



City of San Diego Ethics Commission

OPERATING POLICIES

Approved by the Ethics Commission on _____, 2009

City of San Diego Ethics Commission
Telephone: (619) 533-3476
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www.sandiego.gov/ethics

ARTICLE I - IDENTIFICATION

Section 1: Name

City of San Diego Ethics Commission

Section 2: Contact Information

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E-Mail: ethicscommission@sandiego.gov

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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 within 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: Number, Appointing Authority and Qualifications

~~The Ethics Commission shall consist of seven members appointed by the Mayor 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. 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 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. The nominations shall reflect the diversity of the City. (Source: SDMC § 26.0404(c))~~

Section 2: Term of Appointment

~~The members of the Commission shall serve four year terms beginning on July 1 and ending on June 30. Three of the Mayor's initial seven appointees shall serve two year terms. A member who has served two complete, consecutive four-year terms shall be ineligible for reappointment for four years after leaving office. (Source: SDMC § 26.0405)~~

Section 3: Conditions of Appointment:

- ~~(a) Each Commissioner shall be a qualified elector of the City of San Diego, and of high moral character and integrity.~~

- ~~(b) No member of the Commission shall make a financial contribution to, or publicly support or oppose, a candidate for City office.~~
- ~~(c) No member of the Commission shall become a candidate for elective governmental office during his or her tenure on the Commission, and for twelve months thereafter. Each prospective Commissioner shall sign a written declaration agreeing not to run for elective governmental office for at least twelve months after completion of service on the Commission, and waiving the legal right to challenge this provision.~~
- ~~(d) No member of the Commission is permitted to act as a lobbyist required to register with the City pursuant to Chapter 2, Article 7, Division 40 of the San Diego Municipal Code.~~

~~Failure to comply with any of these conditions shall constitute an automatic resignation from the Commission.~~

~~(Source SDMC § 26.0406)~~

Section 4: Vacancy and Removals

~~The Mayor shall fill any vacancies on the Commission by sending 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 Municipal Code section 26.0404(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), the Mayor may call for additional nominees. (Source: SDMC § 26.0404(d))~~

~~The City Council may remove a member of the Commission for cause by a vote of a majority of the members of the Council. Before the Council may remove a member of the Commission, written charges shall be made against the Commission member and an opportunity afforded for public hearing before the Council upon such charges. (Source: SDMC § 26.0408)~~

Section 5 1: Compensation

~~Commissioners shall serve without any compensation. Commissioners may be reimbursed for expenses incurred in the performance of Commission duties. (Source: SDMC §§ 26.0403, 26.0410)~~

Section 6 2: 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.~~

Section 7 3: 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 8: Duties and Responsibilities

The Commission shall:

- ~~(a) Provide training and education regarding local governmental ethics laws to City officials and employees, and to candidates for City office and their staff;~~
- ~~(b) Issue formal and informal advice and opinions regarding local governmental ethics laws within the Commission's jurisdiction, and provide immunity from administrative penalties to persons who act in good faith based upon a formal opinion issued to him or her by the Commission;~~
- ~~(c) Review campaign, lobbying, and conflict of interest disclosure forms. Reviews and audits of such forms shall be conducted in accordance with an Audit Manual adopted by the Commission and approved by the City Council;~~
- ~~(d) Propose formal complaint and investigation procedures for violations of the City's governmental ethics laws, subject to City Council approval;~~
- ~~(e) Investigate and enforce violations of local governmental ethics laws, and refer such matters to other enforcement agencies when appropriate. Complaints made to the Commission will be handled in accordance with the guidelines described in Section 9, and more fully set forth in the investigation and enforcement procedures adopted by the Commission, approved by the City Council, and codified in the San Diego Municipal Code at sections 26.0401, et seq.;~~
- ~~(f) Review the City's existing governmental ethics laws, and propose updates to those laws to the City Council for its approval;~~
- ~~(g) Publish an annual report describing the activities of the Commission during the previous year, including the number of complaints handled and investigations conducted, the types of violations alleged, and the action taken in response to complaints received and investigations conducted; and,~~
- ~~(h) Adopt additional rules and regulations, subject to approval of the City Council, to carry out the purposes of Chapter 2, Article 6, Division 4 of the San Diego Municipal Code.~~

