City of San Diego
Ethics Commission

OPERATING POLICIES

Proposed Changes Docketed for
Ethics Commission Discussion
at Meeting of September 9, 2010

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

City of San Diego Ethics Commission
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ARTICLE I - IDENTIFICATION

Section 1: Name

City of San Diego Ethics Commission

Section 2: Contact Information

Telephone: (619) 533-3476
Fax: (619) 533-3448
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Section 3: Authority, Statutory Requirements, other Laws and Policies

The Commission shall comply with all applicable laws, including, but not limited to, the San Diego Charter, the San Diego Municipal Code [SDMC], the Ralph M. Brown Act (Government Code sections 54950, et seq.), and the Political Reform Act of 1974 (Government Code sections 81000, et seq.). These Operating Policies are intended to supplement the provisions contained with the San Diego Municipal Code at sections 26.0401 through 26.0456.

ARTICLE II - MISSION STATEMENT

To preserve public confidence in our city government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.

ARTICLE III - ETHICS COMMISSION

Section 1: Function

The Ethics Commission shall have responsibility for the impartial administration, implementation, and enforcement of San Diego's local governmental ethics laws set forth in the San Diego Municipal Code concerning campaign finance, lobbying, conflicts of interest, and governmental ethics.

Section 2: Compensation

Commissioners shall serve without any compensation. Commissioners may be reimbursed for expenses incurred in the performance of Commission duties.

Section 3: Oath of Public Office

Acceptance of the Oath of Public Office constitutes a Commissioner's sworn responsibility to serve well and to faithfully discharge their duties and responsibilities diligently and consistent with the laws of the City of San Diego, and all pertinent state and federal laws.

ARTICLE IV – OFFICERS

Section 1: Officers

The Officers of the Commission are a Chairperson and Vice-Chairperson.

Section 2: Term of Office

The Commission shall annually elect its officers by a majority vote at the Commission's first open meeting in June. The term of each office is one year.

Section 3: Chairperson

The Chairperson shall preside at all meetings of the Commission and is an ex-officio non-voting member of all committees except a nomination committee, if one is convened. The Chairperson is accountable to the Commission as a whole in setting policy and shall also perform such other duties as may be assigned by the Commission. The Chairperson, and/or the Chairperson's designee, serves as the liaison to the media and other departments, agencies, and committees as necessary. At the end of the calendar year the Chairperson, along with the Executive Director, shall submit a written annual report to the Commission for approval, summarizing the activities, accomplishments, and budgetary needs of the Commission during the term of office.

Section 4: Vice Chairperson

The Vice Chairperson shall perform the duties and responsibilities that may be delegated by the Chairperson, and the assignments traditionally assigned to that office. In the absence or disability of the Chairperson, the Vice Chairperson shall perform the duties as described in Article IV, Section 3.

ARTICLE V - COMMISSION STAFF, CONSULTANTS, AND CONTRACTORS

Section 1: Executive Director

The Executive Director is appointed by the Commission, subject to confirmation by the City Council, and serves at the pleasure of the Commission. The Commission shall conduct a formal performance evaluation of the Executive Director on an annual basis in addition to conducting an informal midyear informal evaluation. The formal evaluation shall be performed in a manner consistent with the evaluation process used by the City's Personnel Department.

Section 2: Employees

The Executive Director shall have the authority to hire and remove employees within constraints set forth by the Civil Service Commission, the Personnel Department, and the Commission's budget.

Section 3: Contractors and Consultants

The Executive Director shall have the authority to hire independent contractors and consultants within constraints set forth by the City's Council Policies, Administrative Regulations, and the Commission's budget.

Section 4: Legal Advisor

The Ethics Commission General Counsel shall provide legal services to the Commission. The General Counsel may be an employee of the Commission hired by the Executive Director, or an independent contractor hired by the Executive Director. In the event that the General Counsel has a financial interest or other conflict of interest in an advisory or enforcement matter, the Commission may retain outside counsel to advise the Commission. In addition, the Commission may retain outside counsel to advise the Commission when ethical considerations warrant that the Commission and the Executive Director be advised separately.

ARTICLE VI – COMMITTEES

Section 1: Standing Committees

The Chairperson and/or the Commission, at its discretion, may establish standing committees to perform ongoing tasks or functions as necessary. Standing committees shall meet when deemed necessary by a majority of the Committee membership. All standing committee meetings shall comply with public notice requirements. A majority of the members of a standing committee constitutes a quorum.

Section 2: Ad hoc Committees

The Chairperson and/or the Commission, at its discretion, may establish ad hoc committees of no more than three members to perform discrete tasks or functions as necessary. Ad hoc committee meetings are not subject to public notice requirements.

