

Item 5b - Redline of Amendments to PEC Complaint Procedures



CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

MEDIATION AND COMPLAINT PROCEDURES

Effective January 3, 2020

I. INTRODUCTION

The Public Ethics Commission (“Commission”) adopts the following procedures applicable to the Commission’s enforcement authority as granted by the Oakland City Charter and Oakland Municipal Code.

A. Purpose. These procedures are intended to ensure a fair, just, and timely process for the review, investigation, and hearing of complaints submitted to the Public Ethics Commission by doing the following:

1. Maintain objective standards for investigations and enforcement of the law,
2. Eliminate any improper influence in the investigation and resolution of complaints,
3. Provide a fair hearing for persons and entities accused of violations,
4. Ensure timely enforcement and complaint resolution, and
5. Coordinate with other governmental agencies to share enforcement responsibility in a manner most appropriate to ensure justice is served.

B. Enforcement Authority. These procedures are applicable to potential violations of the following laws:

1. The Oakland Campaign Reform Act;
2. The Oakland Government Ethics Act;
3. The Oakland Limited Public Financing Ordinance;
4. The Oakland Sunshine Ordinance;
5. The Oakland Lobbyist Registration Act;
6. The Oakland False Endorsement in Campaign Literature Act; and
7. Any other law or policy over which the Commission has jurisdiction or with which the Commission is charged with overseeing compliance.

II. DEMAND FOR MEDIATION OF PUBLIC RECORD REQUEST UNDER THE OAKLAND SUNSHINE ORDINANCE

A. Scope of Section. This section applies only to a demand for mediation of an unfulfilled public records request under the Oakland Sunshine Ordinance. All other complaints are subject to the procedures in the subsequent sections of these Complaint Procedures, starting with Section III.

Item 5b - Redline of Amendments to PEC Complaint Procedures

B. Mediation. A person whose public records request was denied, in whole or in part, by a local agency or department may demand mediation of their request.¹ To begin mediation, a requestor should complete the Commission's Mediation Request Form and submit it to Commission staff. Mediation is the first step in the process of submitting a matter to the Commission; mediation must be requested and completed before submission of a formal complaint to the Commission.

1. The Executive Director of the Commission, his or her designee who may be a Commissioner, or a mutually agreed upon volunteer mediator, may serve as mediator.²
2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable.³
3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendation is not binding on any party.⁴
4. Statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.⁵
5. At the conclusion of mediation, the mediator shall close the mediation and issue a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts the mediator would recommend to resolve the dispute. The report shall be filed with the Commission, provided to all parties, and made available for public inspection.

C. Additional Remedies. After the Commission closes a mediation:

1. The requestor may file a formal complaint requesting that the Commission investigate whether the local agency's or department's actions violated the Oakland Sunshine Ordinance. (See procedures beginning in Section III.). In that case, the mediator will offer to pre-fill a formal complaint form based on the information provided in the Mediation Request Form and provide a copy to the requestor.
2. If the requestor does not wish to submit a formal complaint, the mediator may submit an informal complaint. (See procedures beginning in Section III.)
3. No person may file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation.⁶ Participation in mediation is satisfied when the complainant was responsive to the mediator and willing to take action to complete the mediation.

¹ OMC 2.20.270(C)(1).

² OMC 2.20.270(C)(1).

³ OMC 2.20.270(C)(2).

⁴ OMC 2.20.270(C)(3).

⁵ OMC 2.20.270(C)(3).

⁶ OMC 2.20.270(F).

Item 5b - Redline of Amendments to PEC Complaint Procedures

4. In order to prevent statements obtained during mediation from being used in any related proceeding, the mediator will not participate in any subsequent investigation.⁷
5. This mediation process constitutes the administrative process for review and enforcement required by the Oakland Sunshine Ordinance.⁸ Upon closure of mediation, the requestor may seek injunctive relief, declaratory relief, or a writ of mandate in any court of competent jurisdiction, whether or not the person also files a complaint with the Commission.⁹ A requestor must complete the administrative process before seeking court action.¹⁰

III. SUBMITTING A COMPLAINT

A. Complaints. A complaint alleging a violation of any law listed above may be submitted by any person, including a member of the public, any employee or official of the City of Oakland, or any member of the Commission.

