

Audit of the Sacramento Ethics Commission

Report# 2024/25-13 | April 2025



City of
SACRAMENTO
Office of the City Auditor

Research and Analysis Division

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AUDIT FACT SHEET

Audit of the Sacramento Ethics Commission

April 2025

Report #2024/25-13

RECOMMENDATIONS

We made several recommendations regarding the Sacramento Ethics Commission. Our recommendations included:

Strategy

- The City Clerk should create a strategic plan for the Good Governance Program.

Training and Advice

- The City Council should establish the training curriculum for Ethics Commissioners.
- The City Council should direct staff to create a collection of advice materials available to those under the Commission’s purview.
- The City Council should consider creating a support service to respond to questions from those under the Commission’s jurisdiction.

Internal Controls

- The City should automate the complaint intake process to improve accuracy and transparency.
- The City Clerk should provide more robust rationale to Commission for complaint dismissals.

Operational Improvements

- The City should establish a formal process for the Ethics Commission to request staff support.
- The City should formalize a format and process for Commission recommendations to improve standardization, consistency, and responsiveness.

Role in Contract Review

- The City Clerk should clarify the Ethics Commission role in reviewing and recommending contracts with the Fair Political Practices Commission.

BACKGROUND

Ethics commissions serve an important role in a democratic government as regulatory agencies. A primary objective of ethics commissions is to strengthen public confidence in the integrity of the ethics enforcement process by entrusting oversight to a quasi-independent body. The City of Sacramento established the Ethics Commissions to enforce local ethics codes and ordinances and carry out related functions. In addition to oversight, the Commission provides advisory recommendations to the City Council on ethics issues including local ethics laws.

FINDINGS

Finding 1: The City can establish goals and vision, objectives, actions plan, or monitoring activities over the Good Governance Program to ensure the Ethics Commission and the Office of Ethics and Compliance are achieving their objectives.

- The City can improve planning, strategies, and reporting on activities to improve coordination between the Ethics Commission and the Good Governance Program.

Finding 2: Providing greater resources for training and advice would benefit both Commissioners seeking to enforce and individuals seeking to comply with the City’s ethics laws.

- The City can design and require additional Commissioner training.
- The City can provide additional materials and advice to individuals under the purview of the Commission to assist in compliance efforts.

Finding 3: More robust internal controls over complaint procedures can help inform complaint review and discussion by the Ethics Commission.

- Ethics Commission review of complaints can be improved by automating the complaint intake process.
- The City Clerk’s processes for production of the Complaint Log can be improved to ensure only appropriate information is included.
- The City Clerk should include more robust rationale about complaint dismissals to allow transparent Commission review and discussion.

Finding 4: Opportunities exist for the City Council to update its Rules of Procedures related to the operations of commissions to improve consistency and effectiveness.

- The City should formalize a process for the Commission to request staff support.
- The City should formalize a recommendation format and process.

Finding 5: The City can clarify the Ethics Commission’s powers and duties to review and make recommendations to the City Council pertaining to any contract with the California Fair Political Practices Commission.

Introduction

In accordance with the City Auditor’s Fiscal Year 2024/25 Work Plan, we have completed the *Audit of the Sacramento Ethics Commission*. We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The City Auditor’s Office would like to thank the Sacramento Ethics Commission and the City Clerk’s Office for their cooperation during the audit process. Both entities were invited to provide a response to the report.

Background

Ethics commissions serve a vital role in a democratic government as regulatory agencies. A primary objective of ethics commissions is to strengthen public confidence in the integrity of the ethics enforcement process by entrusting oversight to a quasi-independent body. Local agencies may establish ethics commissions responsible for enforcing local ethics codes and ordinances and carrying out related functions. In addition to oversight, these commissions often provide advisory opinions and deliver training to promote understanding and compliance with local ethics laws.

Creation and Evolution of Sacramento Ethics Commission

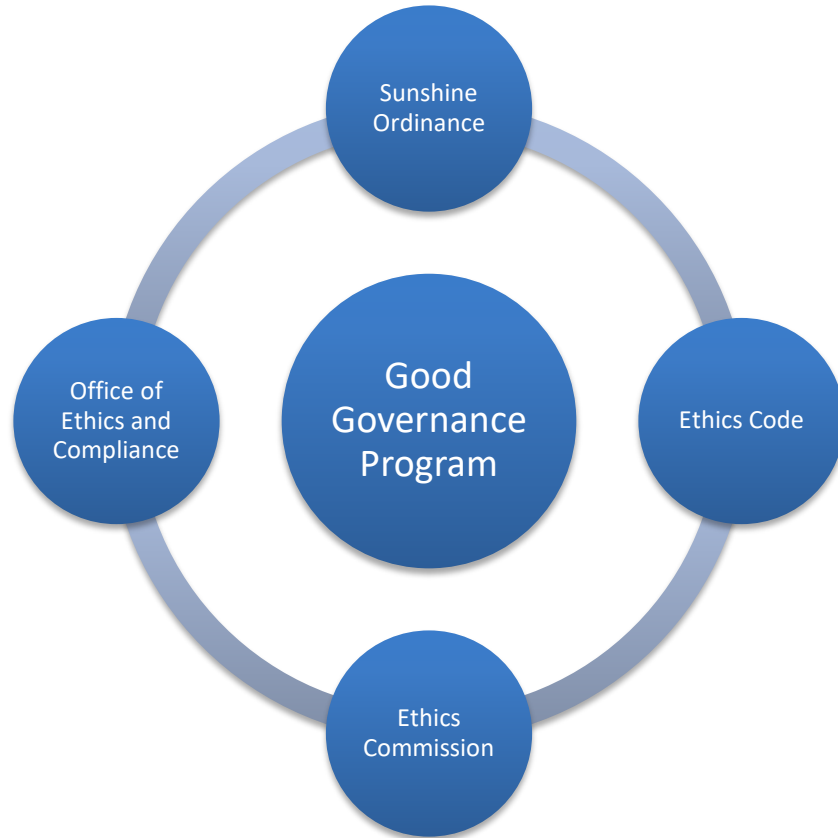
In November 2014, City of Sacramento Mayor Kevin Johnson appointed the Good Governance Ad Hoc Committee to evaluate good governance reforms and create a work plan for the creation of an ethics committee and other ethics-related enhancements. Throughout 2015, the Ad Hoc collected an inventory on the City’s ongoing efforts regarding ethics and training, engaged in conversations with the public, and engaged other organizations to identify best practices. These agencies included the California Fair Political Practices Commission, McGeorge Law School, University of the Pacific, and the Center for Practice and Professional Ethics at Sacramento State University.

In September 2015, the City Council approved the Good Governance Ad Hoc Committee’s Framework for Recommendations for Good Governance, which included direction to draft an ordinance creating an Ethics Commission and an Office of Compliance in the City Clerk’s Office. In March 2017, the City Council approved the remaining recommendations from the Good Governance Ad Hoc Committee which included the Ethics Code ordinance and the initial approval for an Ethics Commission.

More specifically, the City Council approved a slate of ordinances to create the Good Governance Program, including Ordinance No. 2017-0026 creating the Sacramento Ethics Commission. As outlined in the City Council report: the “goal of the Ethics Program is to achieve the greatest level of compliance to City codes and policies as well as applicable State law by elected officials and all City employees through

training and compliance monitoring.” The proposed Ethics Program included a comprehensive approach to ethics oversight to include components for compliance, investigation, training, and oversight.

Figure 1: City plan for establishment of Good Governance Program



Source: Auditor generated based on legislative documents.

The Good Governance Program, as the graph illustrates, was envisioned to be comprised of four parts. First, the City Council adopted a Sunshine Ordinance aimed at enhancing the public’s participation and transparency in government. The City Council adopted a Sunshine Ordinance in March 2017, Ordinance No. 2017-0024, with a stated purpose to “enhance the public’s ability to participate in the city’s decision-making process and have access to public information and records.”

Second, the City Council established a Code of Ethics for City officials, appointed officers, and City employees to promote ethics and accountability. The City Council adopted an Ethics Code in March 2017, Ordinance No. 2017-0025, with a stated purpose to “identify a Code of Ethics for city officials, appointed officers, and city employees.”

Third, City Council established an Ethics Commission, through approving Ordinance No. 2017-2026, aimed at helping City officials achieve the greatest level of compliance with City codes and City policies, by acting as a body to review, investigate, and consider complaints alleging violations of various City

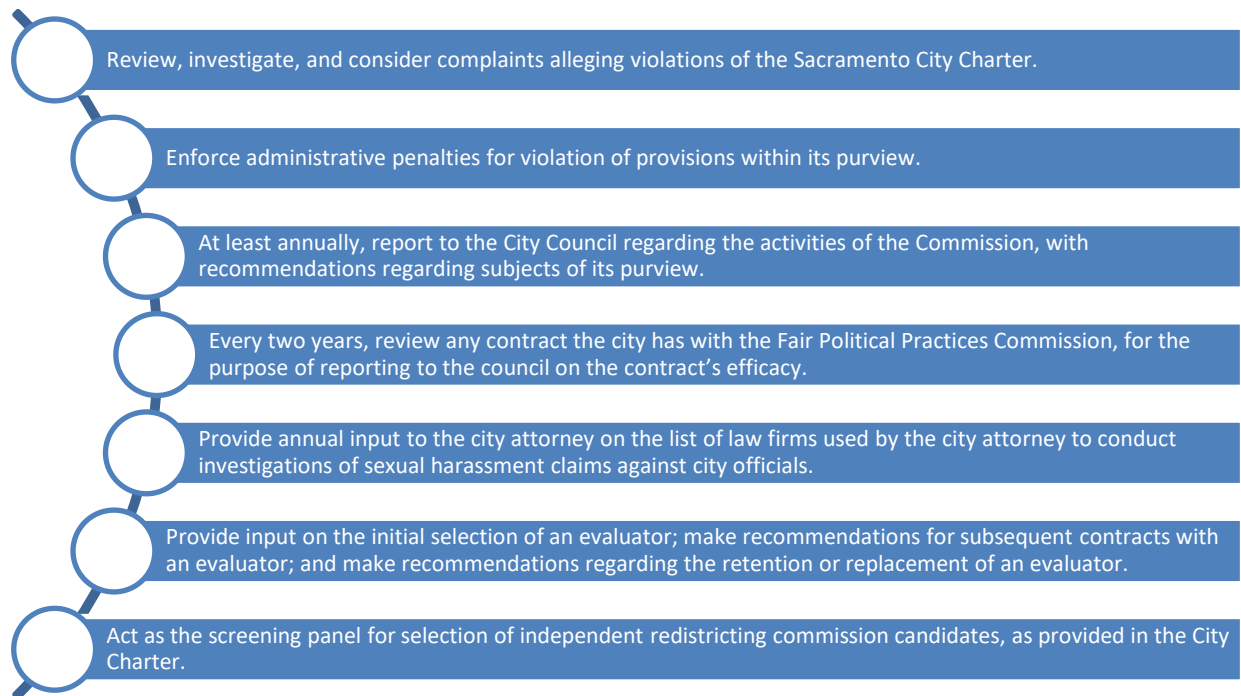
ethics laws. The City Council Report also provided guidance on the structure and duties of the Ethics Commission. The approval for the form and function of the Commission is described in greater detail below.

Finally, the City Council approved the funding for the establishment of an Ethics/Compliance Office to be embedded within the City Clerk’s Office and approved funding for staffing. Specifically, the City Council approved Ordinance No. 2017-0026 stating that “an effective ethics program includes a training and education component.” Additionally, the City Council provided resources for staffing the new function through the passage of Resolution No. 2017-0112.

Ethics Commission Structure Powers and Duties

As part of the reform package, the City Council approved the formation of an Ethics Commission to “help city officials achieve the greatest level of compliance with city codes and city policies, by acting as a body that reviews, investigates, and consider complaints alleging violations of various City ethics program components.” The ordinance creating the Commission provided the following powers and duties to the Commission:

Figure 2: City Code chapter 2.112.030 Powers and duties of Commission



Source: Auditor generated based on Sacramento City Code

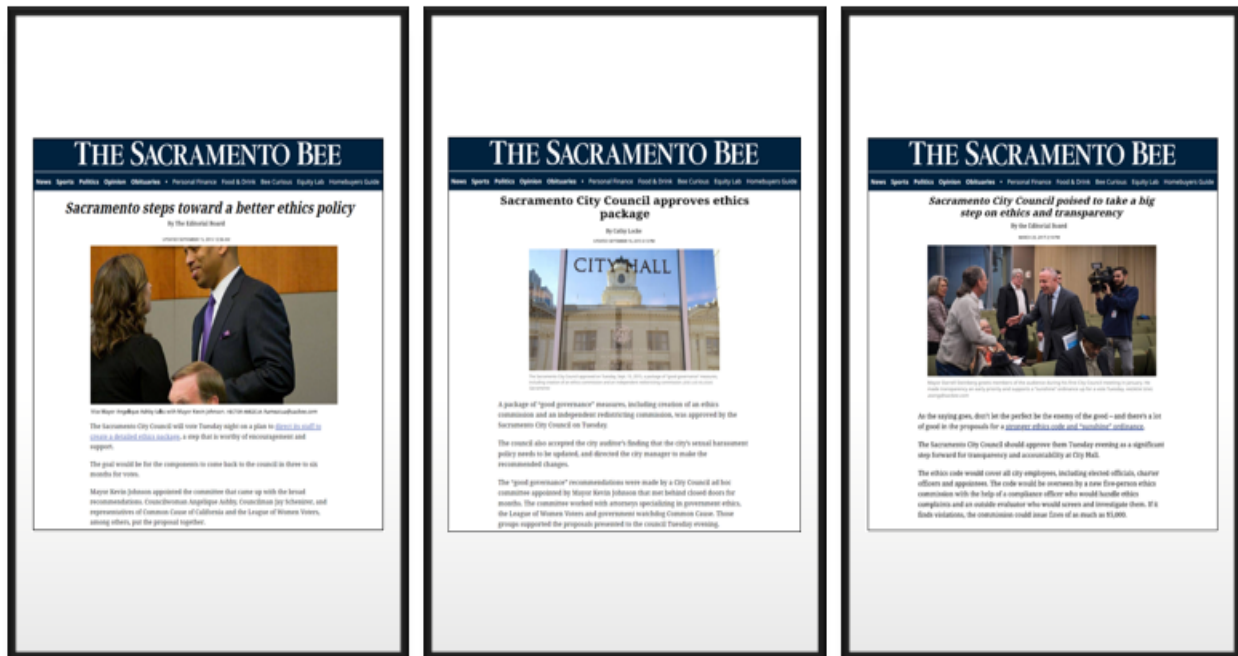
The Ethics Commission’s authority extends to City elected officials, candidates for elected office, independent expenditure committees, members of boards and commissions, the City Manager, the City

Clerk, the City Attorney, the City Treasurer, the City Auditor, the director of the Office of Public Safety Accountability Officer, and lobbyists as defined in City Code chapter 2.15. Therefore, anyone not holding one of these positions is outside of the Commission’s jurisdiction. The Ethics Commission was granted authority over sections of the City Charter, City Code, and Council Rules of Procedure that cover campaign laws, ethics laws, and lobbying laws. Finally, the Ethics Commission was authorized to design and adopt its own procedures to guide how it would operate.

