director recommends a dismissal. Historically this procedure has not been followed due to a desire for a staff presentation of the complaint, and/or to permit public comment on each complaint individually.

The above paragraph also establishes a feature that makes Oakland unique among all other state and local ethics agencies -- The public disclosure and discussion of preliminary investigations. The Fair Political Practices Commission (FPPC), as well as the ethics commissions of San Francisco, Los Angeles and San Diego, all provide for closed session review of preliminary complaint investigations. Depending on the local procedures, complaints filed with these other agencies typically do not become "public" until a formal hearing is conducted or after settlement.

One of the reasons cited for closed session hearings of preliminary investigations is to provide respondents with some degree of protection against unfounded or irrelevant accusations. On the other hand, many would argue that the public preliminary review of complaints provides an essential degree of transparency to City affairs.

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.

COMMENT:

As stated, the deadlines of Section III.A are not typically achievable. More appropriate language might consist of "no later than the date the Executive Director's report is distributed to members of the Commission."

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 of her designee, the complaint shall be dismissed.

COMMENT:

This section arguably should include registration requirements under the Lobbyist Registration Act and extend the additional time that may be granted by the Chair.

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.

COMMENT:

One of the problems interpreting this provision is the phrase "determined adversely to the person." Often the Commission may dismiss a complaint conditionally and/or direct staff to communicate some corrective or suggestive action to the respondent. In such cases, has the complaint been determined "adversely"? Additional clarification would be helpful on this point.

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.

COMMENT:

A recent California Supreme Court decision [Morongo Band (2009) 45 Cal.4th 731] likely prohibits the Commission's sole or primary legal advisor from acting in a prosecutorial capacity in a single adjudicatory proceeding. The existing language should be modified to ensure that some degree of internal separation exists on the part of the Commission's legal advisor to accommodate both functions.

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.

COMMENT:

See comment to preceding section.

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.

COMMENT:

The above language requires the Commission to determine at the time it decides to schedule a hearing whether to sit as a hearing panel or delegate this authority to one of its members or an independent hearing examiner. Commission staff has observed that it may sometimes be too early to determine who shall conduct the hearing, especially when and if the Commission decides to condition its decision to conduct a hearing on an attempt to reach a settlement or mediation of the underlying complaint. The Commission should arguably have the discretion to make the decision of who shall conduct the hearing at a later date (see below).

(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 _____."

COMMENT:

Before a hearing is even scheduled, there are some additional procedures which the Commission may wish to consider formalizing that could help narrow the issues for determination and achieve a more efficient hearing. The Commission could consider directing staff to prepare a Draft Administrative Complaint that formalizes the specific allegations to be determined at hearing and any applicable penalties or remedies sought and/or authorized by law. A second procedure would be the scheduling of a mandatory pre-hearing conference at which various issues would be determined, such as a list of witnesses, documents to be submitted, requests for subpoenas, matters suitable for stipulation, and any other preliminary matters.

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.

COMMENT:

Commission staff notes that the 14-day deadline for the request of subpoenas is probably too close to the hearing date. Commission staff also notes that a request for a witness subpoena should also demonstrate why the appearance of a witness is necessary. Issuance of a subpoena should arguably be issued upon a "finding" of good cause rather than a "showing" of good cause.

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.

COMMENT:

Commission staff notes that the 7-day deadline for submitting preliminary matters for determination is probably too close to the hearing date. Commission staff also notes that the enumerated grounds of "preliminary matters" could arguably include stipulated facts and issues, admissibility of witnesses and evidence, and specific issues to be determined at the hearing.

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.

COMMENT:

Written materials (with the exception of any written argument), should arguably be submitted further in advance of the hearing so that the person(s) conducting the hearing could determine their admissibility in advance of the hearing.

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.

COMMENT:

The California Attorney General has advised that members of the public have the right to comment during a quasi-judicial proceeding. In

order to minimize the effect of any irrelevant or prejudicial comments upon the proceedings, Commission staff believes such comments should be segregated from any testimony as much as possible. The Commission should also consider whether to permit the parties to call and examine witnesses, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

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.

COMMENT:

All postponements should be granted upon a finding that good cause exists. The section also should arguably permit the Chair or hearing examiner to postpone the hearing on his or her own initiative.

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.

COMMENT:

Section VI(C) above states that the Commission's decision to dismiss a complaint after a preliminary investigation is "final and represents closure of the administrative process." Section X states that a party may contest a decision "after conclusion of the administrative process." These two sections should clarify the presumed intent that a Commission decision to dismiss after a preliminary investigation is final and not contestable, while a decision following a formal hearing may be contested in civil court pursuant to established provisions of state law (CCP §1094.5).

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).

COMMENT:

The 60-day time limit within which to file a complaint under the Sunshine Ordinance only appears in these regulations and not in the ordinance itself. The Commission's Sunshine Committee has recommended that the 60-day time limit be amended into the Sunshine Ordinance as well.

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.