



Ethics Commission Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

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October 22, 2018

Discussion Item 03

Title: Approve Complaint Intake, Preliminary Review, and Independent Evaluator Procedures

Location: Citywide

Recommendation: Pass a Motion approving the Complaint Intake, Preliminary Review, and Independent Evaluator Procedures.

Contact: Kevin Greene, Government Ethics and Transparency Administrator, (916) 808-7267

Presenter: Kevin Greene, Government Ethics and Transparency Administrator, (916) 808-7267, Office of the City Clerk

Attachments:

1-Description/Analysis

2-DRAFT Complaint Intake, Preliminary Review, and Independent Evaluator Procedures.

Description/Analysis

Issue Detail: Review and Approve the Complaint Intake, Preliminary Review, and Independent Evaluator Procedures.

Complaint Intake: Complaints can be submitted to the Office of the Clerk and the Government Ethics and Transparency Administrator (Administrator), formally, informally, or anonymously. Formal complaints require specified information and are signed under penalty of perjury. Complaints can be submitted on the official form on the City Clerk's website, or through various methods including, email, postal service, phone or in-person communications.

Preliminary Review: Preliminary review is conducted by the Administrator and the review is limited to whether the complaint falls within the jurisdiction of the Ethics Commission. Upon determining jurisdiction, the Administrator will prepare a Preliminary Review Memo (PRM) and refer the complaint to the Independent Evaluator for further review and investigation. If the Commission has no jurisdiction over a complaint, or if the complaint could be more appropriately investigated by another government or law enforcement agency, the Administrator will prepare a PRM providing the rationale for such a decision.

Independent Evaluator Review: If the Administrator recommends referral of a complaint for further review, the Independent Evaluator will open a formal investigation. The investigation should include interviews of the Complainant, Respondent, and any witnesses, and should review documentary and other evidence.

Upon the conclusion of an investigation, the Independent Evaluator will prepare a written *Report and Recommendation of the Evaluator (RRE)*. The RRE shall contain a summary of law and evidence gathered through the investigation. The Independent Evaluator may consider all relevant facts and evidence. The ERR shall state whether the Independent Evaluator concludes that a respondent did or did not violate ethics law. Recommendations may include actions to be taken by the Commission or the need for further investigation to be conducted by the Independent Evaluator.

Commission Action Following an Investigation: If a complaint does not appear to warrant further investigation or a violation(s) of law, the Independent Evaluator will advise the Administrator and Chair of the Commission, who will then schedule a public hearing to present findings and recommendations of the ERR.

If the Commission determines, with a simple majority vote, that sufficient evidence exists that a violation(s) occurred, the complaint will be advanced to the Administrative Hearing process and the Chair will initiate Administrative Hearing proceedings.

If the Commission determines, with a simple majority vote, that insufficient evidence exists that a violation(s) occurred, then the Commission will vote to dismiss the complaint.

Final Closure: A dismissal of a complaint, after review by the Administrator (for jurisdiction) or the Commission, is a final decision and represents completion of the administrative process. No further action shall be taken other than notification to the complainant and respondent.

Policy Considerations: Sacramento City Code Section 2.112 gives the authority to the Sacramento Ethics Commission to develop procedures to guide its work. Approval of these procedures will articulate a clear process for the Government Ethics and Transparency Administrator to handle complaint intake, conduct a preliminary review and guide the Independent Evaluator when reviewing, investigating, and making a recommendation to the Ethics Commission.

Economic Impacts: None.

Environmental Considerations: None.

Sustainability: None.

Commission/Committee Action: The Commission provided input at the August 27, 2018 Ethics Commission meeting and a subcommittee of Chair Moylan and Commissioner Adams has been providing guidance to the Government Ethics and Transparency Administrator.

Rationale for Recommendation: None.

Financial Considerations: None.

Local Business Enterprise (LBE): None.

City of Sacramento

ETHICS COMMISSION COMPLAINT INTAKE & INDEPENDENT EVALUATOR INVESTIGATION PROCEDURES

Effective: Month, XX, 2018

The Sacramento Ethics Commission (Commission) adopts the following procedures applicable to the Complaint Intake, Preliminary Review, and Independent Evaluator Investigation processes. The authority is granted to the Commission by Sacramento City Code (SCC) § 2.112.030.C.