According to the ordinance, the Commission shall consist of five members. Members shall be nominated by the City Council’s Personnel and Public Employees Committee and appointed by the Mayor with the approval of a majority of the City Council.

The establishment of the Ethics Commission was celebrated by local community groups and the local media as an important step to reestablishing community faith in local government.

Figure 3: Local Media for City Council Approval of Good Governance Program and Ethics Commission



Source: Auditor generated based on Sacramento Bee articles

Community careholders including the League of Women Voters and California Common Cause commended the City Council in approving the Good Governance Program and creating the Ethics Commission.

Sacramento Ethics Commission Policies and Procedures

The Commission approved several sets of procedures since its inception for identifying reviewable complaints, complaint investigation, holding Commission hearings, disposition, and levying penalties.

The first set of procedures, titled *Ethics Commission Complaint Intake & Independent Evaluator Investigation Procedures*, were adopted in October 2018. These Procedures set the initial operations for the Commission including: (i) the complaint intake process; (ii) the process for the preliminary review of complaints; (iii) the Independent Evaluator procedures for conducting investigations, reporting, and making recommendations to the Commission; and (iv) the Commission’s procedures for taking action on the report and recommendations from the Evaluator.

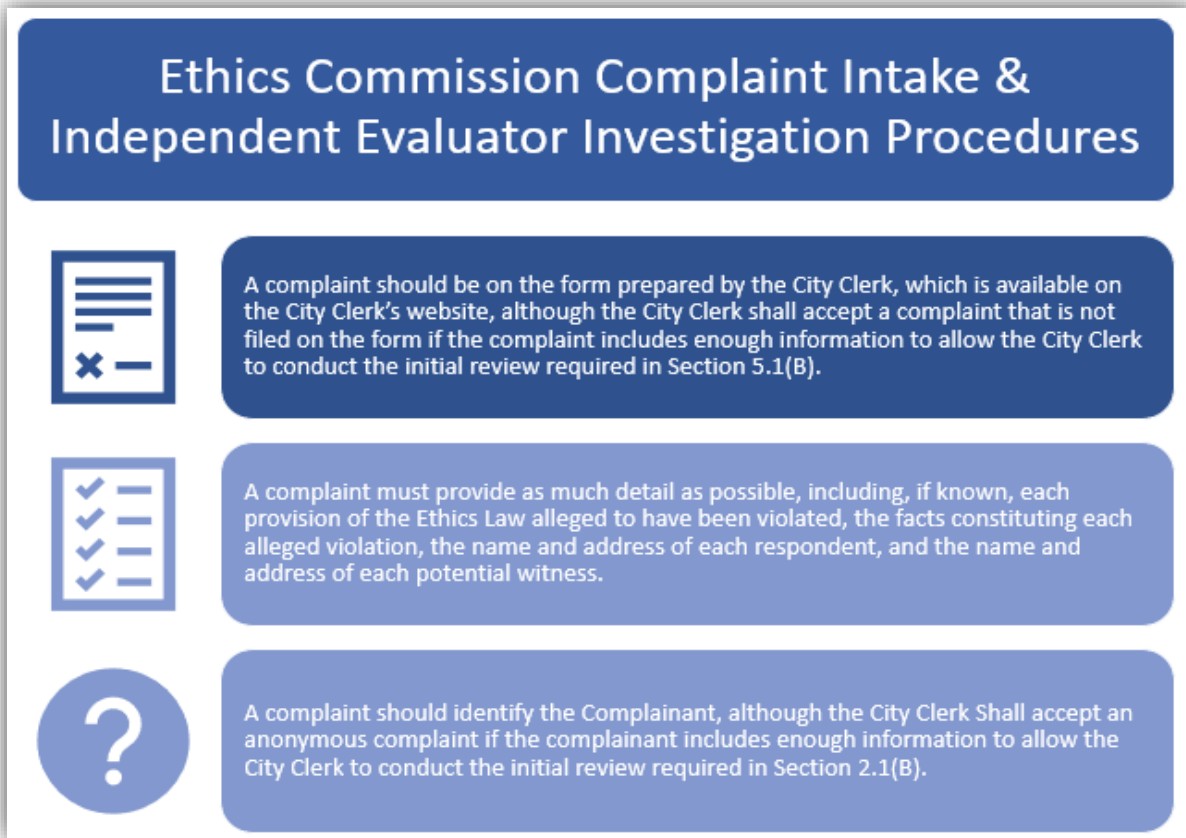
The Commission substantively revised the Procedures in February 2021. This revision to the Procedures established the complaint review, investigation, and disposition process described below. The Commission has approved two subsequent sets of procedures, titled *Sacramento Ethics Commission Procedures*, that did not contain significant procedural steps and were largely “clean up” revisions, in September 2022 and September 2024.¹

Complaints – Intake Requirements

The set of procedures adopted by the Commission in February 2021 establishes the Commission’s process for the intake, investigation, and procedures for complaints. As stated above, the Commission subsequently undertook minor revisions to these procedures. The current Procedures establish the following requirements:

¹ The first set of Procedures were adopted in October 2018. A second set of Procedures were adopted in February 2021. A third set of Procedures were adopted in September 2022. The most recent set of Procedures were adopted in September 2024.

Figure 4: Ethics Commission Complaint Intake Procedures related to Complaints



Source: Sacramento Ethics Commission Procedures, adopted September 2024

Notably, while the procedures are silent on complaints given over the phone, the City Clerk stated that phone call complaints are periodically received, and the City Clerk attempts to collect as much relevant information as possible.

Ethics Commission – Complaint Tracking and Initial Review

A requirement of the procedures states the City Clerk shall maintain a complaint log and enter the date and time each complaint is filed. The Commission Procedures adopted in September 2024 require that the City Clerk review and reach a determination about the complaint within 14 days. The City Clerk may do the following:

1. Refer the complaint to the Independent Evaluator for a preliminary evaluation;
2. Refer the complaint to another City department or to the California Fair Political Practices Commission (FPPC) or another governmental agency with jurisdiction over the subject matter of the complaint; or

3. Dismiss the complaint for lack of jurisdiction and notify the complainant of the dismissal.²

Following the City Clerk's determination, the procedures require the City Clerk to enter information about the disposition in the complaint log to record the action taken after the initial review. In addition, at the Commission's next regular meeting, the City Clerk shall notify the Commission of the action taken after the initial review but shall not identify the complainant and the respondent or respondents or indicate the substance of the complaint.

Ethics Commission -- Independent Evaluator Evaluation

According to the procedures, upon a City Clerk referral of a complaint, the Ethics Commission's Independent Evaluator must within 30 days conduct a preliminary evaluation to determine whether to initiate a full investigation. Based on the preliminary evaluation, where the Independent Evaluator determines that sufficient cause to warrant a full investigation exists, then the Independent Evaluator proceeds with the investigation. In instances where the Independent Evaluator does not find cause to proceed, a no-cause report is prepared explaining the lack of cause, provided to the City Clerk, and presented to the Commission as an agenda item for discussion in a public meeting. The Ethics Commission may accept the Independent Evaluators recommendation not to investigate further or may still direct the Independent Evaluator to conduct an investigation.

Ethics Commission -- Independent Evaluator Investigation

According to the procedures, the Independent Evaluator shall within 60 days after receiving the complaint, complete and submit to the City Clerk a written report, with a copy to the City Attorney, that includes: (i) a narrative summary of information gathered; (ii) a determination whether each ethics law in the allegation was violated; (iii) a recommended action or a recommendation that the Independent Evaluator conduct further investigation and report back to the Commission; and (iv) a recommendation to refer the complaint to the FPPC or another governmental agency to more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law.

If the Independent Evaluator discovers facts during an investigation that indicate possible additional violations or possible violations by persons who are not named as a respondent in the complaint, then the Independent Evaluator shall notify the City Clerk and consult with the City Clerk on how to conduct a fair and thorough investigation of the newly discovered facts.

² According to the Commission procedures, the City Clerk may dismiss a complaint for lack of jurisdiction under the following circumstances: (a) it alleges violations that occurred more than three years before it was filed, or, for violations subject to a different limitations period, it was filed after the limitations period expired; (b) it alleges facts that are not subject to any provision of the Ethics Law; (c) the respondent is not a person listed in City Code section 2.112.030.B; or (d) the respondent is a Commissioner.

Ethics Commission – Hearing Procedures, Remedies, Penalties

The procedures lay out how a hearing before the Commission works, including the timing of the hearings, the requirements for the respondent’s written responses, and rules regarding testimony. Notably, the procedures state that the Commission may ask the City Council to issue a subpoena compelling a witness to appear at the hearing and provide testimony or a subpoena duces tecum compelling witnesses to produce documents.

Upon the completion of the hearing the Commission may take a series of actions including: (i) direct the Independent Evaluator to conduct a further investigation; (ii) find that sufficient evidence exists to establish that a violation occurred; (iii) find that sufficient evidence does not exist and dismiss the complaint; and/or (iv) refer the complaint.

The Commission may order the following: (i) a finding that mitigating circumstances exist and that no further action is warranted; (ii) a reprimand; (iii) an order to take corrective action by a specific date; (iv) an order issuing a warning letter that sets conditions for the potential imposition of penalties depending on the future conduct; or (v) an order imposing an administrative penalty.

Ethics Commission – Complaint Logs

According to our review of Commission meetings, agendas, and meeting minutes, the City Clerk began issuing “Complaint Logs” to Commissioners in July 2020. According to the Commission report submitted to the Commission in July 2020, the complaints filed to the Commission are reviewed by the City Clerk. The complaint log includes the following information: (1) Complaint number; (2) Date Received; (3) Method Received; (4) Alleged Violation; (5) Alleged Violation Details; (6) Disposition; (7) Referred To; and (8) Disposition Date. Figure 5 below provides an example of an Ethics Commission Complaint Log.

Figure 5: Sacramento Ethics Commission Complaint Log Example

Complaint No.	Date Received	Method Received	Alleged Violation	Alleged Violation Details	Disposition	Referred To	Disposition Date
2022-003	4/20/2022	Online	City Code Chapter 4.02	I submitted a PRR on June 18 2021. I keep receiving messages saying the information will be provided next month but each month the fulfillment of the request is delayed such that nearly a year has passed without me now having any expectation that it will actually be filled. There comes a point when one must regard delays as effectively a refusal to comply with the CPRA. Please examine this issue as my perception is that someone in the relevant department is willfully refusing to provide the requested information.	Dismissed by City Clerk-Lack of Jurisdiction	Office of the City Clerk / Public Records Request Unit	4/28/2022
2022-002	2/17/2022	Online	City Code Chapter 4.02 City Code Chapter 4.04	Councilmember Valenzuela is misusing public funds for political purposes. Her official city logo and signage on all of her official City of Sacramento materials (website, social media accounts, signage for events, etc) is identical to her campaign materials. Same colors, same typeface, same style, same graphics. This is a misuse of public resources under Penal Code Section 424, and Government Code Sections 84564 and 8314, and also should fall into the City's Ethics Code as indicated above.	Hearing conducted by the Sacramento Ethics Commission on 4/25/2022. The Commission found insufficient evidence to sustain a violation of any Ethics Law and dismissed the complaint.	Dismissed by Ethics Commission.	4/25/2022

Source: City of Sacramento Ethics Commission Report, File ID: 2022-01576, September 26, 2022

According to our review of the complaint logs, there were 47 complaints filed between September 2019, and March 2025. The City Clerk dismissed 40 cases citing lack of jurisdiction. The Independent Evaluator conducted seven investigations into complaints that were later dismissed by the Commission.

Sacramento Ethics Commission Annual Reports to City Council

In accordance with the City Code enumerated powers and duties, the Ethics Commission has issued several annual reports. The annual report provides the following information about the Commissions activities and activities completed: a listing of the Commission’s power and duties; a description of the staffing and resources; purpose of the Commission; information about complaints received; and a list of Commission recommendations.

Recently, the City Council has approved a series of legislative changes to standardize operations of the City’s boards and commissions by, in pertinent part, requiring the bodies to prepare and present an Annual Report that includes a work plan to the City’s Council’s Personnel and Public Employees Committee (P&PE Committee) for comment and review.

Contracts for Services to Support the Sacramento Ethics Commission

As stated in the City Code, the Commission may “review” and “make recommendations” related to contracts with an independent evaluator and contracts with the FPPC. Specifically, the City has entered contracts with the firm Hanson Bridgett, LLP, to perform investigations and the FPPC to provide additional assistance on enforcement and interpretation of campaign laws. The City also entered into a contract with Devaney Pate Morris & Cameron, LLP for additional Independent Evaluator services.

City's Contract with the California Fair Political Practices Commission³

Closely following the establishment of the Commission, the City entered into a contract with the FPPC to assist in the administration, implementation, and enforcement of campaign laws. The FPPC, according to the agreement, aided in the enforcement and interpretation of campaign laws to effectively advise, assist, litigate, and otherwise represent the City on such matters related to Sacramento City Code, Chapter 2.13 "Campaign Contribution Limitations." Services specified in the contract included auditing certain candidate campaign committees, enforcing violations of City campaign contribution limits; providing education, training, and advice on rules under the Commission and FPPC purview; and legal review to provide recommendations for updates to codes.

Per the original contract terms, the City agreed to pay the FPPC \$55,000, due and payable on the execution of the agreement and at the beginning of each year of the contract term as the "floor" payment for services provided. The term of the contract was March 1, 2018 through December 31, 2019. The City paid \$110,000 for the contracted services.

City's Contract with Independent Evaluator for Ethics Commission

The City entered into an agreement with Hanson Bridgett, LLP, to provide the City with services as an independent evaluator to review and investigate complaints, and to make recommendations to the Sacramento Ethics Commission. According to the agreement, the investigation results will be provided in a written report with recommendations. The City has entered into a series of contracts with Hanson Bridgett, the most recent term ends in December 2026.

Additionally, the City entered into a separate agreement for a second Independent Evaluator in the event the primary Evaluator has a conflict. The term of the agreement, with Devaney Pate Morris & Cameron, runs from February 2023 through November 2027.

