

ORDINANCE NO. _____

An ordinance amending Chapter 2 of Division 24 of the Los Angeles Administrative Code to amend a regulation of the City Ethics Commission concerning enforcement procedures.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The prefatory language of Subsection (d) and Subdivision (1) of Subsection (d) of Section 24.23 of the Los Angeles Administrative Code are amended to read as follows:

(d) Based on the initial review of a complaint, Commission staff may do one or more of the following:

(1) Continue to investigate the allegations in the complaint;

Sec. 2. Section 24.24 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

Sec. 24.24. Subpoenas and Subpoenas Duces Tecum.

(a) **Issuing Subpoenas.**

(1) The Director of Enforcement may issue subpoenas and *subpoenas duces tecum* on behalf of the Commission. The Director of Enforcement may delegate this authority in writing to any Ethics Officer.

(2) A subpoena or *subpoena duces tecum* may not be issued unless the Director of Enforcement finds that the person to be subpoenaed or the information to be requested in the *subpoena duces tecum* is material to a specific matter under investigation or subject to enforcement action or that the person or entity to be subpoenaed controls material information.

(b) **Notice to Consumers.** If a *subpoena duces tecum* seeks the production of a customer's financial records from a third party, notice to the customer shall be given as required by California Government Code Sections 7460 *et seq.* If a *subpoena duces tecum* seeks the production of a consumer's personal records from a third party, notice to the consumer shall be given as required by California Code of Civil Procedure Section 1985.3. A customer or consumer who moves to quash or modify the production of records under either law shall file written notice of the motion with the Commission staff on the same date that the motion is filed.

(c) **Service.** A subpoena shall be served at least 15 calendar days before the time required for attendance. A *subpoena duces tecum* shall be served at least 28

calendar days before the time required for attendance or production of the requested documents.

(d) **Compliance.**

(1) If the Director of Enforcement consents, the custodian of records or documents that is the subject of a *subpoena duces tecum* may satisfy the *subpoena duces tecum* by delivering the requested records or documents together with an affidavit in compliance with Section 1561 of the California Evidence Code.

(2) If any person refuses to attend or testify or timely produce any records or documents required by a subpoena or *subpoena duces tecum*, the Executive Director may petition the Los Angeles Superior Court for an order compelling the person to comply with the subpoena or *subpoena duces tecum*.

(3) Failure to timely comply with a subpoena or *subpoena duces tecum* without lawful excuse is both of the following:

(A) A violation of these regulations and subject to sanctions under the Los Angeles Administrative Code (LAAC) Section 24.29(f); and

(B) A violation of and subject to enforcement under LAAC Section 19.21.

(e) **Witness Mileage and Fees.** A witness appearing pursuant to a subpoena or a *subpoena duces tecum*, other than a party, is entitled to receive the same mileage and fees allowed by law to a witness in a civil case pending in the Los Angeles Superior Court. This does not apply to an officer or employee of the City of Los Angeles. Mileage and fees may be received once the witness has complied with the subpoena or *subpoena duces tecum* and submitted a written request.

(f) **Objections.**

(1) A person served with a subpoena or *subpoena duces tecum* may object to its terms by filing written objections with the Executive Director. Objections shall include a working facsimile number or valid email address for which the person or the person's legal representative has authorized service of the ruling on the objections. Objections must be filed by the following deadlines:

(A) No later than five calendar days after service of a subpoena.

(B) No later than 14 calendar days after service of a *subpoena duces tecum*.

(2) The Executive Director shall rule on objections and issue an order in writing by the following deadlines:

(A) No later than four calendar days after written objections to a subpoena are filed.

(B) No later than seven calendar days after written objections to a *subpoena duces tecum* are filed.

(3) A petition for judicial review of the Executive Director's ruling must be filed within five calendar days after the date a ruling on a subpoena is issued and within seven calendar days after the date a ruling on a *subpoena duces tecum* is issued. Written notice of a petition shall be filed with the Executive Director on the same date that the petition is filed with the superior court.

(4) Failure to file timely written objections with the Executive Director waives all grounds for any objection to a subpoena or *subpoena duces tecum* and all grounds to petition for judicial review.

