

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S
Enforcement Procedures

PROPOSED AMENDMENTS
Rev. June 27, 2008

Chapter 2: Government
Article 6: Boards and Commissions
Division 4: Ethics Commission

§26.0402 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

Probable cause determined by Presiding Authority instead of by Commission

.....

Administrative Hearing means an administrative hearing, open to the public, following ~~the Commission's~~ a Presiding Authority's determination that *Probable Cause* exists to believe that a violation of *Governmental Ethics Laws* has occurred.

.....

Includes any elective city office, not just City of San Diego office

Elective governmental office means any ~~City~~ city, county, state, or federal elective office. It includes an office held by an individual appointed to fill a vacancy in an elective office. It does not include an elective position on a city neighborhood planning group, planning area committee, town council, business improvement district, or similar group.

.....

Final Administrative Complaint means a document prepared by the *Executive Director* that identifies the *Governmental Ethics Laws* allegedly violated by the *Respondent*, the acts or omissions with which the *Respondent* is charged, the penalties the *Commission* is seeking to impose for each violation listed, and which is consistent with any findings made by the ~~Commission~~ Presiding Authority following the *Probable Cause Hearing*.

.....

New definition: probable cause to be determined by Presiding Authority

Probable Cause Determination means a written report prepared by the individual or ad hoc subcommittee conducting the *Probable Cause Hearing* that contains a determination regarding whether or not *Probable Cause* exists.

....

Replaced by new term: "Probable Cause Determination"

~~*Probable Cause Recommendation* means a written report prepared by the individual or ad hoc subcommittee conducting the *Probable Cause Hearing* that contains a recommendation to the *Commission* regarding whether or not *Probable Cause* exists.~~

....

Reflects ability to subpoena witnesses during investigation

Subpoena means a written order requiring a ~~witness's appearance~~ witness to appear and give testimony in connection with a *Commission* investigation or at a *Probable Cause Hearing* or *Administrative Hearing* ~~to give testimony.~~

....

§26.0404 Appointment

(a) The Mayor shall appoint all seven members of the *Commission* from a pool of nominees submitted by the members of the City Council and City Attorney. The Mayor's appointments are subject to confirmation by a majority of the City Council.

(b) The *Commission* shall reflect the diversity of the City which it serves. At least one of the members of the *Commission* shall be a person who has been a candidate for an *elective governmental office*, has worked as a treasurer or other high level position in a campaign for *elective governmental office*, or who has held elective governmental office, and at least two of the members of the *Commission* shall be attorneys in good standing with the California Bar Association. No more than three members of the *Commission* shall be registered with the same political party. Each nominee shall be a qualified elector of the City of San Diego, although when a person with unique qualifications is able to serve, and who is a qualified elector of San Diego County but not the City of San Diego, an exception may be made and such person may be considered eligible for nomination to the *Commission*. No person who ran as a candidate against a current elected *City Official*, or who served in a staff capacity for the campaign of such a candidate, shall be eligible for nomination to the *Commission*. The members of the City Council and the City Attorney shall identify the requirements fulfilled by each of their nominees. The nominations shall reflect the diversity of the community.

Relevant information in (c) moved to (b)

(c) ~~The Mayor shall make the initial appointments to the *Commission* in the following manner. Each member of the City Council and the City Attorney shall nominate seven candidates, including at least one person who has been a candidate for an *elective governmental office*, has worked as a treasurer or other~~

Establishment provisions in (c) no longer needed; substance moved to (b)

~~high level position in a campaign for elective governmental office, or has held an elective governmental office, at least two attorneys in good standing with the California Bar Association, and no more than three persons registered with the same political party. Each nominee shall be a qualified elector of the City of San Diego, although when a person with unique qualifications is able to serve, and who is a qualified elector of San Diego County but not the City of San Diego, an exception may be made and such person may be considered eligible for nomination to the Commission. No person who ran as a candidate against a current elected City Official, or who served in a staff capacity for the campaign of such a candidate, shall be eligible for nomination to the Commission. The members of the City Council and the City Attorney shall identify the requirements fulfilled by each of their nominees. The nominations shall reflect the diversity of the community. If the Mayor reasonably believes that the pool of nominees is not large enough, or does not provide nominees who meet the professional background or political party requirements of Section 26.0404(b), the Mayor may call for additional nominees.~~