Sacramento Ethics Commission and Office of Ethics and Compliance - Budget

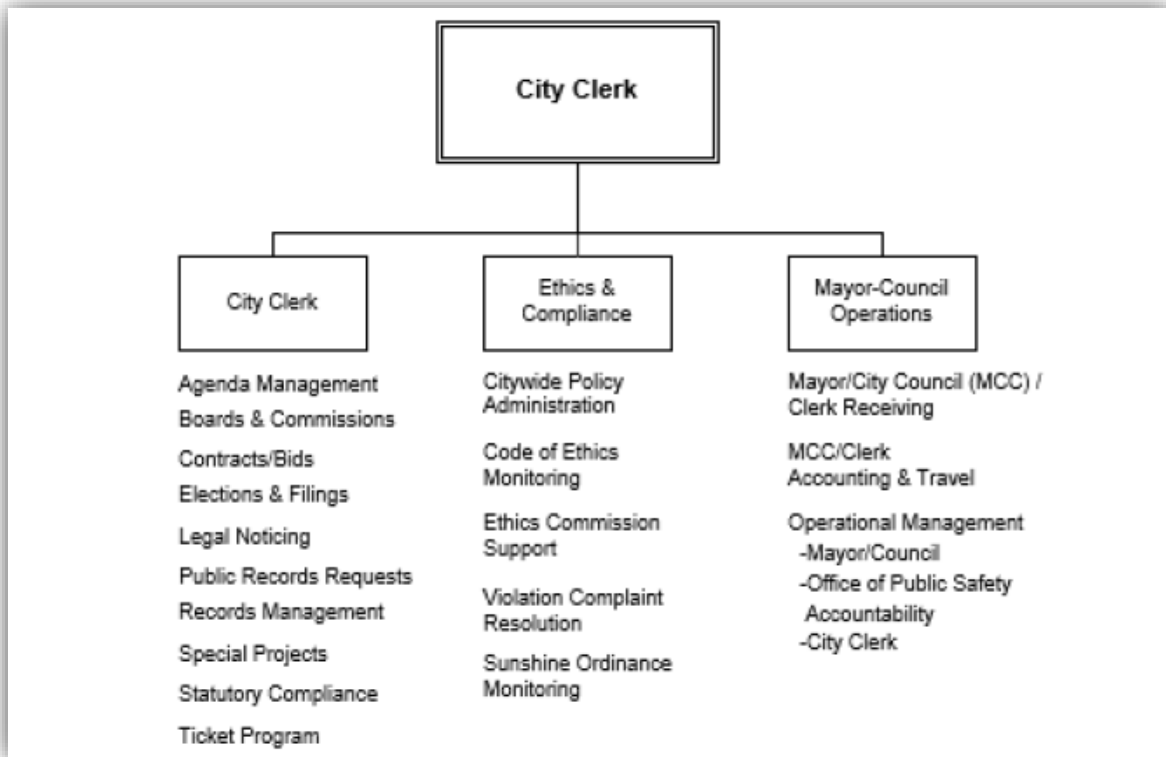
The City Council voted to establish the new Code of Ethics and create the Ethics Commission by approving a series of ordinances and a resolution in March 2017. The City Council and City Clerk originally envisioned funding for the Commission would include funds for two contracts – one with an independent evaluator firm to conduct complaint inquiries and another contract with the FPPC – and a

³ The California Fair Political Practices Commission is a five-member independent, non-partisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act. The Act regulates campaign financing, conflicts of interest, lobbying, and governmental ethics. The Commission's objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process, to promote transparency in government and to foster public trust in the political system.

position for a Compliance Officer to assist in employee training and provide administrative support for the Commission.

According to the City’s Approved Operating Budget FY2024/25, the City Clerk’s Office “supports the Ethics Commission and focuses on reviewing existing City codes and policies, and educating and training staff, public officials, and the community to ensure compliance. These guidelines are found in the City Code and in adopted citywide policies.” As seen in the organization chart below, the ethics function is embedded in the City Clerk’s Office.

Figure 6: Sacramento City Clerk Organization Chart



Source: Auditor generated based on City of Sacramento FY2024/25 Approved Budget

The City Clerk’s Office has been providing staff support to the Commission along with the City’s other boards, committees, and commissions.

Objective, Scope, and Methodology

The objective of this audit was to determine whether the Sacramento Ethics Commission is meeting its City Code mandated purpose and duties, and whether the Ethics Commission's authorities and operations are consistent with best practices in ethics oversight and transparency bodies.

As part of this project, we interviewed former and current Commissioners, and former and current staff from the City Clerk's Office. We reviewed Sacramento Ethics Commission and City Council meeting minutes, recorded meetings, annual reports, Complaint Logs, and Reports to Council and Reports to the Ethics Commission.

We reviewed best practices and policy analyses related to the formation and operation of ethics oversight agencies. We also interviewed staff from other cities and counties operating ethics agencies to determine how other agencies are structured, operate, and work within their organization. We conducted benchmarking of 15 ethics oversight agencies for cities and counties with populations between 317,000 and 3.8 million residents. We researched information on the establishment, structure, authorities, and operation of these agencies such as enacting language in City Charter, City Code, ordinance, resolution, or policies and procedures. We determined the number of oversight agencies that provide advice to individuals under the agency's purview.

Finding 1: The City can establish goals and vision, objectives, action plans, or monitoring activities over the Good Governance Program to ensure the Ethics Commission and the Office of Ethics and Compliance are achieving their objectives.

The City Council established a Good Governance Program “to achieve the greatest level of compliance to City codes and policies as well as applicable State law by elected officials and all city employees through training and compliance monitoring.”

Based on our research, we found that best practices recommend that entities create strategic plans to establish objectives, identify action plans, and create accountability to ensure objectives are met. Strategic planning is a comprehensive and systematic management tool designed to help organizations assess the current environment, design objectives, set strategies for achieving its objectives, and respond appropriately to changes in the environment. The U.S. Government Accountability Office (GAO) and the Government Finance Officers Association (GFOA) recommend that government organizations use some form of strategic planning to provide a long-term perspective for service and budgeting, thus establishing logical links between authorized spending and broad organization goals.⁴

We found that opportunities exist for the City to strengthen its internal control environment over the agencies charged with operating the Good Governance Program. The City should consider conducting strategic planning to document objectives, design action plans, or monitor activities over the development and delivery of outreach and training programs. As a result, the City can more efficiently provide direction, monitor the activities, or measure the effectiveness of the Ethics Commission (Commission) or the Office of the City Clerk’s stewardship of the Good Governance Program.

Our research found numerous sources of information detailing practices on creating a strategic plan that identifies the planning process, engages in careholder identification, and monitors its effectiveness. As seen below, there are several key steps to formulating a strategic plan.

⁴ The Government Finance Officers Association (GFOA), founded in 1906, represents public finance officials throughout the United States and Canada. The association's more than 20,000 members are federal, state/provincial, and local finance officials deeply involved in planning, financing, and implementing thousands of governmental operations in each of their jurisdictions. GFOA's mission is to advance excellence in public finance.

Figure 7: Key Steps in creating a Strategic Plan

Steps	Description
Initiate the Strategic Planning Process	Invest time upfront for planning process to include accessing key careholders, deciding when and how to engage, timeline for completion, and identify resources.
State the Goals and Objectives	Goals are results-oriented, broad statements of policy or intention and represent particular aspects of the vision. Objectives are specific, measurable results to be achieved. Objectives should be expressed as quantities, or at least as verifiable statements and ideally would include timeframes.
Create an Action Plan	Determining how the stated goals will be achieved through creating an Action Plan. An action includes detailing work plans, identifying and documenting short and long-term strategies for getting from where you are now to where you want to be, are your objectives. This section should identify and address potential pitfalls and obstacles; protocols if something goes awry; and establish clear lines of communication
Developing a Monitoring Plan	Once implementation begins, regular and consistent oversight is critical. By monitoring your progress at regular intervals, the plan can be adapted to a changing environment, while simultaneously maintaining the original vision and core values. The objectives should be measurable, either quantitatively or qualitatively, and measured to compare the original objectives to the current status. Finally, the findings should be reported to team members, the City, and the public, to create an aura of trust and goodwill.

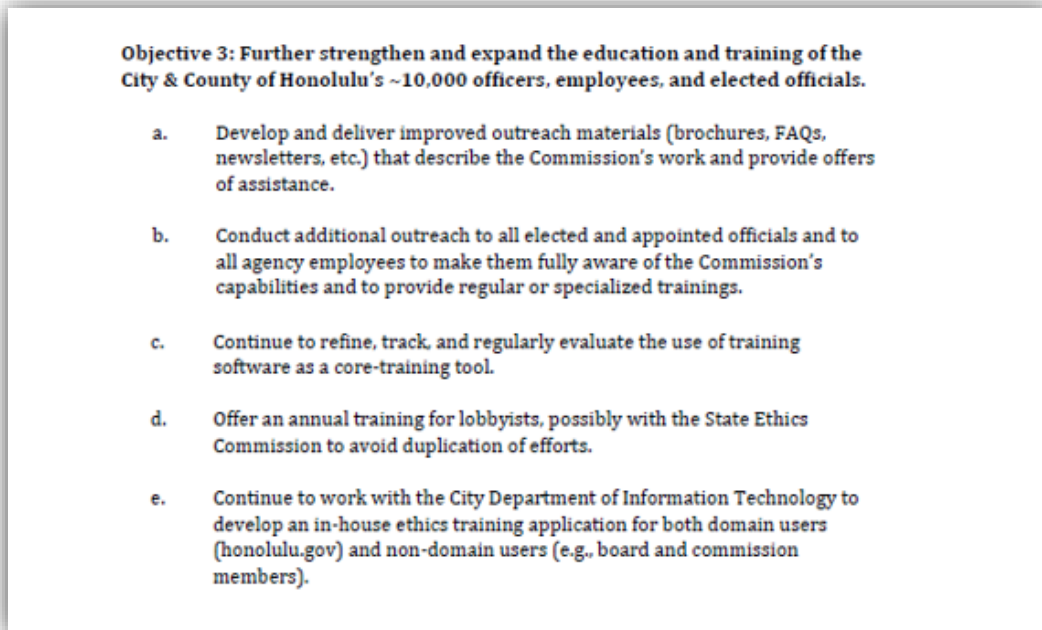
Source: Sacramento City Auditor’s Office based on guidance provided by the Government Finance Officers Association and Partnership for Public Service.

As the table indicates, strategic planning is the ongoing organizational process of using available knowledge to document a business's intended direction. This process is used to prioritize goals and objectives, effectively allocate resources, and ensure those goals are met by implementing monitoring steps.

We found that several other ethics commissions nationwide and their supporting agencies have successfully engaged in a strategic planning process to document and publicly issue objectives, goals, and action steps. For example, the City and County of Honolulu Ethics Commission (HEC) issued its first strategic plan in September 2019, culminating three years of careholder outreach, public meeting discussions, development and drafting. The plan included four objectives to focus on between 2020 and 2024. Each objective was separately discussed to include a series of more granular sub-objectives the agency sought to achieve. For example, one objective discussed efforts to further strengthen and

expand the education and training for officers, employees, and elected officials. The strategy listed the following actions:

Figure 8: Example of objective listed in the City of Honolulu Ethics Commission Strategic Plan



Source: City of Honolulu Ethics Commission

As can be seen above, the objectives detail the overall program goals while the sub-objectives represent specific action steps to effectuate those goals. This gives decision makers and careholders information to discuss and to measure progress. The strategic plan also included a section dedicated to stating the "Short Term Actions" and "Accomplishments" of the HEC. Notably, the actions to be continued, completed, or started each fiscal year are included in the strategic plan. For example, the HEC included the information about the agency's accomplishments for the fiscal year:

Figure 9: Example of accomplishments listed in the City of Honolulu Ethics Commission Strategic Plan

Attachment 3 Accomplishments - FY2019 (July 1, 2018 - June 30, 2019)	
Item	Timeframe
Ethics Commission - 7-Member Commission Fully Appointed	
Strategic Planning	
	Fall 2018 - plan amended
	Winter 2019 - PIG meeting, plan amended
	Summer 2019 - PIG meeting, plan amended
Ethics Training - Learning Management System (LMS) Development	
	Summer 2018 - agencies completed, certified all-employee training
	Summer 2019 - finalizing non-domain user interface for bd/comm member training
	Summer 2019 - finalizing all-employee biennial ethics training curriculum
Specialized Training	
	Fall 2018 - HFD new captains
	Fall 2018 - HPD new captains
	Winter 2019 - cabinet and Mayor's key staff (5 sessions)
	April 2019 - HFD new captains
Ethics Data Reported (New Categories in City Annual Report)	
	Contacts Rev'd (requests for advice, concerns, misc. inquiries) - 481
	Contacts Ans'd (requests for advice, concerns, misc. inquiries) - 458
	Concerns Rev'd - 108
	Emp'ees Trained - 843
	Bd/Comm Members Trained - 0
	Disclosures Rev'd (financial, conflict of interest, outside interest, candidate, nomination) - 878
	Lobbyist Filings Rev'd (registrations, annual reports) - 378
Ethics Commission Meetings (8)	
	Timely agendas filed, mins prepared/uploaded, post-meeting clean-up completed
Ethics Outreach - Newsletters, Twitter	
	Winter (Dec 2018) - newsletter
	Winter (Dec 2018) - Ethics Elf on the Shelf outreach via Twitter
	Gift Guide (Dec) 2018
	Summer (May) 2019 - newsletter

Source: City of Honolulu Ethics Commission

As can be seen above, the Honolulu Ethics Commission includes an update on the agency's accomplishments including a general description, a more granular description, and the frequency. Finally, the Commission committed to revisiting the plan every two years to incorporate updates.

Similarly, the City of Tallahassee Independent Ethics Board (TIEB) issued a *Three-Year Strategic Plan 2021-2023* in December 2020 that provided an overview for the strategy and goals of the Commission and the supporting office. Specifically, the document listed a series of Strategic Priorities that included key indicators and major initiatives. For example, the plan listed the following as key indicators.

- Annually ensure every City official and employee receives ethics training that is relevant to our mission.

- By 2023, establish core online training courses accessible to every City official, advisory board member, and employee.

As illustrated in Figure 10 below, the document goes a step further and lists the major initiatives the TIEB and support staff are taking to ensure those objectives are met.

Figure 10: Example of major initiatives listed in the City of Tallahassee Independent Ethics Board Three-Year Strategic Plan

Major Initiatives
 Ensure every City official, City employee, and advisory board or committee member attends ethics training annually and can apply the Ethics Code.

