



Los Angeles City Ethics Commission

January 10, 2014

The Honorable City Council
c/o Holly Wolcott, Interim City Clerk
200 North Spring Street
City Hall – 3rd Floor
Los Angeles CA 90012

Re: Ethics Commission Enforcement Regulations

FOR COUNCIL CONSIDERATION

Dear Councilmembers:

The Ethics Commission has unanimously approved changes to the provisions of the Los Angeles Administrative Code (LAAC) that regulate the Commission's administrative enforcement actions. The Commission urges you to adopt the approved language provided in Attachment B to implement the amended regulations.

The Los Angeles City Charter (Charter) establishes specific procedures for regulations adopted by the Ethics Commission. The regulations are subject to City Council approval but cannot be modified. Charter §703(a). In addition, a public hearing must be held, and action to approve or disapprove must be taken within 60 days of the date the Ethics Commission approved the recommendations. Charter § 703(b). The Ethics Commission approved the recommendations on December 19, 2013, and the 60-day deadline is February 17, 2014.

BACKGROUND

City law provides criminal, civil, and administrative remedies for violations of laws within the Ethics Commission's jurisdiction. See Charter §§ 470(o), 706, 803(v); Los Angeles Municipal Code (LAMC) §§ 48.09, 49.5.16, 49.7.38. The Charter requires the Ethics Commission to maintain a whistleblower hotline and to investigate and enforce against alleged violations of state law, Charter provisions, and City ordinances relating to campaign financing, lobbying, conflicts of interests, and governmental ethics. Charter §§ 702(d), 702(g), 706.

PROCESS

The enforcement regulations were adopted in 1992, to guide the Commission in its investigative and enforcement duties and to provide adequate due process for persons subject to administrative enforcement. LAAC §§ 24.21 *et seq.* The regulations have not been

substantively amended since 2001, when they were updated to reflect changing technology, to incorporate the statute of limitations, and to address the service of subpoenas.

At public meetings in October and December 2013, the Ethics Commission considered staff analysis, comments from committee treasurers, comments from the public, and input from the City Attorney's office regarding the approved regulations. The approved regulations are largely the same as the existing regulations, but they do include substantive changes to improve the Commission's processes for receiving complaints, issuing subpoenas, making probable cause determinations, conducting administrative hearing procedure, and fostering compliance. The approved regulations also include technical updates to clarify, streamline, and account for modern technology.

Key substantive changes are discussed below and are also summarized in the table provided in Attachment A.

COMPLAINTS & INVESTIGATIONS

A. Complaints

Current law states that all complaints made to the Ethics Commission must be made in writing. LAAC § 24.21(a)(3)(A). However, the Charter requires the Ethics Commission to maintain a whistleblower hotline, and the regulations also refer to complaints made by telephone or in person. Charter § 702(g); LAAC § 24.21(a)(4)(A).

The approved regulations remove the requirement that all complaints must be in writing and, instead, clarify that Commission staff processes and reviews all complaints, regardless of format. *See* approved LAAC § 24.23(b). This codifies the Commission's long-standing practice of accepting all complaints. The approved regulations also identify the information that should be included in a complaint to facilitate review. *See* adopted LAAC § 24.23(c).

B. Referrals

The Charter requires the Ethics Commission to maintain confidentiality regarding investigations. Charter § 706(a)(2). However, the current regulations permit staff to make referrals to the City Attorney and to other government agencies that can either prosecute or impose discipline for unlawful activity. LAAC § 24.21.

The approved regulations state that the Ethics Commission may also make referrals to a government agency that has investigative authority, as well as enforcement or disciplinary authority. *See* approved LAAC § 24.22(c). This clarifies the Ethics Commission's ability to work with other City agencies, including those that employ individuals who have violated departmental policies, and the Controller's office, which investigates possible waste, fraud, and abuse in City government.

C. Subpoenas

1. *Authority to Issue*

The Commission's Executive Director is currently the person authorized to issue subpoenas on the Commission's behalf. LAAC § 24.21(b)(3)(B). The approved regulations eliminate the Executive Director's authority and authorize the Director of Enforcement or an Ethics Officer delegated by the Director of Enforcement to issue subpoenas. *See* approved LAAC § 24.24(a)(1).

This reflects the standard in other law enforcement agencies, where the person responsible for prosecuting wrongdoing (e.g., a district attorney) issues subpoenas in furtherance of that responsibility. The change also eliminates any concerns that might arise when the Executive Director issues a subpoena and then is required to preside at the probable cause conference at which evidence discovered through that subpoena is presented. *See* LAAC § 24.21(d)(6)(A).

2. *Failure to Comply*

The current regulations do not address the failure to comply with a subpoena issued by the Ethics Commission. However, another provision of the LAAC states that failure to comply with any City subpoena without lawful excuse is a misdemeanor. LAAC § 19.21. The approved regulations clarify that failing to comply with a Commission subpoena without lawful excuse is subject the same penalties as any other City subpoena. The approved regulations also specify that failing to comply with a Commission subpoena is subject to sanctions, which are further discussed below in General Provisions Section B. *See* approved LAAC § 24.24(d)(3).

PROBABLE CAUSE DETERMINATIONS

A. Recusal of the Executive Director

Before an administrative hearing is held, the Executive Director must determine whether there is probable cause to believe that a violation occurred and that the respondent is responsible for the violation. LAAC § 24.21(d)(7)(B). The Executive Director may recuse himself from participating in the probable cause determination, and a respondent may seek the Executive Director's recusal. LAAC § 24.21(d)(9). If the Executive Director recuses, the Director of Enforcement must randomly select a former government attorney to make the probable cause determination. *Id.*

The approved regulations require the Commission's Deputy Executive Director to select the person who will make a probable cause determination when the Executive Director is recused. *See* approved LAAC § 24.26(e)(1). This will avoid any potential conflict that could arise when the prosecuting attorney also selects the decision maker.

The approved regulations also require that the person to make a probable cause determination when the Executive Director is recused be chosen from a list of former Executive Directors, former members of the Ethics Commission, and current or former Ethics Officers (supervisory Ethics Commission employees). *Id.* Narrowing the pool of individuals who can make probable cause determinations to those familiar with Ethics Commission laws, policies, and procedures will help to ensure that an equitable decision is made and that the process is handled as efficiently as possible.

B. Statute of Limitations

The current regulations reflect the Charter and the LAMC by specifying a four-year statute of limitations for administrative enforcement actions. *See* Charter § 470(o)(2)(F)(ii); LAMC §§ 48.09(C)(4), 49.5.16(A)(2), 49.5.16(B)(5), 49.7.38(A)(2), 49.7.38(B)(5); LAAC § 24.21(d)(10). The four years begin on the date on which the violation occurred, and an enforcement action begins when a probable cause report is served on a respondent. LAAC § 24.21(d)(10). The statute is tolled if the respondent engages in concealment or fails to comply with a Commission subpoena. *Id.*

The approved regulations clarify that the statute is tolled if the respondent fails to comply with a Commission subpoena or engages in either concealment or deceit. *See* approved LAAC § 24.26(a)(2). Adding reference to deceit more fully reflects the range of activities for which the statute may be tolled. Concealment could be interpreted as the more passive action of simply not revealing the truth. Deceit, on the other hand, could be interpreted as a more active action that is designed to mislead, such as when an individual knowingly files a false document. The statute of limitations is tolled in either scenario and, to eliminate confusion, the approved regulations have made this clear.

C. Initiating Civil Action

In addition to administrative penalties, the Ethics Commission may also initiate a civil action to remedy a violation of a law within its jurisdiction. LAMC §§ 48.09(C), 49.5.16(B), 49.7.38(B). Currently, the Executive Director may ask the members of the Ethics Commission to decide whether to initiate a civil action. LAAC § 24.21(c)(4). If the decision to initiate a civil action is put before the commissioners, no administrative enforcement proceeding regarding the same allegations may be brought. *Id.*

The approved regulations make two changes. First, they authorize the Executive Director to initiate a civil action without first seeking input from the commissioners. *See* approved LAAC § 24.25(c). This will allow an action to be brought quickly if time is of the essence, such as when an injunction is necessary to stop a continuing violation that threatens to affect an election.

Second, the approved regulations preclude administrative enforcement on the same allegations only when a civil action is actually commenced. *See* approved LAAC § 24.25(c). This will allow the commissioners to choose to pursue administrative enforcement instead of

civil action when a matter is referred to them, rather than being forced to choose between either initiating a civil action or taking no action. It also clarifies that the Ethics Commission is not precluded from administrative enforcement by virtue of pursuing procedural action in civil court, such as compelling compliance with a subpoena.

ADMINISTRATIVE HEARINGS

A. Hearing Officer

Currently, an administrative hearing may be conducted in one of three ways: the members of the Ethics Commission may serve as the hearing panel; the members may serve as the hearing panel with an individual hearing officer from outside the agency presiding; or an individual hearing officer from outside the agency may preside over the hearing alone. LAAC § 24.21(e)(1). The members of the Ethics Commission determine how the hearing will be conducted. *Id.*

The approved regulations specify that a member of the Ethics Commission may be designated as an individual hearing officer. *See* approved LAAC § 24.27(a)(1)(B). It is both appropriate and efficient for the members of the Commission to be able to designate one of their number to serve as the individual hearing officer when the commissioners could preside as a body. The approved regulations also specify that the members of the Commission must designate an individual to serve as the hearing officer and an individual to decide preliminary hearing matters. *See* approved LAAC §§ 24.27(a)(2)–(3).

B. Subpoenas

Currently, the hearing officer may issue a subpoena for the production of documents or attendance, upon the request of any party. LAAC § 24.21(e)(7)(B)(1). The approved regulations permit the hearing officer to deny a request for a subpoena after considering relevancy, privileges and confidentiality, the potential for creating an undue burden, and the overall interests of justice. *See* adopted LAAC § 24.27(e)(2)(A)(iv). Evidence is admissible only if it is relevant, not privileged, and will not result in the undue consumption of time, and allowing a hearing officer to deny a subpoena request if the evidence sought is clearly inadmissible will streamline the process, promote efficiency, and ensure that the hearing is not overly burdensome.

C. Decisions

If the Executive Director determines that there is probable cause, an accusation that clearly specifies the alleged violations must be served on the respondent and must also be publicly announced. LAAC § 24.21(d)(8). Respondents are then entitled to an administrative hearing on the merits, which may be conducted by the members of the Ethics Commission or an individual hearing officer. LAAC § 24.21(e). A determination that a violation actually occurred may be made only by a vote of the commissioners. LAAC § 24.21(e)(7)(D)(v).

