

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING REGULATIONS AND PROCEDURES FOR THE SAN JOSE ~~ETHICS COMMISSION~~BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES INVESTIGATIONS AND HEARINGS, AND REPEALING RESOLUTION 77879

WHEREAS, the San José ~~Ethics Commission~~Board of Fair Campaign and Political Practices ("~~Commission~~Board") is charged, under Chapter 12.04 of the San José Municipal Code, to investigate complaints alleging violations of Title 12 of the San José Municipal Code and take enforcement action where appropriate; and

WHEREAS, formal regulations ~~are required to~~ ensure that all interested parties are apprised of and understand the procedures by which a fair hearing will be conducted; and

WHEREAS, the City Council desires to amend the current regulations and procedures for ~~Commission Board~~ investigations and to reflect the Board's current practice ~~of the Commission~~;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The following Regulations and Procedures ~~as amended are hereby adopted and shall~~ govern all proceedings before the San José ~~Ethics Commission~~Board of Fair Campaign and Political Practices (~~Ethics Commission or Commission Board~~).

REGULATIONS AND PROCEDURES FOR SAN JOSE ~~ETHICS COMMISSION~~BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES INVESTIGATIONS AND HEARINGS

A. PREAMBLE

~~These~~ Regulations and Procedures of the San José ~~Ethics Commission~~Board of Fair Campaign and Political Practices are promulgated ~~in order~~ to ensure the fair, just, and timely resolution of complaints presented to the ~~Commission Board~~ that allege violations of City ~~ordinances relating to the~~ campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances ~~set forth in~~under Title 12 of the San José Municipal Code, by:

1. Setting and maintaining objective standards for ~~the investigation and determination of investigating and determining~~ matters brought before the ~~Commission~~Board;
2. Eliminating ~~any~~ improper influence in the investigation of and determinations relating to persons alleged to have ~~committed ethics violations~~violated Title 12 of the San José Municipal Code; and
3. Assuring reasonable time frames ~~for completing within which~~ enforcement proceedings ~~should be completed~~.

B. DEFINITION OF TERMS

For purposes of these Regulations and Procedures, the following definitions ~~shall~~ apply:

1. "Alternate Evaluator" means a person who is neutral and impartial, meets the qualifications in Section C, and has been retained for the limited purpose as provided herein because the Evaluator cannot maintain the appearance of neutrality or impartiality in evaluating or investigating a particular Complaint.
2. "Board" means the San José Board of Fair Campaign and Political Practices.
3. "Candidate" means a person who is running for City Office or is a City elected officeholder.
24. "Chair" means the elected Chair of the San José ~~Ethics Commission~~Board of Fair Campaign and Political Practices. If the Chair is not available, the elected Vice-Chair may temporarily assume the duties and responsibilities of the Chair.
35. "Code Enforcement" means the Code Enforcement Division of the Planning, Building, and Code Enforcement Department which provides citywide enforcement service for all reported concerns and violations relating to neighborhood residential properties as well as commercially and industrially zoned properties.
46. "Complainant" means a person or entity that files a complaint.
57. "Complaint" means a complaint alleging a possible violation of Title 12 of the San José Municipal Code that is filed with the Office of the City Clerk on the Ethics CommissionBoard of Fair Campaign and Political Practices Complaint Form,

~~which the Complainant has m, completed and signed by the Complainant, which is on file with the City Clerk.~~

68. "Day" means calendar day, unless otherwise ~~specifically indicated~~stated.

~~7. "Ethics Commission" or "Commission" means the San José Ethics Commission.~~

~~8. "Ethics Ordinances" means all ordinances found in Title 12 of the San José Municipal Code.~~

99. "Evaluator" means a person who is neutral and impartial, meets the qualifications in Section C and has been retained as provided herein.

~~1010.~~ "Exculpatory information" means information tending to show that the Respondent has not committed ~~is not guilty of~~ the alleged violations.

