Title: 2018 Sacramento Ethics Commission Annual Report to the City Council Follow Up

Location: Citywide

Recommendation: Receive and file.

Contact: Mindy Cuppy, City Clerk, (916) 808-5442, Office of the City Clerk

Presenter: Mindy Cuppy, City Clerk, (916) 808-5442, Office of the City Clerk

Attachments:
1-Description/Analysis
2-Charter Section 34 - Investigations
3-Code Section 1.28 - General Penalty
4-Code Section 2.112 - Ethics Commission
Description/Analysis

Issue Detail: On April 23, 2019, the Sacramento Ethics Commission submitted its annual report to the City Council and made recommendations that require further Council action. The City Clerk is bringing back this report to provide further information on the Council action and to receive clarification from the Commission if further action is required.

Policy Considerations: The Commission’s recommendations may require Council action and, in some instances, a vote of the electorate.

Economic Impacts: None

Environmental Considerations: None

Sustainability: None

Commission/Committee Action: None

Rationale for Recommendation: The Commission made its annual report to the Council and made recommendations regarding subpoena power; hearing officer; independence and staffing; and education, training, and policy. This report outlines the next steps in addressing each of these recommendations.

Financial Considerations: None

Local Business Enterprise (LBE): None

Background: During its annual report to the City Council, the Commission made four primary recommendations: subpoena power; hearing officer; independence and staffing; and education, training, and policy. This report addresses each recommendation.

Subpoena Power

Under the City Charter, only the City Council or a committee composed of Council Members may subpoena witnesses (City Charter § 34) so one of the following actions would have to occur for the Commission to be granted subpoena power:

1. Council Action: At the Commission’s request, the City Council could issue subpoenas ordering witnesses to appear before the Commission and testify or produce documents.

2. Council Action: The City Council might, by amending City Code chapter 2.112, be able to delegate the subpoena power to the Commission when the Commission acts on a complaint. The amendment would resemble City Code § 1.28.010.D.4.e.viii(D), which reads as follows:
Subpoenas. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making his/her decision regarding the imposition of administrative penalties.

Further research would be required to confirm that the City Council may delegate the subpoena power in this way.

3. Charter Amendment: The electorate could approve an amendment of the City Charter that expressly authorizes the City Council to delegate the subpoena power to the Commission or directly grants the subpoena power to the Commission.

Hearing Officer

The Commission requested the ability to use an administrative-law judge (ALJ) or hearing officer when potentially lengthy or complex administrative hearings make timely disposition of a complaint difficult. Specifically, the Commission requested the ability to use an ALJ or hearing officer to take the matter under submission, and the Commission would then conduct a streamlined hearing to adjudicate a complaint. Council action to amend City Code chapter 2.112 to allow for the use of an ALJ or hearing officer would be needed. Budget allocation, also by Council action, would also be needed so that funding is available should the Commission chose to use an ALJ or hearing officer.

Independence and Staffing

The Commission requested independent, dedicated staffing and a guaranteed budget, which require Council action and possibly a vote of the electorate. Council could take action during the budget cycle to modify the City Clerk’s budget to add additional funding and staff. If the Council wishes to guarantee the Commission’s independence and funding within the City Charter, a vote of the electorate is required.

Education, Training, and Policy

Input and involvement regarding education, training, and policy development regarding the code sections under the Commission’s jurisdiction are critical to the success of the City’s ethics program. Although City Code chapter 2.112 is silent regarding the Commission’s role in education, training, and policy, the City Clerk and the Commission agree that Commission guidance and support is critical to the development and execution of training. The Council could amend City Code chapter 2.112 so as to clarify the Commission’s role.
§ 34 Investigations.

The city council or any duly appointed committee of the members of the council may make investigations into the affairs of the city government and the conduct of any department, office, agency, officer or employee thereof, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any person who fails to obey a lawful order issued in the exercise of these powers by the city council or a committee of the council shall be guilty of a misdemeanor and punishable by fine or imprisonment, or both, in such amount and for such time as prescribed by state law for misdemeanors.

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Chapter 1.28 GENERAL PENALTY

1.28.010 General penalty—Continuing violations—Imposition of administrative penalties.

A. Criminal Sanctions. Criminal sanctions for violations of mandatory provisions of this code shall be as set forth in Sections 1.28.020 and 1.28.030 and elsewhere in this code.