1. Formal Complaints. A formal complaint must be submitted either 1) in writing on a complaint form as prescribed by Commission staff, or 2) in a manner designated as a method for submitting a formal complaint as determined by Commission staff. The forms and instructions will be available at the Commission's office, on the Commission website, and upon request to Commission staff.

a. Contents of Formal Complaints. A formal complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint also must include the following information:

- i. name, address, and phone number of complainant,
- ii. name of the respondent, and any known addresses or phone numbers,
- iii. the facts of the alleged violation,
- iv. area of law allegedly violated, if known,
- v. names and addresses of any witnesses, if known, and
- vi. any documentation that might aid in the investigation of the alleged violation.

b. Effect of Formal Complaints.

- i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
- ii. Commission staff shall process and review all formal complaints.

⁷ OMC 2.20.270(C)(3).

⁸ OMC 2.20.270(A)(3).

⁹ OMC 2.20.270(B).

¹⁰ OMC 2.270(B)(1).

Item 5b - Redline of Amendments to PEC Complaint Procedures

2. **Informal Complaints.** An informal complaint may be submitted by telephone, in person, or in writing.
 - a. **Contents of Informal Complaints.** An informal complaint must include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a formal complaint will be considered as an informal complaint.
 - b. **Effect of Informal Complaints.** Commission staff has no obligation, but retains discretion, to process and review informal complaints. In exercising discretion to process and review informal complaints, Commission staff should consider the nature of the alleged violation, whether the information contained in the complaint permits review and investigation of the alleged violations, and whether the complainant is justified in submitting the complaint in a form other than the proscribed form.
 - c. **Anonymous Complaints.** A complaint may be submitted without a name or without identifying the complainant, and these complaints will be considered anonymous complaints. An anonymous complaint shall be considered an informal complaint, whether submitted on a formal complaint form or in another form, and the processing of these complaints will be at the discretion of Commission staff.
3. **Commission-initiated Complaints.** Commission staff may initiate an investigation without conforming to any formal complaint requirements. A member of the Commission may submit a formal or informal complaint. A member of the Commission will be recused from all consideration, review, investigation, or hearing of any complaint submitted by the member, but may provide information or be called as a witness at any hearing on the complaint.
4. **Withdrawal of a Complaint.** If a complainant requests that his or her complaint be dismissed or withdrawn, the Commission may continue to review, investigate, and hold hearings or proceedings regarding the violations alleged in the complaint.
5. **Repetitive and Unmeritorious Complaints.** Any person who has submitted four (4) complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a “repetitive unmeritorious complainant.” Any subsequent complaint submitted by a “repetitive unmeritorious complainant” during the twelve month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. The Commission Chair’s decision shall be final and shall be reflected in the Commission’s public report on pending complaints, and Commission staff shall notify the complainant of the determination. If the Commission Chair determines that there are grounds to investigate any subsequent complaint, the complaint shall be forwarded to Commission staff to receive and process the complaint.

Item 5b - Redline of Amendments to PEC Complaint Procedures

6. Ex-Parte Communications. Once a complaint is submitted, no Commissioner shall engage in oral or written communications, outside a hearing, Commission meeting, or other meeting that provides all relevant parties with proper notice and opportunity to be heard regarding the substance of the complaint with the respondent, complainant, witnesses, or any person communicating on behalf of the respondent or complainant, unless the communication is necessary to investigate, remediate, enforce or enter into a stipulated order regarding the alleged violation.

B. Preliminary Review of Complaints. Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the person or entity accused of a violation, and any other reasonable inquiry to determine whether a full investigation is warranted.

IV. PRELIMINARY REVIEW OF COMPLAINTS

A. Intake Resolution. After conducting a preliminary review of a complaint, Commission staff shall decide whether to open a case for investigation, resolve the complaint by way of dismissal, or recommend closure. Commission staff shall notify the complainant of the result of the preliminary review in writing.

