

Date: December 8, 2021

To: Honorable Members of the Ethics Commission

From: Julian Cernuda, Special Projects Officer

Subject: **Revisiting Ad Hoc Committees Structure**

Attached you will find the Anticipated Monthly Schedule Timeline for Action Plan deliverables. Please review the anticipated upcoming deliverables to assist in the discussion of forming new potential ad hoc committees moving forward.

If you have any questions, please contact Julian Cernuda, Special Projects Officer, at (562) 570-6154.

ATTACHMENT

CC: APRIL WALKER, ADMINISTRATIVE DEPUTY CITY MANAGER
AMY R. WEBBER, DEPUTY CITY ATTORNEY
TAYLOR M. ANDERSON, DEPUTY CITY ATTORNEY
JONATHAN NAGAYAMA, CITY CLERK ANALYST

**City of Long Beach
Action Plan Deliverables Timeline
Anticipated Monthly Schedule**

2021

July
Commission receives Code routing process feedback, agrees to any changes, and potentially adopts amended Code
Commission receives election related materials for review and recommendation
Commission receives disciplinary workflow and data presentation from Civil Service and Human Resources
August
Commission discusses Beginner's Guide for Prospective Candidates and provides recommendation to City Clerk
Commission continues Code discussion, if needed
Staff works with Human Resources to distribute Code to bargaining units for review and input
September
Commission discusses Candidate Handbook and provides recommendations to City Clerk
Commission continues discussion on Candidate Handbook, if needed
October
Staff brings back Reporting Pathways resource for Commission review and recommendations
Commission discusses Authorities, Boards, Commissions, and Committees Handbook to provide recommendations, if needed
November
Commission Conducts Workshop with Ethics Capstone Team to receive progress report on development of an Ethics Education Program
December
Commission Receives final presentation on Ethics Capstone Team educational program recommendations
Staff receives and synthesizes bargaining organizations feedback on Code, feedback shared with Commission and Commission agrees to any changes and potentially adopts amended Code

2022

January
Supplier's Code: Commission receives presentation from Financial Management on current supplier code work
Lobbying (City Clerk)
February
Anti-Retaliation/Anti-Harassment Policy Presentation and Review (Policies: 2.1;2.2;7.9 – Policies may be presented separately)
Code of Conduct Feedback from Bargaining Units brought back
March
Immediate Family Disclosure Presentation and Review (AR32-1)
Staff brings back final Code of Conduct with any approved Commission Changes and forwards to Council
April
Commission receives Ethics Guide presentation from City Attorney and discusses Guide
Conflict of Interest Policy Presentation and Review (Atty – Ethics Guide)

Date: November 10, 2021

To: Honorable Members of the Ethics Commission

From: Rebecca Guzman Garner, Administrative Deputy City Manager *R. Garner*

Subject: **Revisiting Ad Hoc Committees Structure**

On September 14, 2021, the Office of the City Attorney transmitted a memo regarding Ad Hoc and Standing Committees under the Brown Act.

Please review the attached memo to discuss the existing Ad Hoc Committees structure and to consider alternative approaches to the current structure that address Brown Act concerns and provide additional benefits to the work of the Ethics Commission.

If you have any questions, please contact Julian Cernuda, Special Projects Officer, at (562) 570-6154.

ATTACHMENT

CC: APRIL WALKER, ADMINISTRATIVE DEPUTY CITY MANAGER
JULIAN CERNUDA, SPECIAL PROJECTS OFFICER
AMY R. WEBBER, DEPUTY CITY ATTORNEY
JONATHAN NAGAYAMA, CITY CLERK ANALYST



City of Long Beach

Working Together to Serve

Office of the City Attorney

Memorandum

DATE: September 14, 2021

To: Ethics Commissioners

FROM: Amy R. Webber, Deputy City Attorney

SUBJECT: Ad Hoc and Standing Committees under the Brown Act

You have asked how the Ethics Commission ("Commission") and its use of Ad Hoc committees will work as the Brown Act COVID-19 exemptions expire. The purpose of this memo is to address those concerns.

Background

The Ralph M. Brown Act (California Government Code 54950 et seq.) establishes rules for open and public meetings of legislative bodies, including local government advisory commissions. Agendas for regular meetings are required to be posted in advance, and meetings are required to be held in accessible facilities, among other requirements. During the COVID-19 pandemic, in order to facilitate participation at meetings of local legislative bodies, Governor Newsom issued Executive Order N-08-21 suspending some Brown Act requirements during the pandemic. This order will expire on September 30, 2021, unless extended, and the usual Brown Act requirements will resume. Please see attached memo dated August 19, 2021, for more specific information on these requirements.

Standing Committees or Ad Hoc Committees

The expiration of the Executive Order will not affect Ad Hoc committees. An Ad Hoc committee is created for a limited time or to consider a particular issue, and consists of less than a quorum of the Commission. They are not subject to Brown Act notice and posting requirements.

By contrast, standing committees of a legislative body, irrespective of their composition, have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by City Charter, Ordinance, Resolution, or formal action of a legislative body. Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, function controls over form. For example, a statement by the legislative body that "the advisory committee shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.

It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary (Ad Hoc) committee. If a committee is created to explore a topic of limited scope and duration, is it an exempt temporary committee or a non-exempt standing committee?

The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

If the Ad Hoc committees over time and practice have become standing committees, they are subject to the usual Brown Act notice and posting rules which will resume October 1, 2021. If the committees remain Ad Hoc with limited scope and duration, they are not affected by the expiration of the Executive Order, as they are composed of less than a quorum of the Commission.

Staffing

The Brown Act is silent on staffing of meetings. It is largely a function of budget, and availability of staff and facilities. For regular Commission meetings and standing committees, which require preparation of agendas and supporting documents, keeping of minutes and public comment, coordination of facilities and equipment, staff is generally needed. Long Beach Municipal Code Section 2.18.040 requires that "Within the limits dictated by fiscal constraints, the City will endeavor to provide reasonable staff support to advisory bodies in order to permit them to perform their functions in an effective manner."

Ad Hoc committee meetings are supposed to be informal meetings to address specific issues, and provide some flexibility for less than a quorum of Commission members. If staff is included in these informal meetings, there may be a perception the Ad Hoc committee is operating more like a standing committee, which would be subject to the Brown Act.

Conclusion

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.

document2

cc: Rebecca Garner, Administrative Deputy City Manager
Julian Cernuda, City manager's Office
JT Nagayama, City Clerk Analyst

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

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



November 10, 2021

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

RE: Ad Hoc Committee Three Report for November 10 Meeting

Ad Hoc Committee Three provided the attached draft investigative protocol in July 2021. Due to other priorities, the Commission deferred action on the draft protocol. Now that the Commission has heard the presentation of the City Auditor and addressed a number of other higher priority items, Ad Hoc Committee Three believe it would be beneficial to seek feedback on the draft protocol from the office of the City Auditor and any other relevant department, including Human Resources. We request Commission permission to request such feedback and welcome any comments other members of the Commission may offer on the draft protocol.

Sincerely,

Luke Fiedler, Commissioner
Barbara A. Pollack, Commissioner

Protocol for Intake, Investigation and Disposition of Allegations of Improper Conductⁱ

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 witnesses¹
 - 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.² 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 training³ and authority

¹ 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?

² 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.

³ 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:**⁴
 - 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.

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.

⁴ 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.

ⁱ 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.)