B. Civil Actions. The city attorney may bring an action in a court of competent jurisdiction to enjoin a violation of any provision of this code or any other ordinance of the city, or to enforce administrative penalties imposed.

C. Administrative Penalties.

1. The purpose of this subsection relating to administrative penalties is to provide alternative remedies to address acts or omissions set forth in subsection (C)(2) of this section. Violations may be corrected, abated or addressed in a number of ways. It is the intent of this subsection to provide the city with additional remedies to correct violations and, where necessary, to penalize violators for failure to comply with city codes and ordinances. The city council hereby finds and determines that enforcement of this code, other ordinances adopted by the city, conditions on entitlements and terms of city agreements are matters of local concern and serve important public purposes. Consistent with its powers as a charter city, the city adopts this administrative penalty provision in order to achieve the following goals:

   a. To protect the public health, safety and welfare of the city;
   b. To provide for an administrative process that has objective criteria for the imposition of penalties and provides for a fair process to appeal the imposition of administrative penalties;
   c. To provide a method to penalize responsible parties who fail or refuse to comply with provisions of this code, ordinances, agreements, or conditions on entitlements in the city;
   d. To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.

   The city council establishes an administrative penalty procedure. All final administrative orders made pursuant to the procedures set forth in this subsection shall be subject to review only as provided in California Code of Civil Procedure Sections 1094.5 and 1094.6. Should any court of competent jurisdiction determine that the city must provide an appeal of any final administrative order in a manner other than set forth in Sections 1094.5 and 1094.6, then it is the intent of the city council that the administrative penalty process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code Section 53069.4.

   2. Imposition of Administrative Penalties. In addition to criminal sanctions and other remedies set forth in this code, the city may impose administrative penalties for any of the acts or omissions set forth in this subsection. Administrative penalties shall be imposed, enforced, collected and reviewed in compliance with the provisions of this section. Administrative penalties may be imposed for any of the following acts or omissions:

      a. All violations of this code;
b. All violations of the city charter and other codes or ordinances adopted by the city, including, but not limited to, the Planning and Development Code;

c. All violations of uniform codes adopted by the city;

d. Failing to comply with any order issued by a commission, board, hearing officer or examiner or other body appointed by the city council and authorized to issue orders, including, but not limited to, the planning and design commission, the housing code advisory and appeals board, the preservation commission, the design director, the preservation director and the zoning administrator;

e. Failing to comply with any condition or requirement imposed on or by any entitlement, permit, contract or environmental document issued or approved by the city.

3. Alternative Remedy. Nothing in this subsection shall prevent the city from using one or more other remedies to address violations. When the violation upon which the administrative penalty is based pertains to building, plumbing, electrical, structural or zoning provisions, the responsible party shall be provided a reasonable period of time to correct the violation prior to imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety.

4. Definitions. For purposes of this chapter, the term “responsible party” shall refer to any person, business, company or entity, and the parent or legal guardian of any person under the age of eighteen (18) years, who has done any act for which an administrative penalty may be imposed.

D. Imposition of Administrative Penalties.

1. Notice. Where the city has determined that any responsible party has violated this code or other provisions as set forth in subsection (C)(2) of this section, the city may commence an administrative proceeding to impose administrative penalties. Any department in the city responsible for enforcement of codes or ordinances may initiate administrative penalty proceedings. To commence such proceedings, the department head or designee shall issue an order imposing administrative penalties. The order shall contain:

   a. The name and address of the responsible party in violation. If the administrative penalty results from events occurring on, or the status or condition of, property, the order shall also contain the address of the property;

   b. A statement from the city official responsible for issuing the order of the acts or conditions which violate this code or other provisions as set forth in subsections (C)(2) of this section and the specific code or provisions which have been violated;

   c. The amount of the administrative penalty the city imposes for the violation;

   d. A statement that the responsible party in violation may appeal the imposition of the administrative penalty within twenty (20) days of the date the order is served;

   e. A statement that if the responsible party fails to request an appeal of the imposition of the administrative penalty, the order imposing the penalty shall be final;

   f. A statement that any responsible party upon whom a final administrative penalty has been imposed may seek review of the order imposing the penalty pursuant to California Code of Civil Procedures Sections 1094.5 and 1094.6.