1. Dismissal. Commission staff may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to the following:

- a. The allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction.
- b. The complaint does not include enough information to support further investigation.
- c. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
- d. The complaint should be referred to another governmental or law enforcement agency better suited to address the issue.

2. Closure. Commission staff may recommend closure of a complaint if it falls within the Commission's jurisdiction but there is reason to support closure. The Commission shall review Commission staff's determination at a subsequent Commission meeting and must take formal action in order to close the complaint. Commission staff's recommendation to close the complaint may include one or more of the following actions:

- a. Close with no action
- b. Close with advisory letter
- c. Close with warning letter

Item 5b - Redline of Amendments to PEC Complaint Procedures

- d. Close with additional Commission action, such as holding an informational hearing or providing follow-up diversion requirements, training or communications on a matter
 3. **Referral.** Commission staff may refer a complaint to the appropriate enforcement authority instead of or in addition to dismissal, closure, or the opening of an investigation.
 4. **Complaints Against the Public Ethics Commission.** Within 90 days of receiving a complaint against the Commission, Commission members, or Commission staff, Commission staff will reply to the complainant with the name and address of the entities that have concurrent or overlapping jurisdiction and inform the complainant that they have the right to file a civil action. In most instances, the Commission will close the complaint. However, where a single respondent Commissioner or staff can be walled off entirely from the investigation and approval process, the Commission may continue adjudicating the complaint, in addition to making a referral to an alternate entity.
- B. Report to the Commission.** Commission staff shall notify the Commission of all dismissals by reporting the information, including the action taken and the reason for dismissal, on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
- C. Notification to Respondent.** After the preliminary review of the complaint, if Commission staff dismisses the complaint, then Commission staff may notify the respondent of the receipt and dismissal of the complaint. If Commission staff recommends closure or the opening of an investigation, then Commission staff shall notify the respondent of the complaint and the issue(s) to be investigated in writing.
- D. Notification to Complainant.** After the preliminary review of the complaint, Commission staff shall notify the complainant of its decision to dismiss, close, make a referral, or open an investigation. If Commission staff opens an investigation, Commission staff shall also provide to the complainant a copy of the notice to the respondent. The complainant shall have 10 days to respond to Commission staff concerning the scope of the investigation, and Commission staff may alter the scope of the investigation based on feedback from the complainant.
- E. Final Closure.** A dismissal, after notification to the Commission pursuant to subsection IV.B, or a closure of a complaint is a final decision and represents closure of the administrative process for that complaint.

V. INVESTIGATION OF COMPLAINTS

- A. Investigation.** If Commission staff determines that the allegations in the complaint warrant further inquiry, Commission staff shall open an investigation regarding the violations alleged in the complaint. An investigation may include, but not be limited to, interviews of the complainant, respondent, and any witnesses, and the review of documentary and other evidence. Commission staff, and anyone conducting interviews

Item 5b - Redline of Amendments to PEC Complaint Procedures

- on behalf of Commission staff, may administer oaths and affirmations for interviewees to tell the truth under penalty of perjury.
- B. Subpoenas During Investigation.** The Executive Director may issue a subpoena on behalf of the Commission if he or she finds, based on the information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation and is under the control of the person or entity being subpoenaed. The Executive Director shall report each subpoena he or she issues on behalf of the Commission to the Commission Chair within 7 days of issuing the subpoena.
 - C. Contacting the Respondent.** If Commission staff's attempt to contact a person or entity accused of a violation is unsuccessful, Commission staff will pursue other methods of contact, including formal methods, such as certified mail, and informal methods, such as social media channels or neighborhood contacts, as appropriate.
 - D. Audit Program.** Commission staff may initiate routine investigations or audits as part of its enforcement program. Such investigations may use a streamlined review process to determine compliance with City ordinances and need not include a full investigation or written summary. Commission staff may create standard forms for summarizing and communicating the audit findings.