~~(d)~~(c) The Mayor shall fill any subsequent vacancies on the *Commission* in the following manner. When a vacancy occurs, the Mayor shall send a memorandum to the City Attorney and City Council stating the requirements for the vacant position. Each member of the City Council and the City Attorney shall nominate one candidate for each vacancy on the *Commission*. The nominations and appointments shall be made so that the requirements of ~~Section 26.0404(b)~~ subsection (b) with respect to professional background and political party membership are maintained. If the Mayor reasonably believes that the pool of nominees is not large enough, or does not provide nominees who meet the professional background or political party requirements of ~~Section 26.0404(b)~~ subsection (b), the Mayor may call for additional nominees.

Moves Chair's election to June; term to start July 1

~~(e)~~(d) The members of the *Commission* shall elect a Chairperson annually, ~~on July 1, or as soon thereafter as possible at a meeting held before the end of June, with the elected Chairperson's term of office to begin on July 1.~~ A member may serve as a Chairperson of the *Commission* for no more than two consecutive one-year terms; however, a member who has served two consecutive one-year terms as Chairperson is eligible to serve again as Chairperson after an interval of one year has passed.

§26.0416 Prohibition Against False Testimony and False Documentation

It is unlawful for any person within the Commission's jurisdiction, as set forth in section 26.0413(a), to:

New section prohibiting false statements and documentation

- (a) knowingly make a false statement regarding a material fact during the course of a Commission investigation, a Probable Cause Hearing, or an Administrative Hearing; or
- (b) submit any books, papers, records, or other documentation during the course of a Commission investigation, a Probable Cause Hearing, or an Administrative

Hearing knowing that such documentation contains false information regarding a material fact.

§26.0431 Probable Cause Hearing and Determination

Request must be in writing 1 week before hearing

(a) The Probable Cause Hearing shall be closed to the public unless ~~Unless~~ all *Respondents* named in the *Probable Cause Report* request in writing at least one week prior to the hearing that the *Probable Cause Hearing* hearing be held in public, ~~the hearing shall be closed to the public.~~

Clarifies rules of evidence for Probable Cause Hearing

(b) Formal rules of the California Evidence Code shall not apply to a *Probable Cause Hearing* ~~held pursuant to these procedures.~~ The rules relating to the admissibility of evidence at a Probable Cause Hearing shall be the same as those set forth in section 26.0436(d).

(c) The *Presiding Authority* shall have the authority to administer oaths and affirmations at the *Probable Cause Hearing*.

(d) The *Presiding Authority* may continue the *Probable Cause Hearing* based on good cause shown by one of the *Parties* to the hearing, if the *Presiding Authority* determines that due process has not been adequately afforded.

(e) The *Presiding Authority* shall find that *Probable Cause* exists only if the *Presiding Authority* determines that the evidence is sufficient to lead a person of ordinary caution and prudence to believe that a violation has been committed and that the *Respondent* may have committed or caused the violation.

Presiding Authority will determine probable cause, not just make a recommendation

(1) If the *Presiding Authority* is one Commissioner, the *Presiding Authority* shall take the matter under submission, and make a ~~recommendation~~ determination regarding whether or not probable cause exists. Reasonable effort shall be made to submit a *Probable Cause* ~~Recommendation~~ Determination to the *Commission* within thirty calendar days of the conclusion of the *Probable Cause Hearing*.

(2) If the *Presiding Authority* is an ad hoc subcommittee composed of three Commissioners, such subcommittee shall take the matter under submission and, based on the concurrence of at least two members of the subcommittee, make a ~~recommendation~~ determination regarding whether or not probable cause exists. Reasonable effort shall be made to submit a *Probable Cause* ~~Recommendation~~ Determination to the *Commission* within thirty calendar days of the conclusion of the *Probable Cause Hearing*.

(3) If the *Presiding Authority* is an individual selected pursuant to Section 26.0430(b)(2)(C), such individual shall take the matter under submission and make a ~~recommendation~~ determination regarding whether or not probable cause exists. Reasonable effort shall be made to submit a

Probable Cause Recommendation Determination to the Commission within thirty calendar days of the conclusion of the *Probable Cause Hearing*.