The current regulations require each commissioner to certify to having personally heard the testimony *and* reviewed the entire record of the hearing. LAAC § 24.21(e)(7)(d)(iv). The approved regulations permit commissioners to certify that they personally heard the testimony *or* reviewed the entire record of the proceedings. *See* approved LAAC § 24.27(e)(4)(A)(ii). This change accounts for circumstances in which a commissioner cannot personally hear testimony, such as when an individual hearing officer presides over the administrative hearing.

D. Default Orders

The approved regulations include a new process for default orders when a respondent does not communicate with the commission or submit a defense to an enforcement action. *See* approved LAAC § 24.28. If a respondent fails to respond to a probable cause report or other Commission pleading, the Director of Enforcement may pursue a default order. This will allow the Commission to resolve violations when a respondent, for example, ignores or evades the Commission.

Notice of the proposed default order must be served on the respondent at least 15 calendar days before the order is heard by the commissioners. *See* approved LAAC § 24.28(a)(1). The respondent may file a written response to the proposed default order. *See* approved LAAC § 24.28(b). If the commissioners approve a default order, the Director of Enforcement must attempt to serve a signed copy of the order on the respondent. *See* approved LAAC § 24.28(c). The respondent may request that the order be vacated up to 15 calendar days after the order is signed. *See* approved LAAC § 24.28(d).

GENERAL PROVISIONS

A. Service of Process

The existing regulations provide that service of process may be made in person or by mail to the home or office of a named person or to the office of the named person's attorney or agent for service of process. LAAC §§ 24.21(b)(3)(D), 24.21(d)(1)(C)(ii), 24.21(d)(8)(C). The approved regulations provide that, in addition to the existing methods, service may also be made by any other method agreed upon by the parties. *See* approved LAAC § 24.29(a). This change will allow the parties to agree to service by e-mail, which is more efficient and resource-neutral.

B. Sanctions

The approved regulations include a provision authorizing the Commission to seek sanctions from a civil court when a person does not have a lawful excuse for obstructing the investigative or enforcement process or failing to comply with a Commission subpoena. *See* approved LAAC § 24.29(e)(1). If sanctions are called for, the hearing officer or the Director of Enforcement may request that they be imposed and enforced by the superior court. *See* approved LAAC § 24.29(e)(2). The person requesting sanctions must certify the facts that justify sanctions, and the court must order the person subject to the sanctions to appear and show why

sanctions should not be imposed. See approved LAAC §§ 24.29(e)(2)(A)–(B). The superior court then has jurisdiction over the contempt matter, and the court's procedures and penalties apply. See approved LAAC §§ 24.29(e)(2)(C)–(D).

C. Deadlines

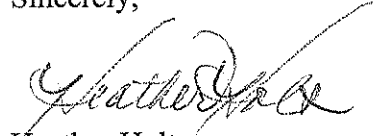
Finally, the approved regulations specify that any deadline that falls on a Saturday, Sunday, or City holiday is moved to the next business day. See approved LAAC § 24.29(f). This will provide certainty for witnesses, respondents, and others who are subject to the regulations. It will also promote the most efficient use of staff resources.

CONCLUSION

The Ethics Commission urges you to adopt the approved regulation language in Attachment B, to clarify and strengthen City law and to streamline the Commission's investigative and enforcement processes. The regulations are subject to City Council approval but cannot be modified, and February 17 is the deadline for City Council action. Charter § 703(a).

We would be happy to discuss these recommendations with you at any time. If you have questions, please do not hesitate to contact me or Director of Policy Mike Altschule.

Sincerely,



Heather Holt
Executive Director

Attachments:

- A Quick Guide to Key Changes.*
- B Approved LAAC language (clean).*
- C Approved LAAC language (redlined).*

Los Angeles City Ethics Commission
Quick Guide to Key Changes:
Enforcement Regulations
January 10, 2014

COMPLAINTS & SUBPOENAS				
Topic	Existing Regulation	Existing Citation	New Regulation	New Citation
Complaints	All complaints must be in writing.	LAAC § 24.21(a)(3)(A)	Complaints may be made verbally or in writing. All complaints will be reviewed.	LAAC § 24.23(b)
Referrals	Commission staff may refer evidence of possible unlawful conduct to the City Attorney, another attorney authorized to prosecute the unlawful activity, or a government agency that can enforce or impose discipline for the unlawful activity.	LAAC § 24.21	Commission staff may refer evidence of possible unlawful conduct to the City Attorney, another attorney authorized to prosecute the unlawful activity, or a government agency that can investigate, enforce, or impose discipline for the unlawful activity.	LAAC § 24.22(d)
Subpoena Authority	The executive director may issue subpoenas.	LAAC § 24.21(b)(3)(B)	The director of enforcement may issue subpoenas.	LAAC § 24.24(a)(1)
Subpoena Compliance	Failure to comply with a City subpoena, without lawful excuse, is a misdemeanor under LAAC § 19.21.	N/A	Failure to comply with a Commission subpoena, without lawful excuse, is both a misdemeanor under LAAC § 19.21 and subject to sanctions under LAAC § 24.29(e).	LAAC § 24.24(d)(3)

PROBABLE CAUSE DETERMINATIONS				
Topic	Existing Regulation	Existing Citation	New Regulation	New Citation
Civil Action	The executive director may refer a decision to initiate civil action to the commissioners. Referral precludes administrative enforcement by the Commission.	LAAC § 24.21(c)(4)	The executive director may initiate civil action or refer a decision to initiate civil action to the commissioners. Administrative enforcement by the Commission is precluded when a civil action is initiated to pursue substantive penalties.	LAAC § 24.25(c)
Recording	Probable cause conferences must be tape-recorded. The Commission must retain the tape and provide a copy to each respondent.	LAAC § 24.21(d)(6)(E)	Probable cause conferences must be recorded, and a copy must be provided to each respondent.	LAAC § 24.26(b)(4)

PROBABLE CAUSE DETERMINATIONS cont'd

<i>Topic</i>	<i>Existing Regulation</i>	<i>Existing Citation</i>	<i>New Regulation</i>	<i>New Citation</i>
Recusal	If the executive director recuses or is unavailable, the director of enforcement randomly selects a former government attorney to determine probable cause.	LAAC § 24.21(d)(9)	If the executive director recuses or is unavailable, the deputy executive director selects a former executive director, former commissioner, or current or former ethics officer to determine probable cause.	LAAC § 24.26(e)(1)
Statute of Limitations	The four-year statute of limitations is tolled if the respondent engaged in concealment or fails to comply with a subpoena.	LAAC § 24.21(d)(10)	The four-year statute of limitations is tolled if the respondent engaged in concealment or deceit or fails to comply with a subpoena.	LAAC § 24.26(a)(2)

ADMINISTRATIVE HEARINGS

<i>Topic</i>	<i>Existing Regulation</i>	<i>Existing Citation</i>	<i>New Regulation</i>	<i>New Citation</i>
Decisions	The commissioners determine by three votes whether a violation occurred and whether to impose an order. Each participating commissioner must certify to having personally heard the testimony and reviewed the entire record of the proceeding.	LAAC §§ 24.21(e)(7)(D)(iv)–(v)	The commissioners determine by three votes whether a violation occurred and whether to impose an order. Each participating commissioner must certify to having personally heard the testimony or reviewed the entire record of the proceeding.	LAAC §§ 24.27(f)(2)(A)(i)–(ii)
Default Orders	The regulations do not address default orders.	N/A	A default judgment may be entered when a respondent fails to respond or submit a defense.	LAAC § 24.28
Evidence	Evidence admissible under the California Administrative Procedures Act is admissible.	LAAC § 24.21(e)(7)(C)	Relevant, non-privileged evidence is admissible and, as provided in the California Administrative Procedures Act, may be excluded if its probative value is substantially outweighed by the probability that it will result in the undue consumption of time.	LAAC § 24.27(f)(1)(B)
Hearing Officer	The hearing officer may be the commissioners or a single individual outside the agency.	LAAC § 24.21(e)(1)	The hearing officer may be the commissioners or a single individual, including a commissioner.	LAAC § 24.27(a)(1)
Subpoenas	The hearing officer may issue subpoenas upon the request of a party.	LAAC § 24.21(e)(7)(B)(1)	The hearing officer may issue subpoenas upon the request of a party. The request may be denied based on relevant factors.	LAAC § 24.27(c)(3)

GENERAL PROVISIONS

Topic	Existing Regulation	Existing Citation	New Regulation	New Citation
Deadlines	The regulations do not address deadlines that fall on weekends or City holidays.	N/A	Deadlines that fall on a Saturday, Sunday, or City holiday are moved to the next business day.	LAAC § 24.29(f)
Sanctions	The regulations do not address sanctions.	N/A	A hearing officer or the director of enforcement may ask the superior court to impose contempt sanctions on a person who obstructs the Commission's investigation and enforcement mandate in specified ways.	LAAC § 24.29(e)
Service of Process	Service may be made in person at or by mail to the home or office of the named individual or the office of the named individual's attorney or agent for service of process.	LAAC §§ 24.21(b)(3)(D) 24.21(d)(1)(C)(ii) 24.21(d)(8)(C)	Service may be made in person or by mail. Service is complete when a copy of the document is delivered to the named person, at the person's residence or office, or to the office of the person's agent. Service may also be made and completed by any other method agreed to by the parties.	LAAC § 24.29(a)

INVESTIGATIONS AND ENFORCEMENT REGULATIONS

Los Angeles Administrative Code Division 24, Chapter 2

Sec. 24.21

Definitions.

- (a) "Commission" means the Los Angeles City Ethics Commission.
- (b) "Deputy Executive Director" means the Commission staff member who is authorized by the Executive Director to serve as the Commission's executive officer when the Executive Director is absent or otherwise unable to serve.
- (c) "Director of Enforcement" means the Commission staff member who is in charge of enforcement matters.
- (d) "Ethics Officer" means a Commission staff member whose City job classification is ethics officer, including but not limited to Ethics Officer I, Ethics Officer II, and Ethics Officer III.
- (e) "Executive Director" means the Commission's executive officer.

Sec. 24.22

Authority to Investigate and Refer.

- (a) In connection with Commission investigations and enforcement actions, the Executive Director and the Commission staff may inspect books, records, and electronic data; receive and investigate complaints; administer oaths; certify to official acts; issue subpoenas for the attendance of witnesses or the production of books, accounts, documents, electronic data, or testimony in any relevant inquiry, investigation, hearing, or proceeding.
- (b) The Executive Director and the Director of Enforcement may administer oaths and affirmations on behalf of the Commission and may delegate that authority to any Ethics Officer.
- (c) The Executive Director and the Commission staff may divulge evidence of possible unlawful conduct discovered during an investigation to the following:
 - (1) A government attorney authorized by law to prosecute the unlawful conduct;
 - (2) A government agency with the authority to investigate or enforce laws relating to the unlawful conduct; or
 - (3) A government agency with the authority to discipline City employees for the unlawful conduct.