~~111.~~ "Hearing" means a formal meeting of the San José ~~Ethics Commission~~ Board of Fair Campaign and Political Practices convened for the purpose of making determinations regarding a Complaint and conducted in accordance with ~~the requirements in~~ Section G.

~~122.~~ "Investigator" means a person who is neutral and impartial, meets the qualifications in Section D, and has been retained as provided herein.

~~133.~~ "Mitigating information or circumstances" means information or circumstances tending to excuse or reduce the significance of the Respondent's conduct.

~~144.~~ "Preliminary Evaluation" is the initial review of a complaint conducted by the Evaluator to determine whether sufficient cause exists to conduct ~~a~~ full investigation prior to any presentation to the ~~Commission~~ Board.

~~155.~~ "Respondent" means a person or entity that is alleged in a complaint to have violated ~~an Ethics Ordinance~~ a provision of Title 12 of the San José Municipal Code.

~~1616.~~ "Sufficient Cause" means that a complaint identifies specific facts, which if proven, would be a violation of Title 12 of the San ~~Jose~~ José Municipal Code.

~~17.~~ "Title 12" means the campaign, lobbying, conflicts of interest and ethics ordinances under Title 12 of the San José Municipal Code.

C. HIRING OF THE EVALUATOR

1. The ~~Commission Board shall will~~ prepare and issue a Request for Qualifications/Quotes for an Evaluator at least six (6) months before the existing existing-contract with the Evaluator expires.
2. The Evaluator ~~shall-must~~ have a legal background and experience with ethics, election, or political law.
3. The Evaluator ~~shall-must~~ be neutral and impartial and ~~shall-may~~ not have or appear to have any bias or favoritism toward any person or entity involved ~~in any way~~ with any complaint or investigation.
4. The ~~Commission Board shall will~~ select the Evaluator and present the contract with the selected candidate to the Council for approval of the contract on a public agenda.
5. ~~6.——~~ The contract ~~shall-may~~ have up to a four (4) year term and ~~shall-may not~~ end ~~on June 30 of in~~ an odd numbered year.
- ~~76.~~ The Board may terminate the contract with the Evaluator at its pleasure. ~~shall be subject to termination at the pleasure of the Commission.~~
- ~~78.~~ The Board contract shall may be terminated the contract with the Evaluator if any circumstances arise which, in the Board's judgment, ~~of the Commission~~ would compromise the Evaluator's appearance of neutrality.
- ~~89.~~ If circumstances arise where the Evaluator cannot be neutral or impartial, or maintain the appearance of being neutral or impartial, when evaluating or investigating a particular Complaint, the City Attorney, in consultation with the Chair, may enter into an agreement with an Alternate Evaluator for the limited purpose of conducting a Preliminary Evaluation or Investigation of that Complaint. All Regulations and Procedures applicable to the Evaluator are applicable to the Alternative Evaluator.

D. HIRING OF AN INVESTIGATOR

1. ~~In addition to the Evaluator, if~~ When necessary, the ~~Ethics Commission Board may is authorized to~~ hire an ~~independent~~ Investigator by contract executed by the City Clerk.

2. The ~~Commission Board shall~~will prepare and issue a Request for Qualifications/Quotes for the Investigator to conduct ~~or assist with investigations~~or assist with investigations of complaints ~~which are~~ assigned by the ~~Ethics Commission Board~~, and to monitor compliance with ~~the requirements of~~ Title 12 of the ~~San José Municipal Code~~ as requested by the ~~Ethics Commission Board~~.
3. The Investigator ~~shall~~must have experience in conducting investigations such as law enforcement, ethics, or employment related investigations. Familiarity with conflict of interest, campaign finance, and lobbying laws is desirable.
4. The Investigator ~~must~~shall be neutral and impartial and ~~must~~may not have or appear to have any bias or favoritism towards any ~~person or entity involved in~~any way with any complaint or investigation.
5. The ~~Board may terminate the~~ contract with the Investigator ~~shall be subject to termination at at the its~~ pleasure ~~of the Commission~~.
6. The ~~Board may contract shall be~~ terminated ~~the contract with the Investigator~~ if any circumstances arise which, in the ~~Board's~~ judgment ~~of the Commission~~, would compromise the ~~Investigator's~~ appearance of neutrality.
7. The ~~City Clerk will administer the~~ contract with the Investigator ~~shall be administered by the City Clerk~~.
8. ~~For purposes of the investigation of complaints by the Investigator, the provisions of these~~The Regulations and Procedures ~~which are~~ applicable to the Evaluator ~~shall are also apply applicable~~ to the Investigator.