New provisions to deal with Presiding Authority's finding of probable cause

- (f) If the Presiding Authority determines that Probable Cause does not exist, the Commission shall take no further action on the complaint. Within five business days of the Commission's receipt of the Probable Cause Determination, the Executive Director shall serve or mail a copy of this document to each Complainant and Respondent.
- (g) If the Presiding Authority determines that Probable Cause exists, the Commission shall prepare for an Administrative Hearing in accordance with section 26.0435. Within five business days of the Commission's receipt of the Probable Cause Determination, the Executive Director shall serve or mail a copy of this document to each Respondent.
- (h) Public disclosure of records relating to the Probable Cause Hearing is subject to the provisions of Section 26.0455.

~~§26.0432 Probable Cause Determination~~

Entire section deleted; probable cause determination to be made by Presiding Authority

- (a) ~~As soon as practicable following the Probable Cause Hearing and the receipt of any Probable Cause Recommendation, the Commission shall make a Probable Cause determination.~~
 - (1) ~~The determination shall be made in closed session pursuant to California Government Code section 54956.9 by a concurring vote of at least four Commissioners.~~
 - (2) ~~If an individual was selected from a pre-qualified list to serve as Presiding Authority pursuant to Section 26.0430(b)(2)(C), the Commission may request that such individual attend the closed session meeting to discuss any issue relevant to the Probable Cause Hearing.~~
 - (3) ~~The Commission shall find that Probable Cause exists only if it determines that the evidence is sufficient to lead a person of ordinary caution and prudence to believe that a violation has been committed and that the Respondent may have committed or caused the violation.~~
 - (4) ~~Any member of the Commission may be disqualified from participating in the Probable Cause determination in accordance with the provisions set forth in Section 26.0447(b).~~
 - (5) ~~A determination by the Commission regarding the existence of Probable Cause shall be based on the entire record of the proceedings. Each Commissioner who participates in the determination shall state for the record that he or she personally heard or read the testimony (either in person or by listening to a recording or by reading a transcript prepared by~~

a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

- (6) ~~The Commission may elect to remand the matter to the Presiding Authority for further proceedings.~~
- (b) ~~If the Commission determines that Probable Cause does not exist, the Commission shall take no further action on the complaint and the Executive Director shall notify each Complainant and Respondent in writing of the Commission's decision within five business days of the decision.~~
- (c) ~~If the Commission determines that Probable Cause exists, the Commission shall announce in open session that it has determined there is Probable Cause to believe that the Respondent may have violated a Governmental Ethics Law and that the matter shall be heard at a public Administrative Hearing. The announcement shall contain a summary of the allegations and a cautionary statement that the Respondent is presumed to be innocent unless and until such time that the allegations are proven to be a violation at the Administrative Hearing.~~
- (d) ~~Public disclosure of records relating to the Probable Cause Hearing is subject to the provisions of Section 26.0455.~~

§26.0435 Preparation for Administrative Hearing

- (a) ~~Concurrent with electing to proceed with a public Administrative Hearing, At its next meeting following its receipt of a Probable Cause Determination that finds Probable Cause, or as soon thereafter as practicable, the Commission shall:~~
 - (1) ~~announce in open session that the Presiding Authority has determined there is Probable Cause to believe that the Respondent may have violated a Governmental Ethics Law, and that the matter shall be heard at a public Administrative Hearing. The announcement shall contain a summary of the allegations and a cautionary statement that the Respondent is presumed to be innocent unless and until such time that the allegations are proven to be a violation at the Administrative Hearing.~~
 - (2) ~~direct the Executive Director to schedule an Administrative Hearing on a date no later than ninety calendar days from the date the Commission ordered the hearing, however such date may be extended beyond ninety calendar days upon a showing of good cause by either Party and the approval by the Presiding Authority; and~~
 - (3) ~~direct the Executive Director to prepare a Final Administrative Complaint.~~
- (A) ~~If the Commission finds that Probable Cause exists was found for every allegation listed in the Draft Administrative Complaint, then~~

New provisions reflect Presiding Authority's finding of probable cause

the *Final Administrative Complaint* will be substantially identical to the *Draft Administrative Report*.