Sec. 24.23
Complaints.

- (a) A complaint alleges possible violations of state or City laws relating to campaign financing, lobbying, conflicts of interests, or governmental ethics.
 - (1) Any person may file a complaint with Commission staff.
 - (2) Commission staff may internally initiate a complaint, based on personal knowledge, an audit, a staff referral, a referral from another government or law enforcement agency, a news article, or another source of information that may indicate a possible violation.
 - (3) Concerns raised at public meetings or to members of the Commission are not complaints.
 - (4) Complaints are confidential and are not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.
- (b) Commission staff will process and review all complaints.
- (c) A complaint is most helpful if it is in writing, is dated by the complainant, and contains the following information with as much detail and specificity as possible and to the best of the complainant's knowledge and belief:
 - (1) The name and address of the alleged violator;
 - (2) The provisions of law allegedly violated;
 - (3) Facts evidencing the alleged violations;
 - (4) The names and addresses of potential witnesses; and
 - (5) An address, telephone number, and email address at which the complainant may be reached during normal business hours.
- (d) Based on the information provided in a complaint, Commission staff may do one or more of the following:
 - (1) Initiate an investigation of the allegations in the complaint;
 - (2) Refer the complaint or the complainant to another government or law enforcement agency;
 - (3) Take no action for reasons which may include but are not limited to the following:
 - (A) The complaint does not contain sufficient facts or information to pursue an investigation;
 - (B) The evidence does not support the allegations;

- (C) The complaint expresses opinions rather than specific, actionable allegations;
- (D) The allegations in the complaint have already been disposed of as a result of another complaint or are already under investigation by the Commission or another government or law enforcement agency; or
- (E) The Commission has no jurisdiction over the allegations in the complaint.

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 either personal or financial records from a third party, notice to the consumer shall be given as required by California Government Code sections 7460 *et seq.* A consumer who objects to the production of personal or financial records shall file written notice with the custodian of the records and Commission staff at least 10 calendar days prior to the production date specified in the *subpoena duces tecum*.

- (c) **Service.** Subpoenas shall be served at least 15 calendar days before the time required for attendance. *Subpoenas duces tecum* shall be served at least 25 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 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 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 Section 24.29(e); and
 - (B) A violation of and subject to enforcement under 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 officers and employees 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 at least five calendar days before the time required for attendance or production of the requested documents.
 - (2) The Executive Director shall rule on the objections and issue an order in writing at least one calendar day before the time required for attendance or production of the requested records or documents. A petition for judicial review of the Executive Director's ruling must be filed within 10 calendar days of the date the ruling is issued.
 - (3) Failure to file timely objections with the Executive Director waives all grounds for any objection.

Sec. 24.25

Preliminary Enforcement Determination.

- (a) Based on a review of the evidence gathered through the course of an investigation, the Director of Enforcement shall determine whether enforcement action should be initiated and whether a referral to another government or law enforcement agency is appropriate for enforcement or disciplinary purposes.
- (b) The Director of Enforcement shall obtain the Executive Director's concurrence prior to initiating enforcement action, making a referral, or closing a case.
 - (1) If a referral is made, information gathered by Commission staff in the course of the investigation may be provided to the other government or law enforcement agency.
 - (2) A determination that no further action should be taken by Commission staff at that time shall not prevent any other government agency from initiating other enforcement or disciplinary action based on the same allegations and facts.
- (c) The Executive Director may determine that a civil action by the Commission is appropriate or may refer the matter to the members of the Commission, who shall

consider the matter in closed session and decide whether such an action is appropriate. If the Commission commences a civil action to pursue substantive civil penalties, it may not initiate an administrative enforcement proceeding based on the same allegations against the same respondent.

Sec. 24.26

Probable Cause Determination.

(a) Probable Cause Report.

- (1) The Director of Enforcement must file a written probable cause report with the Executive Director to commence administrative enforcement proceedings.
 - (A) The probable cause report shall identify the alleged violations and contain a summary of law and evidence gathered through the investigation, including exculpatory and mitigating information of which the staff has knowledge, that is sufficient to justify the issuance of an accusation. The report may include hearsay, including declarations of investigators or others relating to the statements of witnesses or the physical evidence.
 - (B) After the probable cause report is submitted to the Executive Director, the respondent shall be served with the following:
 - (i) A copy of the probable cause report;
 - (ii) Notification that the respondent has the right to respond in writing to the probable cause report; and
 - (iii) Notification that the respondent has the right to request a probable cause conference at which the respondent may be present in person and represented by legal counsel or another representative.
- (2) A probable cause report may not be served to commence administrative enforcement proceedings more than four years after the date of an alleged violation. This four-year period is tolled for the following periods:
 - (A) If the respondent engaged in concealment or deceit, for the period of concealment or deceit. Concealment or deceit may occur as part of an alleged violation, such as with money laundering or the falsification of records, or may occur as conduct following a complaint.
 - (B) If the respondent fails to comply with a subpoena or *subpoena duces tecum*, from the date the compliance was originally required until the date compliance is achieved.
- (3) A respondent may submit a written response to the probable cause report.
 - (A) The response may request a probable cause conference.

- (B) A response, including a request for a probable cause conference, must be filed with the Executive Director and served on all other respondents listed in the probable cause report on the same day and not later than 21 calendar days following service of the probable cause report.
 - (4) The Director of Enforcement may submit a rebuttal to the response. A rebuttal must be served on the respondents 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.
- (b) **Probable Cause Conference.**
- (1) If requested by a respondent, a probable cause conference shall be held at a time and location and in a method fixed by the Executive Director.
 - (A) The probable cause conference shall be conducted informally by the Executive Director. Formal rules of evidence shall not apply.
 - (B) Notice of the date, time, location, and method of the conference shall be served on each respondent at least 14 calendar days before the conference.
 - (2) The probable cause conference shall be closed to the public unless a respondent otherwise requests and all other respondents agree to a public conference. If a conference is closed to the public, only Commission staff, respondents, and respondents' legal counsel or representatives have the right to attend.
 - (3) The Executive Director may allow witnesses to attend and participate in part or all of the probable cause conference, regardless of whether the conference is public. In making this determination, the Executive Director shall consider the relevancy of the proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate.
 - (4) The probable cause conference shall be recorded.
 - (A) The Commission shall retain the recording and provide a copy to each respondent.
 - (B) A respondent may ask that a certified court reporter attend and record the probable cause conference. That respondent shall provide copies of any transcript to the Executive Director and all other respondents. The cost of such a record shall be borne by the respondent requesting the record.
- (c) **Probable Cause Determination.**
- (1) The Executive Director shall make a written determination regarding probable cause.

- (A) The determination may be based solely on the probable cause report, any responses or rebuttals, and any arguments and evidence presented by the parties.
 - (B) The Executive Director may find there is probable cause to believe a violation has occurred only if the evidence is sufficient to lead a reasonable person to believe that a violation has been committed and that the respondent committed or caused the violation.
 - (C) A finding of probable cause by the Executive Director does not constitute a finding that a violation has actually occurred.
 - (D) The Executive Director shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, prior to the alleged violation, the respondent obtained formal advice under Charter Section 705(b) regarding the same facts, truthfully disclosed all material and pertinent facts, and acted in accordance with the formal advice.
- (2) The Executive Director shall make the determination regarding probable cause within 45 calendar days after the later of the date the probable cause report was served, the date the probable cause conference was held, or the date the last pleading was received if no probable cause conference is held. The Executive Director shall not make a determination regarding probable cause before the respondent's deadline to respond to the probable cause report.
 - (3) The Executive Director shall serve notice of the determination regarding probable cause on all respondents and the Director of Enforcement within five calendar days of making the determination.
- (d) **Accusation and Announcement.**
- (1) If the Executive Director determines that probable cause exists, the Director of Enforcement shall prepare an accusation within 14 calendar days of being served with the determination of probable cause.
 - (2) The accusation shall clearly specify the provisions of law that were allegedly violated and set forth the acts or omissions with which the respondent is charged.
 - (3) The accusation shall be served on the respondent within 10 calendar days of being completed.
 - (4) The Executive Director shall publicly announce the determination of probable cause no later than 10 calendar days after service of the accusation, unless the parties stipulate to the entry of an order under Section 24.27(f)(3)(C) 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.

(e) **Recusal of the Executive Director.**

- (1) If the Executive Director determines that he or she will be unavailable, cannot be fair and impartial, or for any other reason should not make the probable cause determination, the probable cause conference shall be conducted by a person selected by the Deputy Executive Director from a list of former Executive Directors, former members of the Commission, and current and former Ethics Officers.
 - (A) The person selected shall have the same authority as the Executive Director to conduct the probable cause conference and to make the determination of probable cause.
 - (B) The person selected is subject to the prohibitions in Charter Section 700(d) from the date of selection until the enforcement matter is resolved.
- (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 paragraph (1).
- (f) The Executive Director may extend the time limits in this section for good cause.
- (g) The Executive Director may permit or request any party to file additional material related to a probable cause determination and may specify a reasonable deadline for the filing.

Sec. 24.27
Administrative Hearings.

(a) Hearing Officer.

- (1) After an accusation has been issued, 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:
 - (A) The members of the Commission may sit as the hearing officer, either with or without an individual hearing officer presiding;
 - (B) The members of the Commission may select an individual, who may be one member of the Commission, to sit as the hearing officer.
- (2) If they elect to use one, the members of the Commission shall appoint an individual hearing officer. However, if they elect to use an individual hearing officer provided by an outside entity, that entity shall appoint the individual.
- (3) The members of the Commission shall appoint an individual, who may be the individual hearing officer or a member of the Commission, to decide preliminary hearing matters and requests for reconsideration under subsection (e). However, if the individual hearing officer is provided by an outside entity, that entity shall appoint the individual. The same individual may be appointed to decide both preliminary hearing matters and requests for reconsideration.

(b) Scheduling and Notice.

- (1) The hearing officer shall schedule the administrative hearing and shall serve notice of the hearing on all respondents at least 21 calendar days prior to the scheduled hearing. If the hearing officer is one or more members of the Commission, the Executive Director may provide notice.
- (2) The notice shall be in substantially the following form but may contain additional information:

"A hearing regarding the charges made in the accusation against you will be held before the Los Angeles City Ethics Commission (or [name of individual hearing officer]) at [time] on [date], at [location]. You may be present at the hearing, may be represented by counsel, may present any relevant evidence, and will be given a full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses or the production of documents and records by applying in writing to the Commission (or [name of individual hearing officer])."

(c) Discovery.

- (1) The parties shall be entitled to pre-hearing discovery of relevant, non-privileged records that are not confidential pursuant to City Charter section 706.