E. COMPLAINTS OF ALLEGED VIOLATIONS

1. Any person may file a complaint alleging possible violations of the campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances set forth in Title 12 ~~of the San José Municipal Code~~.
2. Complaints ~~shall only~~must be filed with the City Clerk, ~~who shall act as who~~serves as the Secretary to the ~~Commission Board~~. Complaints may be filed with the Office of the City Clerk in person during normal business hours, by mail, by electronic mail, or by facsimile.
3. Complaints ~~may~~must be filed on the complaint form that is approved by the ~~Commission Board~~, and is available in the Office of the City Clerk or ~~from~~ the City Clerk's website. ~~In addition, t~~The City Clerk may also accept ~~complaints~~complaints filed by letter or electronic mail that if the complaint

provides the specificity and detail, including the identity of the Complainant, ~~as~~ as required ~~in under~~ this Section, ~~by letter or electronic mail.~~

4. ~~Complaints shall be filed with the City Clerk in person during business hours, by mail, by electronic mail or by facsimile on a complaint form.~~

5. A complaint ~~shall~~ must provide as much specificity and detail as possible, including facts constituting the alleged violations, the name and address of the person who is alleged to have violated an ordinance, ~~and~~ the names and addresses of potential witnesses, and the identity of the Complainant unless there is good cause for anonymity as established in this Section.

6. The City Clerk will forward any written complaint that satisfies the requirements of this Section to the Evaluator ~~Written complaints, which provide specificity and detail, including the identity of the Complainant, and which are filed with the City Clerk, shall be forwarded promptly to the Evaluator by the City Clerk.~~

7. The following ~~types of complaints~~ matters are outside the Board's jurisdiction ~~of the Ethics Commission, and the Board may not take any action no action can or will be taken by the Commission regarding these types of complaints~~ on:

- a. Complaints against the ~~Ethics Commission, Board~~ and/or its members; ~~and/or~~
- b. Complaints against the City Clerk; ~~and/or~~
- c. Complaints regarding the placement or size of political signs. The City Clerk will alleging political sign placement or size violation which shall be forwarded complaints of this nature promptly to to Code Enforcement ~~by the City Clerk; and/or~~
- d. Complaints alleging violations ~~other that are not under Title 12n the campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances set forth in Title 12 of the San José Municipal Code.~~

8. A complaint may be submitted anonymously by calling the "Ethics CommissionBoard of Fair Campaign and Political Practices Anonymous Complaint Hotline" at 408-975-ANON (2666). The Complainant ~~shall~~ must state good cause for anonymity, which is limited to:

(a). an employee of the City or the Successor Agency to the Redevelopment Agency who is not protected by the Civil Service

_____ system making a complaint about a supervisor in his or her chain of _____
_____ command; or

_____~~(b).~~_____ -a private sector employee making a complaint about his or her
_____ employer.

9. _____ The Chair ~~of the Commission shall will~~ assess whether there is good cause for anonymity. ~~It is recommended, but not required, that t~~The Complainant may provide a telephone number or other contact information for the Chair to contact the Complainant to gather additional information about the cause for anonymity. If the Chair determines there ~~re~~ Complainant has is good cause for anonymity, the City Clerk will forward the complaint ~~shall be forwarded promptly~~ to the Evaluator ~~by the City Clerk~~. If the Chair determines that the Complainant does not have good cause for anonymity, the complaint ~~shall~~may not be forwarded to the Evaluator.