- (B) If ~~the Commission finds that Probable Cause does not exist~~ was not found for one or more of the allegations listed in the *Draft Administrative Report*, ~~it~~ then the Commission shall instruct the *Executive Director* to prepare a *Final Administrative Complaint* that does not contain such allegations.
 - (C) The *Executive Director* shall make available to the public a copy of the *Final Administrative Complaint*.
- (b) As soon as practicable, but no later than ~~thirty~~ thirty-five calendar days after ordering that a public *Administrative Hearing* be conducted, the *Commission* shall take the following action:
- (1) Appoint a *Petitioner* to prepare and present the case against the *Respondent* to be heard at the *Administrative Hearing*. The *Executive Director* shall serve as the *Petitioner* unless the *Commission*, at its discretion, selects someone else from a list of pre-qualified individuals retained to serve as *Petitioners*.
 - (2) Appoint a *Presiding Authority* to conduct the *Administrative Hearing*. At the discretion of the *Commission*, the *Presiding Authority* shall be one of the following:
 - (A) The entire *Commission* sitting as a hearing panel; or
 - (B) An ad hoc subcommittee composed of three Commissioners; or
 - (C) An individual selected from a list of volunteers who have been pre-qualified to meet or exceed minimum qualification criteria for training and experience as established by the *Commission*.
- (c) The *Executive Director* shall cause the *Respondent* to be served with the following materials, in accordance with Section 26.0443, at least sixty calendar days prior to the date of the *Administrative Hearing*:
- (1) A copy of the *Final Administrative Complaint*; and
 - (2) written notice of the date, time, and location of the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a public hearing will be held before a Presiding Authority appointed by the City of San Diego Ethics Commission on the ____ day of _____, 20____, at the hour of _____, at (location), upon the allegations made in the Final Administrative Complaint.

You have a right to attend the hearing, and may be represented by legal counsel or any other representative of your choosing. You may present any relevant evidence and will be given an 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, papers, records, or other items by applying to the Presiding Authority in care of the City of San Diego Ethics Commission on or before (date).”

- (d) The *Parties* shall be entitled to pre-hearing discovery in accordance with the provisions for discovery set forth in the official Hearing Procedures adopted by the *Commission*. However, upon request, the *Presiding Authority* may, at its discretion, allow the *Parties* to conduct additional discovery other than what is provided for in the Hearing Procedures. The *Presiding Authority* shall resolve any discovery dispute.
- (e) The *Petitioner* and *Respondent* may seek *Subpoenas* and *Subpoenas duces tecum* in connection with the *Administrative Hearing* pursuant to the provisions of Section 26.0445. Procedures for issuing, serving, objecting to, or enforcing a *Subpoena* or *Subpoena duces tecum* in connection with the *Administrative Hearing* shall be as set forth in Section 26.0445.
- (f) Not later than seven calendar days prior to the public *Administrative Hearing*, the *Petitioner* shall, and any *Respondent* may, submit an administrative hearing brief to the *Presiding Authority*.
 - (1) Any brief shall outline significant legal arguments and evidence to be presented at the hearing.
 - (2) A brief shall not exceed twenty-five pages in length except by permission of the *Presiding Authority* and by a showing of good cause.
 - (3) When a brief is submitted by any *Party* pursuant to this subsection, a copy shall be served on the same date of the submission to all other *Parties* to the *Administrative Hearing*.
- (g) The time limitations of this section may be extended or shortened by the *Presiding Authority* for good cause shown.
- (h) The *Petitioner* or *Respondent* may request that preliminary matters, not related to the merits of the hearing, be heard by the *Presiding Authority* prior to an *Administrative Hearing* in accordance with Section 26.0447.

§26.0443 Service of Documents

- (a) Service of any document relating to the procedures set forth in this Division may be made by any individual who is not less than eighteen years of age. Documents may be served by any *Commission* employee.
- (b) Service may be made by personally delivering a copy of materials to a *Person*. Personal delivery means handing the materials to a *Person* or the *Person's* attorney or designated agent for service of process; or leaving it at the *Person's* office or at the *Person's* 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 leaving it at the *Person's* dwelling house or usual place of abode with some person at least eighteen years of age then residing therein.

New provisions allowing service by mail on person's attorney

- (c) ~~If the *Person's* name and address are known, service may be made by certified mail return receipt requested or by overnight mail.~~ Service may also be made by certified mail return receipt requested or by overnight mail to a *Person* if his or her name and address are known, or to a *Person's* attorney or designated agent for service of process. If service is made by mail, three calendar days shall be added to the period prescribed for a response. Service by mail is complete upon mailing.