- (2) The person designated by the members of the Commission to resolve preliminary hearing matters shall resolve discovery disputes.
- (3) The hearing officer may issue subpoenas and *subpoenas duces tecum* upon the request of any party.
 - (A) A party seeking a subpoena shall file a written request with the Executive Director, who shall promptly forward the request to the hearing officer.
 - (B) A request for a subpoena shall be accompanied by a declaration specifying the name and address of the witness and setting forth the materiality of the witness's testimony.
 - (C) A request for a *subpoena duces tecum* shall identify the requested documents or records with specificity, set forth the materiality of the items, and state that the witness possesses or controls the items.
 - (D) The hearing officer may deny a request after considering the relevancy of the evidence, privileges and confidentiality, the potential for the request to be unduly burdensome, and the overall interests of justice.
 - (E) The provisions of Section 24.24 apply, except that the Director of Enforcement's role shall be conducted by the hearing officer.
 - (F) The costs of a subpoena or *subpoena duces tecum* shall be borne by the party requesting it.
- (d) **Administrative Hearing Brief.**
 - (1) The Director of Enforcement shall and any respondent may file with the hearing officer an administrative hearing brief that outlines significant legal arguments and evidence to be presented at the hearing.
 - (2) Briefs shall not exceed 25 pages in length except by permission of the hearing officer and by a showing of good cause.
 - (3) Briefs 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 10 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.
- (e) **Hearing on Preliminary Matters.**
 - (1) The Director of Enforcement or any respondent may request a hearing on preliminary matters prior to the hearing on the merits. Preliminary matters may include but are not limited to the following:

- (A) Procedural questions;
 - (B) The validity or interpretation of the applicable laws;
 - (C) The disqualification of a member of the Commission from participating as a hearing officer;
 - (D) Discovery; and
 - (E) Any other matter not related to the truth or falsity of the factual allegations in the accusation.
- (2) Motions requesting a hearing on preliminary matters and on the matters, themselves, shall be filed at least 14 calendar days prior to the hearing on the merits. The preliminary hearing shall be conducted by the individual appointed to decide preliminary hearing matters under subsection (a)(3).
 - (3) Any party may file a written request for reconsideration regarding any decision on preliminary matters with the individual appointed to decide requests for reconsideration under subsection (a)(3).
 - (A) The request shall set forth the reasons for the request and any supporting legal arguments and affidavits.
 - (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 requests 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.
- (f) **Hearing on the Merits.**
- (1) **Procedural Issues.**
 - (A) 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.
 - (B) All relevant, non-privileged evidence may be admissible in the administrative hearing.
 - (i) All parties shall have the right to call and examine 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.

- (ii) Evidence may be excluded if its probative value is substantially outweighed by the probability that it will result in the undue consumption of time.
 - (iii) The hearing officer shall rule on procedural matters and on the admission and exclusion of evidence.
- (C) 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.
- (D) A 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 any transcript to the Commission and all other parties.
- (E) Each party shall be allowed oral argument of no more than 20 minutes.
- (F) The hearing officer may extend the time limits in this section for good cause.

(2) **Findings.**

- (A) Determinations regarding findings, orders, and penalties shall be made by the members of the Commission, based on a preponderance of the evidence.
 - (i) The votes of at least three members are required to find a violation, impose an order, or remand the case to an individual hearing officer.
 - (ii) Each member who participates in the determination shall certify that he or she either heard the testimony either in person or reviewed the entire record of the proceedings.
- (B) When an individual hearing officer alone hears a case, he or she shall make an initial determination as to whether a violation occurred and shall recommend a proposed order.
 - (i) The individual hearing officer shall provide a written report that contains proposed findings of fact, conclusions of law, and a summary of the evidence supporting each finding. Copies 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
 - (ii) Within seven calendar days of the date the report is filed with the Executive Director, any party may file a brief of no more than 15 pages in response to the report.

- (iii) The members of the Commission shall consider the individual hearing officer's determination and recommendation. Based on the individual hearing officer's report and the record of the proceedings, the members of the Commission shall make a final determination concerning whether a violation has occurred and impose an order.
 - (iv) If the members of the Commission determine that the individual hearing officer's report and the record of the proceedings are not sufficient to enable them to make a determination concerning whether a violation has occurred, they may remand the case to the individual hearing officer who heard the case or to a new hearing officer, with instructions for further proceedings.
- (C) A determination by the members of 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 may be written or verbally entered into the record.

(3) Orders and Penalties.

- (A) In framing a proposed order or penalty, the hearing officer shall consider the relevant circumstances surrounding the case, including but not limited to the following:
- (i) The severity of the violation;
 - (ii) The presence or absence of any intention to conceal, deceive, or mislead;
 - (iii) Whether the violation was deliberate, negligent, or inadvertent;
 - (iv) Whether the violator demonstrated good faith by consulting the Commission staff in a manner not constituting a complete defense under Charter Section 705;
 - (v) 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;
 - (vi) 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
 - (vii) The overall interests of justice.
- (B) Following the finding of a violation, the members of the Commission shall issue a written order that includes a summary of facts and the conclusions of law and, after considering the relevant circumstances in paragraph (A), may impose penalties consistent with Charter Section

706(c). If the members of the Commission verbally enter the order into the record, they shall direct staff to prepare a written order consistent with the verbal entry.

- (C) 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.
 - (i) A stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the members of the Commission.
 - (ii) A stipulated order may resolve the violation only or both the violation and the penalty.
 - (iii) A stipulated order has the full force of an order issued under paragraph (B) when it is approved by the members of the Commission.
 - (iv) 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.
- (D) Enforcement orders shall be announced publicly.

Sec. 24.28
Default Proceedings.

- (a) If a respondent fails to timely respond or file a defense to a probable cause report or pleadings in an administrative hearing, the Director of Enforcement may pursue a default order.
 - (1) The Director of Enforcement shall serve the respondent with notice and a copy of the proposed default order, which must include a summary of facts and evidence and the conclusions of law, at least 15 calendar days before the proposed order is heard by the members of the Commission.
 - (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.
- (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 the members of the Commission approve 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.

- (d) The respondent may file a written motion requesting that a default order be vacated and stating the reasons relief should be granted. The motion must be filed with the Executive Director within 15 calendar days after the default order is signed.
 - (1) On a showing of good cause, the members of the Commission, in their discretion, may vacate the default order and either grant an administrative hearing or approve a stipulated order.
 - (2) A motion to vacate a default order is the only administrative remedy available to a respondent after entry of a default order.

Sec. 24.29
General Provisions.

(a) **Service.**

- (1) Service may be made in the following ways:
 - (A) Personally, by any individual who is not a party to the matter and is at least 18 years of age, including any Commission employee other than the Executive Director or the Director of Enforcement;
 - (B) By first-class, certified, registered, or overnight mail; or
 - (C) By another method agreed upon by the parties, such as electronic mail.
- (2) Service is completed in the following ways:
 - (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 named person's designated agent for service of process.
 - (i) When delivered to an office, the document must be left with a clerk, with an individual in charge of the office, or in a conspicuous place in the office.
 - (ii) When delivered to the named person's residence, the document must be left with an individual of suitable age and discretion who resides there.
 - (B) Service by mail is complete upon mailing.
 - (C) Service by another method is complete when the criteria agreed upon by the parties have been met.

- (b) **Filings.** A filing is complete when the document or complaint is received by the party to whom it must be submitted.

(c) **Confidentiality.**

- (1) Unless they are deemed public by another provision of these regulations, records and information relating to an enforcement matter are confidential and not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.
- (2) Records and information may be disclosed to a respondent, an individual designated in writing by a respondent as the respondent's counsel or representative, a witness, a court, a prosecution or law enforcement agency, or otherwise as necessary to conduct an investigation.
- (3) Commission staff may periodically report the number and types of enforcement cases, as well as other statistical enforcement data, to the members of the Commission.

(d) **Cooperation.** All City agencies, employees, and officials shall cooperate with Commission investigations.

(e) **Sanctions.**

- (1) A person is subject to contempt sanctions for any of the following:
 - (A) Disobeying or resisting a lawful order of the Commission or the hearing officer without substantial justification.
 - (B) Failing or refusing to comply with a lawful discovery order, subpoena, or *subpoena duces tecum* without substantial justification.
 - (C) Refusing to take the oath or affirmation as a witness or, after doing so, refusing to be examined.
 - (D) Engaging in disorderly, contemptuous, or insolent behavior toward the hearing officer during the hearing.
 - (E) Breaching the peace or engaging in boisterous or violent conduct during the hearing.
 - (F) Unlawfully obstructing, interrupting, or interfering with the hearing.
- (2) The hearing officer or Director of Enforcement may request that the superior court impose contempt sanctions.
 - (A) The hearing officer or Director of Enforcement shall certify the facts that justify a contempt sanction.
 - (B) The superior court shall issue an order directing the person to appear at a specified time and place and show cause why the person should not be punished for contempt.

- (C) The court order and the certified statement shall be served on the person. Upon service, the superior court has jurisdiction over the contempt matter.
 - (D) The same procedures apply and the same penalties may be imposed as if the person had committed contempt in the trial of a civil action before the superior court.
- (f) **Deadlines.** If a deadline identified in this chapter falls on a City holiday, a Saturday, or a Sunday, the deadline shall be moved to the next business day.
- (g) **Public Meetings.** When the members of the Commission must act as a body, the action must be taken at a public meeting.

INVESTIGATIONS AND ENFORCEMENT REGULATIONS

Los Angeles Administrative Code Division 24, Chapter 2

Sec. 24.21

Investigations Pursuant to Charter Sections 470, 702 and 706, and Enforcement Proceedings Pursuant to Charter Section 706 Definitions.

- (a) "Commission" means the Los Angeles City Ethics Commission.
- (b) "Deputy Executive Director" means the Commission staff member who is authorized by the Executive Director to serve as the Commission's executive officer when the Executive Director is absent or otherwise unable to serve.
- (c) "Director of Enforcement" means the Commission staff member who is in charge of enforcement matters.
- (d) "Ethics Officer" means a Commission staff member whose City job classification is ethics officer, including but not limited to Ethics Officer I, Ethics Officer II, and Ethics Officer III.
- (e) "Executive Director" means the Commission's executive officer.

Sec. 24.22

Authority to Investigate and Refer.