910. The City Clerk ~~shall~~will promptly notify the ~~Board-Commission~~ members ~~promptly~~ that a complaint has been filed, the date the complaint was filed, and the general nature of the complaint.

1011. If a Board member ~~of the Commission~~ files a complaint, that member's right to participate in the complaint process is the same as any other complaining party. However, that member ~~shall~~may not participate in deliberations or vote on a matter concerning such complaint.

1112. Under the circumstances described in Subsection F.8-, the Evaluator may file a complaint with the City Clerk alleging possible violations of Title 12 as provided in this Section ~~E alleging possible violations of the Ethics Ordinance~~.

F. REVIEW OF COMPLAINTS BY EVALUATOR

1. Upon receipt of the complaint, ~~T~~the Evaluator ~~shall~~must notify the Respondent of the allegations and provide the Respondent with a complete copy of the complaint and the Regulations and Procedures of the ~~Ethics Commission~~Board ~~immediately upon the receipt of the complaint~~, unless the Evaluator determines that it is necessary to delay the notification ~~in order not to~~ avoid compromising the investigation.

2. The Evaluator ~~shall~~must conduct a preliminary evaluation of every complaint to determine whether ~~sufficient~~sufficient ~~cause~~cause exists to conduct a full investigation. ~~Sufficient cause shall exist when a complaint identifies specific facts, which if proven, would be a violation of Title 12 of the San José Municipal~~

~~Code. The Evaluator may not~~ No investigation shall be conducted an investigation if:

- ~~a.~~ a. the complaint does not identify specific facts ~~to demonstrated~~ demonstrating a potential ~~violation~~ violation;
- ~~if~~ if ~~b.~~ b. the facts would not amount to a violation of law; or
- ~~if~~ if ~~c.~~ c. identical allegations have already been addressed in a prior complaint.

3. ~~The Board may not consider~~ Complaints filed more than four (4) years after the alleged ~~which allege~~ violations ~~which have occurred more than four (4) years prior to the date of filing shall not be considered by the Commission.~~

4. Any City employee who is a Candidate for City office ~~shall must~~ be treated as like any other Candidate for the purposes of San José Municipal Code Chapter 12.06 ~~of the San José Municipal Code. However, the Evaluator shall must~~ refer any complaint where the Respondent is a classified or unclassified employee appointed by a City Council Appointee to the appointing authority for investigation and action. The ~~Commission Board shall may not~~ take ~~no~~ further action on the complaint with regard to the employee.

5. If the Complaint, on its face, does not warrant an investigation, the Evaluator ~~shall will~~ advise the Chair. ~~The Chair shall and~~ schedule a Hearing for the Board to ~~consideration of~~ the Evaluator's Report and Recommendations.

6. ~~If the Board determines, If the Commission,~~ upon reviewing the Evaluator's determination of lack of sufficient cause, ~~determines~~ that the complaint identifies specific facts ~~which that~~ if proven would be a violation of Title 12, the Municipal Code, the ~~Commission Board shall may~~ direct the Evaluator to commence an investigation.

7. ~~If When there is~~ sufficient cause ~~is found by the Evaluator, or on review by the Commission,~~ the Evaluator ~~shall will~~ conduct an investigation. ~~Such, which must include investigation must include~~ an interview with the Respondent unless the Respondent refuses to cooperate. The ~~investigation Evaluator~~ may also ~~include, but shall not be limited to, the~~ interview ~~of~~ the Complainant and any witnesses, as well as ~~the~~ review ~~of~~ documents and other evidence.