2. Service of Administrative Penalty Order.
a. Persons Entitled to Service. The administrative penalty order shall be served upon the responsible party in violation. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her.

b. If the violation is the result of a condition existing on property in the city and the city proposes to impose a lien on the property, one copy of the administrative penalty order shall also be served on each of the following if known to the city official issuing the order or disclosed from official public records: (i) the holder of any mortgage or deed of trust or other lien or encumbrance of record; and (ii) the owner or holder of any lease of record. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her.

c. Method of Service. Service of an administrative penalty order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service on any owner in violation is deemed complete when it is served at the address listed by the owner on the latest equalized assessment roll of Sacramento County, or as known to the city official issuing the order. In lieu of personally serving the responsible party by personal delivery or certified mail, service of the administrative penalty order and any amended or supplemental order may be made as follows:

   i. In the event that service by certified return receipt mail cannot be effected or the recipient cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:

      (A) By leaving a copy during usual business hours in the recipient’s business with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left;

      (B) By leaving a copy at the recipient’s dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

   ii. In the event the violation results from an event occurring on, or a condition existing on, property in the city and the recipient cannot be served by certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth in subsection (D)(2)(c)(i)(A) of this section upon the property manager or rental agency.

   iii. If the responsible party resides or has his, her or its business address out of state and service cannot be effected by certified return receipt mail, then service may be made by first-class mail.

   iv. If a violation relates to an event occurring on, or a condition existing on a property in the city, substituted service may be effected by posting the property with the administrative penalty order and mailing a copy of the order to the responsible party in violation, at the address of the property on which the violation has occurred or is occurring.

   v. If the responsible party in violation or other person entitled to service cannot be located or service cannot be effected as set forth in this section, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.
The failure of any person to receive such administrative penalty order shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

3. Amount of Administrative Penalty. Unless the city council has by resolution or by ordinance adopted a separate and distinct administrative penalty for the particular violation, the amount of the administrative penalty to be imposed shall be set by the department head or his or her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. Unless otherwise provided in this code, administrative penalties may be imposed in any amount not less than one hundred dollars ($100.00) nor more than twenty-five thousand dollars ($25,000.00) per violation. In determining the amount of the administrative penalty to be imposed, the city official shall consider factors including, but not limited to, the seriousness of the violation, the responsible party’s efforts to correct the violation, the injury/damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of city staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations. The amount of the administrative penalty shall be set according to the following schedule:

a. Level A violations are violations that present a substantial probability that death or serious physical harm to the public at large or person(s) would result therefrom. Level A violations shall be subject to an administrative penalty of five thousand dollars ($5,000.00) to twenty-five thousand dollars ($25,000.00);

b. Level B violations are violations that either: (1) present the threat, but not substantial probability, that serious physical harm to the public at large or person(s) would result therefrom; or (2) present circumstances that are likely to cause and/or do cause serious harm to public or private property; or (3) present a conscious and willful disregard of: (i) a hearing examiner’s order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level B violations shall be subject to an administrative penalty of two thousand five hundred dollars ($2,500.00) to four thousand nine hundred ninety-nine dollars and ninety-nine cents ($4,999.99);

c. Level C violations are violations that present circumstances that either: (1) are likely to cause and/or do cause harm to public or private property; or (2) show repeated or continuous noncompliance with: (i) a hearing examiner’s order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level C violations shall be subject to an administrative penalty of one thousand dollars ($1,000.00) to two thousand four hundred ninety-nine dollars and ninety-nine cents ($2,499.99);

d. Level D violations are violations other than Level A, B, or C violations. Level D violations shall be subject to an administrative penalty of one hundred dollars ($100.00) to nine hundred ninety-nine dollars and ninety-nine cents ($999.99).

4. Administrative Hearing Appeal.

a. Notice of Appeal. Any responsible party upon whom an administrative penalty has been imposed may appeal the administrative penalty by filing with the office of the city clerk a written notice of appeal within twenty (20) calendar days of service of the administrative penalty order. The written notice of appeal shall contain:

i. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
ii. A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his, her or its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and

iii. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail.

b. Payment of Appeal Fee. Any responsible party appealing the imposition of an administrative penalty shall be required to pay to the city clerk, at the time the written notice of appeal is filed, an appeal fee as herein provided. The appeal fee is intended to cover the costs, expenses and city employees' time incurred by the city in processing, preparation for, and hearing of the appeal, and shall be refunded to the appellant if the hearing examiner determines that imposition of the penalty is not warranted or is not in the interest of justice. No notice of appeal is valid unless accompanied by the appeal fee, unless otherwise waived pursuant to Section 1.24.100 of this code. In the event an appeal fee is waived and the violation results in a lien against the appellant's property, the appeal fee which was waived shall be added to the amount of the lien. The appeal fee shall be:

i. Level A violation, five hundred dollars ($500.00);

ii. Level B violation, two hundred fifty dollars ($250.00);

iii. Level C violation, one hundred dollars ($100.00);

iv. Level D violation, fifty dollars ($50.00).