Sec. 3. Subdivision (4) of Subsection (a) of Section 24.26 of the Los Angeles Administrative Code is amended to read as follows:

(4) The Director of Enforcement may submit a rebuttal to the response. A rebuttal must be served on each respondent on the same day that it is filed with the Executive Director, and not later than ten calendar days following receipt of the response to the probable cause report.

Sec. 4. Subdivision (3) of Subsection (c) of Section 24.26 of the Los Angeles Administrative Code is amended to read as follows:

(3) The Executive Director shall serve notice of the determination regarding probable cause on each respondent and the Director of Enforcement within five calendar days of making the determination.

Sec. 5. Subdivisions (3) and (4) of Subsection (d) of Section 24.26 of the Los Angeles Administrative Code are amended to read as follows:

(3) The accusation shall be served on the respondent within ten calendar days of being completed.

(4) The Executive Director shall publicly announce the determination of probable cause no later than ten calendar days after service of the accusation, unless the parties stipulate to the entry of an order under Section 24.27(i)(2) during this time period.

(A) The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Charter or ordinances unless and until the violation is proved in a subsequent administrative hearing.

(B) The announcement shall not be made public until all respondents have been served with the accusation.

Sec. 6. Subdivision (2) of Subsection (e) of Section 24.26 of the Los Angeles Administrative Code is amended to read as follows:

(2) A respondent may seek the recusal of the Executive Director by filing a written recusal request with the Executive Director within ten calendar days after being served with the probable cause report.

(A) The request shall state the reasons why the Executive Director cannot be fair and impartial with respect to a particular matter and should not make the probable cause determination.

(B) The Executive Director shall make a written determination regarding the request and serve the respondent with notice of the determination within seven calendar days.

(C) Failure to file the request with the Executive Director within ten calendar days after being served with the probable cause report waives all grounds for recusal.

(D) A petition for judicial review of a determination concerning recusal of the Executive Director must be filed with a court within ten calendar days following the date of notice of the determination.

(E) If the request is granted, the probable cause conference shall be conducted in the same manner as under Subdivision (1) above.

Sec. 7. The prefatory language of Subdivision (1) of Subsection (a) of Section 24.27 of the Los Angeles Administrative Code is amended to read as follows:

(1) After an accusation has been issued, an administrative hearing shall be conducted. The Director of Enforcement shall present to the members of the Commission the following options from which the members must select an administrative hearing officer:

Sec. 8. The term "Ethics" shall be added before the term "Commission" in last sentence of Subdivision (2) of Subsection (b) of Section 24.27 of the Los Angeles Administrative Code.

Sec. 9. Subdivisions (3) and (4) of Subsection (d) of Section 24.27 of the Los Angeles Administrative Code are amended to read as follows:

(3) A brief shall be filed with the hearing officer and all other parties to the administrative hearing at least seven calendar days prior to the hearing.

(4) An opposing party may file a written response to a brief. The response may not exceed ten pages in length except by permission of the hearing officer and by a showing of good cause. The response must be filed with the hearing officer and all other parties to the administrative hearing at least two calendar days prior to the hearing.

Sec. 10. Paragraph (E) of Subdivision (1) of Subsection (e) of Section 24.27 of the Los Angeles Administrative Code is amended to read as follows:

(E) Any other matter not related to the truth or falsity of the factual allegations in the accusation or to a possible penalty.

Sec. 11. Paragraphs (B) and (C) of Subdivision (3) of Subsection (e) of Section 24.27 of the Los Angeles Administrative Code are amended to read as follows:

(B) The request shall be filed at least seven calendar days prior to the administrative hearing on the merits.

(C) The individual appointed to decide the request for reconsideration, in the individual's discretion, may either reconsider a decision regarding a preliminary matter on its merits or deny a request for reconsideration. The individual need not determine whether a decision on preliminary matters was correct and need not give reasons for denying a request. The individual shall make a ruling and serve notice of the ruling on all parties within five calendar days of making the ruling.

Sec. 12. Subsection (f) of Section 24.27 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

(f) **Procedural Issues.**

(1) Any member of the Commission, the Executive Director, the secretary of the Commission, or an individual hearing officer may administer oaths and affirmations for an administrative hearing.

(2) All relevant, non-privileged evidence may be admissible in the administrative hearing.