VI. RESOLUTION OF COMPLAINTS

- A. Probable Cause Report.** After an investigation, and, in the absence of a stipulated agreement or other recommended resolution, Commission staff shall prepare a written report that includes a summary of the evidence gathered and a recommendation of whether there is probable cause to believe that a violation occurred. The probable cause report shall be submitted to the Commission for consideration.
- B. Notification.** At the time that Commission staff submits a probable cause report to the Commission for consideration (per the advanced-notice requirements for the public meeting), Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.
- C. Commission Review.** Upon review of Commission staff's written report and recommendation of whether there is probable cause to believe that a violation occurred, the Commission may decide to close the matter, request further investigation, and/or request that Commission staff seek a stipulated settlement.. In addition, if the Commission has determined that probable cause exists to believe that a respondent violated a law listed in Section I.B, the Commission may refer the matter to an administrative hearing or, for probable violations of the Oakland Sunshine Ordinance, may decide to file a court proceeding seeking injunctive relief, declaratory relief, or writ of mandate.¹¹ The Commission may issue a warning letter, advisory letter, or diversion agreement at any phase of the Commission's review, in conjunction with another remedy or as a stand-alone resolution.

¹¹ OMC 2.20.270(B).

Item 5b - Redline of Amendments to PEC Complaint Procedures

D. Stipulated Settlement. At any time after a complaint has been submitted, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulated agreement, followed by Commission approval of the decision. The Commission's Enforcement Penalty Guidelines outline the principles that guide Commission staff in determining fine amounts to pursue via stipulations.

1. **Stipulation.** Any proposed stipulation shall explicitly state that:

- a. The proposed stipulation is subject to approval by the Commission;
- b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
- c. The respondent understands and acknowledges that any stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- d. The respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and,
- e. In the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

2. **Commission Decision and Order.** The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority. Stipulated agreements must be approved by the Commission and, upon approval, be announced publicly.

3. **Concurrent Referral to Commission.** Commission staff may submit a probable cause report to the Commission for the Commission's consideration of other methods of resolution, including referring the matter to an administrative hearing, concurrently or in lieu of Commission staff's pursuit of a stipulated settlement. Commission staff may submit a probable cause report to the Commission for concurrent consideration, especially where doing so may result in more timely resolution of the matter.

E. Diversion Agreement. At any time after a complaint has been submitted or initiated by Commission staff, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a diversion agreement, followed by Commission approval of the agreement. If the diversion agreement is being entered into under a streamlined settlement, Commission approval is only necessary as specified in Section VI(H).

1. **Agreement.** Any proposed diversion agreement shall explicitly state that:

- a. The proposed diversion is subject to approval by the Commission, unless the diversion agreement is being entered into by way of a

Item 5b - Redline of Amendments to PEC Complaint Procedures

streamlined settlement under authority of the Executive Director pursuant to Section VI(H).

- b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
 - c. The respondent understands and acknowledges that any diversion agreement is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
 - d. The respondent agrees that in the event the Commission refuses to approve the proposed diversion agreement, it shall become null and void; and,
 - e. In the event the Commission rejects the proposed diversion agreement and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the diversion agreement.
2. **Commission Decision and Order.** The diversion agreement shall set forth the pertinent facts and may include an agreement as to the imposition of a fee, training requirement, and/or anything that facilitates the Commission's goals and that is agreed to by the respondent. Diversion agreements must be approved by the Commission and, upon approval, be announced publicly.
- F. Default Decision.** When a Respondent has failed to respond to or otherwise defend the complaint, or when a respondent waives his or her right to a hearing, the PEC may make a final decision against the respondent through the following default process:
1. Upon a finding of probable cause by the Commission, Commission staff shall prepare a written summary report, which shall include the charges, a summary of the evidence to support the charges, and an explanation of the default process, and shall serve the complaint on the Respondent via personal or substitute service.
 2. A Respondent has 30 days from the date he or she is served with the staff summary report to file a written response. The PEC may still accept a response from the respondent after 30 days, if Commission staff has not yet filed a written request for default with the Commission.
 3. After the 30 day response period has passed, Commission staff shall submit the summary report and a request for default decision to the Commission for review and decision at a subsequent Commission meeting. The request for default shall include an affidavit signed by Commission staff that attests to and includes the following:
 - a. Commission staff had attempted to notify the respondent on multiple prior occasions as specified, or the respondent has waived his or her right to a hearing;

