

**CITY OF LONG BEACH  
ETHICS COMMISSION  
Ad Hoc Committee Three**

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REVISED**

**Luke Fiedler, Commissioner  
Barbara A. Pollack, Commissioner**



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July 14, 2021

Ethics Commission  
City of Long Beach  
411 West Ocean Boulevard  
Long Beach, CA 90802

**RE: Ad Hoc Committee Three Report for July 14 Meeting**

Ad Hoc Committee Three met multiple times to discuss the draft Investigative Protocol. The current draft of the protocol is attached. At present, there are numerous pathways for reports of violations of ethics rules and harassment. The draft protocol assumes the pathways remain; the protocol would implement basic requirements for all investigations, regardless of pathway, and establish minimum standards of investigation, disposition, and documentation. The draft also assumes the City would adopt a single case management software tool, from among tools presently in use by the City.

There are several open questions noted in the draft protocol. We expect some of these questions will be addressed in presentations by City personnel to the Commission or through collaboration with the City Auditor. In addition, the draft protocol raises questions for the Commission, for example, whether the Commission will recommend the City have a single point of contact in each department for oversight of investigations.

This draft provides context for some of the presentations planned for the July meeting. We expect that the Ad Hoc Committee would make additional changes to the draft based upon the information obtained in presentations to the Commission.

Ad Hoc Committee Three has received responses from City staff to all of our initial questions. The responses are attached in two documents. These responses helped to inform the draft protocol. The responses also bear on the remaining work of Ad Hoc Committee Three on workstreams 4 and 5.

In addition to continued work on the draft protocol, Ad Hoc Committee Three plans to focus on workstream 5.2 (potential corrective action and discipline guidelines), 5.5 (review of requirements imposed on contractors and vendors that prohibit the giving of gifts), and compliance with Form 800 series disclosure requirements (and adequacy of guidance for filing). We believe it would be of great benefit for the Commission to receive a briefing on the on-going City review of procurement regulations.

Sincerely,

Luke Fiedler, Commissioner  
Barbara A. Pollack, Commissioner

## **Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct<sup>1</sup>**

This protocol shall apply to intake, investigation, and disposition of allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, harassment, and any other violations of the City Code of Conduct or Ethics Guide. Investigations should be conducted in a timely manner with consistent outcomes, subject to audit.

### **I. Intake**

- a. **Receipt of Allegation:** Receipt of allegations of improper conduct shall be documented, to include:
  - i. Date received
  - ii. Reporter's name and contact information, if known (and whether reporter requests confidentiality)
  - iii. Subject of the report including contact information, if known
  - iv. Date(s) of improper conduct
  - v. All facts known to reporter to support the report, how they know the facts, and who/what may corroborate the facts
  - vi. Identity of other potential witnesses<sup>1</sup>
  - vii. Location of any relevant documents and copies if available
- b. **Record of Allegation:**
  - i. The report of allegation should be placed in a case management system that provides security adequate to protect confidentiality of information and is amenable to audit.<sup>2</sup> Each allegation should be categorized by the nature of the conduct alleged. A common list of categories, similar to or based on that used by the City Auditor should be used by all pathways.
  - ii. If the investigator determines the allegation does not merit investigation, the rationale for early termination of the investigation will be documented in the case management system.
  - iii. If the investigator determines that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited.
- c. **Initiation of Investigation:** Individual in receipt of report of improper conduct should make a preliminary determination if he/she/they have training<sup>3</sup> and authority

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<sup>1</sup> Are City employees obligated to cooperate with investigations of improper conduct? Are there consequences if a City employee declines to cooperate with an investigation? How/when does City attorney subpoena power come into play? Does any other entity have subpoena power in regards to investigations of misconduct in LB?

<sup>2</sup> There are numerous pathways for reporting and investigation of allegations of improper conduct. At present, there are no city-wide statistics on number of allegations reported and dispositions. A case management system should enable collection and analysis of allegations and trends.