(A) Each party shall have the right to call and examine all witnesses under oath or affirmation, to introduce exhibits, to cross-

examine opposing witnesses on any relevant matter even if that matter was not covered in direct examination, to impeach any witness, and to rebut evidence presented against the party.

(B) Evidence may be excluded if its probative value is substantially outweighed by the probability that it will result in the undue consumption of time.

(C) The hearing officer shall rule on procedural matters and on the admission and exclusion of evidence.

(3) The hearing shall be recorded, and the recording shall be provided to the Commission. The Commission shall retain the recording and provide a copy to each respondent.

(4) Each respondent may ask that a certified court reporter or translator attend and record the hearing. The costs of such services shall be borne by the respondent requesting them. A respondent who uses a court reporter shall provide copies of the transcript to the Commission and all other parties.

(5) Each party shall be allowed oral argument of no more than 20 minutes.

(6) The hearing officer may extend the time limits in this section for good cause.

Sec. 13. Subsections (g), (h) and (i) are added to Section 24.27 of the Los Angeles Administrative Code to read as follows:

(g) Findings.

(1) A determination regarding findings shall be made only by a quorum of the Commission based on a preponderance of the evidence.

(A) The votes of at least three members are required to find a violation or remand the case to an individual hearing officer.

(B) Each member who participates in the determination shall certify that he or she either heard the testimony in person or reviewed the entire record of the proceedings.

(2) When an individual hearing officer alone hears a case, he or she shall make a recommendation regarding whether a violation occurred.

(A) The individual hearing officer shall provide a written report containing proposed findings of fact, conclusions of law, and a summary of the evidence supporting each proposed finding. A copy of the hearing officer's report shall be filed with the Executive Director and each respondent. The Executive Director shall provide copies to the members of the Commission.

(B) Within seven calendar days of the date the report is filed with the Executive Director, any party may file with the Executive Director a brief of no more than 15 pages in response to the report. The Executive Director shall provide copies to the members of the Commission.

(C) Based on the record of the proceedings, a quorum of the Commission shall make a final determination concerning whether a violation has occurred and may do so without further oral argument by the parties.

(D) If a quorum of the Commission determines that the individual hearing officer's report and the record of the proceedings are not sufficient to enable it to make a determination concerning whether a violation has occurred, it may remand the case to the individual hearing officer who heard the case or to a new hearing officer, with instructions for further proceedings.

(3) A determination by the Commission that a violation occurred shall be supported by the relevant facts and laws, shall be based on the entire record of the proceedings, and shall be incorporated into the order required by Subsection (i).

(4) If a quorum of the Commission determines that no violation occurred, staff shall publish a statement to that effect, in substantially the following form:

"On [date], the Los Angeles City Ethics Commission considered whether [name of respondent or respondents] had violated City law by [summary of allegations]. The Ethics Commission determined that no violation occurred."

(h) Penalties.

(1) Penalties may be imposed only by a quorum of the Commission, based on its determination under Subsection (g) regarding whether a violation occurred and on the arguments and evidence submitted by the parties regarding penalties.

(A) The votes of at least three members are required to impose penalties.

(B) The parties may submit arguments and evidence regarding penalties.

(i) Each party may file a brief that is no more than ten pages in length. The brief shall be filed with the Executive Director and all opposing parties at least 15 calendar days prior to the date the Commission will consider penalties. The Executive Director shall provide copies of any brief to the members of the Commission.

(ii) The members of the Commission may permit the parties to provide oral argument of no more than ten minutes each.

(2) In framing a penalty, the Commission shall consider the relevant circumstances surrounding the case, including but not limited to the following:

(A) The severity of the violation;

(B) Whether the violation was deliberate and whether the violator intended to conceal or deceive;

(C) Whether the violator demonstrated good faith by consulting the Commission staff in a manner not constituting a complete defense under Charter Section 705;

(D) Whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of the laws within the Commission's jurisdiction;

(E) The degree to which the violator cooperated with Commission staff in order to provide full disclosure, remedy a violation, or cooperate voluntarily with an investigation; and

(F) The overall interests of justice.

(3) If a quorum of the Commission imposes monetary penalties, the penalties must be paid in full within 21 calendar days after the date the order imposing the penalties issued under Subsection (i).