c. Hearing Examiner. The administrative penalty appeal shall be heard by a hearing examiner appointed by the city council to hear administrative appeals. The hearing examiner shall not be a city employee.

d. Setting Administrative Penalty Appeal Hearing. The administrative penalty appeal hearing shall be set by the city clerk or his or her designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written notice of appeal. The hearing shall be held no sooner than twenty (20) days after the notice of appeal is filed. Notice of the appeal hearing shall be mailed to the appellant at least fifteen (15) days before the hearing date.

e. Conduct of the Administrative Penalty Appeal Hearing.

i. Testimony at the Hearing. At the time set for the administrative penalty appeal hearing the hearing examiner shall proceed to hear testimony from the representative of the city, the appellant and any other competent persons with respect to imposition of an administrative penalty.

ii. Record of Oral Evidence at Hearing. The proceedings at the hearing shall be reported by a tape recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

iii. Continuances. The hearing examiner may, upon request of the appellant or the city, or upon his or her own motion, grant continuances from time to time for good cause shown.

iv. Oaths—Certification. The hearing examiner shall administer the oath or affirmation.

v. Evidence Rules. Government Code Section 11513, subsections (a), (b) and (c), as it exists on the effective date of the ordinance codified in this section, these provisions, or as hereafter amended, shall apply to all administrative penalty hearings.

vi. Rights of Parties.
(A) Parties may represent themselves, or be represented by any person of their choice.

(B) If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at that party’s own cost, to translate for the party. An interpreter shall not have had any personal involvement in the issues of the case prior to the hearing.

vii. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or county, or any of their departments.

viii. Inspection of Premises.

(A) In the case of a violation related to real property in the city, the hearing examiner may inspect the property prior to, during, or after the hearing, provided that:

(1) Notice of the inspection shall be given to the parties before the inspection is made;

(2) The parties consent and are given an opportunity to be present during the inspection; and

(3) Upon completion of the inspection, the hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusion drawn therefrom.

(B) Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

(C) Notice to the parties, or the owner(s)’ consent to inspect the property is not required if the property can be inspected from areas to which the general public has access or with permission of other persons authorized to provide access to the property and/or buildings located on the property.

(D) Subpoenas. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making his/her decision regarding the imposition of administrative penalties.

f. Imposition of the Administrative Penalty—Form and Contents of Decision—Finality of Decision.

i. Factors in Hearing Examiner’s Decision. The hearing examiner may affirm the administrative penalty imposed by the city, reduce the penalty to a lower amount within the charged level of violation, reduce the level of violation and reduce the penalty to an amount within the new level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice. The hearing examiner shall have the discretion to impose a lower, but not a higher, level of violation and/or penalty amount. In making his or her decision regarding the administrative penalty, the hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party’s efforts to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of city staff time which was expended investigating and addressing the violation.
Hearing Examiner's Decision. The decision of the hearing examiner shall be issued within thirty (30) days of the hearing, shall be in writing, and shall contain findings of fact and a determination of the issues presented. The decision shall require the administrative penalty to be paid within twenty-five (25) calendar days of the date of service of the decision. The decision shall inform the responsible party that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the responsible party, and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected. The hearing examiner's decision shall also inform the responsible party that any judicial review of the hearing examiner's decision shall be pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

Service of the Hearing Examiner's Decision. Upon issuance of the decision, the city shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing examiner's decision shall be deemed served two days after the date it is mailed to the address provided by the appellant.

Any judicial action taken to set aside, annul or vacate the decision of the hearing examiner shall be filed in the manner and within the time provided in California Code of Civil Procedure Sections 1094.5 and 1094.6.

g. Payment and Collection of the Administrative Penalty.

i. Any responsible party upon whom an administrative penalty has been imposed shall pay the administrative penalty within twenty-five (25) days after service of a final order or decision of a hearing examiner. The city may take the actions set forth in this subsection to collect the unpaid penalty.

ii. Attorney's Fees and Costs. In the event a civil action is commenced to collect the administrative penalty, the city shall be entitled to recover reasonable attorney’s fees and all costs associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure Section 1033.5.

iii. Interest on Administrative Penalties. An administrative penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the twenty-sixth day following service of a final order or the hearing officer's decision.

iv. Liens. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a lien on the real property on which the violation occurred.