<sup>3</sup> TBD: Identify appropriate level of training needed to investigate allegations of improper conduct. Should include: understanding of the underlying legal/regulatory requirements alleged to have been violated (as is

to investigate the allegation and the time needed to conduct the investigation. If the individual lacks the training, authority and / or time needed, they should refer the report to an appropriate individual with authority and time needed to conduct a proper investigation.

- i. **Discussion point for Commission:** Should each Department or pathway have a single point for review of all allegations responsible for assignment of personnel to investigate, oversight of early disposition, and maintenance of records?

## II. Investigation

- a. **Early Disposition:** It may be possible to close a matter without investigation. If the investigator closes a matter without investigation, the rationale with all supporting materials should be provided in the case management system.
- b. **Preliminary steps. Investigator should:**
  - i. Contact the HR department responsible for the subject of the investigation and other investigative authorities to determine whether the same or a similar report is being or has been investigated.
  - ii. Obtain organization chart(s) for the subject's organization to identify potential witnesses in addition to those provided by the reporter.
  - iii. Identify likely sources of documents that may be relevant to the investigation and collect all such documents. Review documents and upload relevant documents to the case management system.
- c. **Interviews:**<sup>4</sup>
  - i. Start with fact witnesses
  - ii. Assure witnesses you will work to protect their identity if they request confidentiality. As a practical matter, in a small organization, the identity of the witnesses may become obvious to the subject of the investigation regardless of steps taken to protect confidentiality.
  - iii. Request that witnesses maintain confidentiality of the interview. In the event an allegation is unfounded, you want to mitigate any harm to the subject's reputation.
  - iv. Inform witnesses of the City policy prohibiting retaliation and your commitment to ensure the policy is enforced in regards to the witness' cooperation.
  - v. Ask every witness to identify any other possible witnesses or relevant documents.

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presently required for allegations of harassment) and skills training appropriate to the nature of the allegations. Certain types of allegations will be far reaching and may require financial auditing skills or other specialized knowledge.

<sup>4</sup> If legal counsel conducts the investigation, consideration should be given to the use of Upjohn warnings, consistent with City Counsel policy. Do City Employees have a right to counsel during interviews? A right to a union rep? What if the investigator interviews a person who is not a City employee and they ask to have counsel present?

- vi. When you Interview the subject of the investigation, admonish the subject not to attempt to determine the source of the allegation and ensure the subject is aware of the City's prohibition against retaliation. Afford the subject a fulsome opportunity to explain the conduct alleged to be improper. Allow the subject a full opportunity to provide any defensive information.
  - vii. Create a record of each interview and place the interview record in the case management system.
- d. **Status update:**
- i. When you have reached a preliminary decision on disposition, speak with the subject's immediate supervisor to determine if there are mitigating or aggravating circumstances that should be taken into account in your final report.
  - ii. Provide status update to source of allegation and subject at least every 30 days.

**III. Report. The report should:**

- a. Provide a summary of the allegation up front.
- b. Include a list of all interviews and a list of relevant documents. If additional documents were reviewed as part of the investigation but deemed not relevant, the report should describe those documents and the basis for the determination they were not relevant.
- c. State whether the investigation substantiated the allegation, in whole or in part, along with the rationale for the conclusion. If the investigation substantiated an allegation of improper conduct, the Report should include any mitigating or aggravating factors.

**IV. Disposition**

- a. Complete within 60 days of receipt of allegation.
- b. Conduct closure meeting with source of allegation and subject of the investigation.

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<sup>i</sup> Sources:

US Sentencing Commission Guidelines for Sentencing of Organizations (ch 8) and 2020 Evaluation of Corporate Compliance Programs  
 Performance Audit of the City of Long Beach Ethics Program  
 LA City Ethics Commission website  
 Oakland Ethics Commission website  
 Sacramento Ethics Commission website  
 Institute for Local Government Ethics and Transparency  
 ALI  
 ECI  
 SCCE Handling Anonymous Report  
 ComplianceCosmos.org  
 (iSight for reports: [www.i-sight.com](http://www.i-sight.com).)