- a. Provide ethics training to newly elected and current City officials, their aids, and City appointees.
 - Year One
 - Assess training needs
 - Use guest instructors to deliver training topics in 2021
 - Create a training module about the Ethics Code by January 2022
 - Create a training module about public records by January 2022
 - Create a training module about public meeting laws by January 2022
 - Year Two and Three
 - Provide access to online training giving an overview of the Ethics Code, public records, and public meeting laws
 - Use guest instructors to conduct training on Article II of the Florida Constitution, and statutory requirements for voting conflicts, gift bans, campaign contribution limits, and restrictions on campaigning within government buildings
- b. Administer an online refresher course for City employees
 - In collaboration with the Human Resource and Workforce Development Department, develop a new online refresher course by January 1 of each year.
 - Collaborate with the Human Resource and Workforce Development Department to administer the online refresher training.
- c. Conduct ethics training for new and existing employees.
 - Year One
 - Coordinate training in collaboration with the Human Resource and Workforce Development Department
 - Deliver the Ethical Standards of Conduct Course #01 to scheduled classes.
 - Year Two
 - Create an asynchronous course for online training to supplement classroom instruction.
 - Year Three
 - Deliver Ethical Standards of Conduct Course #01 as needed.
 - Evaluate the impact of training
 - Update course based on assessment
- d. Provide advisory opinions.
 - Use social media to inform others of the Board's authority to provide advisory opinions on the application of the Ethics Code.
 - Create a section on the Board's website to list advisory opinions.

Source: City of Tallahassee Independent Ethics Board *Three-Year Strategic Plan*

As can be seen above, the Major Initiatives section describes specific steps that the agency will take to achieve the objectives stated in the key indicators section. This provides the TIEB, City executives, and the City Council, the opportunity to provide direction on whether the initiatives are appropriate or if different steps should be taken, such as providing training and education on emerging issues of law. Additionally, this provides a performance measure to determine whether the Ethics Commission and supporting agency are successfully meeting their objectives.

We believe that the City Clerk's Office would benefit from designing a strategic plan that clearly states the mission and vision statements for the Good Governance Program. The City Clerk's Office should engage careholders – including, for example, the Commission, elected officials, and charter officers – to establish a set of goals and objectives for the office and identify actionable steps to complete the objectives, such as training on updates on provisions of law under the Commission's purview. For example, the HEC strategic plan, the objective "strengthen and expand the education and training" was tied to the action of "[d]evelop and deliver improved outreach material (brochures, FAQs, newsletters, etc.) that describe the [HEC's] work and provide offers of assistance."

Notably, the Ethics Commission has recently been directed by the City to include work priorities for the upcoming year as part of its Annual Report which will be docketed and discussed by the City Council's Personnel and Public Employees Committee (P&PE Committee). The City Clerk assists in the production of this document. We believe the City Clerk can leverage this practice to include similar strategic initiatives, accomplishments, and a work plan, for presentation to the Commission and P&PE Committee. The Office of the City Clerk should consider documenting the responsibilities and delegating authority to achieve the objectives. Finally, we believe that the City Clerk's Office should consider designing and implementing a monitoring and reporting structure to track the performance of the City's compliance with the Good Governance Program.

RECOMMENDATION

We recommend the Office of the City Clerk:

- 1. Design and document a strategic plan, in consultation with the City officials, the Ethics Commission, and careholders, that clearly states the goals and objectives for the Good Governance Program. The strategic plan should identify objectives and action plans to complete the objectives. Finally, the strategic plan should provide for monitoring activity and recurring annual updates.**

Finding 2: Providing greater resources for training and advice would benefit both Commissioners seeking to enforce and individuals seeking to comply with the City's ethics laws.

The City created the Good Governance Program and established the Ethics Commission in an effort to establish rules for good governance, improve public engagement, transparency, and compliance by elected officials and all city employees through training and compliance monitoring. However, we found the City can provide more sufficient resources to allow the Ethics Commission (Commission) to assist individuals seeking to comply with the rubric of laws under the purview of the Commission.

A key goal of an ethics commission is to enhance public trust in the ethics enforcement process by assigning it to a quasi-independent entity. They work to ensure voters' trust in policymakers and political institutions by reducing the risk of wrongdoing; increasing the likelihood that wrongdoing will be discovered and brought to the attention of management; increasing the likelihood of an appropriate response to the wrongdoing; and maintaining integrity in the agency's performance and reputation. Critical elements of an ethics program include adequate resources to engage in oversight functions over agencies and over those who seek special benefits from or are regulated by the government.

In our review of the Commission, we found:

- Ethics commissioners would benefit from additional training or education concerning the laws and regulations under their purview; and
- Those seeking to comply with the City's ethics laws would benefit from the City providing greater resources to clarify and advise on the laws.

We found that providing additional resources pertaining to these issues can assist the Commission's ability to perform in-depth analysis on ethics and good governance laws, provide advice and direction on training needs and trends, make reports and recommendations to the City Council, and effectively communicate with community careholders. We believe that opportunities exist for the City to revisit these issues and strengthen the City's ethics oversight through identifying and allocating more resources to provide additional educational materials and advice to individuals seeking to comply with laws under the purview of the Commission.

Ethics Commissioners would benefit from additional training or education concerning the laws and regulations under their purview.

A critical component of effective compliance programs is continuously improving and adapting to changing customers, laws, leading practices, and environments in which they operate. Without adequate training on relevant new developments and existing programs in a city, an ethics oversight board does not have a complete understanding of a city's ethics laws and programs. Without regular

training, a board may lack a complete understanding of risks, training to mitigate these risks, or how to apply a city's rules in a consistent manner.

According to current and former Commissioners, the Commission has not been provided robust onboarding and training on the rules and regulations under its purview, such as the laws governing campaign contribution and finance, lobbyist registration, conflicts of interests, or codes of ethics. We found that, since its inception, Commissioners received a series of presentations that covered some of the laws, codes, and rules under its City Code mandated purview. However, we found that Commissioners have not been provided with any onboarding or training on the full rubric of laws, codes, and rules under the Commission's purview.

As stated above, the City Council created the Commission to "help city officials achieve the greatest level of compliance with city codes and city policies, by acting as a body that reviews, investigates, and considers complaints alleging violations of various city ethics program components." The City Code provides the Commission with purview over 10 separate bodies of law.⁵ The City Code also provides the Commission with the duty to make recommendations regarding the laws, codes, and rules under its purview. According to presentations to the City Council describing the formation and operation of the Commission, City officials illustrated their intent that annual training on ethics would be provided to the Commission.

As early as its first meeting in January 2018, the newly empaneled Ethics Commissioners recognized the need to educate the Commission prior to engaging in other duties. At the February 2018 Commission meeting, representatives of the City Attorney's Office provided an overview of the formation of the Commission, a discussion of the City's Code of Ethics, and some information about whistleblower protections. At the April 2018 meeting, representatives of the City Clerk's Office provided an overview of the City Code provisions detailing the Code of Fair Campaign Practices and the Lobbyist Registration and Reporting Code. A representative of the City Attorney's Office provided a presentation on conflict of interest.

Finally, at the January 2024 meeting, the City Attorney's Office provided a presentation covering two areas of law and the powers and duties of the Commission. Figure 11 below shows presentations were provided to the Commission for five of the 10 separate bodies of law under its purview.

⁵ The Sacramento City Code identified the following bodies of law under the purview of the Ethics Commission: (1) Section 35 of the Sacramento City Charter; (2) City Code Chapter 1.20; (3) City Code Chapter 2.13; (4) City Code Chapter 2.14; (5) City Code Chapter 2.15; (6) City Code Chapter 2.16; (7) City Code Chapter 4.02; (8) City Code Chapter 4.04; (9) Council Rules of Procedure Chapter 3; and (10) Council Rules of Procedure Rule 6.E.

Figure 11: City Provided Two Presentations for the Ethics Commission on Laws, Codes, and Rules under its Purview

<u>Provided</u>	<u>Not Provided</u>
✓ City Code Ch. 1.20 ("Code of Fair Campaign Practices")	✗ City Charter Sec. 35 ("Limitation on future employment")
✓ City Code Ch. 2.15 ("Lobbyist Registration and Reporting Code")	✗ City Code Ch. 2.13 ("Campaign Contribution Limitations")
✓ City Code Ch. 2.16 ("Conflicts of Interest")	✗ City Code Ch. 2.14 ("Campaign Spending Limits and Public Campaign Financing")
✓ City Code Ch. 4.02 ("Code of Ethics")	✗ City Council Rules of Procedure Ch. 3 ("Conduct of Members")
✓ City Code Ch. 4.04 ("Sunshine Ordinance")	✗ City Council Rules of Procedure Rule 6.E ("Closed Sessions")

Source: Auditor generated based on review of the Ethics Commission meetings.

The Commission was provided two presentations covering, as the figure above illustrates, a subset of the laws, codes, and rules that fall under its City Code mandated purview.

Notably, the City Clerk has created and provided onboarding training curriculum suitable for all the City's more than 25 boards and commissions focused on the Brown Act, California Public Records Act, and the basics of parliamentary procedure.

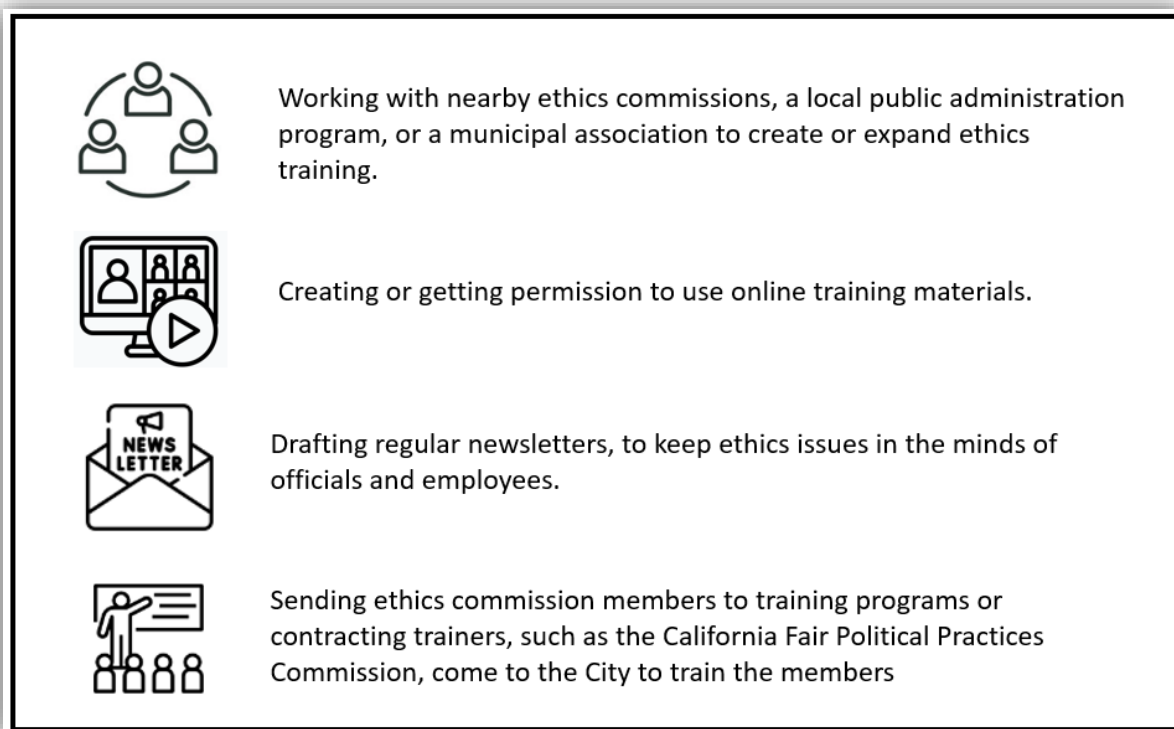
Commissioners interviewed expressed interest in receiving more substantive training on the different bodies of law under its purview since these early presentations. One Commissioner acknowledged that when the inaugural Commission started, there was no training because it was all brand new. However,

Commissioners remain interested. In fact, the Commissioners have discussed interest in working on developing onboarding for new Commissioners and ongoing training for current Commissioners.

We believe the Commission’s authority to hear complaints and levy administrative penalties over specific bodies of law should be accompanied by training to educate the Commission on those bodies of law. The Commissioners stressed that developing onboarding and ongoing training is important. In interviews conducted for this report, representatives of the City Clerk’s Office and the City Attorney’s Office expressed an interest in working together to create a more expansive training portfolio.

Ethics oversight advocates have identified several different methods for onboarding and continuous training. For example, Robert Wechsler, Director of Research for City Ethics, Inc., and author of *Local Government Ethics Programs*, asserts there are many avenues to design and improve ethics training for Commissioners. Figure 12 below illustrates different methods of providing training.

Figure 12: Methods for providing training to Ethics Oversight Board Members



Source: Auditor generated based on best practices.

The Ethics and Compliance Initiative in its publication, *Critical Elements of an Effective Ethics and Compliance Program*, also identified providing periodic training tailored to the board members’

responsibilities as one of the leading practices in supporting ethics and compliance oversight.⁶ This training should include any special issues of relevance.

Without adequate training, the Commissioners may not have a complete understanding of the City's ethics laws and programs. Additionally, without adequate training, the risk exists that Commissioners will less likely be able to make meaningful recommendations to the City Council about leading developments in ethics regulations. As stated above, representatives of both the City Clerk's Office and the City Attorney's Office expressed an interest in working to create a more expansive training program.

We believe the City Council should consider facilitating discussions between the Office of the City Clerk, the Ethics Commission, and the City Attorney's Office, for designing and implementing an onboarding program for new Commissioners and ongoing training for seated Commissioners to prepare them to perform their duties, continuously improve, and adapt to changing laws and leading practices. These discussions should include curriculum, frequency of training, who will provide the training, and funding needed to support the continuing education of the Commissioners. Additionally, these discussions should determine the consequences for Commission members who do not complete the training.

RECOMMENDATION

We recommend the Mayor and City Council:

- 2. Consider determining the training curriculum that Ethics Commissioners should be required to complete and potential remedies if training is not completed. Further, the training curriculum should be memorialized through City Council direction.**

Those seeking to comply with the City's ethics laws would benefit from the City providing greater resources to clarify and advise on the laws.

Ethics law experts stress the nuance and complexity of ethics laws can be confusing and difficult to follow for individuals that fall under the purview of the ethics oversight agencies. Making ethics guidance documents and advisory services available can help educate, reduce violations of ethics laws, and increase overall conformance with a city's laws and policies. Providing guidance and advice also encourages public officials and employees to request assistance and helps build trust between the oversight agency and those required to comply with ethics laws.

⁶ Ethics & Compliance Initiative, *Critical Elements of an Effective Ethics & Compliance Program: Recommendations for the US Department of Justice*, September 2018 (Last visited: May 17, 2024; URL: <https://www.ethics.org/wp-content/uploads/2018/09/ECI-DOJ-White-Paper-Final.pdf>)

According to ethics oversight advocates, providing guidance or advice should be a key component of an ethics program. Not providing advice or guidance on laws exclusive to the municipality can increase instances of non-compliance, create a negative perception of the ethics oversight body, and place an unfair burden creating an inequitable barrier to entry into public service.