§26.0445 Subpoenas and Subpoenas Duces Tecum

- (a) The *Commission* has the authority to issue *subpoenas* and *subpoenas duces tecum* pursuant to Section 41(d) of the San Diego Charter, and in accordance with the procedures in this Division. The *Commission* may refer to the California Administrative Procedures Act for guidance in exercising its authority to issue *subpoenas* and *subpoenas duces tecum*.
- (b) During the formal investigation of a complaint, the *Executive Director* may seek *Subpoenas and Subpoenas duces tecum* by submitting a written request to the *Commission*. The *Commission* shall grant the request only after a concurring vote of at least four of the Commissioners in closed session. The *Commission* shall not issue a *Subpoena or Subpoena duces tecum* during a formal investigation unless it finds, based on information submitted to it in writing, that the information to be requested in the *Subpoena or Subpoena duces tecum* is material to a specific matter then under investigation.
- (c) After the *Commission* has appointed a *Presiding Authority* to conduct the *Probable Cause Hearing* or *Administrative Hearing*, the *Petitioner* and *Respondent* may seek *Subpoenas* and *Subpoenas duces tecum* in accordance with the following procedures:

Allows subpoenas of persons during investigation

- (1) All requests for a *Subpoena* must be submitted no later than twenty calendar days before a scheduled hearing; all requests for a *Subpoena*

duces tecum must be submitted no later than thirty-five calendar days before a scheduled hearing.

Subpoena requests go to Presiding Authority instead of Commission

- (2) The *Petitioner* may seek *Subpoenas* and *Subpoenas duces tecum* by submitting a written request to the ~~Commission~~ Presiding Authority. The Respondent may seek *Subpoenas* and *Subpoenas duces tecum* by submitting a written request to the *Executive Director*, who shall promptly forward the request to the *Presiding Authority*. ~~The Commission~~ In either case, the *Presiding Authority* shall grant or deny the request within five calendar days of receipt of the request ~~following a concurring vote of at least four of the Commissioners in closed session~~. The *Presiding Authority* may appoint from among its members an ad hoc subcommittee of one to three individuals to grant or deny subpoena requests.

Allows ad hoc subcommittee to respond to subpoena requests

- (3) ~~The Respondent may seek *Subpoenas* and *Subpoenas duces tecum* by submitting a written request with the *Executive Director*, who shall promptly forward the request to the *Presiding Authority*. The *Presiding Authority* shall grant or deny the request within five calendar days of receipt of the request.~~

(3) deleted; provisions now covered in (2)

- (4)(3) All requests for a *Subpoena* or *Subpoena duces tecum* shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the production of documents or records is sought, 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.

- (5)(4) A *Subpoena* or *Subpoena duces tecum* shall not be issued unless the information submitted pursuant to ~~Section 26.0445(e)(4)~~ subsection (c)(3) states that the *Person* to be subpoenaed, or the information to be requested in the *Subpoena duces tecum*, is material to a specific matter at issue in the *Probable Cause Hearing* or *Administrative Hearing*.

- (6)(5) The subpoenaing *Party* must serve a copy of the *Subpoena* or *Subpoena duces tecum* on every other *Party* to the administrative proceeding.

- (d) In the event a *Subpoena duces tecum* seeks either the production of personal or financial records of a consumer, as that term is defined in California Code of Civil Procedure section 1985.3, notice to that consumer shall be given as required by Section 1985.3.
- (e) *Subpoenas* shall be served at least ten calendar days before the time required for attendance. *Subpoenas duces tecum* shall be served at least twenty-five calendar days before the time required for the production of the requested documents. A *Subpoena* or *Subpoena duces tecum* shall be served in accordance with the provisions set forth in Section 26.0443.

Provision (f) moved to (c)(5); service required only for hearing subpoenas

~~(f)~~ The subpoenaing *Party* must serve a copy of the *Subpoena* or *Subpoena duces tecum* on every other *Party* to the administrative proceeding.