(A) Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(B) The lien shall attach when the city manager or his or her designee records a lien listing delinquent unpaid administrative penalties with the county recorder's office. The lien shall specify the amount of the lien, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

(C) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (D)(4)(g)(iv)(B) of this section shall be recorded by the city clerk.
(D) The lien may be foreclosed at any time by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys’ fees and costs, including, but not limited to, costs incurred for processing and recording of the lien and providing notice to the property owner.

v. Special Assessments. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a special assessment against the real property on which the violation occurred. The procedure established by the city council to specially assess costs of abating public nuisances set forth in Article VIII of Chapter 8.04 shall be used to specially assess unpaid administrative penalties.

vi. Other Enforcement Procedures. The city may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Sections 680.010 et seq. (Ord. 2015-0008 § 1; Ord. 2013-0026 § 1; Ord. 2013-0021 § 1; Ord. 2012-005 § 2; Ord. 2006-065 § 3; Ord. 2005-038 § 2; Ord. 2001-046 § 2; Ord. 98-038 § 1; Ord. 97-065 § 1; prior code § 1.01.070)

1.28.020 Criminal sanctions—Misdemeanors and infractions.

A. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this code, including any administrative order issued hereunder. Any person violating any of the provisions, or failing to comply with any of the requirements of this code, including an administrative order, shall be guilty of a misdemeanor, except where it has been provided by state law or this code that the violator shall be guilty of an infraction. Any person convicted of a misdemeanor under the provisions of this code shall be punishable by a fine of not more than one thousand dollars ($1,000.00), or not less than five hundred dollars ($500.00), or by imprisonment in the County Jail for a period not exceeding six months, or by both fine and imprisonment; provided that violations of Chapter 13.10 of this code regarding unlawful dumping shall be punishable by a fine of not less than five hundred dollars ($500.00), or by imprisonment in the County Jail for a period not exceeding six months, or by both fine and imprisonment.

B. Notwithstanding the above provisions, a violation of any provision of this code is an infraction when the prosecutor files a complaint charging the offense as an infraction or reduces the charge to an infraction.

C. Whenever in this code, or in any other ordinance of the city, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefore, the violation of any provision of this code, any adopted code, administrative order or any other ordinance of the city shall be deemed to be a misdemeanor and shall be punished as set forth in subsection A of this section.

D. Multiple Convictions of an Infraction. Any offense which would otherwise be an infraction is a misdemeanor if the defendant has been convicted of the same offense three or more times within the twelve (12) month period immediately preceding the commission of the offense and the convictions are alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed a conviction of the offense charged.

E. Separate Offenses. Any person that violates any provision or fails to comply with any of the requirements under this code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continues, is
maintained or permitted by the person, and may be punishable as such. (Ord. 2001-047 § 1; Ord. 2001-046 § 2)

1.28.030 Prohibited acts—Includes causing, maintaining, permitting or suffering.

Whenever in this code any act or omission is made unlawful, it shall include causing, maintaining, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Ord. 2001-046 § 2)

1.28.040 Recovery of attorneys' fees and costs.

A. In addition to all other remedies and cost recovery authorized or provided by any provision of this code or any other law, any person violating any provision of this code shall be liable to the city for the city's reasonable attorneys' fees and costs incurred to remedy such violation or enforce such person's compliance with this code, including recovery of the city's reasonable attorneys' fees and costs in bringing an action or proceeding to enforce an administrative determination or court order against such person. This section does not apply to public nuisance abatement actions for which attorneys' fees are authorized under subsection B of this section.