As currently structured, the City Code places no responsibility on any City agency to provide any guidance documents or any advice to individuals seeking to comply with laws under the purview of the Sacramento Ethics Commission (Commission). While the City Clerk provides some guidance in document form on some laws, we found that an individual seeking to comply with this complex rubric of laws is largely left to figure it out on their own or incur personal costs for professional advice. As a result, individuals under the purview of the Commission currently have few reference materials available to help clarify the finer points of the law and have little recourse to seek advice from the City on how to comply with these laws.

We believe not providing advice to individuals seeking to comply with the City's ethics laws carries the potential risk of unfairly shifting the burden of learning and complying with a nuanced and complex area of law to individuals who want to comply. We believe that establishing a rubric of law without providing resources to explain and assist compliance may create distrust and lead to the perception that the Commission is simply a "gotcha agency." Additionally, not providing advice or guidance may potentially create an inequitable barrier to entry to individuals seeking to enter public service by forcing them to expend funds for professional consultants, accountants, and attorneys.

In establishing the Commission and the Good Governance Program, we believe the City Council considered that some degree of assistance would be available for individuals seeking to comply with these laws. The vision to provide staff resources and establish the Office of Ethics and Compliance within the City Clerk's Office was included as part of the City Council's establishment of the Good Governance Program in March 2017. One Councilmember, who was a member of the committee created to research ethics and good governance, explained the City's vision of the Office of Compliance.

"The Office of Compliance will exist inside of the City Clerk's Office. ... They will make sure that every Councilmember gets the training, every person that accountable to the code knows what the code is, and what their responsibilities are. ... We don't want to rely only on people making mistakes. We want to be proactive. That's why we have the other piece in here about training and education and making sure that everyone has an opportunity to be compliant and not have to fail before you figure out that you've made a mistake."

Additionally, the legislative record indicates that the City Council intended that advice would be available for individuals seeking to comply, at least, with campaign finance laws. This intent is illustrated by the presentation to the City Council in March 2017. Specifically, the City Clerk stated the "FPPC will provide advice letters when requested." Additionally, the intent is further signaled by the City Council's

establishment of the Ethics Commission and the intent to contract with the California Fair Political Practices Commission (FPPC) to, in part, provide advice. Figure 13 below provides the language in the City's contract with the FPPC related to providing written and verbal advice.

Figure 13: Contract with FPPC providing advice services

The FPPC may, in its sole discretion, provide written and/or verbal assistance to candidates for elected City offices and potential contributors in a City election regarding the provisions of Chapter 2.13 upon the request of the candidates, potential contributors, or their representatives

Source: State of California Fair Political Practices Commission and City of Sacramento Campaign Law Enforcement Agreement.

Notably, the contract stated the FPPC would provide advice pertaining to City Code Chapter 2.13 "Campaign Contribution Limitations". Representatives of the FPPC appeared before the Commission in October 2018 and stated the FPPC provided several avenues for individuals seeking advice, including links on the FPPC webpage, email addresses, and telephone numbers. In turn, the FPPC could provide advice through email, advice over the phone, and formal written advice for more complex questions. Additionally, representatives of the FPPC stated the plain language guidance documents would be produced and posted to the agency's website to assist those seeking information on how to comply with laws.

As described in Finding 5, the contract with the FPPC expired in December 2019 and has not been renewed. Since the date of expiration, there has been no formal advice provided by the City for any of the laws under the Commission's purview.

The City Clerk's Office currently oversees the Good Governance Program and provides staff support for the Ethics Commission. The Clerk's Office supports an internet presence for the Commission, the City's Good Governance Program, and election materials. The City Clerk includes copies of each law and code that fall under the purview of the Commission and provides more comprehensive guidance, in the form of Frequently Asked Questions, on two of the 10 laws under the Commission's purview, including City Code Chapter 2.13 ("Campaign Contribution Limitations") and City Code Chapter 2.15 ("Lobbyist Registration and Reporting Code"). As a result, individuals under the purview of the Commission are left to conduct research individually to determine how to comply with the remaining bodies of law under the Commission's purview.

Guidance Documents

The principal goal of a local government ethics program is to further the public's trust in those who govern their communities to put their personal interests aside in favor of the public interest. One of the

most important role of an ethics commission and its staff is to provide guidance so that officials and employees can responsibly handle difficult situations.

We conducted a survey of 15 ethics oversight agencies nationwide to determine whether the provision of plain language guidance and interpretations of complex rules were provided to assist in compliance. We found that 13 of the 15 agencies provided information sheets that provide information and interpretation of laws to guide individuals on how to comply with various ethics laws.⁷ These information guidance documents are typically created to provide guidance on questions frequently posed in inquiries or in fact sheets that provide plain language descriptions of the law coupled with practical examples of its application. Finally, these fact sheets and other information are posted on the website and made publicly available to assist in compliance with ethics laws that are often complex and nuanced.

For example, the San Diego Ethics Commission (SDEC) publishes a series of guidance and frequently asked questions (FAQs) on laws and codes under the purview of the SDEC. These guides provide a plain English explanation of the codes and provide hypothetical scenarios and answer frequently asked questions. The SDEC offers numerous fact sheets to assist in compliance with campaign laws, the city's ethics ordinance, and the city's lobbying ordinance. More specifically, the SDEC provides 18 fact sheets on different issues related to Campaign Laws, including advertising rules for candidates; electioneering communications; and soliciting and accepting contributions. Similarly, the SDEC provides nearly 20 fact sheets on how to comply with the City's Ethics Ordinance.

As another example, the Atlanta Ethics Office (AEO) is an independent city office led by the City Ethics Officer. The office is charged with bringing the city into compliance with the Code of Ethics (Standards of Conduct) and instilling a culture of ethics and integrity within city government. The AEO offers considerable resources to individuals under the purview of the various ethics laws adopted in the city. For example, the AEO provides a *Pocket Guide* that provides brief, plain English guidance on laws.

In addition to the *Pocket Guide*, the AEO also provides guidance materials called *Ethics Briefings* that assist those under the purview of the AEO to better understand and comply with ethics laws. For example, the AEO enforces the city's Ethics Code which covers conflict of interests involving city officials,

⁷ Ethics oversight agencies that provided advice included: (1) the Los Angeles Ethics Commission; (2) the Chicago Board of Ethics; (3) the San Diego Ethics Commission; (4) the Austin Ethics Review Commission; (5) the Jacksonville Ethics Commission; (6) the San Francisco Ethics Commission; (7) the Seattle Ethics and Elections Commission; (8) the Washington DC Board of Ethics and Government Accountability; (9) the Baltimore Board of Ethics; (10) the Atlanta Board of Ethics; (11) the Long Beach Ethics Commission; (12) the Oakland Public Ethics Commission; and (13) the Kansas City Municipal Officials and Officers Ethics Commission.

Ethics oversight agencies that did not provide advice include (1) the San Jose Board of Fair Campaign and Political Practices; and (2) the Riverside Board of Ethics.

employees, and agencies. In order to help understand the code and how to comply, the AEO produced a short video below for tips on how to identify, disclose, and handle potential conflicts.

Figure 14: AEO video explaining Conflict of Interest laws



Source: Atlanta Ethics Office⁸

The video provides a plain English explanation of the code and provides hypothetical examples of issues and how to comply. AEO provides additional videos for avoiding bribes, Code of Conduct awareness, and reporting misconduct.

The AEO also provides guidance on ethical issues covered by its Ethics Code that may be faced by individuals under the purview of the AEO. For example, one page of the AEO's website is dedicated to conflicts of interest. The website includes plain English information about the guiding principles of the code, a description of what constitutes a conflict of interest, how the conflicts can be addressed, and the procedure for disclosure, and general guidelines for compliance. Notably, AEO provides guidance to the following additional ethical issues: elections, post-employment requirements, and travel and training.

⁸ Atlanta Office of Ethics' Conflict of Interest video URL: <https://www.atlantaethics.org/education-5/ethics-briefings/handling-conflicts-of-interest> (Last visited: October 18, 2023)

Advice Services

We also found that many cities have ethics oversight agencies that provide advice on compliance issues to individuals seeking to comply with the laws under the purview of the oversight agency.

As part of our fieldwork for this audit, we conducted benchmark research of 15 ethics oversight agencies to assess if these agencies provided advisory services. Based on our research, we found that 13 of the 15 agencies benchmarked provide advice to individuals under their purview.⁹ Notably many of these agencies are embedded in cities of different sizes and these ethics agencies have different structures with varying levels of authority than the Sacramento Ethics Commission. Despite these differences, we found these agencies instructive as they share in the commitment to provide advice to help careholders comply with the ethics codes, build trust, and minimize the number of violations that occur.

Many of these agencies provided different levels of advice. For example, some agencies provide formal advice in letters provided by ethics staff which are made available to the public. Others provide verbal advice through phone lines. Examples of different types of advice that agencies provide are explained in the figure below.

⁹ Ethics oversight agencies that provided advice included: (1) the Los Angeles Ethics Commission; (2) the Chicago Board of Ethics; (3) the San Diego Ethics Commission; (4) the Austin Ethics Review Commission; (5) the Jacksonville Ethics Commission; (6) the San Francisco Ethics Commission; (7) the Seattle Ethics and Elections Commission; (8) the Washington DC Board of Ethics and Government Accountability; (9) the Baltimore Board of Ethics; (10) the Kansas City Municipal Officials and Officers Ethics Commission; (11) the Atlanta Board of Ethics; (12) the Long Beach Ethics Commission; (13) the Oakland Public Ethics Commission. Ethics oversight agencies that did not provide advice include (1) the San Jose Board of Fair Campaign and Political Practices and (2) the Riverside Board of Ethics.

Figure 15: Examples of Different Types of Advice Provided by Ethics Oversight Agencies

Type of Advice	Description of Advice Provided
Formal Advice	<ul style="list-style-type: none"> • Formal advice is provided regarding duties under the Charter, a City ordinance, or an opinion or policy adopted by the Ethics Commission relating to campaign finance, conflicts of interest, lobbying, or governmental ethics. • Formal advice is rendered in written opinions signed by the Board Chair, Executive Director, or approved by the Commission. • In some jurisdictions, the Commission shall have the right to issue formal opinions at its discretion in response to requests for advice. • In some jurisdictions a formal opinion is issued in response to an inquiry when sufficient information about the issue is provided to the Commission. • Formal opinions may provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice. • Copies of the advice request and the formal advice are public records.
Informal Advice	<ul style="list-style-type: none"> • Informal advice may be provided regarding duties under the City Charter, a City ordinance, or an opinion or policy adopted by the Ethics Commission relating to campaign finance, conflicts of interest, lobbying, or governmental ethics. • Informal advice may be requested and rendered by email, telephone, and in person. • Informal advice in most cases does not provide the same level of immunity that a formal opinion provides and therefore does not provide similar protection to the requestor.

Source: Auditor generated based on review of benchmark cities websites.

Many of the agencies in our benchmarking survey provide advice. We found agencies that also track and report on the number of advice letters issued. For example, the Chicago Board of Ethics reported that written opinions are provided on average about 25 times each year and informally about 4,000 times each year, by email, telephone, or in person. Additionally, many of the benchmarked agencies post their formal advisory opinions online to assist individuals with questions that have been addressed by the commission.¹⁰

We conducted interviews with several directors of ethics oversight agencies who stated that providing advice to individuals under the purview of the Ethics Commission is one of the most important functions, helps build trust, and dispels the “gotcha agency” assumption. For example, the Executive Director of the Los Angeles Ethics Commission stated, “the goal was to create a situation that they can trust us, so we absolutely try to give guidance.” Similarly, the Executive Director of the San Diego Ethics Commission stated that the agency encouraged employees, elected officials, candidates and lobbyists to reach out to the Commission. The Executive Director stated, “We stress that if the question is in our jurisdiction, we will help you... We want people to understand this stuff.”

¹⁰ Some examples include the Los Angeles Ethics Commission, Chicago Board of Ethics, the San Diego Ethics Commission, the Seattle Ethics and Elections Commission, the Washington DC Board of Ethics and Government Accountability, the Baltimore Board of Ethics, the Atlanta Board of Ethics.

Other executive directors that we interviewed stated the importance of giving advice to increase compliance and decrease the number of complaints filed. For example, the former executive director of Oakland Public Ethics Commission stressed that providing advice to individuals trying to comply is important to establishing a preventative approach to violating ethics codes.

Finally, providing advice can potentially assist in minimizing unfair barriers of entry to public service. The former Chair of the FPPC, Richard Miadich, stated that providing resources to help individuals comply with complex campaign and ethics rules is critical to help remove barriers to entry into the electoral process. Specifically, Miadich stated in a radio interview:

Particularly, I think about first time candidates, people that are interested in getting into the political process, and these rules are complicated. We don't want it to be a barrier to entry. We want a rich diversity of voices in our political process.... I do not want a first-time candidate who is interested in getting their voice heard to show before our agency the first time in an enforcement action because they made an inadvertent mistake in filling something out in one of their reports. I want them to understand that, look, in that sense we are here to help you understand and comply with the law. I think that's helpful because that's going to drive up compliance, it's going to keep people interested and engaged in the political process.¹¹

A couple of complaints filed in 2023 to the City's Ethics Commission highlight the need for the City to provide better resources to those who seek to comply with the City's laws and regulations. More specifically, two individuals filed separate complaints to the Ethics Commission alleging two individuals running for elective office in the City were potentially not in compliance with City campaign financing law. The City's campaign law imposed a limit on the amount of campaign contributions a candidate may receive from all contributors during what the Municipal Code defines as the "off-election year" period.

The Commission's Independent Evaluator called the law "confusing." According to the Independent Evaluator's report both the City Clerk and the City Attorney acknowledged "confusion" resulting from the law.¹² The Independent Evaluator noted that both candidate respondents attempted to comply by sending emails and making phone calls to different City departments in hopes of receiving clarification or guidance on the meaning of the law and how to comply.

¹¹ The statement by Richard Miadich, director of the California Fair Political Practices Commission was made in an interview on NPR's *Insight* radio program on August 23, 2022. (Last visited: November 30, 2022; URL: <https://www.caprado.org/news/insight/2022/08/23/monkeypox-resources-in-the-central-valley-fppc-chair-on-cryptocurrency-and-campaign-finance-sacramentos-dinner-at-tiger/>)

¹² Notably, the law at issue has since been updated to remedy the confusion.

According to the Independent Evaluator’s report, neither candidate received sufficient clarification or advice to avoid engaging in potentially problematic behavior. Notably, the Commission found both candidates did not commit any violations.