## Ethics Commission

### Ad Hoc Committee 3 Series 1 Questions Updated

#### Action Plan Workstream 4

1. Per the Harvey Rose audit report, there are numerous paths for reporting ethics violations, including the City Attorney, the HR Department (through its EEO division for harassment and discrimination complaints), Internal Affairs (Police, and the Citizen Police Complaint Commission), supervisors, Administrative Officers in all departments, and the City Auditor's Fraud Hotline. Are there other paths for the semi-independent Commissions, such as Harbor? Is this list complete?

**The Civil Service Commission also has investigative powers and duties afforded through the City Charter to enforce the Civil Service Rules & Regulations and there may be others based on the nature of the issue. The reporting process is typically the same, and if needed, is routed to the appropriate department(s).**

- a. For each pathway, please provide any guidance regarding what allegations should go to the specific pathway and provide any protocols for the investigation and disposition of the allegations.

**There are not specific pathways that allegations must follow. Employees can report any perceived violation through each of the pathways previously identified above (Item 1), without being restricted to a certain avenue or process. Perceived violations are fully investigated through a fact-finding process and disciplinary actions are applied as appropriate whenever a claim is substantiated and can range from verbal counseling to separation of employment depending on the circumstances.**

Who conducts investigations for each pathway?

**It varies, based on the allegation and can be done internally by management, Human Resources (EEO), City Attorney, or contracted third party investigator. In addition, investigations may also be conducted by other departments based on the nature of the complaint or allegation (i.e., City Auditors Office, Citizen Police Complaint Commission, PD, etc.)**

Is there any training or experience required for individuals responsible to investigate the allegations?

**While there are not specific minimum requirements, investigations must be conducted and/or overseen by a manager and/or legal counsel experienced in investigations. Additionally, investigators that investigate claims related to harassment/discrimination/retaliation must have attended at least a training course covering such topics.**

- b. Are there any policies, procedures, or other written documentation that describe any of these pathways? If so, please provide.

**Yes, there are multiple policies that exist and depending on the type of violations, they could transcend over multiple areas with varying policies, procedures and/or protocols that outline processes for complaints, reporting, etc. For example:**

- **The City's Policy 2.1: Discrimination Complaints, outlines the pathway for reporting discrimination complaints.**
- **The City's Policy 7.9: Workplace Threats and Violence, outlines the pathway for reporting threats, threatening behavior, or acts of violence against employees, visitors or other individuals by anyone in the City.**
- **The City's Policy 2.2: Unlawful Harassment, outlines the pathway for reporting unlawful harassment complaints.**

**The Ethics Guide for Long Beach City Officials and Employees outlines the pathway for reporting ethical violations.**

**The above only represent examples and there are various guiding policies that outline the pathway for reporting based on the issue and the specific authority who has oversight (i.e., Internal Affairs, Civil Service Commission, City Auditor, etc.).**

- c. For each pathway, is the individual responsible for conduct and disposition of the investigation required to prepare a written report of the outcome of the investigation?

**The individual conducting the investigation serves as a fact-finder and is responsible for presenting the facts of an investigation. They typically do not determine the disposition or recommend discipline.**

Who receives any such written reports?

**It depends on the type of investigation; however, these are usually confidential documents and access is limited to Human Resources, City Attorney's Office, and City Manager.**

May we get copies of the reports? If not, are there any statistics on such investigations/reports such as number of complaints received, dispositions (on an anonymous basis), and the time taken to conduct the review(s)?

**It depends on the type of investigation; however, these are usually confidential documents and access is limited to Human Resources, City Attorney's Office, and City Manager.**

**The requested statistical information is not available.**

2. Are there any documents that specify discipline for specific misconduct? For example, is there a policy or procedure that identifies the appropriate discipline for a finding of harassment? A second offense?