ARTICLE VII - COMMISSION MEETINGS

Section 1: Meetings Open to the Public

In accordance with the Ralph M. Brown Act and Council Policy 000-16, Commission meetings shall be conducted in full view of the public and news media except for matters requiring confidentiality, such as personnel and administrative litigation matters discussed in section 8.

Section 2: Meeting Schedule

Regular meetings shall be held in accordance with a legislative calendar adopted annually and amended as necessary by the Commission. When deemed appropriate, the Commission may adjourn a meeting scheduled on its calendar, and shall provide notice of such adjournment on a publicly posted agenda.

Section 3: Location of Meetings

Regular Commission meetings shall be held in the 12th Floor Committee Room of the City Administration Building. The Commission may change the location of a meeting to accommodate other uses of the Committee Room or for any other reason deemed appropriate by the Commission.

Section 4: Notice of Meetings

Notices and agendas of all regular and special Commission meetings shall be posted at the City Administration Building in a place freely accessible to the public. The notices and agendas shall also be posted on the Commission's web page and mailed to each Commissioner and any person who files a written request for such notice with the Commission. Notice of regular meetings shall be posted at least 72 hours before the meeting. Notice of special meetings shall be posted at least 24 hours before the meeting.

Section 5: Quorum

At all meetings of the full Commission, the presence of a majority (4) of the members shall constitute a quorum for all purposes. The act of the majority of the members of the Commission shall be the act of the full membership.

Section 6: Excused Absences

Prior notification to the Chairperson of absence from Commission meetings constitutes an excused absence.

Section 7: Public Comment

All interested persons shall be allowed to express their views at Commission meetings regarding matters within the jurisdiction of the Commission. All Commission meetings shall provide an opportunity for public comment on matters not listed on the agenda but within the jurisdiction of the Commission. Such opportunity for public comment shall appear as an item on the agenda. Each person wishing to speak before the Commission shall be allowed to do so subject to the Commission's right to limit the individual and total time for public comment. Public comment shall be allowed on each matter listed on the agenda, before any vote or action is taken by the Commission on an item. Each person wishing to speak on an agenda matter may do so subject to the Commission's right to limit the individual and total time for public comment. The Commission shall urge the public, in the strongest terms possible, not to make complaints at public meetings since the public disclosure of such complaints may undermine any subsequent investigation undertaken.

Section 8: Meeting Minutes

Minutes shall be taken at every regular and special Commission meeting and shall be approved by majority vote of the Commission.

Section 9: Closed Sessions

The Commission is authorized to hold closed (non-public) sessions at regular and special meetings for purposes of confidential discussions, such as the discussion of job performance, or dismissal of employees, anticipated or pending litigation. Upon consultation with the Ethics Commission General Counsel, and the determination that a closed session is both authorized and appropriate under the circumstances, the Chairperson of the Commission may call for a closed session. Appropriate notice shall be given of all closed sessions.

Section 10: Special Meetings

The Chairperson of the Commission may call special meetings to address specific matters pursuant to public notice requirements.

ARTICLE VIII - AGENDA REQUIREMENTS

Section 1: Agenda Preparation

The agenda is prepared through the joint effort of the Commission Chairperson and the Executive Director. The Executive Director shall work with the Chairperson to develop the agenda for all meetings. The agenda shall contain a meaningful description of each item to be transacted or discussed at the Commission meeting so as to alert those whose interests may be affected by the item that he or she may have reason to attend the meeting or seek more information about the item.

Section 2: Consent Calendar

A consent calendar is the portion of the printed agenda that lists routine matters expected to be non-controversial and on which there will be no questions. There will be no separate discussions on a Consent Calendar item unless a request is made by a Commission member or the public, in which event the matter shall be removed from the consent Calendar and considered as a separate item.

ARTICLE IX – VOTING

Section 1: Voting and Abstention

Each member present at a Commission or committee meeting shall vote on all matters put to a vote~~,~~ unless the member ~~first requests and is excused from voting by a motion adopted by a majority of the members present, or unless the member has a financial interest or other conflict of interest which legally precludes that member from participating in the matter~~ is legally disqualified from participating in the decision or otherwise believes that he or she may be unable to participate in the decision in an entirely impartial manner. Any member recusing himself or herself from the decision shall, at that time, identify the basis for recusal.

Section 2: Voting by Proxy

Voting by proxy is prohibited.

ARTICLE X - PARLIAMENTARY PROCEDURE

Section 1: Robert's Rules of Order (Newly Revised)

Except where the Charter or other rules provide to the contrary, or in the case of emergency, meetings shall be governed by Robert's Rules of Order (newly revised).