- (a) In connection with Commission investigations pursuant to Charter Sections 470, 702 and 706, and enforcement proceedings pursuant to Charter Section 706 and enforcement actions, the Executive Director and the Commission staff of the Commission, as set forth more specifically in this section, may: inspect books and records, and electronic data; receive and investigate complaints; administer oaths; certify to official acts; issue subpoenas for the attendance of witnesses and or the production of books, accounts, documents, electronic data, and or testimony in any relevant inquiry, investigation, hearing, or proceeding pertinent or material thereto in any part of the State of California; and.
- (b) The Executive Director and the Director of Enforcement may administer oaths and affirmations on behalf of the Commission and may delegate that authority to any Ethics Officer.
- (c) The Executive Director and the Commission staff may divulge evidence of possible unlawful conduct discovered, during an investigation to the following:
 - (1) At the City Attorney or to any other government attorney authorized by law to prosecute the unlawful activity conduct involved; or to any other
 - (2) A governmental agency with the authority to investigate or enforce laws relating to the unlawful activity conduct; or

- (3) ~~A government agency with the authority to impose discipline on City employees with respect to for such conduct the unlawful conduct.~~

(a) _____

Sec. 24.23

Complaints.

- (4a) ~~Any person may file, or the City Ethics Commission (hereafter "Commission") may on its own initiate, a complaint alleging possible violations of state and or City laws relating to campaign financing, lobbying, conflicts of interests, and or governmental ethics.~~

(1) Any person may file a complaint with Commission staff.

(2) Commission staff may internally initiate a complaint, based on personal knowledge, an audit, a staff referral, a referral from another government or law enforcement agency, a news article, or another source of information that may indicate a possible violation.

(3) Concerns raised at public meetings or to members of the Commission are not complaints.

(4) Complaints are confidential and are not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.

- (2) ~~It is recommended, although not required, that complaints be filed on a form specifically provided by the Commission. However, the Commission shall have no obligation to investigate or respond to any complaint that is not verified under penalty of perjury and does not contain the information required in Subdivision (3).~~

(3b) ~~A complaint shall:~~Commission staff will process and review all complaints.

(c) A verified complaint is most helpful if it is in writing, is dated by the complainant, and contains the following information with as much detail and specificity as possible and to the best of the complainant's knowledge and belief:

(A1) ~~be in writing~~The name and address of the alleged violator;

(B2) ~~be signed and dated by the complainant~~The provisions of law allegedly violated;

(C3) ~~provide, with as much detail and specificity as possible, all information requested on the form, including the name and address of the alleged violator, the provision(s) of law allegedly violated, f~~Facts constituting evidencing the alleged violation(s);~~i~~

(4) ~~t~~The names and addresses of potential witnesses, additional information, if any;~~i~~
and

(5) ~~a~~An address and, telephone number, and email address at which the complainant may be reached during normal business hours. All such information shall be provided to the best of the complainant's knowledge and belief.

- (4) ~~The City Ethics Commission staff (hereafter "staff"), under the direction of the Director in charge of enforcement (hereafter "Director of Enforcement"), shall process and review formal complaints filed pursuant to Subdivisions (2) and (3) above and may process and review the following:~~
- ~~(A) informal or unverified complaints made by telephone, facsimile, e-mail, in person, or in writing;~~
 - ~~(B) staff referrals, including issues generated from other cases and referrals generated from audits;~~
 - ~~(C) referrals from governmental and/or law enforcement agencies; and~~
 - ~~(D) possible violations raised by news items or articles.~~
- (5) ~~Complaints should not be made at public meetings.~~
- (6) ~~Complaints filed with or initiated by the Commission or its staff shall be confidential.~~

(bd) ~~Review and Investigation of Complaints.~~

- (1) ~~Staff, under the direction of the Director of Enforcement, shall, in a timely fashion, process and review all complaints, and bBased on the information provided in a complaint, shall~~Commission staff may do one or more of the following:

- ~~(A1) Initiate an investigation of the allegations of in the complaint; or~~
- ~~(B2) determine that additional time or information is required to evaluate the complaint in order to determine whether a full investigation by the Commission should ensue, or~~
- ~~(C) rRefer the complaint or the complainant to another governmental or law-enforcement agency; or~~
- ~~(D3) tTake no action on the complaint because the allegations do not warrant further action for reasons which may include, but are not limited to, any or all of the following:~~
 - ~~(iA) tThe complaint does not contain sufficient facts or information to pursue an investigation;~~
 - ~~(B) The evidence does not support the allegations;~~
 - ~~(ii) the complaint restates other complaints containing essentially similar or identical allegations which have already been disposed of, and the evidence presented does not warrant reopening the previous case;~~
 - ~~(iiiC) tThe complaint contains an expression of opinions, rather than specific, actionable allegations;~~

(ivD) ~~†~~The allegations contained in the complaint have already been disposed of as a result of another complaint or are already under investigation by the Commission or another governmental or law enforcement agency; or

(vE) ~~†~~The Commission has no jurisdiction over the allegations in the complaint.

(2) ~~— If a complaint was filed under penalty of perjury and contains the information required in Subdivision (a)(3), staff shall, within 14 calendar days after receipt of the complaint and following approval of the Director of Enforcement, notify the complainant that the complaint has been received and is being processed pursuant to the applicable provisions of these regulations.~~

(3) ~~—~~

Sec. 24.24

Subpoenas and Subpoenas Duces Tecum.

(A) ~~—~~ **Voluntary Compliance.** The staff, under the direction of the Executive Director, shall seek to obtain voluntary compliance with state and City laws relating to campaign finance, lobbying, conflicts of interest, and governmental ethics and shall investigate possible violations of those laws. The staff shall make a reasonable effort to obtain information on a voluntary basis prior to the issuance of an administrative subpoena or *subpoena duces tecum*. The Executive Director, in the exercise of his or her discretion, may forego such efforts at obtaining voluntary compliance with respect to an investigation in progress. The staff shall periodically report to the Commission on the status of all investigations, including the reasons for the issuance of any administrative subpoena or *subpoena duces tecum* without first making reasonable efforts to obtain the information voluntarily. Failure to report to the Commission concerning the issuance of subpoenas shall not affect the validity of any administrative subpoena or any enforcement action.

(Ba) Issuance of Subpoenas.

(1) ~~—~~ The Executive Director shall have the authority to ~~of Enforcement may~~ issue subpoenas and *subpoenas duces tecum* on behalf of the Commission pursuant to Charter Sections 470 and 706(a)(3) in accordance with the provisions of these regulations and the California Administrative Procedures Act. These regulations are intended to supplement the California Administrative Procedures Act. In the event of a conflict between these regulations and the California Administrative Procedures Act, these regulations control. The Director of Enforcement may delegate this authority in writing to any Ethics Officer.

(2) ~~—~~ The Executive Director shall not issue a subpoena or *subpoena duces tecum* may not be issued unless he or she the Director of Enforcement finds, based on information submitted to him or her in writing, that the person to be subpoenaed, or the information to be requested in the subpoena duces tecum, is material to a specific matter then under investigation or subject to enforcement action and/or that there is reason to believe that the person or entity to be subpoenaed has controls the material information under his or her control.

The Executive Director may delegate in writing the authority under this regulation to issue subpoenas and *subpoena duces tecum* to any Deputy Director other than the Director of Enforcement.

(Cb) **Notice to Consumers.** ~~In the event~~ If a *subpoena duces tecum* seeks either the production of either personal records of a consumer or the financial records from a third party of a customer, notice to the consumer or customer shall be given as required by California Code of Civil Procedure Section 1985.3 or Government Code Sections 7460, et seq., whichever is applicable, or any successor or amended provision. A consumer who objects to the production of personal or financial records shall file written notice with the custodian of the records and Commission staff at least 10 calendar days prior to the production date specified in the subpoena duces tecum.

(Dc) **Service of Subpoenas.** ~~A subpoena or subpoena duces tecum may be personally served by any person who is not a party and is not less than 18 years of age. With the exception of the Commission's Executive Director and the Director of Enforcement, a subpoena or subpoena duces tecum may be personally served by any Commission employee. Service of a subpoena or a subpoena duces tecum upon a person named therein shall be made by delivering a copy thereof to such person, or that person's attorney or designated agent for service of process. In addition, if the person's name and address are known, a subpoena or subpoena duces tecum may be served by first-class, certified, registered or overnight mail. Delivery of a copy means handing it to the person, the person's attorney or the person's designated agent for service of process; or leaving it at the person's or attorney's or designated agent's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.~~

Subpoenas shall be served at least ~~40-15~~ calendar days before the time required for attendance. *Subpoenas duces tecum* shall be served at least ~~20-25~~ calendar days before the time required for attendance and/or production of the requested documents. However, if the subpoena or *subpoena duces tecum* is served by mail, three calendar days shall be added to the prescribed period.

(Ed) **Compliance with Subpoenas Duces Tecum.**

(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 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 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 Section 24.29(e); and

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

(Fe) **Witness Mileage and Fees.** A witness appearing pursuant to a subpoena or a *subpoena duces tecum*, ~~other than an officer or employee of the City of Los Angeles, shall receive, upon request after complying with the subpoena or 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 officers and employees 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.

(Gf) **~~Objections to the Subpoena or the Subpoena Duces Tecum Prior to the Issuance of an Accusation.~~**

(1) A person served with a subpoena or subpoena duces tecum may object to its terms by filing written objections with the Commission's Executive Director no later than four at least five calendar days before the time required for attendance and/or production of the requested documents.

(2) The Commission's Executive Director shall rule on the objections and/or issue an order in writing within two at least one calendar days of receiving the written objections before the time required for attendance or production of the requested records or documents. A petition for judicial review of the Executive Director's ruling must be filed within 10 calendar days of the date the ruling is issued.

(3) Failure to file timely objections with the Commission's Executive Director waives all grounds for any objection. All petitions for judicial review of any Executive Director ruling or order concerning objections to a subpoena or subpoena duces tecum must be filed by the 10th calendar day following the date of the ruling or order by the Commission's Executive Director.

(H) **~~Petition to Compel Attendance.~~** ~~If any person refuses to attend or testify or produce any papers as required by such subpoena or subpoena duces tecum, the Executive Director on behalf of the Commission may petition the Los Angeles Superior Court for an order compelling the person to attend and testify and to produce the papers required by the subpoena, in accordance with the standards and procedures set forth in the California Administrative Procedures Act.~~

(4) **~~Administration of Oaths and Affirmations.~~** ~~In connection with the conduct of an investigation pursuant to Charter Sections 470 and 706(a)(3), including testimony pursuant to subpoena, the Executive Director shall have the authority to administer oaths and affirmations on behalf of the Commission. The Executive Director may delegate in writing the authority to administer oaths and affirmations to any Deputy Director including the Director of Enforcement.~~

Sec. 24.25

Preliminary Enforcement Determination.