**There is no policy that designates specific discipline infraction based on an offense and/or several offenses.**

**Section 84 of the Civil Service Rules & Regulations outlines causes for suspension, demotion, release or discharge for classified employees. However, this does not identify disciplinary actions based on specific misconduct**

3. What, if anything, are employees and elected/appointed officials currently required to sign to acknowledge compliance with the City's Code of Ethics?

**The Code of Ethics policy is part of the City's Onboarding policy in which employees are required to read and sign a policy acknowledgement form**

Who receives, tracks, and maintains such attestations?

**Each Department tracks for their respective employee and elected/appointed officials and the acknowledgement form is filed in the employee personnel file.**

**These and additional questions may be addressed when the item is presented to the Commission at a future date.**

#### Action Plan Workstream 5

4. The Harvey Rose audit report states that certain City officials and staff are required to submit Forms 700 and 801-803 (p. 44-46), but does not further identify which officials and staff in particular. Who decides which officials and staff are required to submit Form 700? Forms 801-803?

**The Fair Political Practices Commission (FPPC) sets the requirement via their regulations and Gov. [Code 87500](#). The FPPC directs each jurisdiction under the Filing Officer's (Office of the City Clerk in our case) to set the conflict of interest parameters. The code is required to be updated every two years during the Biennial Review. This is across all agencies within our City and requires each department to add/remove positions to make sure the conflict of interest code is up to date and reflects the current structure of the agency. We designate certain employees (normally Department Administrative Officers) who help us manage the process and keep us up to date on any changes that occur. All changes are reviewed by the City Attorney's Office and adopted by Council.**

5. Do these requirements apply to all City departments and commissions?

**Yes, all City Departments, Elected Officials, and Boards and Commissions are included in the Biennial Review. Those positions that make decisions with a material financial effect are included as filers.**

6. The audit report appears to suggest that the Forms 801-803 are submitted to the City Clerk. Is this correct, and if so, is the City Clerk the sole recipient of these forms?

The Office of the City Clerk is the primary custodian of the 800 series document. Per FPPC [Regulation 18944](#), required filers must submit this to their respective Filing Officer (Office of the City Clerk) within 30 days of qualifying. We are required to record and publish all statements and provide the website link to FPPC. We do so by keeping records via our FPPC tracking system (DisclosureDocs) and make a redacted copy available [online](#) on 800 series page

7. How are these disclosures currently maintained, reviewed, and processed for public disclosure?

As of 2009, the Office of the City Clerk began to use SouthTech's DisclosureDocs to help track, message, and store filings/other FPPC related documents. Prior to this date, we used Laserfiche as our permanent digital records repository. While DisclosureDocs meets the security requirements with the State for permanent retention, we continue to utilize Laserfiche as the primary repository for our indefinite records. In coordination with our DisclosureDocs application, City Clerk staff performs a Facial Review, records, and redacts the forms prior to making them available to the public. Forms for Elected Officials can be found on the City Clerk website, forms for City Employees can be viewed upon request via the Public Records Act (PRA).

8. Is anyone responsible for review of the disclosures for potential conflicts of interest?

While staff conducts a Facial Review, at present the 700 is a tool for the public to review. Our Office completes a full review on at least 20 percent of original statements filed on time, at least half of which must be selected on a random basis. A full review is also conducted on all late statements. The full review is done to determine if the statements contain all the information required by the [Political Reform Act](#) as specified in FPPC [Regulation 18115](#).

#### General Questions

9. At the last Commission meeting, we received an e-comment regarding a Cal State Long Beach Applied Ethics program, willing to offer collaboration on projects without charge. What is the process to solicit expressions of interest from such organizations so that we may call on them as needed?

**See response to question 10.**

10. Is there a process we must follow if we want to engage with one or more of the applicants for the Ethics Commission, who were not selected but have relevant experience and may be interested in working with the Commission on specific projects?