~~(Source: SDMC § 26.0414)~~

Section 9: Complaints

- ~~(a) The Commission shall accept complaints alleging violations of governmental ethics laws.~~
- ~~(b) The Commission shall consider formal complaints submitted to it in writing and signed by the Complainant under penalty of perjury. The Commission may also consider informal complaints. The Executive Director is vested with the responsibility of screening all complaints through a preliminary review process.~~
- ~~(c) The Executive Director shall make reasonable efforts to complete a preliminary review of each complaint within thirty days. Upon finding that a complaint warrants investigation, the Executive Director shall seek the permission of the Commission to conduct a formal investigation.~~

- ~~(d) The Commission shall make a determination, in closed session, regarding whether a formal investigation is appropriate, or whether alternative action, including dismissal of the complaint or referral to another enforcement entity, is appropriate.~~
- ~~(e) The Executive Director shall attempt to complete a formal investigation within 180 days, but may take up to 360 days.~~
- ~~(f) After completing a formal investigation, the Executive Director may present the results of the investigation to the Commission and seek the Commission's authorization to proceed with a Probable Cause Hearing.~~
- ~~(g) The Commission shall make a determination, in closed session, regarding whether a Probable Cause hearing is appropriate, or whether alternative action, including dismissal of the complaint or referral to another enforcement entity, is appropriate.~~
- ~~(h) At a Probable Cause Hearing, the Executive Director shall serve as the Petitioner (unless the Commission determines that ethical considerations warrant that a pre-qualified individual assume the role of Petitioner) and shall have the responsibility of presenting the case against the Respondent.~~
- ~~(i) Either (1) one Commissioner; (2) an ad hoc three member subcommittee of the Commission; or (3) an individual selected from a list of volunteers pre-qualified by the Commission shall serve as the Presiding Authority at the Probable Cause Hearing.~~
- ~~(j) Following the Probable Cause Hearing, the Commission shall decide whether probable cause exists to believe that a violation of governmental ethics laws has occurred, and if it does so, shall order that an Administrative Hearing be conducted.~~
- ~~(k) At an Administrative Hearing, the Executive Director shall serve as the Petitioner (unless the Commission determines that ethical considerations warrant that a pre-qualified individual assume the role of Petitioner) and shall have the responsibility of presenting the case against the Respondent.~~
- ~~(l) Either the (1) Commission as a whole; (2) an ad hoc three member subcommittee of the Commission; or (3) an individual selected from a list of volunteers pre-qualified by the Commission shall serve as the Presiding Authority at the Administrative Hearing.~~
- ~~(m) Following the Administrative Hearing, the Commission shall vote in open session regarding whether a violation of governmental ethics laws has occurred. A concurring vote of four Commissioners is required to find that a violation has occurred. A concurring vote of five Commissioners is required to impose a penalty on the Respondent.~~
- ~~(n) The final decision of the Commission shall be expressed in an Administrative Enforcement Order.~~

~~(Source: SDMC §§ 26.0421—26.0456)~~

Section 4: Excused Absences

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

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 July. The term of each office is one year. No officeholder shall serve for more than two consecutive one year terms. (Source: SDMC § 26.0404(e))

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: Minimum Staff

~~The Commission shall employ a staff consisting of no less than a full time executive director, a clerical assistant, and an investigator.~~

Section 2: Executive Director

The Executive Director is appointed by and serves at the pleasure of the Commission. ~~The appointment of the Executive Director shall be subject to confirmation by a majority of the City Council. The Executive Director shall serve as the Commission's administrator and is responsible for conducting preliminary reviews of complaints made to the Commission; supervising the investigation of complaints; serving as petitioner in administrative hearings; and negotiating the settlement of enforcement actions.~~ 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. ~~(Source: SDMC § 26.0411)~~

Section 3 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 4 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 5: 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. ~~(Source: San Diego City Charter, Sections 40 and 41(d))~~

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 72 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 5: 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 7 6: Meeting Minutes

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

Section 8 7: 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 9 8: 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.

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 – RELEASE OF RECORDS

Section 1: Release of Records to the Public

- ~~(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 or until the matter is closed.~~
- ~~(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.~~

~~(Source: SDMC § 26.0455)~~

Section 2-1: 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 XIII - AMENDMENTS

These Operating Policies shall be reviewed annually or as necessary. They may be amended at any regular meeting of the Commission by majority vote of those present, 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.