B. In any action or proceeding brought by the city to abate a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees; provided that, pursuant to Government Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

C. Notwithstanding any other provision of this code, the city, in its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid city fines, taxes, interest, fees, service charges, civil penalties, administrative penalties, and any other sum required to be paid under any provision of this code or any other law. Upon giving advance written notice that the debtor will be subject to collection costs if the debtor does not pay the unpaid amount owed to the city, the city shall be entitled to recover reasonable attorneys' fees and costs associated with the collection of the amount owed regardless of whether the city pursues said collection through litigation or by any other means. As used herein, “costs” include, but are not limited to, city staff time incurred in the collection of the amount owed, third-party costs incurred in the collection action, and those costs set forth in Code of Civil Procedure Section 1033.5. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total amount owed has been collected. (Ord. 2008-007 § 2; Ord. 2005-038 § 1)
Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.112 ETHICS COMMISSION

2.112.010 Commission established.

The Sacramento ethics commission is hereby established. (Ord. 2017-0026 § 2)

2.112.020 Purpose of commission.

The purpose of the commission is to review and consider complaints against elected and appointed city officials, as further described in section 2.112.030, to ensure those city officials are conforming their conduct to the city’s laws and policies. (Ord. 2017-0026 § 2)

2.112.030 Powers and duties of commission.

A. Subject to subsections B and C below, the commission has the power and duty to do the following:

1. Review, investigate, and consider complaints alleging violations of:
   (a) Section 35 of the Sacramento City Charter (“Limitation on future employment”);
   (b) Chapter 1.20 (“Code of Fair Campaign Practices”);
   (c) Chapter 2.13 (“Campaign Contribution Limitations”) and chapter 2.14 (“Campaign Spending Limits and Public Campaign Financing”), if the city has not contracted with the Fair Political Practices Commission for enforcement of those chapters;
   (d) Chapter 2.15 (“Lobbyist Registration and Reporting Code”);
   (e) Chapter 2.16 (“Conflict of Interest”);
   (f) Chapter 4.02 (“Code of Ethics”)
   (g) Chapter 4.08 (“Sunshine Ordinance”); and

2. Enforce administrative penalties for violations of provisions covered in subsection A.1 above, in accordance with the policy adopted pursuant to section 2.112.030.C.6. Penalties for each violation may not exceed the greater of (i) $5000, or (ii) in the case of campaign contributions, three times the amount that the violator failed to report properly or unlawfully contributed or accepted.

3. At least annually, report to the city council regarding the activities of the commission, with recommendations, if any, regarding the subjects of its purview as described in subsection A.1.

4. Every two years, review any contract the city has with the Fair Political Practices Commission, for the purpose of reporting to the council on the contract’s efficacy. The commission may also make recommendations regarding renewal of the contract.
5. Provide annual input to the city attorney on the list of law firms used by the city attorney to conduct investigations of sexual harassment claims against city officials.

6. Provide input on the initial selection of an evaluator under subsection C.4; make recommendations for subsequent contracts with an evaluator; and make recommendations regarding the retention or replacement of an evaluator.

7. Act as the screening panel for selection of independent redistricting commission candidates, as provided in article XII of the Sacramento City Charter.

B. The commission’s authority under subsection A extends only to city elected officials, candidates for city elected office, independent expenditure committees, members of boards and commissions, the city manager, the city clerk, the city attorney, the city treasurer, the city auditor, the independent budget analyst, and the public safety accountability officer.

C. Complaint, Investigation, and Hearing Procedure.

1. In consultation with the city attorney, the commission shall adopt regulations and procedures for investigations and hearings to be conducted by the commission.

2. The commission’s review, investigation, and consideration of complaints shall be in accordance with its adopted regulations and procedures.

3. A complaint filed with the commission may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation.

4. The council shall cause to be retained an independent and neutral evaluator to review and investigate complaints and to make recommendations to the commission.

5. Notwithstanding anything else in this code, complaints, investigative files, and information contained therein shall be considered confidential to the maximum extent under the law, and shall not be disclosed to any person other than a respondent or respondent’s representative, the city attorney or district attorney, a court, a law enforcement agency, designees of the foregoing, or otherwise as necessary to the conduct of an investigation.

6. The commission shall adopt a policy setting forth its standards for imposing penalties and exercising enforcement discretion. The evaluator shall follow that policy when making recommendations to the commission. (Ord. 2017-0026 § 2)

2.112.040 Appointment of members and qualification.

A. Appointment. The commission consists of five members. Members of the commission shall be nominated by the personnel and public employees committee and appointed by the mayor with the concurrence of a majority of the city council.

B. Qualifications.

1. Commission members shall be residents of the city. Three members shall have a background in law, ethics, local government, or similar experience.