8. In the event the Evaluator uncovers facts and information ~~in the course of during~~ an investigation ~~that~~ may implicate possible violations of ~~the Ethics Ordinances~~ Title 12 by one or more persons or entities who are not identified as Respondents ~~in a complaint under investigation~~, the Evaluator ~~shall will~~ notify the

Chair of this discovery and the Chair ~~shall will~~ schedule a Hearing ~~for consideration of to consider~~ the Evaluator's Report and Recommendations.

9. If the ~~Commission Board~~ determines that the Evaluator has identified specific facts ~~which that~~ if proven would be a violation of ~~the Municipal Code Title 12~~, the ~~Commission Board shall may~~ direct the Evaluator to ~~conduct an investigation investigate~~. -The City Clerk ~~shall will~~ file an amended complaint against the new Respondent(s) using the complaint form established for such purpose. To the extent the information giving rise to the complaint relates to the circumstances of another complaint under investigation, the City Clerk ~~shall may~~ reference this in the complaint and indicate that the complaint should be treated as an amendment of the existing complaint. In this event, the Evaluator ~~shall must~~ notify the new Respondent(s), as well as the Complainant and Respondent(s) of the existing complaint, of the new allegations. The Evaluator must also and provide copies of the subject complaints to all parties and the Board's Regulations and Procedures ~~of the Ethics Commission~~.
10. If the information giving rise to the new complaint is not related to another complaint and deserves a separate and independent investigation, the Evaluator will notify the Respondent(s) of the allegations and provide a complete copy of the complaint and the Board's Regulations and Procedures ~~of the Ethics Commission~~, unless the Evaluator determines that it is necessary to delay the notification ~~in order not to not~~ compromise the investigation.
911. When the Evaluator concludes an investigation, the Evaluator ~~shall will~~ prepare a written Report and Recommendation. The Report ~~shall must~~ contain a summary of law and evidence gathered through the investigation, including any exculpatory and mitigating information. The Evaluator may consider all relevant facts and evidence, including, ~~but not limited to~~ hearsay evidence, and must and shall include in the Report all facts bearing on the weight ~~accorded given to~~ the evidence considered. The Report ~~shall must also~~ state whether the Evaluator concludes that ~~a~~ Respondent(s) did or did not violate ~~City law Title 12~~. Recommendations may include actions to be taken by the Commission Board or further investigation to be conducted by the Evaluator.
1012. No complaint, investigative file, or information contained therein, ~~shall may~~ be disclosed to any person other than a Respondent or Respondent's representative, the City Attorney, District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to the presentation of the Report and Recommendations to the Commission Board. The Evaluator, however, may communicate with the Chair ~~of the Commission during the course of during~~ the investigation of a pending complaint in the following circumstances:

- a. On procedural matters; or
- b. As required for a determination that a subpoena is essential under the provisions of Section G.

1113. When a complaint, investigative file, or information contained therein has been released to the public by any person or entity prior to presentation of the Report and Recommendations to the Commission Board, the City Clerk may acknowledge receipt of the complaint and issue a statement noting that:

- a. Any given complaint may or may not ~~actually~~ fall within the purview of the Commission Board;
- b. A complaint ~~merely~~ represents unsubstantiated allegations pending the results of an investigation and Hearing; and
- c. Early release of a complaint to the public is a violation of the San ~~Jose~~ José Municipal Code.

1214. After presentation of the Report and Recommendations, complaints, related documents, and investigative files ~~shall may~~ not be disclosed except as required by the California Public Records Act, as amended (Government Code §§ 6250 et seq.).

G. COMMISSION BOARD HEARING

1. The Evaluator ~~shall must~~ advise the Chair ~~of the Commission~~ to set a Hearing at the earliest practicable date based on the projected schedule for submittal and distribution of the Evaluator's Report and Recommendations.
2. The City Clerk ~~shall must~~ notify the Complainant and the Respondent of the date and time of the Hearing at which the ~~complaint~~ Complaint will be reviewed by the Commission Board.
3. The Evaluator's will deliver the Report and Recommendations ~~shall be delivered~~ to the Commission Board, the Complainant, the Respondent and all interested parties who request the Report, three (3) business days in advance of the Commission Board Hearing.
4. The Commission Board ~~shall will~~ consider the Report and Recommendation of the Evaluator as well as any other evidence presented at the Hearing.