Item 5b - Redline of Amendments to PEC Complaint Procedures

- b. The Commission made a determination of probable cause on a date specified;
 - c. Commission staff served the Respondent with notice of the complaint and pending default process; and
 - d. the documentation explains how Commission staff has met all of the default process requirements.
4. The request for default submitted to the Commission shall include the range of enforcement options available to the Commission, and it may include a recommendation by Commission staff for corrective, remedial or punitive actions, such as penalties and fines.
 5. The Commission shall determine whether to adopt, amend, or reject the findings and conclusions in Commission staff's summary report and recommendation, if any, including making a decision regarding corrective, remedial or punitive actions (penalties and fines) to impose on the Respondent in accordance with the adopted findings and consistent with the Commission's authority. The Commission's decision following approval of a default shall be final and shall constitute closure of the administrative process with respect to the complaint.
 6. The Commission can set aside a default decision upon written request of a Respondent, if the Respondent can show cause as to why the default decision should not have been approved.

G.

Court Proceeding. After the Commission has reviewed a probable cause report from Commission staff concerning an alleged violation of the Oakland Sunshine Ordinance, the Commission may decide to initiate court proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to obtain a Respondent's compliance with the Oakland Sunshine Ordinance.¹²

H. Streamlined Settlement. As an alternative to the procedures described in the rest of this Section VI, Commission staff may enter into a streamlined settlement agreement for low-level types of violations specifically identified in the PEC's Penalty Guidelines as being eligible for streamlined resolution.

1. The Executive Director may approve and enter into a streamlined settlement agreement on their own authority, without the necessity of a vote by the Commission, except for streamlined settlement agreements with the following types of respondents:
 - i. an elected City official or Oakland Unified School District Board of Education member;
 - ii. the Chief of Staff of an elected City official;
 - iii. a City Department Director; or

¹² OMC 2.20.270(B), OMC 2.24.020(E).

Item 5b - Redline of Amendments to PEC Complaint Procedures

iv. for violations of OCRA, a controlling candidate and/or their controlled committee, its treasurers, and its officers, where that committee has either received contributions or made expenditures of more than \$50,000 in the twelve (12) months prior to the violation.

2. For any streamlined settlement agreement entered into under authority of the Executive Director, Commission staff shall inform the Commission on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
3. Streamlined settlement agreements may take the form of a diversion agreement in lieu of, or in addition to, any penalties or late fees imposed.
4. Any streamlined settlement agreement can only be subsequently amended or rescinded by the Executive Director and for substantial non-compliance with the terms of the agreement, or other extraordinary circumstances frustrating the purpose of the agreement.

VII. ADMINISTRATIVE HEARING PROCESS

A. Selection of Hearing Panel or Officer. If the Commission decides to schedule a hearing pursuant to Section VI(B)(3), the Commission shall decide whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing officer.

1. If the Commission decides that the full Commission will not sit as a hearing panel, the Commission shall appoint the hearing officer(s).
2. If the Commission elects to use a hearing officer(s) provided by an outside entity, that entity shall appoint the hearing officer(s).
3. The selected hearing officer shall disclose any actual or potential conflicts of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, he or she might have with the City of Oakland, the parties, or a Commissioner, in which case, the appointing authority shall consider whether to appoint an alternative hearing officer(s).

B. Notice of Administrative Hearing. The Executive Director shall provide notice of the date, time and location of the hearing to the respondent at least 30 days prior to the date of the hearing. A copy of the notice shall be posted publicly, sent to the complainant, and filed with the Office of the City Clerk at least seven days before the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission [or name of the hearing officer, entity, or assigned Commissioner(s)] on ____ (date) at the hour of ____, at ____ (location), upon the charges made in Complaint No. _____. At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. You may request the issuance of

Item 5b - Redline of Amendments to PEC Complaint Procedures

subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before _____.”

C. Subpoenas of Persons or Documents. Any party requesting subpoenas to bring people or documents to the hearing shall notify the Executive Director no later than 14 days before the hearing date. The request shall include a written statement specifying the name and address of the witnesses, and the reason for their testimony.