Procedures for subpoena objections

~~(g)~~(f) A *Person* served with a *Subpoena* or *Subpoena duces tecum* may object to its terms by filing written objections with the *Commission* no later than seven calendar days before the time required for attendance and/or production of the requested documents. ~~If the *Subpoena* or *Subpoena duces tecum* was issued by a *Presiding Authority* other than the full *Commission*, the written objection shall be promptly forwarded to the *Presiding Authority*.~~ Objections to *Subpoenas* or *Subpoenas duces tecum* issued by the *Commission* shall be filed with the *Commission*. Objections to *Subpoenas* or *Subpoenas duces tecum* issued by the *Presiding Authority* or an ad hoc subcommittee of the *Presiding Authority* shall be filed with the *Executive Director*, who shall promptly forward the objections to the *Presiding Authority* or ad hoc subcommittee.

New timeframes for dealing with subpoena objections

(1) If the *Subpoena* or *Subpoena duces tecum* was issued by the *Commission* ~~at the request of the *Executive Director* or *Petitioner*~~, the *Commission* shall rule, in closed session, on the objections ~~and/or issue an order in writing within five calendar days of receiving the written objections at a regular or special meeting on or before the date of the *Commission's* next regularly scheduled meeting, or as soon thereafter as practicable. The *Commission* shall issue a written order on its ruling within five calendar days of making the ruling, and the *Executive Director* shall promptly serve the order on the *Person* making the objections.~~

(2) If the *Subpoena* or *Subpoena duces tecum* was issued by ~~the~~ a *Presiding Authority* or a subcommittee of a *Presiding Authority* at the request of the *Respondent*, ~~then~~ the *Presiding Authority* or ad hoc subcommittee that issued the *Subpoena* or *Subpoena duces tecum* shall rule on the objections ~~and/or and~~ and issue an order in writing within five calendar days of receiving the written objections. The *Executive Director* shall promptly serve the order on the *Person* making the objections.

New provision staying subpoena when party objects

~~(3)~~(3) All obligations to respond to *Subpoenas* or *Subpoenas duces tecum* that are subject to written objections shall be stayed pending the ruling by the *Commission*, *Presiding Authority*, or ad hoc subcommittee pursuant to subsection (f)(1) or (f)(2).

~~(3)~~(4) A failure to file a timely objection with the *Commission* or *Presiding Authority* constitutes a waiver of all grounds for any objection.

~~(4)~~(5) All petitions for judicial review of ~~any *Commission* or *Presiding Authority* ruling or an~~ an order concerning objections to a *Subpoena* or *Subpoena duces tecum* must be filed by the tenth calendar day following the date of service of the ~~ruling or order by the *Commission* or *Presiding Authority*.~~

- ~~(h)~~(g) If the *Party* serving the *Subpoena duces tecum* 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 documents together with an affidavit in compliance with California Evidence Code section 1561.
- ~~(i)~~(h) It is unlawful for any *Person* to refuse to obey a *Subpoena* or *Subpoena duces tecum* issued by the *Commission* or *Presiding Authority*. Failure to obey a *Subpoena* or *Subpoena duces tecum* constitutes contempt and may be prosecuted as a misdemeanor.
- ~~(j)~~(i) If any *Person* refuses to attend or testify or produce any papers as required by a *Subpoena* or *Subpoena duces tecum*, the *Executive Director*, on behalf of the *Commission* or *Presiding Authority*, may petition the San Diego Superior Court for an order compelling the person to attend and testify and to produce the papers required by the *Subpoena* or *Subpoena duces tecum*, in accordance with the standards and procedures set forth in the California Administrative Procedures Act.
- ~~(k)~~(j) A witness, other than an officer or employee of the City of San Diego, appearing pursuant to a *Subpoena*, shall receive, upon request after complying with the *Subpoena*, the same mileage and fees allowed by law to a witness in a civil case pending in the San Diego Superior Court.
- ~~(l)~~(k) All costs related to a *Subpoena* or *Subpoena duces tecum*, including photocopying, service, witness, and mileage fees, shall be borne by the *Party* requesting the *Subpoena* or *Subpoena duces tecum*.
- ~~(m)~~(l) The *Commission* shall develop policies and procedures relating to the issuance of *Subpoenas* and *Subpoenas duces tecum* in formal investigations, *Probable Cause Hearings*, and *Administrative Hearings*, including the form of such documents and related costs.