5. The Respondent may ~~_, but need not,~~ submit a written response to the Report and Recommendations. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information.
6. The Respondent who chooses to submit a response ~~shall~~must deliver the response at least 24 hours in advance of the ~~Commission Board~~ Hearing, if possible. The Respondent ~~shall~~must deliver a total of eight copies of the response to the City Clerk for distribution to the ~~Commission Board~~ and the Evaluator.
7. The Respondent may personally appear before the ~~Commission Board~~ ~~personally~~ or be represented by counsel or any other person.
8. The formal Rules of Evidence ~~shall~~do not apply to the Hearing.
9. All testimony presented to the ~~Commission Board~~ ~~shall~~must be under oath or affirmation.
10. ~~Commission Board~~ members may ask questions of the Complainant, Respondent, witnesses or the Evaluator when recognized by the Chair.
11. The ~~Commission Board~~, if necessary, may compel the testimony of witnesses and may compel the production of relevant documents to the Evaluator by subpoena, but this power may be used only as a last resort, after good faith efforts to acquire the relevant information have failed and upon a finding that the information or testimony is essential for a determination in the matter.
 - a. The Chair ~~of the Commission~~, after consultation with the Evaluator, may subpoena witnesses and compel their attendance and testimony, and may require by subpoena the production of any books, papers, records or other items at a scheduled ~~Commission Board~~ Hearing.
 - b. Use of the subpoena power by the Chair ~~shall~~may only be used ~~only~~ after a written determination that the information or testimony is essential for a determination in the matter and material to the duties ~~and/or~~ exercise of the ~~Board's~~ powers ~~of the Commission~~ and that good faith efforts to acquire the relevant information have failed.
 - c. The City Clerk ~~shall~~must promptly notify the ~~Commission Board~~ members ~~promptly~~ that subpoena power has been used and ~~shall~~must describe the general basis for the written determination without reference to specific details of the complaint, investigative file or information contained therein.

12. Except as otherwise provided above, individual Board members ~~of the Commission~~ may not investigate complaints ~~nor or~~ discuss pending complaints with anyone except during the course of a Hearing.
13. The Complainant is to be treated like any other witness in providing evidence. Any interested person can submit a brief or any written argument to the ~~Commission-Board at least or any written argument~~ 24 hours before the ~~Commission-Board~~ Hearing, if possible. The brief or written argument must be simultaneously provided to the Respondent.
14. The Hearing ~~shall is to~~ be recorded by the City Clerk.
15. The Hearing ~~shall must~~ be open to the public except that witnesses may be excluded at the Board's discretion ~~of the Commission~~.
16. Prior to a final determination on the merits of a complaint, there ~~shall may~~ be no oral or written communications regarding the merits of a complaint with any person or entity unless the communication is necessary for the conduct of the investigation or except as otherwise provided above in these Regulations. After the final determination, the Chair ~~shall be will be~~ the sole contact with the public and media.

H. SCHEDULING

1. This process is to be completed at the earliest possible time. While timeliness cannot be precise because of the nature of an investigation, timeliness is paramount, particularly when an elections-related complaint is filed within two (2) weeks of an election. In all cases, the Evaluator's Report and Recommendations must be submitted to the City Clerk within thirty (30) calendar days after the Evaluator receives the complaint unless an extension has been requested and granted as provided in this section.
2. Whenever an action is required to be completed by a particular time pursuant to these Regulations or an order of the ~~Commission~~Board, the Evaluator or Respondent may request an extension of time by filing a written request with the City Clerk. The Clerk ~~shall will~~ promptly forward the request for an extension to the Chair ~~of the Commission~~ and the City Attorney's Office. In consultation with the City Clerk and the City Attorney's Office, the Chair may grant the request only upon a showing of good cause. The extension granted by the Chair ~~shall must~~ be in writing and must specify the amount of additional time that has been granted.