1. If the request is for a document subpoena, it shall be accompanied by a statement which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents.
2. Subpoenas may be issued by the Executive Director, or the hearing officer upon the above showing of good cause.
3. The party requesting the subpoena shall be responsible for its service on the appropriate persons and shall provide a copy to all opposing parties.

D. Resolution of Preliminary Matters. No later than seven days before the hearing date, any party may submit in writing preliminary matters for determination by the hearing officer or entity. If the complaint is to be heard by the full Commission, or by one or more Commissioners, preliminary matters shall be determined by the Commission Chair or his or her designee. The party submitting any preliminary matter for determination shall demonstrate that an attempt to resolve the preliminary matter was made with any opposing party and that copies of the request were delivered to any opposing party. The opposing party shall be allowed to address a request to hear a preliminary matter. The hearing officer or the Commission Chair may determine preliminary matters upon submission of the written requests and without an oral hearing. Preliminary matters may include, but are not limited to, the following:

1. Whether multiple claims within a single complaint may be scheduled separately;
2. Whether similar complaints filed by separate individuals or entities may be joined;
3. Scheduling of witnesses;
4. Production of documents and issuance of subpoenas;
5. Scheduling of pre-hearing conferences;
6. Disqualification of any member of the Commission from participation in the hearing on the merits; and
7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

E. Conduct of Hearings; Submission of Written Materials. All materials to be considered at a hearing and not otherwise subpoenaed shall be submitted to the person(s) conducting the hearing, the Executive Director, and to all opposing parties

Item 5b - Redline of Amendments to PEC Complaint Procedures

no later than five days prior to the hearing. A written argument need not be submitted. Any written argument submitted shall not exceed 15 pages except upon prior approval of the person(s) conducting the hearing. When prior approval has not been granted, the person(s) conducting the hearing shall disregard all pages of a written argument beyond the 15th page.

F. Conduct of Hearings; Presentation of Testimony; Rules of Evidence. The hearing on the complaint shall be open to the public, provided that witnesses may be excluded at the discretion of the person(s) conducting the hearing. The person(s) conducting the hearing (Hearing Officer) shall brief the parties at the beginning of the hearing on applicable procedures. The Hearing Officer will conduct a fair and impartial hearing on the record, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order.

1. The hearing shall not be subject to the formal rules of evidence. Documentation and written testimony not in compliance with subsection (E) above may be excluded at the discretion of the person(s) conducting the hearing.
2. The Commission, and any individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
3. Oral and written testimony shall be received under penalty of perjury. Although the proceedings are informal, testimony shall be brief and confined to the issues. Oral testimony may be excluded if duplicative, irrelevant, or disruptive to the conduct of the meeting. The person(s) conducting the hearing may ask questions of both sides to further clarify facts and viewpoints. Any party may bring a representative and/or interpreter to speak on his or her behalf, but the person(s) conducting the hearing retains the authority to put questions to any party.
4. If the hearing is conducted by a Commissioner, the following procedure applies: the Commission staff will be the first to call witnesses and present evidence of the violation. After the Commission staff presents its case, the Respondent will have the opportunity to call witnesses, present evidence and present argument. After both sides have presented their case, the hearing officer will open the hearing to take public testimony/ statements/comment. After public statements, the Respondent and Commission staff or it's legal counsel will have an opportunity to present rebuttal information and present an oral summation of the case.
5. Special accommodations for disabled persons may be made by providing the Executive Director 72 hours advanced notice.
6. While there is no right to cross-examination, the parties shall be allowed the opportunity for rebuttal, and the parties, through the person(s) conducting the hearing, may ask questions of any witness. Except for raising preliminary matters as provided by these procedures, no party may communicate with any Commissioner or hearing officer regarding a complaint outside of the formal public hearing.

Item 5b - Redline of Amendments to PEC Complaint Procedures

7. If the Commission refers a matter to the California Office of Administrative Law, or another administrative law judge or entity, that entity's administrative process rules shall apply, with these complaint procedures providing guidance where there are gaps or questions in that administrative process.
8. If the respondent fails to appear at a properly noticed hearing, Commission staff may proceed with presenting the Commission's case or may request to submit a written summary in lieu of a verbal presentation. The hearing officer may proceed with issuing findings and recommendations based solely on the information received from Commission staff.

