



Sacramento Ethics Commission

Administrative Hearing Procedures

Effective April 22, 2019



In accordance with City Code § 2.112.030.C.2, the Sacramento Ethics Commission has adopted the following procedures for administrative hearings.

1. **Purpose.** These procedures are intended to ensure a fair, just, and timely process for administrative hearings on Complaints. To that end, these procedures—
 - create a clear process for conducting administrative hearings and reviewing Complaints;
 - establish objective standards for enforcement of the Ethics Rules;
 - eliminate any improper influence in the resolution of Complaints; and
 - promote timely enforcement of the Ethics Rules and resolution of Complaints.

2. **Authority.** These procedures apply to alleged violations of any of the codes, regulations, and rules specified in City Code § 2.112.030.A.1 (collectively, the “**Ethics Rules**”).

3. **Definitions.**

- “**Administrator**” means the City’s Government Ethics and Transparency Administrator.
- “**Complaint**” means a complaint or petition, submitted to the Commission, that alleges one or more violations of the Ethics Rules.
- “**Evaluator**” means the independent and neutral evaluator appointed by the City Council under City Code § 2.112.030.C.4. The Evaluator acts as the Petitioner’s advocate during the hearing.
- “**Intake Procedures**” means the Ethics Commission Complaint Intake & Independent Evaluator Investigation Procedures adopted on, and effective as of, October 22, 2018.
- “**Petitioner**” means the person who submits a Complaint.
- “**Presiding Officer**” means the person selected to serve as such under § 4.4 below.
- “**Respondent**” means the person who is alleged in a Complaint to have violated the Ethics Rules.

- 4.

Pre-Hearing Matters.

- 4.1 **Submission of Complaints.** A Complaint must be submitted to the Administrator, who, as required by the Intake Procedures, shall promptly review it and recommend a course of action. If the Administrator determines that the Commission does not have jurisdiction, then the Administrator shall so notify the Petitioner in writing. If the Administrator determines that the Commission has jurisdiction, then the Administrator shall promptly forward a copy of the Complaint to the Evaluator for review and investigation in accordance with the Commission's Intake Procedures.

- 4.2 **Probable-Cause Memorandum.** If, after reviewing a Complaint and investigating the allegations, the Evaluator find that sufficient evidence exists to warrant a hearing, the Evaluator shall prepare and submit to the Administrator a probable-cause memorandum specifying the Respondent's alleged violations of the Ethics Rules and setting forth the supporting evidence. The Administrator shall distribute copies of the probable-cause memorandum to the Commission or the hearing officer (as appropriate) and to the Respondent, as soon as is practicable.

- 4.3 **Rebuttal.** The Respondent may submit to the Administrator, within 14 calendar days after receiving a copy of the probable-cause memorandum, a written rebuttal of the memorandum. The Administrator shall distribute copies of the rebuttal to the Commission or the hearing officer (as appropriate) and to the Petitioner and the Evaluator, as soon as is practicable.

- 4.4 **Selection of Hearing Panel or Hearing Officer.** As soon as is practicable after the Administrator distributes copies of a probable-cause memorandum in accordance with § 4.2 above, the Commission shall, at a regularly scheduled meeting, do one of the following:
 - (A) Convene as the hearing panel; choose one of its members to serve as the panel's Presiding Officer; and set the date, time, and location of the hearing on the Complaint. The hearing date must allow for the notice required by § 4.5 below.
 - (B) Assign the Complaint to a hearing officer who will serve as the Presiding Officer and conduct the hearing under the Commission's authority and direction in accordance with these procedures. The hearing officer shall set the date, time, and location of the hearing. The hearing date must allow for the notice required by § 4.5 below. This § 4.4(B) applies only if the City Council enacts an authorizing amendment to City Code chapter 2.212.

- 4.5 **Notice of Hearing.** At least 30 calendar days before the hearing, the Administrator shall notify the Respondent in writing of the hearing's date, time, and location. In addition, at least 120 hours before the hearing, the Administrator shall post notice of the hearing, as part of the Commission's agenda, on one of the kiosks in the Plaza between Historic City Hall and New City Hall.
- 4.6 **Continuance or Postponement of Hearing.** The Presiding Officer may grant continuances or postponements of a hearing only upon a showing of good cause. Requests for continuances or postponements must be submitted in writing, and the requesting party must provide a copy to the opposing party.
- 4.7 **Pre-Hearing Conference.** At the request of the Petitioner or the Respondent, the Presiding Officer may conduct a prehearing conference.
- (A) The Presiding Officer will set the date, time, and location for the prehearing conference, and the Administrator shall notify the parties of the date, time, and location at least three business days in advance of the conference.
 - (B) The prehearing conference may deal with one or more of the following matters:
 - (1) Clarification of issues and procedural questions.
 - (2) Rulings on admissibility of witnesses or evidence.
 - (3) The hearing schedule and special procedures for the hearing.
 - (4) Any other matters that will promote the orderly and fair conduct of the hearing.
 - (C) Each party may submit to the Presiding Officer, at least one business day before the prehearing conference, a brief describing the preliminary matters to be resolved.
- 4.8 **Hearing Briefs.** Each party may submit to the Administrator, at least three business days before the hearing, a brief that describes any preliminary matters to be resolved after the prehearing conference but before the hearing, summarizes the evidence to be presented, and argues for a desired outcome. Upon receiving a brief, the Administrator shall distribute copies to the Commission or the hearing officer (as appropriate) as soon as is practicable.

5. Conduct of Hearing. Hearings are open to the public and will be video recorded, with the recording available to the public for review. The Presiding Officer may set time limits on the presentation of evidence and argument.

5.1 General. This § 5.1 applies whether the hearing is before the Commission or a hearing officer.

(A) *Opening Statement.* Each party may make an opening statement that previews the matters to be considered and the evidence to be presented but does not contain any argument.

(B) *Evidence.* Each party may call and examine witnesses, introduce exhibits, cross examine opposing witnesses, impeach witnesses regardless of which party called the witnesses to testify, and offer rebuttal on any evidence.

(1) The hearing is not subject to formal rules of evidence, and any relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to relying when conducting serious affairs.

(2) Hearsay evidence may be used to explain other evidence but is not sufficient by itself to support a finding unless it would be admissible in civil actions.

(3) All testimony must be under oath.

(4) The Commission or the hearing officer (as appropriate) may question any witness and any party at any time during the hearing.

(C) *Burden of Proof.* The Petitioner has the burden of proof to establish by a preponderance of the evidence that one or more violations of the Ethics Rules have occurred.

(D) *Closing Statement.* Each party may make a closing argument after both parties have presented evidence. The Petitioner will argue first, followed by the Respondent. The Petitioner may then offer a rebuttal, followed by the Respondent.

(E) *Close of Hearing.* After receiving evidence and hearing all arguments, the Presiding Officer shall close the hearing.

5.2 Commission as Hearing Panel. This § 5.2 applies only when a hearing is before the Commission.

(A) Immediately after the close of the hearing, the Commission shall do one of the following in open session:

(1) *Deliberation and Vote.* Deliberate upon the entire record of the proceedings and, by a vote of three or more commissioners, do either or both of the following: (a) order that the Respondent cease and desist from violating the Ethics Rules; and (b) impose monetary penalties on the Respondent in accordance with the Sacramento Ethics Commission Penalty Guidelines.

- (2) *Order Further Investigation.* Request the Petitioner or the Evaluator to conduct a further investigation and report back to the Commission in open session at the next regularly scheduled Commission meeting. Upon receiving the report, the Commission shall proceed in accordance with § 5.2(A)(1) above.
- (C) *Final Decision.* Within 30 calendar days after the vote, the Presiding Officer shall draft and release to the parties and the public the Commission's final decision. The final decision must contain findings of fact; a summary of the evidence supporting each finding; conclusions of law; a determination of whether the Respondent violated the Ethics Rules; and, if the Commission determines that one or more violations occurred, a penalty for each violation.

6.2 Hearing by Hearing Officer. This section applies only when a hearing is before a hearing officer sitting as the Presiding Officer.

- (A) *Deliberation and Proposed Decision.* Upon closing the hearing, the Presiding Officer shall take the matter under submission.
 - (1) Within 30 days after taking the matter under submission, the Presiding Officer shall submit a written proposed decision to the Administrator. The proposed decision must contain findings of fact; a summary of the evidence supporting each finding; conclusions of law; a preliminary determination of whether the Respondent violated the Ethics Rules; and, if the Presiding Officer determines that one or more violations occurred, a recommended penalty for each violation.
 - (2) As soon as is practicable after receiving the proposed decision, the Administrator shall distribute copies to the Commission and schedule the decision for the Commission's review, deliberation, and final decision in open session at a Commission meeting.
- (B) *Commission's Review of Proposed Decision.* During the Commission's review of, and deliberation on, the proposed decision, the Commission may allow each party up to 30 minutes to make a presentation. The Commission may ask questions of the Petitioner, the Evaluator, and the Respondent. But no new evidence may be presented.
- (C) *Final Decision.* Upon completing its review and deliberation, the Commission, by a vote of three or more commissioners, may do one of the following:
 - (1) accept the proposed decision in full;
 - (2) accept the proposed decision in part;
 - (3) request further investigation or additional administrative hearings; or

- (4) reject the proposed decision in full, in which case the Commission retains jurisdiction to investigate and conduct further hearings on the Complaint or issue a decision on the merits.

7. Reconsideration.

7.1 Any party may, within 14 calendar days after the final decision, submit to the Administrator, for distribution to the Commission, a written request for reconsideration. The request must—

- (A) describe in full the issues to be considered;
- (B) include specific references to the record and applicable principles of law; and
- (C) be based on the ground that the party has discovered new, relevant, and material evidence that the party could not, with reasonable diligence, have discovered and produced at the administrative hearing.

7.2 The Commission Chair and Vice Chair each has the authority to grant or deny a request for reconsideration or to extend the time in which to submit a request.

7.3 If the request for reconsideration is granted, the Administrator shall set the matter for another hearing before the Commission, at which it may take additional evidence and may affirm, rescind, or amend the final decision. The decision after reconsideration must be in writing and must specify the reasons for the action taken.

8. Judicial Review. The Commission's final decision (after reconsideration, if any) is the end of the administrative process. A party may seek judicial review of the final decision in accordance with Code of Civil Procedure § 1094.5.

9. Periodic Review. The Commission will review these procedures at least annually and recommend changes as needed.