(A) If a party who is ordered to pay the penalties can demonstrate through documentary evidence that paying the total amount of the penalties within 21 calendar days poses a significant financial hardship, staff may recommend that a payment schedule be established

by a quorum of the Commission. Any payment schedule must require payment in full within 12 calendar months after the date the order imposing the penalties is issued.

(B) If a party fails to pay penalties within 21 calendar days or, if a payment plan is established, fails to make a scheduled payment, the entire amount outstanding on the penalty shall become immediately due and payable in full.

(C) The Commission may pursue all available remedies to collect a penalty.

(i) **Orders.**

(1) Following the finding of a violation, the Commission shall issue a final verbal order that includes a summary of facts and the conclusions of law and, after considering the relevant circumstances in Subsection (h)(2), may impose penalties consistent with Charter Section 706(c). Staff shall prepare a written statement that is consistent with the order and signed by the president of the Commission or, if the president is required to be recused from the matter, by the vice president or another member in order of seniority.

(2) At any time before or during an administrative hearing or in lieu of such a hearing, the Director of Enforcement and any respondent may stipulate to the entry of an order.

(A) A stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by a quorum of the Commission.

(B) A stipulated order may resolve the violation only or both the violation and the penalty.

(C) A stipulated order has the full force of an order issued under paragraph (B) when it is approved by a quorum of the Commission.

(D) An agreement regarding a stipulated order suspends further procedural requirements regarding a probable cause hearing or an administrative hearing for that enforcement matter and tolls the statute of limitations.

(3) Enforcement orders shall be announced publicly.

Sec. 14. Subdivision (2) of Subsection (a) of Section 24.28 of the Los Angeles Administrative Code is amended to read as follows:

(2) The Director of Enforcement shall serve a copy of the proposed default order on the members of the Commission at least six calendar days before the proposed order is heard.

Sec. 15. Subsections (b) and (c) of Section 24.28 of the Los Angeles Administrative Code are amended to read as follows:

(b) The respondent may file a written response to the proposed default order at least three calendar days before the proposed order is heard.

(c) If a quorum of the Commission approves the default order, the Director of Enforcement shall make a reasonable effort to serve the respondent with notice and a copy of the signed order within seven calendar days of the date the default order is signed.

Sec. 16. Paragraph (A) of Subdivision (2) of Subsection (a) of Section 24.29 of the Los Angeles Administrative Code is amended to read as follows:

(A) Personal service is complete when a copy of the document is delivered to the named person at the named person's residence or office, the office of the named person's attorney, or the office of the named person's designated agent for service of process.

Sec. 17. Subsection (d) of Section 24.29 of the Los Angeles Administrative Code is amended in its entirety to read as follows:

(d) **Cooperation.** All persons shall timely cooperate with Commission investigations. Examples of what may constitute cooperation include the following:

(1) Complying with a request for information, a request for interviews, a subpoena, and a *subpoena duces tecum* in accordance with applicable law.

(2) Providing complete, truthful and, during investigations and formal proceedings, sworn statements.

Sec. 18. Subsections (e), (f) and (g) of Section 24.29 of the Los Angeles Administrative Code are renumbered to Subsections (f), (g) and (h), respectively.

Sec. 19. Subsection (e) is added to Section 24.29 of the Los Angeles Administrative Code to read as follows:

(e) **Reporting.** As required by Section 20.60.4, all City departments and appointed offices shall report to the Commission on matters involving potential fraud, waste, or abuse within ten days after discovery. All City departments and appointed offices shall also report to the Commission on matters involving a potential violation of

the campaign finance, governmental ethics, conflict of interests, or lobbying laws within ten days after discovery, except as prohibited by applicable law.

Sec. 20. In Paragraph B of Subdivision (1) of Subsection (f) of Section 24.29 of the Los Angeles Administrative Code, the term “timely” shall be added before the term “comply.”

Sec. 21. Paragraph F of Subdivision (1) of Subsection (f) of Section 24.29 of the Los Angeles Administrative Code is amended to read as follows:

(F) Unlawfully obstructing, interrupting or interfering with the hearing or investigation.

Sec. 22. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
RENEE A. STADEL
Assistant City Attorney

Date May 22, 2017

File No. _____