G. Record of Proceedings. Proceedings shall be recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least three full business days' notice to Commission staff, and at that party's own expense.

H. Continuation and Postponement of Hearings. A postponement may be granted prior to the hearing only upon written request to the Commission Chair or hearing officer. At the hearing a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.

I. Action upon Conclusion of Hearing. Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing shall be closed.

1. If the complaint was heard by a hearing officer, single member of the Commission or Commission panel, he, she or they may take the matter under submission for a period of no more than 14 days before delivering to the Executive Director proposed Findings of Fact and Conclusions. Any deliberations by two or more Commissioners shall be done publicly. Upon receipt, the Executive Director shall deliver a copy of the proposed Findings of Fact and Conclusions to all parties.
 - a. No later than seven days after delivery, any party may submit a written request to the Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Commission Chair may accept the proposed Findings of Fact and Conclusions as correct unless the party making the request for re-hearing demonstrates that: 1) the proposed Findings of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions, or 2) the Conclusions are not supported by substantial evidence.
 - b. The party making the request shall provide a complete copy of the written request to all other parties by the time the written request is submitted to the Commission Chair. Any other party shall have seven days from receipt of the written request to submit written opposition or support to the Commission Chair.
 - c. If the Commission Chair determines there are no grounds to rehear all or portions of the complaint, he or she shall notify the Executive

Item 5b - Redline of Amendments to PEC Complaint Procedures

Director, who shall place the proposed Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or any special meeting called by the Commission Chair.

- d. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence shall be received, and a timetable for re-submitting any revised Findings of Fact and Conclusions to the Executive Director.
 - e. The decision of the Commission Chair on any request for re-hearing shall be final.
2. After notifying all parties and the complainant of the date, time, and location of its meeting, the Commission shall either adopt the proposed Findings of Fact and Conclusions in their entirety or adopt the Findings of Fact and reach additional or different conclusions consistent with the Findings of Fact. The Commission has discretion to reach additional or different conclusions consistent with the Findings of Fact, including the full range of options from dismissal, with or without a warning letter, through assessment of maximum penalties, including other remedial measures.
 3. If the complaint was heard by the full Commission, the Commission shall decide, upon conclusion of the hearing and by an affirmative vote of a majority of Commissioners, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director or designee to prepare a Findings of Fact and Conclusions for consideration at the next Commission meeting.
 4. The Commission shall determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.
 5. Any Findings of Facts and Conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions (penalties and fines) in accordance with the adopted findings and consistent with Commission authority. The Commission will make its findings and recommendations public.

J. Decision and Order: The Commission's decision and order on a complaint following a hearing or default proceeding shall be final and shall constitute closure of the administrative process for that complaint.

VIII. COURT REVIEW

Upon conclusion of the administrative process – whether via default or an administrative hearing, any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within ninety days as provided by law.

IX. COMMISSIONER RECUSAL

Item 5b - Redline of Amendments to PEC Complaint Procedures

A Commissioner or a member of the Commission Staff shall recuse himself or herself from participating in the resolution of any complaint in which he or she has a conflict of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, or in which he or she, by reason of interest or prejudice, cannot perform his or her duties in an impartial and unbiased manner.

X. REPEAL, SEVERABILITY, CONFLICT, AND COMMISSION AUTHORITY

- A. Repeal.** Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including are hereby repealed.
- B. Severability.** If the legislature, court or other entity determines that any portion of these rules is invalid, the other remaining rules shall not be affected and will continue in effect.
- C. Conflict with Law.** To the extent a law or regulation set forth above contains specific procedures or rules that conflict with these General Complaint Procedures, the more specific provisions provided in the laws or regulations set forth above shall control.
- D. Commission Authority.** Nothing in these complaint procedures limits the Commission's ability to review, refer, make recommendations, or take other actions regarding an issue that does not fall within its enforcement authority, but which may fall within its general authority to ensure fairness, openness, honesty, and integrity in City government.