- (a) ~~Based on a review of the evidence gathered through the course of an investigation, the Director of Enforcement shall determine whether some enforcement action, either by way of administrative penalties pursuant to Charter Section 706, or otherwise, should be initiated and whether a referral to another government or law enforcement agency is appropriate for enforcement or disciplinary purposes.~~
- (4b) ~~If the Director of Enforcement determines that no enforcement action should be taken, he or she shall make that recommendation to the Executive Director. If shall obtain the Executive Director's concurrence prior to initiating enforcement action, making a referral, or closing a case, the Commission and its staff shall take no further action in the matter, except that the Executive Director may determine to refer the information to another agency for its appropriate action.~~
- (1) ~~If a referral is made, information gathered by Commission staff in the course of the investigation may be provided to the other government or law enforcement agency.~~
- (2) ~~A determination by the Executive Director that no further action should be taken by the Commission staff at that time shall not prevent any other government agency from initiating other enforcement action, including or disciplinary action, based on the same allegations and facts.~~
- (2) ~~If the Director of Enforcement determines that enforcement proceedings pursuant to Charter Section 706 should be commenced, those proceedings shall be governed by Subsections (d) and (e) of this section. The procedures and requirements of Charter Section 706(b) and (c) and of Subsections (d) and (e) of this section shall be applicable only to enforcement proceedings to impose administrative penalties and orders pursuant to Charter Section 706 and shall not be applicable to any other type of investigative, enforcement or disciplinary action.~~
- (3) ~~If the Director of Enforcement determines that some type of enforcement action and/or disciplinary action by the appointing authority of a City employee, other than administrative enforcement pursuant to Charter Section 706, may be appropriate, he or she shall make that recommendation to the Executive Director. If the Executive Director concurs that such action may be appropriate, the Executive Director shall refer the matter to the appropriate government agency or agencies.~~
- (4c) ~~If the Executive Director may determines that a civil action by the Commission pursuant to Los Angeles Municipal Code Sections 49.5.19B, 49.7.28B or 48.09C, may be is appropriate, the Executive Director shall or may refer the matter to the members of the Commission. The Commission, who shall consider the matter in closed session and shall decide whether to authorize the filing of such an action is appropriate. Regardless of the Commission's decision, if a matter is referred to the Commission pursuant to this subdivision commences a civil action to pursue substantive civil penalties, it may not initiate an administrative enforcement proceeding pursuant to Charter Section 706 may be initiated based on the same allegations against the same respondent.~~

- (5) ~~A referral to another agency pursuant to Subdivision (3) shall state that an investigation has taken place and that the agency may wish to consider appropriate action within its jurisdiction. A copy of all information gathered by the staff in the course of the investigation shall be sent to the other agency along with the referral.~~

(d) ~~_____~~

Sec. 24.26

Administrative Enforcement Proceedings – Probable Cause Determination.

(4a) Probable Cause Report.

- (A1) ~~Based on a review of evidence gathered through the course of an investigation, the Director of Enforcement may decide that administrative enforcement proceedings pursuant to Charter Section 706 should be commenced. In that event, he or she shall direct staff to prepare must file a written probable cause report, hereafter referred to as "the probable cause report." The probable cause report shall be submitted to with the City Ethics Commission Executive Director (hereafter "**Executive Director**") to commence administrative enforcement proceedings.~~

- (BA) The probable cause report shall identify the alleged violations and contain a summary of law and evidence gathered through the investigation, including exculpatory and mitigating information of which the staff has knowledge, that is sufficient to justify the issuance of an accusation. The ~~evidence report~~ may include hearsay, including declarations of investigators or others relating to the statements of witnesses or concerning the examination of physical evidence. The ~~probable cause report shall contain sufficient information to justify the issuance of an accusation.~~

- (CB) ~~Following the filing of~~ After the probable cause report with is submitted to the Executive Director, the respondent(s) shall be served with the following materials:

- (i) ~~a~~ A copy of the probable cause report; and
- (ii) ~~n~~ Notification that the respondent has the right to respond in writing to the probable cause report; and
- (iii) Notification that the respondent has the right to request a probable cause conference at which the respondent may be present in person and represented by legal counsel or any another representative of his or her choosing.

~~These materials may be personally served by any person who is not a party and is not less than 18 years of age. With the exception of the Commission's Executive Director and the Director of Enforcement, these materials may be personally served by any Commission employee. Service of process upon a respondent shall be made by personally delivering a copy of these materials to such respondent, or that respondent's attorney or designated agent for service of process. In addition, if the respondent's name and address are known, these~~

materials may be served by first-class, certified, registered or overnight mail. Delivery of a copy means handing it to the person, person's attorney or designated agent for service of process; or leaving it at the person's or attorney's or designated agent's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

- (2) A probable cause report may not be served to commence administrative enforcement proceedings more than four years after the date of an alleged violation. This four-year period is tolled for the following periods:

- (A) If the respondent engaged in concealment or deceit, for the period of concealment or deceit. Concealment or deceit may occur as part of an alleged violation, such as with money laundering or the falsification of records, or may occur as conduct following a complaint.
- (B) If the respondent fails to comply with a subpoena or *subpoena duces tecum*, from the date the compliance was originally required until the date compliance is achieved.

Response to Probable Cause Report.

- (A3) Each A respondent may submit a written response to the probable cause report,

(A) , which The response may request a probable cause conference. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information.

(B) Each A response, and each including a request for a probable cause conference, must be filed with the Executive Director and, on the same date, served on all other respondents listed in the probable cause report, on the same day and not later than 21 calendar days following service of the probable cause report. If the probable cause report is not personally served, three calendar days shall be added to the prescribed period.

- (34) **Rebuttal.**

(A) The Director of Enforcement may submit to the Executive Director any evidence or argument in a rebuttal to the response. A rebuttal must be served on the respondents on the same day that it is filed with the Executive Director and not later than ten calendar days following his or her receipt of the respondent's response to the probable cause report.

(B) The respondent(s) shall be served with a copy of the rebuttal on the same date that it is filed with the Executive Director.

- (4) Extension of Time Limitations. The time limitations of this subsection may be extended by the Executive Director for good cause shown.

~~(5) **Additional Information.** At his or her discretion, the Executive Director may allow additional material to be submitted as part of the response or rebuttal.~~

(6b) Probable Cause Conference.

~~(A1) If requested by a respondent, the a probable cause conference shall be held at a time and location and in a method fixed by the Executive Director and shall be conducted informally by the Executive Director.~~

~~(A) The probable cause conference shall be conducted informally by the Executive Director. Formal rules of evidence shall not apply.~~

~~(B) Each respondent shall be given at least 14 calendar days nNotice of the date, time, and location, and method of the conference shall be served on each respondent at least 14 calendar days before the conference.~~

~~(B) Formal rules of evidence shall not apply to such a conference.~~

~~(G2) The probable cause conference shall be closed to the public unless a respondent otherwise requests and all other respondents agree to a public conference. If a conference is closed to the public, only Commission staff, respondents, and respondents' legal counsel or representatives have the right to attend.~~

~~(D3) If the conference is not public, only members of the Commission staff, any respondent and his or her legal counsel or representative shall have the right to be present and participate. However, at the discretion of tThe Executive Director, may allow witnesses may be allowed to attend and participate in part or all of the probable cause conference, regardless of whether the conference is public. In making this determination, the Executive Director shall consider the relevancy of the proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate.~~

~~(E4) The probable cause conference shall be tape-recorded.~~

~~(A) , and the tape shall be retained by tThe Commission. A shall retain the recording and provide a copy of the tape shall be provided to each respondent.~~

~~(B) A respondent additionally may ask that a certified court reporter attend and record the probable cause conference. In such event, tThat respondent shall provide copies of any transcript to the Executive Director and all other respondents. The cost of such a record shall be borne by the respondent requesting such the record.~~

(7c) Findings of Probable Cause Determination.

~~(1) The Executive Director shall make a written determination regarding probable cause.~~

- (A) The determination may be based solely on the probable cause report, any responses or rebuttals, and any arguments and evidence presented by the parties.
- ~~(A) No finding as to probable cause shall be made until at least 21 calendar days after the service of the probable cause report.~~
- (B) The Executive Director may find there is probable cause to believe a violation has occurred only if the evidence is sufficient to lead a reasonable person of ordinary caution and prudence to believe or entertain a strong suspicion that a violation has been committed and that the respondent committed or caused the violation.
- (C) A finding of probable cause by the Executive Director does not constitute a finding that a violation has actually occurred.
- (D) The Executive Director shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, prior to the alleged violation, the respondent obtained formal advice under Charter Section 705(b) regarding the same facts, truthfully disclosed all material and pertinent facts, and acted in accordance with the formal advice.:
- (i) ~~the respondent consulted with the staff of the Commission in good faith; and~~
- (ii) ~~the respondent disclosed truthfully all the material facts pertinent to the case; and~~
- (iii) ~~the respondent committed the acts or violations alleged in the complaint in good faith reliance upon the advice of the Commission staff, or because of the failure of the Commission staff to provide advice.~~
- (E2) The Executive Director shall make the determination as to regarding probable cause no later than 30 calendar days after the probable cause hearing, or if no probable cause hearing was held, no later than 30 calendar days after receiving a copy of the last pleading filed in the matter within 45 calendar days after the later of the date the probable cause report was served, the date the probable cause conference was held, or the date the last pleading was received if no probable cause conference is held. The Executive Director shall not make a determination regarding probable cause before the respondent's deadline to respond to the probable cause report.
- (3) The Executive Director shall notify/serve notice of the determination regarding probable cause on all respondents and the Director of Enforcement within five calendar days of making the determination of probable cause. If the determination of probable cause is not made by a probable cause officer within 30 calendar days, the Director of Enforcement, upon written notification to the probable cause officer and the respondent(s), may randomly select a new probable cause officer to make the determination of probable cause.

(8d) Accusation and Announcements.

- (A~~1~~) If the Executive Director makes a finding of determines that probable cause exists, he or she shall direct the Director of Enforcement to shall prepare an accusation. The accusation shall be prepared by the Director of Enforcement within 14 calendar days of being notified of served with the determination of probable cause.
- (B~~2~~) The accusation shall clearly specify the provisions of the ~~City Charter or ordinance(s) which law that~~ were allegedly violated and shall set forth the acts or omissions with which the respondent is charged.
- (C~~3~~) The Accusation shall be served on the respondent who is the subject of the probable cause finding within 10 calendar days of being prepared completed. Service of process upon a respondent shall be made by personally delivering a copy of the Accusation to such respondent, or that respondent's attorney or designated agent for service of process. In addition, if the respondent's name and address are known, the Accusation may be served by first-class, certified, registered or overnight mail. Delivery of a copy means handing it to the person, the person's attorney or the person's designated agent for service of process; or leaving it at the person's or attorney's or designated agent's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.
- (D~~4~~) The finding ~~Executive Director of probable cause~~ shall be announced publicly by the Executive Director or his or her designee announce the determination of probable cause no later than 10 calendar days after service of the Accusation, unless the parties execute a settlement agreement stipulate to the entry of an order under Section 24.27(f)(3)(C) 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 such time that the violation is proved in a subsequent administrative hearing held pursuant to Charter Section 706(e).
- (B) The announcement shall not be made public until all respondents have been served with the Accusation. For purposes of this provision, service of process by mail is complete ~~three days after mailing.~~

(9e) Recusal of the Executive Director.