§26.0447 Pre-Hearing Matters

- (a) The *Petitioner* or *Respondent* may request that preliminary matters, not related to the merits of the hearing, be heard by the *Presiding Authority* prior to a *Probable Cause Hearing* or an *Administrative Hearing*. If the request is granted, those motions or matters shall be noticed in a timely fashion, and a preliminary hearing shall be held and conducted by the *Presiding Authority*. Such preliminary matters may include, but are not limited to, the following:
- (1) Motions regarding procedural matters; and
 - (2) disqualification of any *Person* from participation in the *Probable Cause Hearing* or the *Administrative Hearing*; and
 - (3) discovery; and

- (4) any other matters not related to the truth or falsity of allegations made in the *Probable Cause Report*, the *Draft Administrative Complaint*, or the *Final Administrative Complaint*.
- (b) Any member of the *Presiding Authority* is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge maybe disqualified in a court of law.
 - (1) A member of a *Presiding Authority* may voluntarily disqualify himself or herself and withdraw from the proceedings for any reason, including reasons based on bias, prejudice, or interest in the proceeding. Once disqualified, that individual shall not participate in any discussion, deliberation, or voting pertaining to the pending complaint.
 - (A) Notwithstanding Section 26.0447(b)(1), the *Parties* may choose to accept any member of the *Presiding Authority* by waiving the disqualification in a written statement, signed by all *Parties*, that recites the grounds for disqualification.
 - (B) A waiver is effective only when signed by all *Parties*, accepted by the *Presiding Authority*, and included in the record.
 - (2) Any *Party* may seek to compel the disqualification of any member of the *Presiding Authority* by filing an affidavit with the *Commission*, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the member should be disqualified.
 - (A) Where the request seeks to compel the disqualification of a member of the *Commission*, the disqualification shall be determined by a concurring vote of at least four members of the *Commission*. The Commissioner who is the subject of the request for disqualification shall not participate in the vote or in any deliberations or discussions preceding the vote.
 - (B) Where the request seeks to compel the disqualification of an individual appointed pursuant to Section 26.0430(b)(2)(C) or Section 26.0435(b)(2)(C), the disqualification shall be determined by a concurring vote of at least four members of the *Commission*.
 - (3) If any disqualified Commissioner was part of a three-member ad hoc subcommittee of the *Commission* appointed pursuant to Section 26.0430(b)(2)(B) or Section 26.0435(b)(2)(B), the disqualified Commissioner may be replaced by a substitute Commissioner appointed by the *Commission*.
- (c) At any time before or during the *Probable Cause Hearing* or the *Administrative Hearing*, the *Petitioner* and *Respondent* may propose a stipulation as to any

procedural matter, fact, or substantive matter, and upon the approval of the *Presiding Authority* such stipulation shall have the full force of an order of the *Presiding Authority*.

Allows ad hoc subcommittee to hear pre-hearing matters

- (d) *A Presiding Authority may appoint from among its members an ad hoc subcommittee of one to three individuals to hear any matter covered under subsections (a) or (c).*

§26.0450 Settlements

Settlement negotiations and settlement of pending matters may occur at any point after *Preliminary Review*, subject to the following:

- (a) All settlement negotiations shall be conducted on behalf of the *Commission* by the *Executive Director* in accordance with this section.
- (b) The *Executive Director* may enter into a proposed stipulation with the *Respondent* with regard to anything that could be ordered by the *Commission* under its authority pursuant to San Diego Municipal Code section 26.0414, including partial or full settlement of a matter.
- (c) Before presentation to the *Commission*, any proposed stipulated settlement negotiated between the *Executive Director* and *Respondent* shall:
 - (1) contain a recitation of the facts pertinent to the violation; and
 - (2) refer to each violation and state whether or not the stipulation will cause the discharge of each such alleged violation; and
 - (3) include an Order reflecting any obligations of the *Respondent*, including the payment of any monetary fine.
- (d) In any proposed stipulation presented to the *Commission*, the *Respondent* shall acknowledge by signing such document, that he or she:
 - (1) agrees to hold the City harmless, waiving any right to challenge any procedural rights provided by the San Diego Municipal Code; and
 - (2) agrees to abide by all terms of the stipulation.
- (e) A proposed stipulated settlement shall have no force and effect until approved by the *Commission* as provided in subsection (g).
- (f) The *Executive Director* shall, without unreasonable delay, submit any proposed stipulation signed by the *Respondent*, to the *Commission* for consideration at a closed session meeting of the *Commission*.
- (g) A proposed stipulation shall become final only if the *Commission* approves the stipulation by a concurring vote of four Commissioners, except that if the

stipulation imposes a penalty on the *Respondent*, it shall become final only if approved by a concurring vote of five Commissioners.