ARTICLE XI - STANDARDS OF CONDUCT

Section 1: Standards

In accepting the Oath of Office, Commissioners shall maintain the highest standards of professional and personal conduct. They shall support the mission, goals, and objectives of the City of San Diego Ethics Commission; instill in the public a sense of confidence about the Commissioners' conduct and intentions; uphold all laws and regulations; and refrain from using their official positions to secure special advantage or benefit for themselves or others. In order to set the highest standards of conduct, including the appearance of propriety in the operation of government, and in order to assure public confidence in governing institutions, the City of San Diego Ethics Commission commits itself to:

(a) Encouraging and promoting integrity in government by education and example;

(b) Fairly and objectively enforcing the city's ethics laws and regulations;

(c) Being accountable for its rules of procedure and decisions, and stimulating accountability of all elected and appointed officials and government employees;

(d) Treating all staff, members of the public, and colleagues with courtesy, respect, objectivity, and fairness;

(e) Assuring honesty in all matters that come before the Commission, both individually and collectively; and,

(f) Conducting all business in a timely manner and in public meetings, with full disclosure of policies, procedures, and decision-making processes, except in those matters as specified by the Brown Act that may be dealt with in closed session.

Section 2: Representation of the Commission

Whenever a Commissioner communicates with the news media, or appears at a public hearing or before another City department to discuss existing or proposed legislation or policy, the Commissioner shall make every reasonable effort to explain to the Commissioner's audience whether the Commissioner is expressing an opinion, view, or position that is the individual Commissioner's or a view, position, or opinion of the Ethics Commission as a whole.

Whenever the Commission learns that a view, position, or opinion of the Ethics Commission as a whole has been misinterpreted or misrepresented in the media, at a hearing, or in a public forum, the Commission, through the Chairperson or the Chairperson's appointed representative, shall make every reasonable effort to clarify the Commission's true position as soon as practicable.

Commissioners and Commission staff shall not make any public comments regarding a pending complaint until the Commission has made a Probable Cause determination regarding the matter. Public comments may be made regarding a matter after a Probable Cause determination, but in order to fully respect the due process rights of respondents, including the right to a fair and impartial hearing, Commissioners and Commission staff shall exercise careful consideration and due caution in making any public comment while a matter is still pending.

ARTICLE XII – RECORD RETENTION

Section 1: Retention of Commission Records

The Commission staff shall maintain correspondence, audit files, case logs, audio recordings of Commission meetings, complaint and investigation files, formal advice letters, training materials, legislative amendment files, and research materials in accordance with the record retention schedule on file in the Office of the City Clerk.

Section 2: Materials on Ethics Commission Website

It is the policy of the Ethics Commission to make certain materials available on the Ethics Commission website indefinitely. These materials consist of annual reports, advice letters, stipulations and orders, audit reports, meeting agendas, meeting minutes, and press releases.

Materials that are subject to revisions and updates over time, including the Commission's Operating Policies, Hearing Procedures, fact sheets, campaign manuals, lobbying manuals, audit manuals, and frequently asked questions may be removed from the website when outdated or replaced by more current material.

ARTICLE XIII – RELEASE OF RECORDS

Section 1: Release of Records to Other Law Enforcement Agencies

(a) The Commission staff will confirm or deny the existence of an Ethics Commission investigation for any law enforcement agency. This will help avoid duplication of efforts by governmental agencies. In other words, if the Commission is currently working on an investigation, another law enforcement agency may decide to wait for the Commission's determination before proceeding.

(b) If the Commission has already completed an investigation, and a law enforcement agency has obtained a release from a respondent/witness authorizing the disclosure of investigative records related to that respondent/witness, then Commission staff will provide the law enforcement agency with a copy of such records. The production of investigative materials will be limited to documents and statements provided by respondents/witnesses, and will not include any closed session materials.

(c) If a law enforcement agency submits a request for documents that are contained within a pending investigative file, the request will be considered by the Commission in closed session, regardless of whether the request is accompanied by a release from a respondent/witness. At that time, the Commission shall confer with the General Counsel regarding any legal issues that are related to the sharing of documents, and the Commission may seek input from the Executive Director regarding any relevant policy considerations. The Commission shall then determine whether some or all of the documents requested will be provided to the law enforcement agency.

(d) If a law enforcement agency submits a request for documents that are contained within a closed investigative file, and does not accompany the request with a release from a respondent/witness, then the Chair shall docket for the Commission's consideration at an open session meeting the matter of establishing an ad hoc subcommittee for the purpose of reviewing the particular request. The Executive Director shall confer with the hoc subcommittee before deciding whether some or all of the documents requested will be provided.

ARTICLE XIV - AMENDMENTS

Section 1: Amending Operating Policies

These Operating Policies shall be reviewed annually or as necessary. They may be amended at any regular meeting of the Commission by an affirmative vote of at least four Commissioners, provided such proposed amendments are circulated in writing to all Commissioners at least three (3) days prior to such meeting, and three days public notice shall be posted.

Section 2: History of Amendments

Approved July 25, 2002; amended February 12, 2004; amended February 10, 2005; amended February 12, 2009; amended _____, 2010.