- (1) ~~In the event~~ if the Executive Director determines that he or she will be unavailable, cannot be fair and impartial with respect to a particular matter, or for any other reason determines he or she should not make the probable cause determination, the Executive Director's authority to conduct a probable cause conference pursuant to this subsection with respect to that matter shall be exercised

conducted by a person randomly selected by the Deputy Executive Director of Enforcement from a list previously approved by the Commission of former Executive Directors, former members of the Commission, and current and former Ethics Officers. That list shall consist of persons who are former government attorneys.

(A) The person randomly selected to act in a particular matter shall have the same authority as the Executive Director to conduct the probable cause conference and to make the determination of probable cause, utilizing the procedures and based on the criteria contained in this subsection.

(B) Upon selection to act in a particular matter, such The person selected shall possess the same exemption from civil service as the Executive Director and shall be considered a temporary employee of the Commission for the purpose of carrying out such duties. His or her compensation shall consist solely of a salary established in section 4.61 of this Code and shall not include any other form of economic benefit or compensation is subject to the prohibitions in Charter Section 700(d) from the date of selection until the enforcement matter is resolved.

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

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

(B) The Executive Director shall, within seven calendar days of receiving the request, make a written determination as to regarding the recusal request and notify serve the respondent with notice of the ruling or orderdetermination within seven calendar days.

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

(D) All petitions for judicial review of any Executive Director ruling or order determination concerning recusal of the Executive Director must be filed with a court within ten calendar days following the date of notice of the ruling or orderdetermination.

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

(10) Statute of Limitations for Administrative Enforcement Actions. No administrative enforcement action brought by the City Ethics Commission shall be commenced more than four years after the date on which the violation occurred. The service of the probable cause report upon the person alleged to have violated the law shall constitute the commencement of the administrative enforcement action. If the person alleged to

have violated the law engaged in the concealment of his or her acts, the four-year period shall be tolled for the period of concealment. If upon being ordered by a court to produce any person, witness or document sought by a subpoena, the person alleged to have violated the law fails to appear, or produce any witness or document in response to the order by the date ordered to comply therewith, the four-year period shall be tolled for the period of delay from the date the person or witness was originally scheduled to appear, or the document was to be produced, pursuant to the subpoena until the date the person appears, or the witness or document is produced.

- (f) The Executive Director may extend the time limits in this section for good cause.
- (g) The Executive Director may permit or request any party to file additional material related to a probable cause determination and may specify a reasonable deadline for the filing.

~~(e)~~

Sec. 24.27

Administrative Enforcement Proceedings--Administrative Hearings.

(1a) Hearing Panel/Officer.

- (1) After an accusation has been issued, the Executive Director of Enforcement shall present to the members of the Commission the following options from which to the members must select and/or compose an administrative hearing panel to hear the case/officer:
 - (A) The members of the Commission may sit as the hearing panel to hear the case/officer, either with or without an outside individual hearing officer presiding;
 - (B) The Commission may sit as the hearing panel to hear the case, with an outside hearing officer presiding; or
 - (C) The members of the Commission may select an outside individual, who may be one member of the Commission, to sit as the hearing officer to hear the case and to file a report and recommendation for decision by the Commission.
- (2) If they elect to use one, the members of the Commission shall select one of the above options for the administrative hearing. In the event the Commission selects option (B) or (C), the Commission shall appoint an individual hearing officer. However, if they elect to use an individual hearing officer provided by an outside entity, that entity shall appoint the individual.
- (3) The members of the Commission shall appoint an individual, who may be the individual hearing officer or a member of the Commission, to decide preliminary hearing matters and requests for reconsideration under subsection (d). However, if the individual hearing officer is provided by an outside entity, that entity shall appoint the individual. The same individual may be appointed to decide both preliminary hearing matters and requests for reconsideration.

- (2) ~~Administrative Prosecution.~~ The Executive Director shall direct the Director of Enforcement to prepare and present the case in support of the accusation to be heard at the administrative hearing.

(b) Scheduling and Notice.

(1) The hearing officer shall schedule the administrative hearing and shall serve notice of the hearing on all respondents at least 21 calendar days prior to the scheduled hearing. If the hearing officer is one or more members of the Commission, the Executive Director may provide notice.

(2) The notice shall be in substantially the following form but may contain additional information:

"A hearing regarding the charges made in the accusation against you will be held before the Los Angeles City Ethics Commission (or [name of individual hearing officer]) at [time] on [date], at [location]. You may be present at the hearing, may be represented by counsel, may present any relevant evidence, and will be given a full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses or the production of documents and records by applying in writing to the Commission (or [name of individual hearing officer])."

(3c) Discovery.

(1) The parties shall be entitled to pre-hearing discovery in accordance with the provisions for discovery set forth in the California Administrative Procedures Act. However, upon request, the Commission or its designated hearing officer may, at its discretion, allow the parties to conduct additional discovery other than what is provided for in the California Administrative Procedures Act of relevant, non-privileged records that are not confidential pursuant to City Charter section 706.

(2) The Commission or its person designated hearing officer by the members of the Commission to resolve preliminary hearing matters shall resolve any discovery disputes.

(3) The hearing officer may issue subpoenas and *subpoenas duces tecum* upon the request of any party.

(A) A party seeking a subpoena shall file a written request with the Executive Director, who shall promptly forward the request to the hearing officer.

(B) A request for a subpoena shall be accompanied by a declaration specifying the name and address of the witness and setting forth the materiality of the witness's testimony.

(C) A request for a *subpoena duces tecum* shall identify the requested documents or records with specificity, set forth the materiality of the items, and state that the witness possesses or controls the items.

- (D) The hearing officer may deny a request after considering the relevancy of the evidence, privileges and confidentiality, the potential for the request to be unduly burdensome, and the overall interests of justice.
- (E) The provisions of Section 24.24 apply, except that the Director of Enforcement's role shall be conducted by the hearing officer.
- (F) The costs of a subpoena or *subpoena duces tecum* shall be borne by the party requesting it.

(4d) **Administrative Hearing Brief.**

- (1) Not later than ~~T~~seven calendar days prior to an administrative hearing, the Director of Enforcement shall, and any respondent may, submit to file with the Commission and/or to the outside hearing officer, if such was selected pursuant to option (B) or (C) above, an administrative hearing brief (hereafter "brief"). The brief shall that outlines significant legal arguments and evidence to be presented at the hearing.
- (2) The ~~b~~Briefs shall not exceed 25 pages in length except by permission of the hearing panel or the outside hearing officer, if he or she sits alone, and by a showing of good cause.
- (3) Prior to the hearing, when a brief is submitted by any party pursuant to this subsection, a copy shall be served on the same date of [t]he submission to ~~Briefs~~ 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 10 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.

(5e) **Hearing on Preliminary Matters.**

- (A1) Regardless of whether a hearing panel is established or an outside hearing officer is selected, ~~t~~The Director of Enforcement or any respondent may recommend to the Commission that preliminary matters, not related to the merits of the accusation, shall be heard by an outside hearing officer or by a designated Commissionerrequest a hearing on preliminary matters prior to the hearing on the merits. Such ~~p~~Preliminary matters may include, but are not limited to, the following:
 - (iA) motions regarding ~~p~~Procedural mattersquestions;
 - (iiB) ~~t~~The validity or interpretation of the applicable provisions of the Charter and/or ordinanceslaws;
 - (iiiC) The disqualification of any member of the Commission from participation on the administrative ~~participating as a~~ hearing panelofficer;

(ivD) ~~d~~Discovery; and

(vE) ~~a~~Any other matters not related to the truth or falsity of the factual allegations in the accusation.

(B2) ~~If the Commission accepts the recommendation of the Director of Enforcement or respondent, those m~~Motions ~~or requesting a hearing on preliminary matters and on the matters, themselves, shall be noticed in a timely fashion, and a filed at least 14 calendar days prior to the hearing on the merits. The preliminary hearing shall be held and conducted by the an outside hearing officer or the designated Commissioner selected by the Commission~~individual appointed to decide preliminary hearing matters under subsection (a)(3).

(C3) ~~The Director of Enforcement and a~~Any respondent party may request reconsideration by the Commission of file a written request for reconsideration regarding any decision by an outside hearing officer or designated Commissioner on preliminary matters with the individual appointed to decide requests for reconsideration under subsection (a)(3).

(A) ~~Any party requesting reconsideration~~The request shall set forth the reasons for the request and any supporting legal arguments and affidavits.

(B) ~~submit a written request for reconsideration~~The request shall be filed at least 14 ~~seven~~ calendar days prior to the administrative hearing on the merits. The request shall set forth the reasons for the request and any supporting legal arguments and affidavits.

(C) ~~The Commission~~individual appointed to decide requests for reconsideration, in ~~its the individual's discretion, may either reconsider the outside hearing officer's or designated Commissioner's a decision regarding a preliminary matter on its merits, or deny a request for reconsideration without having to determine whether the decision by the outside hearing officer or designated Commissioner on a preliminary matter was correct or not. The Commission shall issue a ruling and notify all parties in a timely fashion. 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.~~

~~The Commission need not give reasons for its decision to deny a request for reconsideration.~~

(6) ~~Stipulated Orders.~~ At any time before or during an administrative hearing or in lieu of such a hearing, the Executive Director and any respondent may stipulate to the entry of an order. 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 pursuant to Charter Section 706(c). The stipulated order must be approved by the Commission, shall be announced publicly and shall have the full force of an order of the Commission.

