

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: September 12, 2008

TO: Council President and Members of the City Council

FROM: Guillermo Cabrera, Chair, San Diego Ethics Commission
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

SUBJECT: Investigation and Enforcement Procedures (SDMC §26.0401 et seq.)

The Ethics Commission's Investigative and Enforcement Procedures were adopted by the City Council on February 11, 2002. The Commission and its staff have worked with the current procedures for more than six years, and have identified various provisions that require amendment or that should be added to the Municipal Code. The Commission presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on September 3, 2008, at which time the Committee voted unanimously to forward the following proposed amendments to the full City Council:

A. Appointment and Qualifications of Commissioners

A1. Election of Chairperson

The Commission recommends amending the procedures to state that the election of a new Chairperson will take place at the last Commission meeting in June (instead of the first meeting in July). This change will create a more orderly transition and will enable the newly-elected Chairperson to prepare to run the July Commission meeting.

A2. Seeking Elective Office

The current procedures prohibit Ethics Commissioners from becoming candidates for any city, county, state, or federal elective office while they are Commissioners and for twelve months thereafter. The language in the prohibition refers to elective office in the "City," which is defined to include only the City of San Diego, and not other cities. The Commission therefore recommends amending the language in the definition of "elective governmental office" in order to clarify that the prohibition applies to any city office.

A3. Qualifications – Housekeeping Amendment

The Commission recommends some housekeeping amendments with respect to language that addresses the various qualifications applicable to Commissioners. When the procedures were last modified in December of 2006, several changes were incorporated into SDMC section 26.0404(c), including allowing a former candidate or former campaign officer to fill a seat on the Commission that previously had to be filled by a former elected official. As a result, there are several redundancies in the various subsections that merit streamlining.

B. Witness Testimony

B1. Prohibition on Providing False Evidence

The Commission recommends adding a provision making it unlawful for anyone within the Commission's jurisdiction to provide false information or documentation during a Commission investigation or at a Commission hearing. There have been several instances over the past few years in which individuals have not been entirely truthful with Commission staff during the course of an investigation, and Commissioners have frequently opined that the Municipal Code should include a prohibition on providing false information or documents. Adding this prohibition should serve as an additional incentive for witnesses and respondents to be truthful and forthcoming during the course of a Commission investigation.

C. Probable Cause and Administrative Hearings

As a result of recent experience with the hearing procedures delineated in the Municipal Code, the Commission recommends the following amendments:

C1. Probable Cause Hearings in Public

The procedures currently state that a Probable Cause Hearing will be closed to the public unless the Respondent requests that it be open to the public. The Commission recommends adding language to clarify that a request from a Respondent to hold a Probable Cause Hearing in public must be made in writing or on the record at the hearing. This change will ensure that there is no dispute or miscommunication regarding the Respondent's request. In addition, if there are multiple Respondents who cannot agree on whether or not to hold the hearing in public, the Commission recommends new language requiring that the hearing to be bifurcated.

D. Subpoenas

D1. Subpoenas of Witnesses During Investigation

In March of 2002, the City's voters approved a ballot measure granting the Ethics Commission the power to subpoena witnesses and documents in accordance with procedures adopted by the City Council. The applicable procedures adopted in 2002 state that the Commission may issue document subpoenas during an investigation or in connection with a hearing. With respect to

witness subpoenas, however, the procedures only mention the Commission's ability to compel witness testimony at a hearing. The Commission recommends adding language to state that the Commission may issue witness subpoenas during the course of a Commission investigation. This proposed change is consistent with the relevant language and intent of the City Charter.

D2. Objections to Investigative Subpoenas

With respect to written objections to the Commission's investigative subpoenas, the Commission proposes changes that would provide some additional flexibility with regard to when it must meet to consider these objections. Rather than force the Commission to meet within five days of receiving objections to an investigative subpoena (as is currently required), and rather than require the Commission to wait until its next regularly scheduled meeting (which could be a month after the objections are received), the Commission recommends modifying the procedures to state that with respect to investigative subpoenas the Commission shall consider objections at a special or regular meeting so long as the matter is considered no later than its next regularly-scheduled meeting. Additionally, the Commission recommends adding language to clarify that an investigative subpoena shall be stayed pending the Commission's ruling on the objections.

D3. Service of Subpoenas

Finally, the Commission recommends a minor change to clarify that the requirement concerning service of subpoenas on all parties only applies to subpoenas requested in connection with a Probable Cause Hearing or Administrative Hearing, and not to investigative subpoenas.

E. Miscellaneous

The Commission recommends the following additional miscellaneous updates in order to ensure that the procedures adequately reflect current Commission practices:

E1. Service of Documents

Clarify that service of documents by mail can be effected by certified or overnight mail to a person's attorney or designated agent. (Currently the procedures address this option only in the subsection concerning personal service.)

E2. Stipulations

Clarify that fully-executed stipulations are public documents.

E3. Disclosure of Records

In section 26.0455, which pertains to the disclosure of Commission records, clarify that subsections (d) and (e) are intended to apply to the prohibition contained in subsection (c).

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All the changes discussed above have been incorporated into the proposed clean and strikeout versions of the Ordinance that accompany this report, and which are attached hereto as separate documents. We look forward to the City Council considering these proposed changes as soon as docketing of this issue is feasible. If you have any questions, please contact Stacey Fulhorst at your convenience.

Guillermo Cabrera
Chair, San Diego Ethics Commission

Stacey Fulhorst
Executive Director, San Diego Ethics Commission

cc: Kris Michell, Deputy Chief for Community and Legislative Services
Catherine Bradley, Chief Deputy City Attorney