ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 4 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 26.0402, 26.0404, 26.0431, 26.0443, 26.0445, 26.0450, AND 26.0455, ALL RELATING TO THE ESTABLISHMENT OF THE ETHICS COMMISSION AND TO THE ETHICS COMMISSION'S INVESTIGATION AND ENFORCEMENT PROCEDURES.

WHEREAS, the City Council adopted Ordinance No. O-18945 on June 5, 2001, creating Chapter 2, Article 6, Division 4 of the San Diego Municipal Code, and thereby establishing an Ethics Commission for the City of San Diego; and

WHEREAS, the City Council adopted Ordinance No. O-19034 on February 11, 2002, creating investigation and enforcement procedures for the Ethics Commission within Chapter 2, Article 6, Division 4 of the San Diego Municipal Code; and

WHEREAS, the Ethics Commission regularly reviews the provisions of Division 4 to identify areas that may be clarified, streamlined, or otherwise improved; and

WHEREAS, the Ethics Commission has proposed several amendments to its establishment and enforcement procedures for purposes of clarification and improvement, including establishing procedures for Respondents to request that a Probable Cause Hearing be conducted in public; modifying the timeframes within which the Commission must rule on objections to investigative subpoenas; and clarifying that stipulations entered into by the Commission and a Respondent are public documents; and

WHEREAS, the City Council concurs with the proposal recommended by the Ethics Commission; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 6, Division 4 of the San Diego Municipal Code is hereby amended by amending sections 26.0402, 26.0404, 26.0431, 26.0443, 26.0445, 26.0450, and 26.0455, to read as follows:

§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:

Administrative Enforcement Order to *Draft Administrative Complaint* [no change in text]

Elective governmental office means any 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.

Exculpatory Information to *Subpoena duces tecum* [no change in text]

§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.

(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 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 subsection (b), the Mayor may call for additional nominees.

(d) The members of the *Commission* shall elect a Chairperson annually 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.

§26.0431 Probable Cause Hearing

(a) The *Probable Cause Hearing* shall be closed to the public unless the *Respondents* named in the *Probable Cause Report* request in writing or on the record at the hearing that the *Probable Cause Hearing* be held in public. If there are multiple *Respondents* in disagreement regarding whether or not to hold the *Probable Cause Hearing* in public, the *Presiding Authority* shall bifurcate the hearing to satisfy each *Respondent's* request for a public or private hearing.

(b) Formal rules of the California Evidence Code shall not apply to a *Probable Cause Hearing* held pursuant to these procedures.

(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.

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

§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.

(c) 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 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 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 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:

(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.

(2) The *Petitioner* may seek *Subpoenas* and *Subpoenas duces tecum* by submitting a written request to the *Commission.* The *Commission* 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.

(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.

(4) 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) A *Subpoena* or *Subpoena duces tecum* shall not be issued unless the information submitted pursuant to Section 26.0445(c)(4) 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) 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.

(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*.

(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 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 *Presiding Authority* at the request of the *Respondent*, the *Presiding Authority* shall rule

on the objections and/or issue an order in writing within five calendar days of receiving the written objections.

(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* or *Presiding Authority* pursuant to subsection (f)(1) or (f)(2).

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

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

(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.

(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.

(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.

(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.

(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.*

(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.

§26.0450 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).

(j) 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 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 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 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:

(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.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Catherine M. Bradley
Chief Deputy City Attorney

CMB:als
09/18/2008
10/13/2008REV.
Or.Dept:Ethics
O-2009-43

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

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Exculpatory Information to *Subpoena duces tecum* [no change in text]

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(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.

~~(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 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~~

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~~(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.

~~(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.

§26.0431 Probable Cause Hearing

(a) The *Probable Cause Hearing* shall be closed to the public unless ~~Unless all~~ the *Respondents* named in the *Probable Cause Report* request in writing or on the record at the hearing that the *Probable Cause Hearing* be held in public~~, the hearing shall be closed to the public~~. If there are multiple *Respondents* in disagreement regarding whether or not to hold the *Probable Cause Hearing* in public, the *Presiding Authority* shall bifurcate the hearing to satisfy each *Respondent's* request for a public or private hearing.

(b) Formal rules of the California Evidence Code shall not apply to a *Probable Cause Hearing* held pursuant to these procedures.

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

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(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 regarding whether or not probable cause exists. Reasonable effort shall be made to submit a *Probable Cause Recommendation* to the *Commission* within thirty calendar days of the conclusion of the *Probable Cause Hearing*.

§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.

(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.

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(b) During the formal investigation of a complaint, the *Executive Director* may seek *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 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 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:

(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.

(2) The *Petitioner* may seek *Subpoenas* and *Subpoenas duces tecum* by submitting a written request to the *Commission.* The *Commission* 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.

(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.

(4) 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) A *Subpoena* or *Subpoena duces tecum* shall not be issued unless the information submitted pursuant to Section 26.0445(c)(4) 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) 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.

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

~~(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*.

(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 *Presiding Authority* at the request of the *Respondent*, the *Presiding Authority* shall rule on the objections and/or issue an order in writing within five calendar days of receiving the written objections.

(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* or *Presiding Authority* pursuant to subsection (f)(1) or (f)(2).

(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 order concerning objections to a *Subpoena* or *Subpoena duces tecum* must be filed by the tenth calendar day following the date 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.

§26.0450 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).

(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 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 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:

(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.

CMB:als
09/18/2008
10/13/08REV.
Or.Dept:Ethics

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 4 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 26.0402, 26.0404, 26.0431, 26.0443, 26.0445, 26.0450, AND 26.0455, ALL RELATING TO THE ESTABLISHMENT OF THE ETHICS COMMISSION AND TO THE ETHICS COMMISSION'S INVESTIGATION AND ENFORCEMENT PROCEDURES.

This Ordinance makes changes to Chapter 2, Article 6, Division 4, of the San Diego Municipal Code, which contains the establishment and enforcement provisions applicable to the City's Ethics Commission.

If adopted, this Ordinance would amend Division 4 to require the Ethics Commission to elect its Chairperson in June instead of July; clarify that while serving on the Commission and for twelve months thereafter Ethics Commissioners are prohibited from seeking any elective city, state, or federal office; clarify and streamline the qualifications applicable to members of the Commission; establish procedures for Respondents at a Probable Cause Hearing to request that the hearing be open to the public and that such hearing may be bifurcated if multiple Respondents cannot agree on whether the hearing should be held in public; and clarify that a party's attorney may be served with documents by certified or overnight mail.

With regard to the issuance of subpoenas, this modifies the timeframe within which the Commission must rule on objections to subpoenas; and clarifies that the requirement to provide Respondents with a copy of issued subpoenas applies only to hearing subpoenas.

If adopted, this ordinance would take effect and be in force on the thirtieth day from and after its final passage.

CMB:als
09/18/08
10/13/08 REV.
Or. Dept:Ethics
O-2009-43