(7f) **Hearing on the Merits.**

- (A) ~~**Scheduling and Notice of Hearing.** The Commission or, if applicable, the outside hearing officer, shall schedule the administrative hearing and shall give notice of the hearing to all respondents at least 21 calendar days prior to the scheduled hearing. The notice shall be in substantially the following form but may contain additional information:~~

~~"You are hereby notified that a hearing will be held before the Commission (or name of hearing officer) at _____ on _____ day of _____, 200____, at the hour of _____, at (location of hearing), upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the (Commission or name of hearing officer)."~~

(B) ~~**Subpoenas and Oaths.**~~

- (1) ~~The Commission, or an outside hearing officer appointed to conduct an administrative hearing, is authorized and empowered to issue subpoenas for the attendance of witnesses and for the production of documents and records, upon the request of any party. A party seeking a subpoena shall file a written request with the Executive Director, who shall promptly forward the request to the Commission or hearing officer. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the party seeks the production of documents or records, the declaration shall identify those items with specificity, set forth the materiality of the items and state that the witness has the items in his or her possession or under his or her control.~~
- (2) ~~The Commission, any member of the Commission, the secretary of the Commission, or a hearing officer appointed to conduct an administrative hearing, is authorized and empowered to administer oaths and affirmations.~~
- (3) ~~The procedure for issuing, serving, objecting to or enforcing an administrative subpoena in connection with an administrative hearing after an accusation is served shall be the same as set forth in Section 24.1.2(b)(4) of this Code except that the Executive Director's role will be conducted by the Commission, designated Commissioner or the outside hearing officer.~~

(G1) ~~**Standard of Proof**~~**Procedural Issues.**

- (A) 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.
- (B) When an administrative hearing is conducted pursuant to Charter Section 706(c), determinations shall be made based on a preponderance of the evidence. All relevant, non-privileged evidence admissible in an administration proceeding governed by the provisions of the California Administrative Procedures Act shall may be admissible in the administrative hearing.
- (i) All parties shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter even though if that matter was not covered in direct examination, to impeach any witness, and to rebut evidence presented against the party.
- (ii) Evidence may be excluded if its probative value is substantially outweighed by the probability that it will result in the undue consumption of time.
- (iii) The hearing officer shall rule on procedural matters and on the admission and exclusion of evidence.
- (C) The hearing shall be tape-recorded, and the tape recording shall be retained by provided to the Commission. A copy of the tape shall be provided The Commission shall retain the recording and provide a copy to each respondent.
- (D) A respondent additionally 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. In such event, the A respondent who uses a court reporter shall provide copies of any transcript to the Commission and all other respondentsparties.
- (E) Each party shall be allowed oral argument of no more than 20 minutes.
- (F) The hearing officer may extend the time limits in this section for good cause. The costs of such a record shall be borne by the respondent requesting such record.

(D2) **Finding of Violations.**

- (i) The outside hearing officer, if presiding over the panel, shall rule on procedural matters and on the admission and exclusion of evidence, but shall have no role in the decision.
- (A) Determinations regarding findings, orders, and penalties shall be made by the members of the Commission, based on a preponderance of the evidence.

- (i) The votes of at least three members are required to find a violation, impose an order, or remand the case to an individual hearing officer.
- (ii) Each member who participates in the determination shall certify that he or she either heard the testimony either in person or reviewed the entire record of the proceedings.
- (iiB) When ~~the outside~~ an individual hearing officer alone hears a case, he or she shall make an initial determination as to whether a violation occurred and shall recommend a proposed order.
 - (i) The report of the individual hearing officer shall provide a written report that contains proposed findings of fact and conclusions of law, and shall include a summary of the evidence supporting each finding. Copies of the hearing officer's report shall be mailed filed with to the Executive Director and each respondent. The Executive director shall provide copies to the members of the Commission
 - (ii) Within seven calendar days of mailing the date the report is filed with the Executive Director, each any party may file with the Commission a brief of no more than 15 pages in response to the report.
 - (iii) The members of the Commission shall consider the individual hearing officer's determination and recommendation and. Based on the individual hearing officer's report and the record of the proceedings, the members of the Commission shall make a final determination concerning whether a violation has occurred and impose an order, based on the report of the hearing officer and the record.
 - (iv) If the members of the Commission determines that the outside individual hearing officer's report and the record of the proceedings are not sufficient to enable the Commission to make a determination concerning whether a violation has occurred, the Commission may remand the case to the outside individual hearing officer who heard the case, or to a new hearing officer, with instructions for further proceedings.
- (iii) ~~Prior to a decision by the Commission, each party shall be allowed oral argument to the Commission of no more than 20 minutes.~~
- (ivC) Regardless of whether the Commission or a hearing officer hears the evidence, aA determination by the members of the Commission of that a violation occurred shall be supported by findings of the relevant facts and conclusions of law and, shall be based on the entire record of the proceedings, and may be written or verbally entered into the record. Each Commissioner who participates in the decision shall certify that he or she

~~personally heard the testimony (either in person or by listening to a tape recording of the proceeding) and reviewed the exhibits admitted into evidence, or otherwise reviewed the entire record of the proceedings.~~

- ~~(v) Whether the Commission sits as the hearing panel or acts on the recommendation of an outside hearing officer, it shall require the votes of three Commissioners to find a violation and to impose an order, or to remand the case to an outside hearing officer for further proceedings.~~

(3) Orders and Penalties.

- (EA) ~~Factors to be Considered.~~** In framing a proposed order or penalty following a finding of a violation, the Commission or outside hearing officer shall consider all the relevant circumstances surrounding the case, including but not limited to the following:

- ~~(i) The severity of the violation;~~
- ~~(ii) The presence or absence of any intention to conceal, deceive, or mislead;~~
- ~~(iii) Whether the violation was deliberate, negligent, or inadvertent;~~
- ~~(iv) Whether the violator demonstrated good faith by consulting the Commission staff in a manner not constituting a complete defense under Charter Section 705;~~
- ~~(v) Whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of the City Charter, ordinances or similar laws within the Commission's jurisdiction; and~~
- ~~(vi) 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~~
- ~~(vii) The overall interests of justice.~~

- (FB) ~~Administrative Orders and Penalties.~~** Following the finding of a violation, and pursuant to Charter Section 706(c), the members of the Commission may shall issue a written orders that includes a summary of facts and the conclusions of law and, after considering the relevant circumstances in paragraph (A), may impose penalties which shall require the violator to: consistent with Charter Section 706(c). If the members of the Commission verbally enter the order into the record, they shall direct staff to prepare a written order consistent with the verbal entry.

- ~~(i) cease and desist the violation; and/or~~
- ~~(ii) file any reports, statements or other documents or information required by law; and/or~~

(iii) ~~pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.~~

(C) 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.

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

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

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

(iv) 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.

(D) Enforcement orders shall be announced publicly.

(G) ~~**Statute of Limitations.** With the exception of judicial review of enforcement decisions or rulings involving requests to recuse the Executive Director, or objections to subpoenas or subpoenas duces tecum, the 90-day statute of limitations contained in California Code of Civil Procedure Section 1094.6 shall apply to judicial review of enforcement decisions made pursuant to this section.~~

(f) ~~_____~~

Sec. 24.28

Default Proceedings.

(a) If a respondent fails to timely respond or file a defense to a probable cause report or pleadings in an administrative hearing, the Director of Enforcement may pursue a default order.

(1) The Director of Enforcement shall serve the respondent with notice and a copy of the proposed default order, which must include a summary of facts and evidence and the conclusions of law, at least 15 calendar days before the proposed order is heard by the members of the Commission.

- (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.
- (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 the members of the Commission approve 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.
- (d) The respondent may file a written motion requesting that a default order be vacated and stating the reasons relief should be granted. The motion must be filed with the Executive Director within 15 calendar days after the default order is signed.
 - (1) On a showing of good cause, the members of the Commission, in their discretion, may vacate the default order and either grant an administrative hearing or approve a stipulated order.
 - (2) A motion to vacate a default order is the only administrative remedy available to a respondent after entry of a default order.

Sec. 24.29
General Provisions.

(a) Service.

- (1) Service may be made in the following ways:
 - (A) Personally, by any individual who is not a party to the matter and is at least 18 years of age, including any Commission employee other than the Executive Director or the Director of Enforcement.
 - (B) By first-class, certified, registered, or overnight mail; or
 - (C) By another method agreed upon by the parties, such as electronic mail.
- (2) Service is completed in the following ways:
 - (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.
 - (i) When delivered to an office, the document must be left with a clerk, with an individual in charge of the office, or in a conspicuous place in the office.

(ii) When delivered to the named person's residence, the document must be left with an individual of suitable age and discretion who resides there.

(B) Service by mail is complete upon mailing.

(C) Service by another method is complete when the criteria agreed upon by the parties have been met.

(b) **Filings.** A filing is complete when the document or complaint is received by the party to whom it must be submitted.

(c) **Access To Documents Confidentiality.**

(1) Complaints, responses thereto, and investigative files and information contained therein shall be available for public inspection in accordance with the requirements of the California Public Records Act (Government Code Section 6250, et seq.). No~~Unless they are deemed public by another provision of these regulations, records and information contained in~~relating to any enforcement file shall be disclosed to any person other than a respondent or his or her representative, the City Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a determination concerning probable cause~~matter are confidential and not subject to disclosure as required to preserve the confidentiality mandated by Charter Section 706.~~

(2) When release of material is requested pursuant to Subdivision (1), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied~~Records and information may be disclosed to a respondent, an individual designated in writing by a respondent as the respondent's counsel or representative, a witness, a court, a prosecution or law enforcement agency, or otherwise as necessary to conduct an investigation.~~

(3) Requests for access and/or copies pursuant to Subdivision (1) shall be made in writing and shall specifically identify the documents sought. The person requesting copies shall pay 10 cents per page for copies of public records on State-generated forms or \$1.00 plus 10 cents per page for copies of public records on City-generated forms~~Commission staff may periodically report the number and types of enforcement cases, as well as other statistical enforcement data, to the members of the Commission.~~

(gd) ~~This section does not govern the duties of the Commission pursuant to Charter Section 702(e) and (g)~~**Cooperation.** All City agencies, employees, and officials shall cooperate with Commission investigations.

(e) **Sanctions.**

(1) A person is subject to contempt sanctions for any of the following:

- (A) Disobeying or resisting a lawful order of the Commission or the hearing officer without substantial justification.
- (B) Failing or refusing to comply with a lawful discovery order, subpoena, or subpoena duces tecum without substantial justification.
- (C) Refusing to take the oath or affirmation as a witness or, after doing so, refusing to be examined.
- (D) Engaging in disorderly, contemptuous, or insolent behavior toward the hearing officer during the hearing.
- (E) Breaching the peace or engaging in boisterous or violent conduct during the hearing.
- (F) Unlawfully obstructing, interrupting, or interfering with the hearing.
- (2) The hearing officer or Director of Enforcement may request that the superior court impose contempt sanctions.
 - (A) The hearing officer or Director of Enforcement shall certify the facts that justify a contempt sanction.
 - (B) The superior court shall issue an order directing the person to appear at a specified time and place and show cause why the person should not be punished for contempt.
 - (C) The court order and the certified statement shall be served on the person. Upon service, the superior court has jurisdiction over the contempt matter.
 - (D) The same procedures apply and the same penalties may be imposed as if the person had committed contempt in the trial of a civil action before the superior court.
- (f) **Deadlines.** If a deadline identified in this chapter falls on a City holiday, a Saturday, or a Sunday, the deadline shall be moved to the next business day.
- (b) **Public Meetings.** When the members of the Commission must act as a body, the action must be taken at a public meeting.