- (h) The *Commission's* approval of a stipulation shall be reflected in the *Commission's* report regarding closed session actions.
- (i) The *Executive Director* is authorized to sign a stipulation on behalf of the *Commission* upon approval of the stipulation by the *Commission* as set forth in subsection (g).

Clarifies that stipulations are public documents

- (j) ~~Public disclosure of the stipulation is subject to the provisions of Section 26.0455.~~ Every stipulation approved by the *Commission* shall be made available to the public.

§26.0455 Disclosure of Commission Records

- (a) The purpose of this section is to advance the public's interest under the Public Records Act to access information concerning the conduct of the *Commission* in a manner that will not compromise the *Commission's* ability to conduct effective and confidential investigations into alleged violations of *Governmental Ethics Laws*.
- (b) The *Commission* and its staff shall not make public comments regarding a pending matter until ~~the *Commission* has made a *Probable Cause* determination~~ has been made regarding the matter or until the matter is closed.
- (c) Members of the public shall not be granted access to any document prepared by, or received by, the *Commission*, including investigatory files, related to a pending matter, until ~~the *Commission* has made a *Probable Cause* determination~~ has been made regarding the matter or until the matter is closed, at which time such documents shall be made available to the public in accordance with subsections (d) and (e).
- (d) Following ~~the *Commission's* a *Probable Cause* determination~~, members of the public shall have access to the *Final Administrative Complaint*, but shall not be granted access to any other document prepared by, or received by, the *Commission*, including investigatory files related to a pending matter, except in accordance with subsection (e) below.
- (e) When a matter is closed by the *Commission* prior to the initiation of a formal investigation and the matter is not referred to any other governmental or law enforcement agency, the complaint and any documents prepared by the *Commission* relative to the disposition of the matter shall be made available to the public. Records arising from, or relating to, any matter where a formal investigation has been initiated or any matter that has been referred to another governmental or law enforcement agency shall not be disclosed to the public until all of the following occurrences have taken place:

Clarifies existing provisions

- (1) The *Commission* has closed the matter; and
 - (2) the statute of limitations applicable to the *Commission's* enforcement of the alleged violation has expired; and
 - (3) the statute of limitations applicable to all governmental or law enforcement agencies that have jurisdiction over the alleged violation has expired; and
 - (4) all litigation and administrative proceedings initiated by any other governmental or law enforcement agency with jurisdiction over the alleged violation have reached final conclusion.
- (f) When *Commission* materials are requested by members of the public, the *Executive Director* shall review the requested materials prior to its release and prior to any claim of exemption in order to determine that the requirements of the Public Records Act have been satisfied.
- (g) Documents made available to the public by this section may be examined in the offices of the *Commission* following a request made in writing specifically identifying the documents sought.
- (h) Documents made available to the public by this section may not be removed from the offices of the *Commission*, but may be copied by *Commission* staff as soon as practicable following a request made in writing specifically identifying the documents sought. Any person requesting copies of materials pursuant to this subsection shall reimburse the *Commission* \$0.10 per page for each page copied.
- (i) A matter is considered closed for the purposes of this section if the *Commission* makes a determination that it will take no further action on the alleged violation by declining to pursue administrative enforcement or by issuing an *Administrative Enforcement Order*.
- (j) Notwithstanding the disclosure provisions of this section, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the *Executive Director* determines that the public interest in non-disclosure clearly and substantially outweighs the public interest in disclosure:
- (1) the names of juvenile witnesses; or
 - (2) personal or otherwise private information related or unrelated to the investigation if the disclosure would constitute an unwarranted invasion of privacy; or
 - (3) the identity of a confidential source; or

- (4) the identity of the *Complainant*; or
- (5) secret investigative techniques or procedures; or
- (6) information which, if disclosed, would create a credible risk of endangering any individual; or
- (7) information which, if disclosed, would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.