We found that providing guidance in the form of plain language explanations of complex law and providing advice to individuals seeking to comply with ethics and campaign law is a common function of ethics oversight agencies nationwide. We found that directors of ethics oversight agencies tout these services as a critical and equitable way to ensure compliance with applicable ethics and campaign laws. Finally, one director of an oversight agency stressed that an agency that creates an enforcement function should also provide advice and education resources to help those seeking to comply. However, as described above, many of these ethics oversight agencies are structured differently from the Sacramento Ethics Commission.

The City Clerk’s Office is not statutorily responsible for providing advice to individuals that are seeking to comply with the laws under the purview of the Commission. The City Clerk’s Office is also not resourced to provide advice on complex campaign issues and is not mandated by City Resolution or Ordinance to provide such advice to individuals that inquire with specific questions. What’s more, it may be improper for the City Clerk to appear to be providing information to individuals with specific questions about compliance issues that may be construed as legal advice.

The City Attorney’s Office is also not statutorily required to provide any resources or guidance to individuals under the purview of the Commission on how to comply. Rather, the City Attorney’s Office is responsible, per the City Charter, to act as the legal advisor to the City and the Commission – not individuals outside of the municipal corporation of the City of Sacramento. In fact, the City Attorney’s Office may be legally prohibited from providing advice to individuals under the purview of the Commission, such as candidates for elected office.

Meanwhile, a principal goal of the City’s establishment of the Commission and the Ethics Program is to achieve the greatest level of compliance with City codes and policies as well as applicable State law by elected and appointed officials through training and compliance monitoring. We believe the City should strive to establish a clear, documented approach to providing advice and information on ethics issues to employees and the public. This can become a key component of the ethics program.

We believe the City can consider achieving these goals in two ways. First, given the Sacramento Ethics Commission’s structure and limitations described above for providing advice to individuals, the City should consider creating a collection of information materials to provide guidance on complying with laws under the purview of the Ethics Commission. Second, we believe that opportunities exist for the City to consider exploring an alternative avenue to provide advice to individuals seeking to comply with City laws under the purview of the Ethics Commission, potentially through a third-party such as the Ethics Commission’s Independent Evaluator.

RECOMMENDATIONS

We recommend the Mayor and City Council:

3. Consider directing staff, in consultation with the City Attorney's Office, to create a collection of information materials providing guidance on complying with laws under the purview of the Ethics Commission.
4. Consider directing staff to evaluate the costs, structure, and process to design and implement an online submittal system staffed by the Office of the City Clerk support staff, the City Attorney's Office, or possibly a contractor, to respond to questions by individuals under compliance of the Ethics Commission seeking information on compliance with laws under the purview of the Ethics Commission.

Finding 3: More robust internal controls over complaint procedures can help inform complaint review and discussion by the Ethics Commission.

A key function of ethics oversight agencies is enforcing ethics codes, emphasizing how seriously the government takes the ethics mandate, and ensuring public trust in policy makers and political institutions. In performing these functions, ethics oversight agencies play a vital role in uncovering offenses by initiating, investigating, and holding hearings to adjudicate complaints alleging ethics violations and, in some cases, imposing penalties.

According to the Campaign Legal Center (CLC), a commission should publicly disclose its enforcement actions, regardless of whether the commission issues a sanction or finds no violation, to foster transparency in government and to enhance the commission’s credibility with the public.¹³ The CLC states that providing the public information about the status of a complaint investigation “allows the public to see the ethics commission at work and encourages trust in the process.” Finally, the CLC states that “ethics enforcement best serves the public when the actions of the ethics commission are transparent. When the public has insight into how an ethics commission investigates violations and assesses penalties, it reinforces trust that the government is prioritizing ethics laws and holding officials accountable.”

The Sacramento City Code provides the Commission the power and duty to review, investigate and consider complaints alleging violations of the ethics codes and impose penalties. The Commission has the authority to adopt procedures guiding the review, investigation, and consideration of complaints, and set forth standards for imposing penalties and exercising enforcement discretion. As discussed in greater detail below, the Commission has approved a series of procedures guiding the complaint in-take, jurisdiction review, preliminary investigation, and procedure for reporting to the Commission information about complaints filed and their disposition through a complaint log.

As part of fieldwork for this audit, we reviewed the complaint logs submitted to the Commission and more than 25 complaints filed with the Commission dismissed by the Commission for lack of jurisdiction. We found:

- Ethics Commission review of complaints can be improved by automating the complaint intake process;
- The City Clerk can enhance the process to ensure only appropriate information is included in complaint logs; and
- More robust disclosure of rationale for complaint dismissal can help inform complaint review and discussion by the Ethics Commission.

¹³ Campaign Legal Center (CLC) is a nonpartisan organization that advocates for every eligible voter to meaningfully participate in the democratic process. The CLC employs tactics such as litigation, policy advocacy and communications to make systemic impact at all levels of government.

To enhance transparency and public trust, the City Clerk and Commission should publicly disclose its enforcement actions, regardless of the outcome, while safeguarding legally confidential information. The Commission has the authority to establish procedures for reviewing and investigating complaints, as well as setting enforcement standards. We believe that augmenting controls and reporting practices over the complaint intake review and reporting process, such as automating intake, ensuring only appropriate information is included in logs, and providing clearer rationales for dismissals, would strengthen the Commission's ability to perform its City Code provided duties. We believe these steps can enhance the Commission's credibility and reinforce public confidence that ethics laws are being upheld.

Ethics Commission review of complaints can be improved by automating the complaint intake process.

The City Council created the Ethics Commission to receive, review, and adjudicate complaints. The Ethics Commission created procedures overseen by the City Clerk for the receipt and documentation of complaints filed with the Commission that is overseen by the City Clerk. We believe that controls over the complaint process can be strengthened to provide additional assurance that Ethics Commissioners are informed about complaint submission and review. We believe that ensuring complaints are collected and communicated to the Ethics Commission can build public trust in the proper function of the Commission and local government.

The Ethics Commission has approved a series of Procedures since its inception that guide how complaints should be submitted, the process for the receipt by the City Clerk, and procedures for how the Commission is notified. The Commission procedures specify that complaints can be filed in a couple of ways. First, complaints can be filed on a complaint form that includes specific information the procedures require for complaint review. These include, in pertinent part, the name of the respondent or individual alleged to have violated a provision of code under the purview of the Commission, the section of code potentially violated, a factual recitation of the violation, and the name of complainant. Second, a complaint that is not filed on the form is acceptable if the complaint includes enough information to allow the City Clerk to conduct the initial review.

After the complaint is received, the Procedures require the City Clerk within 14 days of receipt to take one of the following steps:

- (1) Refer the complaint to the Independent Evaluator;
- (2) Refer the complaint to another City department, the California Fair Political Practices Commission, or another government agency with relevant jurisdiction; or
- (3) Dismiss the complaint for lack of jurisdiction.

The Procedures require the City Clerk to perform a jurisdiction analysis to determine whether the complaint is appropriate for consideration by the Commission.¹⁴ The Procedures contemplate that the City Clerk may consult the Office of the City Attorney in performing the jurisdiction analysis.

The City Clerk is then required to “enter in the complaint log the action taken after the initial review. In addition, at the Commission’s next regular meeting, the City Clerk shall notify the Commission of the action taken after the initial review.”

As discussed later in this Finding, we reviewed complaints received by the City Clerk between August 2019 and December 2022. We found that all of these complaints were appropriately logged and reviewed in conformance with the Commission’s Procedures.

After we concluded fieldwork for this report, we were notified of a complaint that was sent to the City Clerk that was not included in the Ethics Commission complaint log. The complaint was communicated to the City Clerk via email in May 2024. We determined this complaint was not included in the complaint log. We consulted with the City Clerk and City Attorney’s Office about the complaint. According to the City Clerk and City Attorney, the complaint underwent an analysis, and the City Clerk determined the case should be dismissed for lack of jurisdiction. However, the complaint and the adjudicated status were not included in the complaint log.

According to the City Clerk, they concluded that the initial jurisdiction analysis would benefit from additional information and reached out to the complainant seeking additional facts. As time passed, the City Clerk did not include the complaint on the log. Notably, when we brought this to the City Clerk’s attention, the complaint was included in the complaint log at the February 24, 2025, meeting of the Ethics Commission.

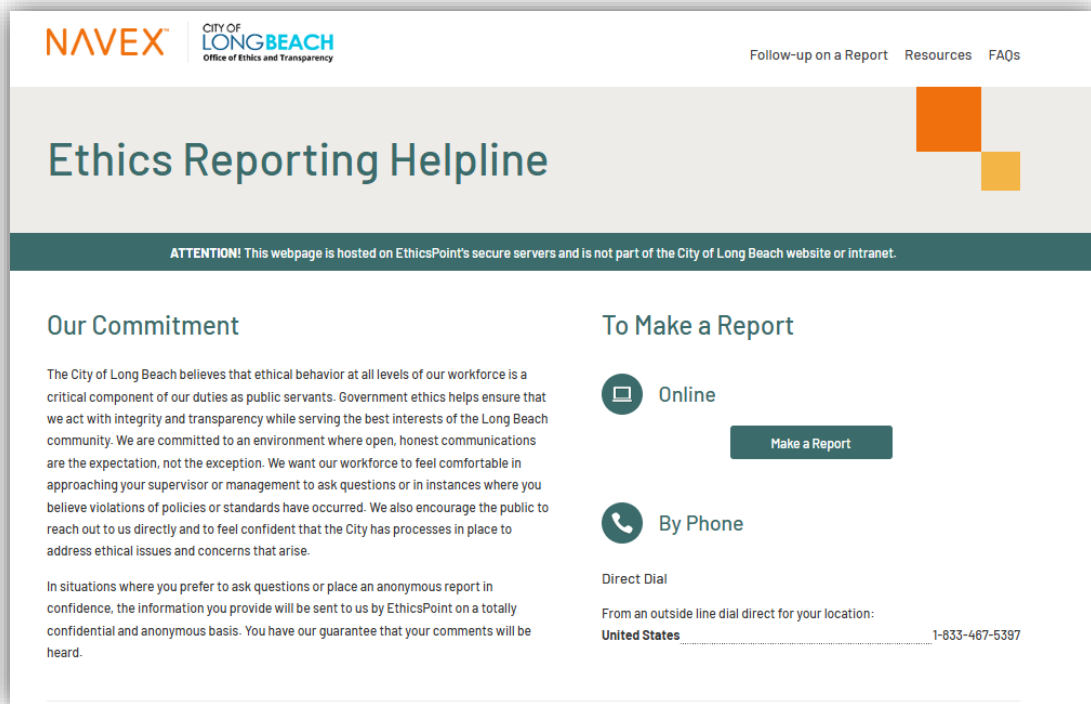
The Ethics Commission relies on the City Clerk’s receipt, review, logging and communication of the existence and disposition of complaints to fulfill City Code-mandated duties. As stated in City Code chapter 2.112.030, the Commission has the power and duty to review, investigate, and consider complaints alleging violations of more than 10 codes and regulations. As stated above, the City Clerk engaged in a manual process of complaint intake and input of the information into a complaint log, which is then presented to the Ethics Commissioners. Critically, this is an important method for Commissioners to learn about the receipt and disposition of the complaints. We believe implementing a process to automate the complaint intake process will reduce the risk of complaints being omitted from the log.

¹⁴ The Ethics Commission Procedure states, “A complaint is outside the Commission’s jurisdiction if (a) it alleges violations that occurred more than three years before it was filed, or, for violations subject to a different limitations period, it was filed after the limitations period expired; (b) it alleges facts that are not subject to any provision of the Ethics Law; or (c) the respondent is not a person listed in City Code section 2.112.030.B.”

During our review of other Ethics Commissions, we found that some agencies employ a hotline. We believe these oversight agencies have implemented an automated system over the complaint intake systems that offers stronger controls to ensure that complaints are captured and reported. Specifically, we found that these agencies have designed and implemented an automated complaint receipt, collection, and reporting system.

For example, the City of Long Beach Office of Ethics and Transparency utilizes an automated ethics complaint filing system through a reporting system called Navex. As Figure 16 illustrates, a complaint can be filed through an online form or by calling a direct dial phone line. The complaints can also be filed anonymously through the system.

Figure 16: Screenshot of City of Long Beach Office of Ethics and Transparency Ethics Helpline



Source: City of Long Beach Office of Ethics and Transparency¹⁵

The City of Long Beach Office of Ethics and Transparency designed a complaint form for complainants to fill out within the system. As the figure below illustrated, the complaint form features drop-down tabs for the inclusion of information relevant to the filing of a report.

¹⁵ URL: "https://secure.ethicspoint.com/domain/media/en/gui/92851/index.html"; Last visited on November 18, 2024

Figure 17: Screenshot of City of Long Beach Office of Ethics and Transparency ethics complaint form.

The screenshot shows the NAVEX interface for filing an ethics report. At the top, it says 'NAVEX' and 'You are now in an EthicsPoint Secure Area | File a Report'. Below this, a message states: 'You are currently in the confidential and secure reporting structure of EthicsPoint. Below are the choices available to you. Please select the type of report you would like to make.' A list of 13 categories is provided, each with a 'Details' link to its right:

Brown Act Violations	Details
Bullying or other abusive behavior	Details
Collateral Employment	Details
Confidentiality Violation/Breach of Privacy	Details
Conflict of Interest	Details
Contract or Vendor Fraud	Details
Discrimination	Details
Gifts	Details
Health and Safety Violations	Details
Lying	Details
Misuse of City Property	Details
Retaliation	Details
Violations or Abuse of City Policy	Details

Source: City of Long Beach Office of Ethics and Transparency

The City of Atlanta Board of Ethics and the Ethics Office have also employed a similar hotline system by the same contractor. This system allows individuals to file a complaint over the phone via a 24-hour phone line or enter the complaints through a web site.

These systems are consistent with how whistleblower hotlines are operated by other local governing agencies in California. For example, our office also contracts with Navex for the collection of complaints to the City of Sacramento’s Whistleblower Hotline. Similarly, the website offers online complaints and a phone-in line that also allows the submission of confidential complaints.

We believe the design and implementation of an automated system that allows individuals to file complaints is a method that mitigates the risks identified above. Specifically, the risk that an ethics complaint is filed and properly addressed to disposition without being included on the complaint log so that Ethics Commissioners are not aware. We believe the City Clerk can maintain the hotline and ensure the reporting of complaints by running reports automatically through the system, consistent with the format currently utilized through the complaint log. Additionally, we believe that providing education and training to the Ethics Commissioners on the automated complaint system would help ensure that individuals that reach out to Commissioners are provided with direction for the proper method to file.

We recommend that the City Clerk research and determine the costs of an online complaint system for ethics reports and consider requesting funding for its implementation. Additionally, we believe the Ethics Commission should receive training on the system’s functionality to ensure members can properly refer any complaints submitted directly to them.