2. The following persons are not eligible to be a commissioner:

   a. A person who – or whose spouse, registered domestic partner, or child – has contributed to a candidate for city elective office, in a single city election cycle in either of the last two city election cycles preceding their date of application to be on the commission, more than 50 percent of the allowable amount for a councilmember candidate.
b. A person who – or whose spouse, registered domestic partner, or child – is or has been, within the two years immediately preceding their date of application to be on the commission, any of the following:

   (i) A paid employee of the city;
   (ii) A registered city lobbyist, or someone who was required to be a registered city lobbyist; or
   (iii) An appointee of any local or state elected official.

c. A person who – or whose spouse, registered domestic partner, parent, sibling, or child – has been, within four years immediately preceding their date of application to be on the commission, any of the following:

   (i) Elected to, or a candidate for, city elective office;
   (ii) An employee of, or paid consultant or contractor to, a campaign for city elective office; or
   (iii) A paid employee of, a consultant to, or someone under contract with any city elected official.

3. A commissioner shall be ineligible, during service on the commission and for a period of four years thereafter, to hold city elective office. A commissioner shall be ineligible, during services on the commission and for a period of one year thereafter, to be appointed to another city commission, to serve as paid staff for or as a paid consultant to any city elected official, to receive a non-competitively bid contract with the city, or to register as a city lobbyist.

4. While on the commission, a commissioner shall not contribute to or participate in any candidate campaign for city elective office.

C. Training. Each commissioner must receive a minimum of one training session per year on ethics, the subjects listed in section 2.112.030.A.1, and the citywide policies identified by city council resolution under section 4.02.040.A. (Ord. 2017-0026 § 2)

2.112.050 Term of office—Vacancy.

A. Except as provided in this section for the length of the terms of the initial appointees, members of the commission shall serve a term of four years. A member shall hold office until his or her successor has been appointed.

B. Terms shall be staggered. The terms of the initial appointees to the seats designated 1, 3, and 5 shall expire two years from the date of their initial appointment, with the remaining two seats having a term expiring four years from the date of initial appointment. Thereafter, all members shall be appointed to serve four-year terms.

C. No member shall serve more than two consecutive terms. The terms established for the initial appointees constitute a full term for the purpose of calculating the two consecutive term limit.

D. If a vacancy occurs during the term of any member, a successor to serve the unexpired term shall be appointed in accordance with the requirements set forth in section 2.112.040. A successor appointed to complete an unexpired term may be eligible to serve up to two consecutive terms in addition to the unexpired term in accordance with section 2.40.120. (Ord. 2017-0026 § 2)

2.112.060 Conflict of interest and financial disclosure statements.
The provisions of article III of chapter 2.16 governing conflicts of interest of board and commission members shall apply to members of the commission. In addition, all appointees to the commission are required to file statements disclosing financial interests pursuant to a conflict of interest code adopted for the commission. (Ord. 2017-0026 § 2)

2.112.070 Chairperson and organization of the commission.

At its first meeting, and annually thereafter, the commission shall elect a commission chairperson and vice chairperson from among the members. The chairperson and vice chairperson shall hold office at the pleasure of the commission. When there is a vacancy in the office of chairperson or vice chairperson, the commission shall fill that office from among the members. The commission may adopt rules and procedures for the conduct of its business and may do any other things necessary or proper to carry out its functions, which may include the formation of one or more committees. Staff support to the commission shall be provided by the city clerk’s office, and one or more city employees that may be designated by the city manager. (Ord. 2017-0026 § 2)

2.112.080 Commission meetings.

The commission shall establish for itself a regular meeting schedule, with a minimum of two meetings per year. The meetings shall be noticed and held in accordance with the provisions of the Ralph M. Brown Act (California Government Code section 54950 et seq.). The commission has the authority to notice and hold special meetings in the manner specified by the Ralph M. Brown Act. (Ord. 2017-0026 § 2)

2.112.090 Quorum—Voting.

The quorum required for the commission to conduct business is three members. The affirmative vote of a majority of the members present and eligible to vote is necessary to approve any item, except that a minimum of three affirmative votes is necessary to impose a monetary penalty. (Ord. 2017-0026 § 2)

2.112.100 Compensation.

Pursuant to City Charter section 29, the compensation commission shall establish the compensation that members of the commission receive for attending commission meetings. (Ord. 2017-0026 § 2)

2.112.110 General requirements.

Unless specifically provided otherwise in this chapter, the general requirements set forth in chapter 2.40, governing the appointment of board and commission members, attendance at board and commission meetings, voting, term limits, and removal, apply to the commission. A member is subject to removal for good cause, neglect of duty, or misconduct as provided in City Charter section 232. (Ord. 2017-0026 § 2)