3. If ~~an the Chair grants an~~ extension ~~has been granted~~ to the Evaluator, the Evaluator ~~shall must~~ submit a progress report on the status of the Evaluator's Report and Recommendations at each regularly scheduled meeting of the ~~Commission Board~~ until the Report has been delivered. The progress report should explain ~~, generally,~~ the status of the Report and Recommendations without divulging details about the Complaint or the investigation.
4. If the Chair has denied the Evaluator's request for an extension, the Evaluator ~~shall must~~ deliver, within three (3) business days, a Report that summarizes the law and evidence gathered through the investigation up to that point, including any exculpatory and mitigating information.

I. ROLE OF THE CHAIR

1. The Chair ~~shall will~~ make procedural determinations including but not limited to the scheduling of Hearings, time extensions, and order of witnesses.
2. The Chair ~~is free to may~~ consult with the Evaluator and the City Attorney on procedural matters. The Chair may also discuss procedural matters *ex parte* with the Respondent.
3. The Chair ~~shall is serve as the~~ ~~sole only contact~~ ~~Commission contact and/or~~ spokesperson for interactions with the public, the City Council, and the media. Except for routine administrative matters within their individual areas of responsibility, the City Clerk, City Attorney, Evaluator, and Investigator ~~shall will~~ refer all inquiries to the Chair.

J. ~~COMMISSION BOARD FINDINGS~~

1. If the ~~Commission Board~~ concludes that further investigation is necessary, it ~~shall will~~ direct the Evaluator to conduct further investigation and to report back to the ~~Commission Board~~.
2. Upon conclusion of the ~~final~~ Hearing, the ~~Commission Board shall must~~ issue a decision by Resolution.
3. If the ~~Commission Board~~ decides that there is sufficient evidence to establish that ~~no a~~ violation ~~has~~ occurred, the ~~Commission Board shall must~~ publicly announce this ~~fact decision~~.
4. If the ~~Commission Board~~ decides that ~~that~~ there is insufficient evidence to establish that a violation ~~has~~ occurred, the ~~Commission Board shall must~~ publicly announce this ~~fact decision~~.

5. A decision that a violation has occurred ~~shall be~~ based on a preponderance of the evidence from the entire record of the proceedings.
6. The votes of at least three (3) members of the ~~Commission Board~~ are required to decide that a violation of Title 12 ~~of the San José Municipal Code has~~ occurred. Each ~~Commission Board~~ member voting on the decision ~~of the Commission shall~~ must certify on the record that he or she ~~has~~ heard (either in person or by listening to a recording) or read the transcript of the testimony at the Hearing on the complaint and reviewed all the evidence in the record.
7. The ~~Commission Board shall may~~ not impose a penalty if it is presented with clear and convincing evidence that, prior to the alleged violation:
 - a. The Respondent ~~had~~ requested and obtained a written opinion from the City Attorney or the California Fair Political Practices Commission (FPPC); and
 - b. The Respondent, in requesting the opinion, truthfully disclosed ~~truthfully~~ all the material facts pertinent to the case; and
 - c. The Respondent committed the acts or violations alleged in the complaint in good faith reliance upon the formal, written opinion of the City Attorney or the FPPC.
8. The City Clerk ~~shall must~~ provide a copy of the Resolution of the Board's decision ~~Commission's determination~~ to the Respondent and Complainant. A copy of the Resolution ~~must shall~~ be posted on the ~~Ethics Commission Board's~~ website.
9. The decision of the ~~Commission Board shall be the~~ is a final administrative determination of the City, unless the ~~Commission Board~~ makes another decision by Resolution to impose penalties under Section K, in which case that decision ~~shall is be~~ the final administrative determination of the City.