We recommend the Office of the City Clerk:

- 5. Consider evaluating the costs, structure, and process to design and implement an online ethics complaint submittal system staffed by the Office of the City Clerk support staff, the City Attorney’s Office, or possibly a contractor, to receive and record ethics complaints filed for consideration by the Ethics Commission.**

- 6. Consider directing staff to design and provide training to the Ethics Commission on the functionality of an online ethics complaint submittal system.**

The City Clerk can enhance the process to ensure only appropriate information is included in complaint logs

The City Code provides the Ethics Commission with the authority to, in consultation with the City Attorney’s Office, adopt regulations and procedures for investigations and hearings.

The Ethics Commission has approved several sets of Procedures since its inception. The Procedures have evolved in directing how complaints are received by the City Clerk and how information related to the investigation and disposition of the complaints are tracked and communicated to the Commission.

The Commission approved its second set of Procedures effective on February 22, 2021. According to the Procedures, the City Clerk is responsible for maintaining a log of complaints received by the Commission and include the date and time each complaint is filed. The City Clerk is also responsible for including in the complaint log information detailing the action taken after the initial review, such as dismissing the complaint for lack of jurisdiction, referring the complaint to a more appropriate investigatory agency, or referring the complaint to the Commission’s Independent Evaluator. The log serves as the primary tool for the Commission to monitor the complaints received alleging violations of codes and laws under its purview.

The Procedures set limits on the information the City Clerk is required include in the complaint log. For example, the new Procedures stated the complaint log “shall not identify the Complainant and the Respondents.” Subsequent procedures issued by the Commission in September 2022 and September 2024 also included these limitations.

We found the City Clerk issued complaint logs at 17 public Ethics Commission meetings between February 2022 and February 2025. We found the City Clerk included information disclosing the identity of the Respondent or Complainant in each of the 17 complaint logs.

To ensure the inclusion of appropriate information, we believe the City Clerk should incorporate the City Attorney's Office in a review of the monthly complaint logs prior to their public release. We believe this step will continue to ensure the Ethics Commission receives timely updates about the substance, status, and disposition of complaints. Additionally, we believe this step will reduce the chance that the names of the Complainants and Respondents will be included in the publicly issued complaint logs.

RECOMMENDATIONS

We recommend the Office of the City Clerk:

- 7. Consider establishing a more thorough process to review complaint logs prior to public issuance to ensure only appropriate information is publicly available.**

More robust disclosure of rationale for complaint dismissal can help inform complaint review and discussion by Ethics Commission.

The Ethics Commission has approved a series of Procedures that set responsibilities for each stage of the complaint review process. These procedures set specific duties related to the intake, the standard of review, and procedural steps to communicate review outcomes to the Commission. One critical provision of the Procedures provides the City Clerk with the authority to conduct an initial review and dismiss complaints for specific reasons.

More specifically, the current Procedures, approved by the Commission September 2024, authorize the City Clerk to “[d]ismiss the complaint for lack of jurisdiction” and establish the standards for the dismissal. The procedures provide that a complaint is outside the Commission’s jurisdiction if “(a) it alleges violations that occurred more than three years before it was filed, or, for violations subject to a different limitations period, it was filed after the limitations period expired; (b) it alleges facts that are not subject to any provision of the Ethics Law; or (c) the respondent is not a person listed in City Code section 2.112.030.B.”

For this report, we reviewed 25 complaints filed with the Commission dismissed by the City Clerk for lack of jurisdiction and compared the information included to the Procedures. We found some of the complaints were dismissed for lack of jurisdiction which could have included a more thorough rationale for dismissal communicated to the Commission to ensure a more transparent complaint review.

We believe these cases highlight an opportunity for the City Clerk to improve its initial complaint review process by including a more thorough rationale for a dismissal for a lack of jurisdiction. Including a more descriptive rationale for jurisdictional dismissals would be consistent with the reporting requirements specified in the Commission’s Procedures when concluding the Preliminary Review.

Providing the Commission with more information concerning the rationale for a dismissal for lack of jurisdiction can help ensure its ability to review, investigate, and consider complaints related to violation of ethics laws. The inability for the Commission to review, consider, and comment on significant information about complaints creates the risk that the public will lose faith in the Commission and, more generally, political institutions. These outcomes limit the Commission’s ability to achieve its purpose to “ensure those city officials are conforming their conduct to the city’s laws and policies.”

The completion of a jurisdiction analysis conducted during the initial review process is akin to a legal analysis of subject matter jurisdiction completed for cases filed in civil courts. The requirement provides that a court has subject-matter jurisdiction, meaning that the court can only assume power over a claim which it is authorized to hear under the laws of the jurisdiction. Similarly, the Commission can only assume power of a claim it is authorized to hear under City Code section 2.112.030.¹⁶

Since its inception in 2018, the Commission has approved four sets of Procedures guiding complaint intake, jurisdiction review, preliminary review, investigation, hearing processes, and the process for imposition of penalties.¹⁷ As discussed in the Background section, the first set of procedures approved by the Commission in October 2018 established the initial process for complaint intake and adjudication. The second set of procedures, approved by the Commission in February 2021, made substantial changes to these processes.

More specifically, the first set of procedures, approved in October 2018, assigned the City Clerk of the Office of Ethics and Compliance the duty to receive complaints, conduct a jurisdiction review, and the preliminary evaluation. The Procedures stated, “Upon receipt of a Sworn Complaint, the City Clerk shall conduct a preliminary evaluation of the complaint to determine whether the alleged violation is within

¹⁶ Sacramento City Code chapter 2.112.030 provides: “A. [T]he 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 4.04 (“Sunshine Ordinance”); and (h) Chapter 3 (“Conduct of Members”) and Rule 6.E (“Closed Sessions”) of the Council Rules of Procedure.

¹⁷ The first set of Ethics Commission Procedures were approved in October 2018. The second set of procedures were approved in February 2021. The third set of procedures were approved in September 2022. The fourth set of procedures were approved in September 2024.

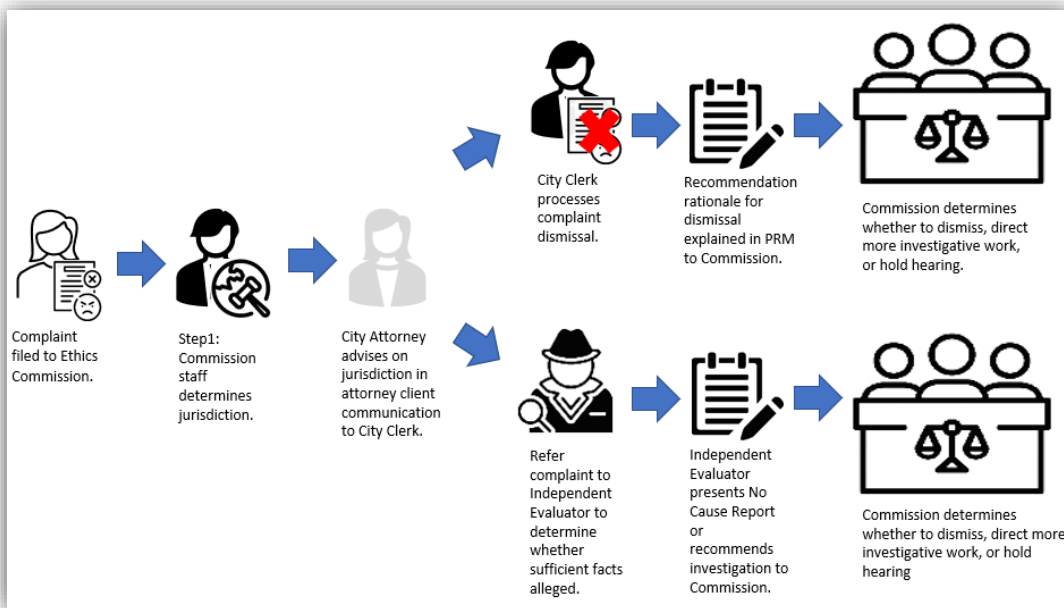
the Commission’s jurisdiction.” The Procedures added, the “preliminary inquiry may include reviewing relevant documents, communicating with the complainant, and any other reasonable inquiry to determine next steps.”

After the preliminary evaluation, the City Clerk will recommend a course of action through a Preliminary Review Memo (PRM). The PRM may refer the complaint to an Independent Evaluator for a formal investigation, dismiss the complaint for lack of jurisdiction, or refer the complaint to another governmental or law enforcement agency better suited to address the complaint. The Procedures also set forth a process for notifying the Commission when a complaint is dismissed:

If the [City Clerk] dismisses a complaint for lack of jurisdiction, the [City Clerk] will prepare a Preliminary Review Memorandum (PRM) for the complaint and provide a report to the Commission in a public meeting. The PRM for dismissed cases must include the date the complaint was received, the general nature of the complaint, and rationale for dismissal.

The PRM was designed to be a thorough discussion of the process and reasoning of the dismissal recommendation.¹⁸ Below is a flow chart of the original procedure:

Figure 18: Initial Complaint Review Process in Ethics Commission Procedures



Source: Auditor generated based on Ethics Commission Procedures approved October 22, 2018

¹⁸ Notably, Black’s Law Dictionary defines “rationale” as, “A discussion of the reasons behind how a decision was made. Rationales document why the choice was made, how it was developed, what assumptions were used and why the conclusion is realistic.”

As can be seen above, should the City Clerk seek to dismiss the complaint on either jurisdictional grounds or for failure to present sufficient facts to warrant a full investigation, the rationale for the decision is presented to the Commission in a PRM. This provides the Commission an opportunity to thoroughly review the rationale and direct staff to conduct additional investigative steps or accept the City Clerk recommendation and dismiss the complaint. The City Clerk can refer the complaint to the Independent Evaluator to conduct an investigation and report to the Commission.

The second set of Procedures was approved by the Commission in February 2021 and included many of the procedural changes addressed below. The subsequent sets of Procedures approved by the Commission in September 2022 and September 2024 included more minor, cleanup changes.

The procedures changed the initial complaint review process and split it into two separate steps. First, the jurisdiction review is performed by the City Clerk. Second, the preliminary evaluation is conducted by the Independent Evaluator.

In terms of the jurisdiction review, the Commission's newly approved Procedures specified in what instances the City Clerk was authorized to dismiss a complaint. Specifically, the City Clerk has the authority to dismiss the complaint for lack of jurisdiction. The procedures established specific elements to establish a lack of jurisdiction.¹⁹ While not clarified in the Procedures, the City Attorney's Office may also provide advice to the City Clerk on jurisdiction analysis.

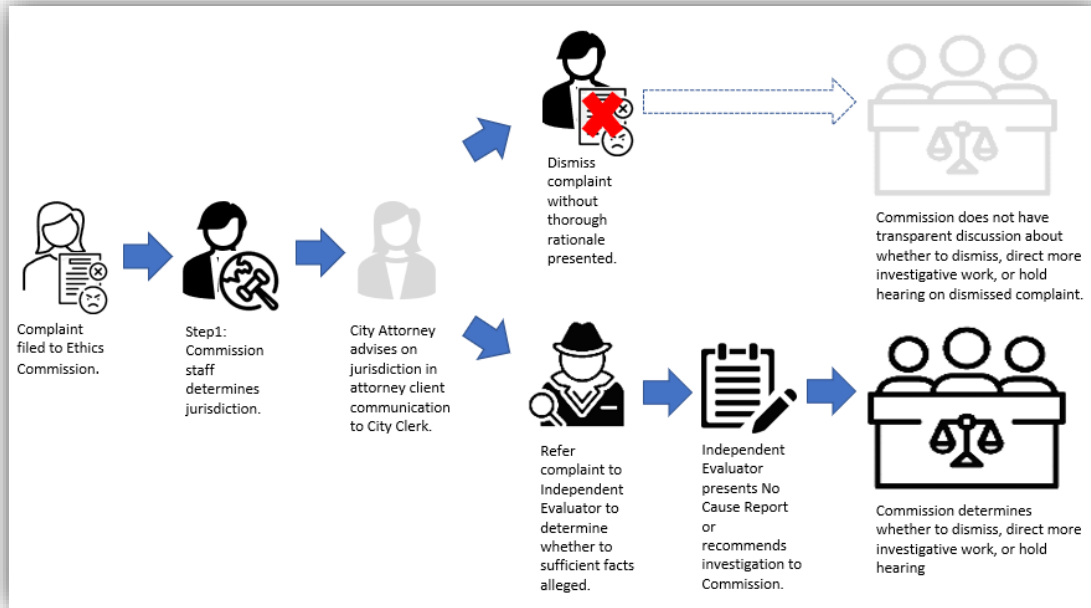
A notable procedural change relates to reporting on dismissals. In instances where the complaint is dismissed, the Commission's new Procedures require that the City Clerk enter in the action taken into a complaint log, rather than explain the rationale in a Preliminary Review Memorandum. In addition, in instances where a complaint is dismissed for lack of jurisdiction, the City Clerk shall notify the Commission at the Commission's next regular meeting of the action taken after the initial review. In instances when jurisdiction is satisfied, the City Clerk may "refer the complaint to an Independent Evaluator for a preliminary investigation" or "[r]efer the complaint to another City department or to the FPPC or another governmental agency with jurisdiction over the subject matter of the complaint.

The next step of the initial review process is conducted by the Independent Evaluator. In this phase, the Independent Evaluator completes a preliminary evaluation to determine whether sufficient cause exists, through a review of allegations within the "four corners" of the complaint, to conduct a full investigation. In instances where the Independent Evaluator does not believe sufficient evidence exists, the Independent Evaluator shall prepare a "no-cause report" explaining why sufficient cause does not

¹⁹ The Procedures approved by the Commission in February 2021 provide: the City Clerk may "(3) Dismiss the complaint for lack of jurisdiction and notify the complainant of the dismissal. A complaint is outside the Commission's jurisdiction if (a) it alleges violations that occurred more than three years before it was filed, or, for violations subject to a different limitations period, it was filed after the limitations period expired; (b) it alleges facts that are not subject to any provision of the Ethics Law; (c) the respondent is not a person listed in City Code section 2.112.030.B; or (d) the respondent is a Commissioner."

exist and recommending that the Commission not hear the matter. The Commission may adopt the no-cause report and dismiss the complaint. Alternatively, if the Commission decides that contrary to the no-cause report, sufficient cause exists to warrant an investigation, the Commission may direct the Independent Evaluator to investigate. Below is a graphical representation of the process.