- A. **Purpose.** These procedures are intended to ensure a fair, just, and timely process for the investigation of ethics complaints submitted to the Commission by doing the following:
 - A. Creating a clear process for investigating and reviewing ethics complaints;
 - B. Maintaining objective standards for investigations and enforcement;
 - C. Eliminating any improper influence in the resolution of complaints; and
 - D. Ensuring timely enforcement and complaint resolution.

- B. **Authority.** These procedures are applicable to alleged violations of the following provisions:
 - A. City of Sacramento Code of Ethics (SCC, Chapter 4.02);
 - B. City of Sacramento Code of Fair Campaign Practices (SCC, Chapter 1.20);
 - C. City of Sacramento's Campaign Contribution Limitations (SCC, Chapter 2.13) and Campaign Spending Limits and Public Financing (SCC, Chapter 2.14) if the city has not contracted with the Fair Political Practices Commission for enforcement purposes;
 - D. City of Sacramento Sunshine Ordinance (SCC, Chapter 4.08);
 - E. City of Sacramento Lobbyist Registration and Reporting Code (SCC, Chapter 2.15);
 - F. City of Sacramento's Conflict of Interest Code (SCC, Chapter 2.16);
 - G. Sacramento City Charter (§35); and
 - H. Chapter 3 (Conduct of Members) and Rule 6.E (Closed Sessions) of the Council Rules of Procedure.

COMPLAINT INTAKE

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 Sacramento, or any member of the Commission. The Government Ethics and Transparency Administrator (Administrator) shall process and review all complaints.

Sworn Complaints:

A Sworn Complaint must be submitted either in writing on a complaint form as prescribed by the Administrator, or in a manner designated as a method for submitting a formal complaint as determined by the Administrator. The forms and instructions are available on the Good Governance and Compliance page on the City Clerk's webpage at <http://www.cityofsacramento.org/Clerk/Good-Governance-and-Compliance>.

Contents of Sworn Complaints:

A Sworn Complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint must also include the following information:

- Name and at least one means of contact information of complainant;
- Name of the respondent, and any known contact information of the respondent;
- The facts of the alleged violation(s);
- Area(s) of law allegedly violated, if known;
- Names and contact information of any witnesses, if known;
- Summary of information to be provided by witnesses; and
- Any additional documentation that might aid in the investigation of the alleged violation.

Unsworn Complaints:

An Unsworn Complaint may be submitted by telephone, in person, via email, or in other written form. An Unsworn Complaint should include the name of the complainant, the name of the respondent alleged to have violated the law, and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not include a verified signature will be considered as an Unsworn Complaint.

Anonymous Complaints:

A complaint may be submitted without any information identifying the complainant. These complaints will be considered Anonymous Complaints whether submitted on a formal complaint form or in another form.

Commission-Initiated Complaints:

The Administrator and any commissioner may submit a Sworn Complaint. If a commissioner submits a Sworn Complaint, that commissioner will be recused from all consideration, review, investigation, or hearing of that complaint, but may provide information or be called as a witness at any hearing on the complaint.

Withdrawal of a Complaint:

If a complainant requests that her or his complaint be dismissed or withdrawn, the Commission may allow withdrawal and close the matter, or the Commission may continue to review and investigate violations alleged in the complaint.

Ex-Parte Communications:

Once a complaint is submitted, no Commissioner shall engage in oral or written communications with the respondent, complainant, or any person communicating on behalf of the respondent or complainant, regarding the merits of an investigation or enforcement action outside of a hearing or settlement conference.

PRELIMINARY REVIEW

Preliminary Review of Complaints:

Upon receipt of a Sworn Complaint, the Administrator shall conduct a preliminary review of the complaint to determine whether the alleged violation is within the Commission's jurisdiction. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, and any other reasonable inquiry to determine next steps.

After the preliminary review, the Administrator will recommend a course of action through a Preliminary Review Memo (PRM). The PRM may:

1. Refer the complaint to an Independent Evaluator for a formal investigation;
2. Dismiss the complaint for lack of jurisdiction; or
3. Refer the complaint to another governmental or law enforcement agency better suited to address the complaint.

Referral to Independent Evaluator:

If the Administrator determines that the complaint should be referred to an Independent Evaluator for a formal investigation, the Independent Evaluator Procedures set forth below shall be followed. Once the complaint has been referred, the Administrator and the Commissioners shall do no further investigation until the Independent Evaluation process is complete.

Dismissal:

If the Administrator dismisses a complaint for lack of jurisdiction, the Administrator will prepare a PRM for the complaint and provide a report to the Commission at the next Commission meeting. The PRM for dismissed cases must include the date the complaint was received, the general nature of the complaint, and rationale for dismissal. The PRM should not disclose the name of the complainant or the respondent.

Referral to Another Governmental Agency:

If the Administrator concludes that the complaint should be investigated and handled by another governmental or law enforcement agency, the Administrator may refer the complaint to that agency without dismissing the complaint filed before the Commission. Jurisdiction by the Commission over the complaint may be retained if the other agency refuses to handle the complaint. If the other agency accepts the complaint for review and investigation, the complaint shall be dismissed by the Administrator. The Administrator shall prepare a PRM notifying the Commission of any complaint that has been referred to another agency. The PRM should provide the date the complaint was received, the general nature of the complaint, and the rationale for referral. The PRM should not disclose the name of the complainant or the respondent.

Notification to the Respondent:

After the initial review of the complaint by the Administrator to determine jurisdiction, the Administrator shall notify the respondent that a complaint has been filed and that a PRM will be drafted by the Administrator. The potential respondent shall be given notice at least seven business days before a complaint is presented to the Independent Evaluator. The potential respondent shall be provided a copy of the PRM with the recommended action.

INDEPENDENT EVALUATOR PROCEDURES

Selection of the Independent Evaluator:

The Administrator and City Clerk shall create a list of eligible evaluators based on a list of qualifications that will be created with input from the Commission. The qualifications list will be publicly available at the City Clerk's Office and on the Good Governance and Compliance page on the City Clerk's webpage. The PRM issued by the Administrator will recommend an Independent Evaluator from the qualified evaluator list.

Opening of a Case with the Independent Evaluator:

If the Administrator recommends referral of a complaint for further review, the Independent Evaluator will open a formal investigation. The Independent Evaluator must follow these Independent Evaluator Procedures.

Investigation:

Complaints referred to an Independent Evaluator should be investigated according to these procedures. The investigation should, at a minimum, include interviews of the complainant, respondent, and any witnesses, and the review of documentary and other evidence. The Independent Evaluator should obtain information from the complainant, respondent, and any witnesses in a voluntary manner and any documentary evidence must be provided voluntarily. The Independent Evaluator may not compel testimony or production of documents, but may note in the Report and Recommendation of the Evaluator (RRE) if a party or witness was unwilling to submit to an interview or unwilling to provide evidence.

Report and Recommendation of the Independent Evaluator:

Upon the conclusion of an investigation, the Independent Evaluator shall prepare a written Report and Recommendation of the Evaluator (RRE). The RRE shall contain a summary of law and evidence gathered through the investigation. The Independent Evaluator may consider all relevant facts and evidence and shall include in the RRE all facts bearing on the weight accorded the evidence. The RRE shall state whether the Independent Evaluator concludes that the respondent did or did not commit the alleged violation. Recommendations in the RRE may include actions to be taken by the Commission or the need for further investigation to be conducted by the Independent Evaluator.

COMMISSION ACTION ON REPORT AND RECOMMENDATIONS OF THE EVALUATOR

If the complaint does not appear to warrant a further investigation, the Independent Evaluator will advise the Administrator and Chair of the Commission, who will then schedule a public hearing to present findings and recommendations of the RRE. Confidentiality considerations will be taken into account based on the facts of each individual case.

If the Commission determines, with a simple majority vote, that sufficient evidence exists that a violation(s) occurred to advance the complaint to an Administrative Hearing, the Chair will initiate Administrative Hearing proceedings.

If the Commission determines, with a simple majority vote, that insufficient evidence exists that a violation(s) occurred, then the Commission will vote to dismiss the complaint.

Investigation Closure:

A dismissal of a complaint, after review by the Administrator (for jurisdiction), or the Commission (for insufficient evidence after an Independent Evaluation), is a final decision and represents completion of the administrative process. No further action, nor appeal, shall be taken other than notification to the complainant and respondent.

Judicial Review/Appeals:

A decision to dismiss a complaint for lack of jurisdiction by the Administrator, or any enforcement decision made by the Commission is a final decision and represents the end of the administrative process. Review of a Commission decision may be had, if appropriate, under California Code of Civil Procedure section 1094.5.