**The City solicits vendor assistance through a competitive procurement process that provides transparency and ensures equal access to conduct business with the City.**

**A solicitation, or an opportunity to conduct business with the City, can be accomplished through different types of competitive opportunities, which included the three methods below.**



- a. **Request for Proposals (RFP)** - Parameters are provided to request organization provide their proposal, usually for services; vendor provides plan with pricing; and evaluation committee selects best vendor based on established criteria within the solicitation document.
- b. **Request for Qualifications (RFQ)** - Requests organizations to provide their qualifications and can be used to establish a qualified list of potential vendors for a specific service, or can be the first step in a two-step solicitation process.
- c. **Request for Information (RFI)** - This method allows the City to understand opportunities and options available to the City, and does not result in an award.

**The competitive processes above typically require that staff develop a clear scope of work, specifications, expected deliverables, evaluation criteria, and other associated items be developed to determine the best procurement process and to solicit outside responses. Businesses must register through Planet Bids and meet insurance and other relevant requirements to receive an award from the City.**

- 11. Is there a process we should follow if we want to seek input from outside experts, who may be willing to speak with us about direction of a specific project without charge?

**Ethics Commission should communicate areas of interests from which the Commission wishes to receive presentations to inform Commission work to staff. Staff will work to identify potential presenters who can lend their expertise to inform the Commission's work.**

## Ethics Commission

### Ad Hoc Committee 3 Series 1 Questions

#### Follow Up Questions and Response

Ref Question 4: May we review the results of the last Biennial Review to know which officials and staff are required to submit Forms 700 and 801-803?

**The results can be found on the letters we sent to Council. Here are the links:**

<http://longbeach.legistar.com/View.ashx?M=F&ID=8769246&GUID=3254C38C-ACCF-4EBF-BC07-8D989A355A46>

<http://longbeach.legistar.com/View.ashx?M=F&ID=8769244&GUID=FB93E92B-E758-4F09-B05E-107F7E4AD9BC>

**The Biennial Review has no bearing on the filing requirement for the 800 series forms. This is set forth by the FPPC. See link below.**

<https://www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html>

**The review only updates current conflict of interest code, dictating which positions are required to file the form 700.**

Ref Questions 6-8: Do I understand correctly that the City relies upon public review to determine if the filings reflect a conflict of interest? That the City review is focused solely on completeness of the filing?

**The Form 700 filing is a disclosure tool for the public. Determining whether a conflict of interests is worthy of investigation is a matter handled by the FPPC. We do not investigate filings to determine if a conflict exists, we receive and verify that the form is completed correctly. The duties of the Filing Officer are as follows (FPPC Regulation 18115):**

- receives and retains original statements
- supply the necessary forms and manuals
- determine whether the proper statements have been filed and whether they conform on their face with the Act's requirements completed correctly
- notify the filer if the statement has not been filed or incomplete
- make at least two attempts at attaining compliance, then report
- compile and maintain current lists of all statements required to be filed

**CITY OF LONG BEACH  
ETHICS COMMISSION  
Ad Hoc Committee Two**

**Susan Wise, Chair  
Lani De Benedictis, Commissioner  
J.P. Shotwell, Commissioner**



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July 14, 2021

Ethics Commission  
City of Long Beach  
411 West Ocean Boulevard  
Long Beach, CA 90802

**RE: Ad Hoc Committee Two Report for July 14 Meeting**

Ad Hoc Committee Two had 2 meetings using Microsoft Teams on June 23 and July 7.

The committee has discussed potential topics for presentation at future commission meetings or workshops.

The committee did no further work on the items identified in its May 6 report as its primary and immediate responsibilities over the next 6 to 12 months.

At this point, the committee is awaiting the staff's revised work plan/action plan deliverables and timeline before resuming that work.

Sincerely,

Susan Wise, Chair  
Lani De Benedictis, Commissioner  
J.P. Shotwell, Commissioner