K. ADMINISTRATIVE ORDERS AND PENALTIES

1. If the ~~Commission Board~~ finds a violation, the ~~Commission Board~~ may:
 - a. Find mitigating circumstances and take no further action;
 - b. Issue a public statement or reprimand;

- c. Require corrective action by a particular deadline; ~~and/or~~
 - d. Impose a penalty in accordance with Chapter 12.04 of the San José Municipal Code.
2. The votes of at least three (3) Board members ~~_of the Commission~~ are required to impose any order, ~~and/or~~ penalty, or both for a violation of Title 12 ~~of the San José Municipal Code~~. Each ~~Commission Board~~ member voting to impose any order, ~~and/or~~ penalty, or both for a violation must certify on the record that he or she has heard (either in person or by listening to a recording) or read the transcript of the testimony at the Hearing on the complaint and reviewed all the evidence in the record.
3. In determining if penalties should be imposed for violations of Title 12 ~~of the San José Municipal Code~~ and the amount of any such penalties, the ~~Commission Board~~ shall may consider all the relevant circumstances surrounding the case including:
 - a. The severity of the violation;
 - b. The presence or absence of any intention to conceal, deceive, or mislead;
 - c. Whether the violation was deliberate, negligent or inadvertent;
 - d. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for Chapter 12.04 of the San José Municipal Code;
 - e. Whether the Respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
 - f. The degree to which the Respondent cooperated with the investigation;
 - g. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of Chapter 12.04 of the San José Municipal Code.
4. Civil penalties ~~shall are be~~ imposed by Resolution of the ~~Commission Board~~.
5. ~~—~~ The City Clerk ~~shall must~~ provide a copy of the Resolution imposing a penalty to the Respondent and Complainant. ~~A copy of the Resolution s, and post a copy of the Resolution~~ hall on be posted to the ~~Ethics Commission Board's~~ website.

L. REFERRALS TO OTHER ENFORCEMENT AGENCIES OR OFFICIALS

At any time, the Evaluator or the Commission Board may refer a complaint and, if applicable, any information gathered in investigating the complaint, to another government agency or official if the Commission Board determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered must be sent by the City Clerk's Office or City Attorney's Office to the agency or official together with the referral.

M. JUDICIAL REVIEW

1. The Resolution ~~shall~~must advise the Respondent that he or she can seek judicial review of the Commission Board's decision in accordance with Chapter 1.16 of the San José Municipal Code.
2. Upon receipt of any complaint filed in Superior Court challenging which challenges any decision of the Commission Board, the City Attorney ~~shall~~will decide ~~whether or not if that Office has there is~~ a conflict of interest which precludes the City Attorney's Office from representing the Commission Board in the action.
3. If the City Attorney determines that a conflict exists, the City Attorney ~~shall~~will retain conflicts counsel to defend the lawsuit.

N. COLLECTION OF CIVIL PENALTIES

1. Civil penalties imposed by the Commission Board ~~shall~~must be ~~paid~~remitted to the City Clerk within 100 days of the date of the Resolution by cashier's check for the specified amount. A cashier's check for the specified amount shall be remitted to the City Clerk.
2. If the civil penalties are not paid within the time specified, the Clerk ~~shall~~will refer the debt to the Director of Finance for submission to the City's collection agency.

O. ROLE OF THE CITY ATTORNEY

1. The City Attorney may provide legal advice to the Commission Board on matters unrelated to to non-complaints matters or on general interpretations of the San José Municipal Code or relevant state or federal law. ~~The but City Attorney may shall~~ not participate in investigations or reviews of complaints. (SJMC § 12.04.080.H)

2. The Chair or the Evaluator may consult with the City Attorney at any time ~~with regard to~~about procedure or an interpretation of the San José Municipal Code, in general, and not as it applies to facts that are the subject of a pending complaint.

SECTION 2. Resolution No. 77879 is hereby repealed.

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk