

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

**PROPOSED AMENDMENTS**

Rev. August 6, 2009

**Chapter 2: Government  
Article 7: Elections, Campaign Finance and Lobbying  
Division 4: Ethics Commission**

**STRIKEOUT VERSION**

**§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 Respondent* [no change in text]

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

Revised to include investigatory subpoenas

*Subpoena duces tecum* [no change in text]

**§26.0416 Prohibition Against False Testimony and False Documentation**

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

New section making it unlawful to provide false testimony or documentation to the Ethics Commission.

(1) knowingly make a false statement regarding a material fact during the course of a Commission investigation, a Probable Cause Hearing, or an Administrative Hearing; or

(2) submit any books, papers, records, or other documentation during the course of a Commission investigation, a Probable Cause Hearing, or an

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

Enforcement of violation is subject to the SDMC's code enforcement procedures.

- (b) A violation of subsection (a) is subject solely to the administrative remedies contained in Chapter 1, Article 2 of the Municipal Code. Pursuant to these remedies, the *Commission* may instruct the *Executive Director* to issue a Notice and Order to any *person* after the *Commission*, by a vote of at least five of its members, has determined that good cause exists to believe that the *person* has violated subsection (a). The Notice and Order shall describe the nature of the violation and may impose a civil penalty in accordance with section 12.0805. Upon the *person's* failure to comply with the provisions of the Notice and Order, the *Executive Director* may, as set forth in section 12.0807, request the appointment of an Enforcement Hearing Officer to conduct an Administrative Enforcement Hearing in accordance with Chapter 1, Article 2, Division 4 of the Municipal Code for the purpose of affirming the Notice and Order.

#### **§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.

- (d) Notwithstanding subsections (b) and (c), *Subpoenas* and *Subpoenas duces tecum* issued by the *Commission* during the formal investigation of a complaint shall be served in the same manner as provided in Government Code section 11184(a). *Subpoenas* and *Subpoenas duces tecum* issued after the *Commission* has appointed a *Presiding Authority* to conduct a *Probable Cause Hearing* or *Administrative Hearing* shall be served in the same manner as provided in Government Code section 11450.20(b).

New subsection detailing service requirements for subpoenas

#### **§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 and California Government Code sections 11180-11191 for guidance in exercising its authority to issue *subpoenas* and *subpoenas duces tecum*.
- (b) During the formal investigation of a complaint, the *Executive Director* may seek *Subpoenas* and *Subpoenas duces tecum* by submitting a written request to the *Commission*.

Additional guidance from Gov't Code sections pertaining to state investigations

Additional requirements for issuance of investigatory subpoenas and subpoenas duces tecum

Gives Executive Director discretion to obtain subpoena w/o first seeking voluntary compliance so long as Commission is informed.

Establishes basis for granting subpoena request.

Witness must be advised of area of inquiry and right to counsel.

- (1) All requests for an investigatory Subpoena shall be accompanied by a declaration specifying the name and address of the witness and setting forth the materiality of the testimony being sought from the witness.
- (2) All requests for an investigatory Subpoena duces tecum shall be accompanied by a declaration specifying the documents or records sought, setting forth the materiality of the items sought, and stating that the witness has the items in his or her possession or under his or her control.
- (3) Requests for an investigatory Subpoena or Subpoenas duces tecum shall be made only after Commission staff has made reasonable efforts to obtain information on a voluntary basis, except that the Executive Director may exercise his or her discretion to forego this requirement so long as he or she notifies the Commission at the time of the request that voluntary efforts were not pursued.
- (4) The Commission shall grant the request only after a concurring vote of at least four of the Commissioners in closed session. The Commission shall not issue a Subpoena or Subpoena duces tecum during a formal investigation unless it finds, ~~based on information submitted to it in writing,~~ that good cause supports the issuance of the information to be requested in the Subpoena or Subpoena duces tecum, and that the information sought is material to a specific matter then under investigation.
- (5) Each Subpoena issued under subsection (b) shall notify the witness of the specific area of inquiry relating to the testimony sought, and of the fact that the witness has a right to be accompanied by legal counsel or any representative of his or her choosing while providing testimony.

Executive Director may administer oaths.

(6) The Executive Director shall have the authority to administer oaths and affirmations on behalf of the Commission to any witness providing testimony under subsection (b).

Witnesses have right to obtain recording of their testimony.

(7) Upon the request of any witness providing testimony pursuant to a Subpoena issued under subsection (b), Commission staff shall make an electronic recording of that testimony and provide a true and complete copy of that recording to the witness. Every witness providing testimony pursuant to a Subpoena issued under section (b) shall also have to right to make his or her own recording of any testimony provided by that witness.

(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

Clarifies state law notice requirements for personal and financial records.

Procedure section 1985.3, or the financial records of a customer, as that term is defined in California Government Code section 7465, notice to that consumer or customer shall be given as required by California Code of Civil Procedure Section 1985.3 or Government Code Section 7474, whichever is applicable.

(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(d).

- (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.~~

Language moved to subsection (h).

~~(h)~~ (h) 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 ~~and California Government Code sections 11180 through 11191~~. Failure to comply with a *Subpoena* or *Subpoena duces tecum* issued pursuant to this section may be punished as a contempt of court and may be prosecuted as a misdemeanor.

Language moved from previous subsection.

~~(i)~~ (i) 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.

~~(j)~~(j) 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*.

~~(k)~~(k) 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.