Figure 19: Initial Complaint Review Process in Ethics Commission Procedures



Source: Auditor generated based on Ethics Commission Procedures effective September 23, 2024

As illustrated above, the complaint is submitted to the City Clerk, who undertakes a jurisdictional analysis. As this is a conclusion that may require some legal analysis, the City Attorney may be tasked with providing advice on whether jurisdiction is appropriate. The City Clerk can then decide to dismiss the complaint or refer to the Independent Evaluator or an outside investigative agency. In the instance of dismissal, the City Clerk enters a “dismissed for lack of jurisdiction” in the complaint log. The updated procedures do not require the inclusion of a rationale to allow for a transparent discussion at the Commission detailing the deficiency in the complaint submission. The Procedures require the City Clerk to “enter in the complaint log the action taken after the initial review.” In contrast, should the Independent Evaluator determine the complaint is deficient to survive preliminary review, the Independent Evaluator submits and presents a “no cause report” in an open meeting of the Commission and detail the rationale detailing the deficiency of the complaint.

As stated above, we reviewed files for 25 complaints dismissed by the City Clerk for lack of jurisdiction and determined the Ethics Commission may have benefited from a more thorough statement of the rationale for dismissing some of the complaints to make more informed decisions.

Notably, during fieldwork for this audit, we found the City Attorney’s Office has provided advice to the City Clerk on the jurisdiction analysis and that this advice was not disclosed to the Commission in the public reporting of the case dismissal for lack of jurisdiction. Notably, Commissioners are entitled to a briefing from the City Attorney’s Office about the contents of that advice. While these actions are appropriate per the Procedures, one Commissioner we interviewed for this report stated they would like to know and would request a briefing if the information was made available to them.

The City Clerk’s dismissal of jurisdiction requires a sparse explanation of the rationale behind the decision. The only explanation provided to the Commission is on the “Complaint Log” compiled by the City Clerk that lists “Dismissed – Lack of Jurisdiction.” Below is the entry input on the Complaint Log for a dismissal.

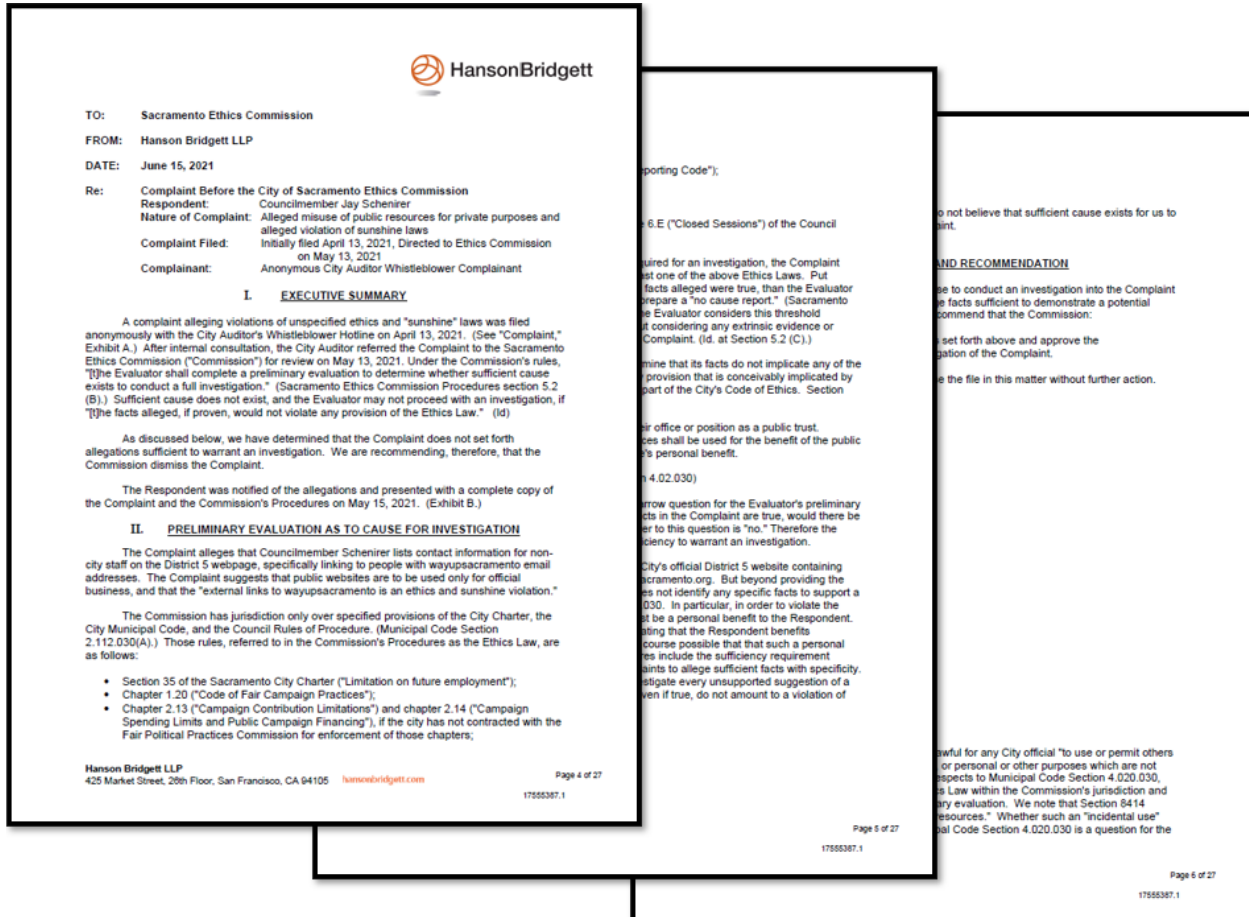
Figure 20: Sacramento Ethics Commission Complaint Log Dismissal Rationale

Disposition
Dismissed by City Clerk-Lack of Jurisdiction

Source: Sacramento Ethics Commission Complaint Log

As stated above, the original version of the Procedures required that the City Clerk issue a Preliminary Review Memorandum detailing the rationale for dismissal to the Commission. This reporting requirement is akin to the recent procedure requirement for the Independent Evaluator to prepare and present a no-cause report when recommending dismissal of a complaint after preliminary review. For example, the following figure is a Preliminary Review Memorandum detailing the dismissal for lack of jurisdiction.

Figure 21: Example of Independent Evaluator’s No-Cause Report to the Ethics Commission



Source: Sacramento Ethics Commission

As can be seen above, the volume of information in the report is more robust than what is provided by in the Complaint Log.

While we are not suggesting the level of detail be the same, the document provides context to the difference in rationale provided. The City Clerk could list the provision relied upon in determining lack of jurisdiction. For example, if a complainant alleged a violation of the Ethics Code by an individual not under the purview of the Commission, the City Clerk could include as justification, “(c) the respondent is a person not listed in City Code section 2.112.030.B.” Additionally, in instances where the City Clerk consults the City Attorney’s Office, the fact that a consultation was provided should be included in order to allow the Commissioners the opportunity to consult with the attorney about the rationale for the dismissal.

Notably, during the report writing phase of this audit, the City Clerk began working with the City Attorney’s Office and the Ethics Commission to determine appropriate information to include in the

complaint log to include the specific provision of the Procedures relied on in making the determination to dismiss complaints for lack of jurisdiction.

Providing a description of the cause for dismissal of complaints based on jurisdictional analysis can assist the Commission by ensuring transparent reporting. Additionally, providing whether the City Attorney's Office provided advice on the jurisdiction determination would allow the Commission to engage in discussions with counsel for more information. The Commission is a complaint-driven agency meaning that the Commission cannot investigate a matter until an individual first files a complaint. As such, public trust in the effectiveness of the Commission is essential to an individual's willingness to file a complaint. Additionally, providing a more robust discussion of the rationale for dismissing a complaint for jurisdiction can provide the Commission the opportunity to perform the City Code-mandated duty to review, investigate and consider complaints alleging violations of law by individuals under the Ethics Commission.

RECOMMENDATION

We recommend the Office of the City Clerk:

- 8. Include in the Complaint Log a more descriptive rationale for complaint dismissal based on lack of jurisdiction.**

Finding 4: Opportunities exist for the City Council to update its Rules of Procedures related to the operations of commissions to improve consistency and effectiveness.

The formation of advisory commissions by local government agencies recognizes the value of drawing on the skills and experience of residents in a way that supplements skills within an organization. These commissions can foster trust and a level of engagement in detailed recommendations for action on complex issues that affect the broader community. A key to success is the establishment of clear expectations and processes for community commissions, ensuring both sufficient guidance and consistency in their advisory work.

The City Council created the Ethics Commission (Commission) to review and investigate complaints alleging violations of ethics laws and provide oversight and recommendations to continuously improve the ethical legal framework in the City. Recent changes to the operations of City boards and commissions through the City Council's Personnel and Public Employees Committee (P&PE Committee) highlights opportunities for the City to update its policies to clarify expectations and consistency in seeking staff support and providing recommendations.

According to best practices, government agencies can empanel community members committees to provide knowledge and viewpoints distilled into specific recommendations. To achieve the best results, advisory commissions should be provided adequate resources to complete its duties and objectives. Additionally, it is imperative that clear roles, responsibilities, and processes are established to allow both the committee and the sponsoring agency to set expectations and reasonable goals.

In our review of the Ethics Commission, we found:

- The City can establish a process for the Ethics Commission to formalize requests for staff support; and
- The City can formalize a process for Ethics Commission recommendations regarding subjects under its purview.

According to former Commissioners, more staff support provided by the City would enhance the Commission's ability to meet its City Code mandated duties. Additionally, the lack of specific process for producing recommendations, documenting feedback, and moving the recommendations through the legislative process has resulted in some requests and information not included in the legislative records.

We believe the City can leverage new processes created by the City Council's P&PE Committee to create more certainty in the operation of the boards and commissions. Specifically, we believe the City can augment requirements that boards and commissions produce annual reports with work plans to include specific requests for staff support and include estimated staff costs. Additionally, we believe the City Clerk can work with the Commission to design a recommendation format to ensure the

recommendations, rationale, feedback from City careholders, and direction from City Council Committees, is captured and presented in one form to the City Council to ensure an informed discussion of the recommendations.

The City can establish a process for the Ethics Commission to formalize requests for staff support.

Public policy experts and advocates for ethics oversight agree that identifying and providing adequate resources and staff support is critical to allow an oversight agency to complete its mission and duties. Our review of the Commission found that requests for sufficient staff support can be formalized in a process to go through its annual report and work plan. The annual consideration of commitments to provide staff resources can create accountability, stimulate production, alleviate Commissioner frustration, and facilitate greater progress on its stated initiatives.

According to ethics oversight advocates, such as the Institute for Local Government, it is critical that ethics and compliance programs are provided sufficient resources to ensure work is completed, proper integration with operations, and an independent voice to leaders.²⁰ Ethics oversight advocates such as the Campaign Legal Center also agree that limited staff and funding for resources create challenges for ethics oversight agencies to fulfill their important missions.

During this audit, the City Council approved a series of legislative changes to the City Code and Council Rules of Procedure to streamline the operations of the City's boards and commissions. Under this new rubric, the staffing for most boards and commissions will be borne by the City Clerk's Office. A part of the new legislation requires the Commission to submit to the City Council's P&PE Committee, as part of their annual report, a work plan for items the Commission plans to focus on in the coming year.

We believe the Commission can leverage this process to estimate and formally request specific staff support through the work plan. The Ethics Commission can employ several different staff planning models to estimate staffing needs, estimate costs, and communicate this information as a request through the new annual reporting process.

For example, the Commission presented its Annual Report 2022 to the City Council's P&PE Committee in September 2023. The Commission included just one objective, to "expand community engagement and outreach in the coming year" and noted additional goals and objectives would be defined at a later date. As seen below, the Annual Report includes an area for the Commission to describe Resources Required for 2023 Projects, Priorities, and Objectives.

²⁰ The Institute for Local Government, founded in 1955, is a non-profit organization that provides information to empower local government leaders and delivers real-world expertise to help them navigate complex issues, increase their capacity, and build trust in their communities.

Figure 22: Ethics Commission’s Annual Report 2022

2023/2024 Projects, Priorities, and Objectives for Consideration

The commission would like to expand community engagement and outreach in the coming year. The commission will be deliberating and further define goals and objectives for outreach activities at an upcoming commission meeting.

Resources Required for 2023 Projects, Priorities, and Objectives

- TBD based on scope yet to be determined by the commission.

Source: Ethics Commission’s Annual Report 2022

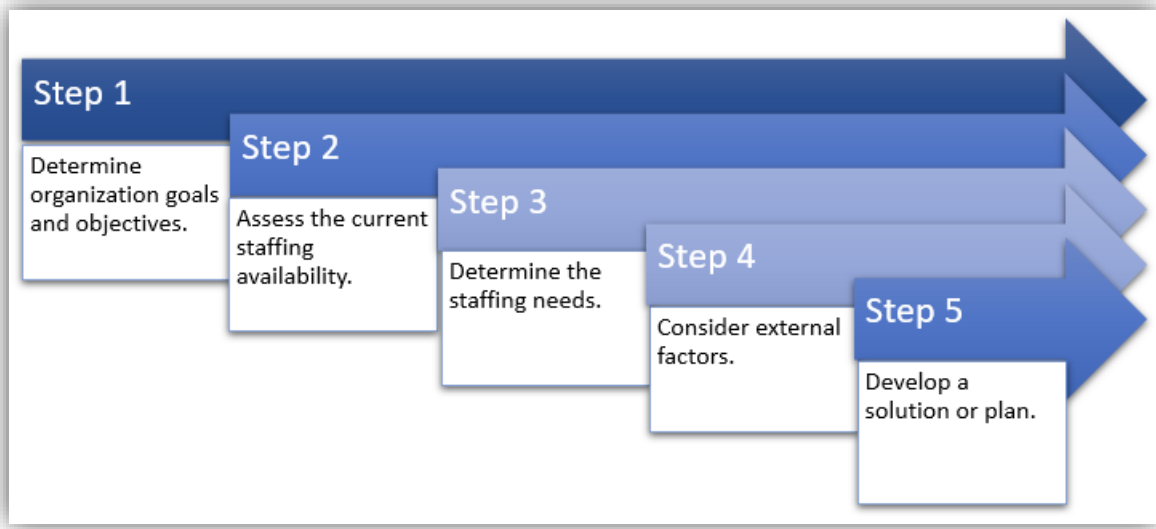
As can be seen above, the Commission did not fully define a list of projects, priorities, and objectives and was therefore unable to determine the staffing resources estimates needed to conduct the work and include the hours in the report for consideration by the Personnel and Public Employees Committee.

Additionally, the former Commissioners appeared before City Council in support of its Annual Report for 2019 and provided public comment in support of additional staff support. In response, the Mayor requested that the Ethics Commission develop a budget proposal to provide an estimate of the staff support and costs to assist the City Council. This estimate was never completed.

Notably, in interviews conducted with former City officials who took part in the drafting of enacting language guiding the formation of the commission, the allocation of staff time to support the Ethics Commission was envisioned to be based on the Commission’s work plan established through the Annual Report process.

We believe the Ethics Commission can use the opportunity of setting its work plan for the upcoming year to engage in staff planning to include a request for specific staff support in connection with the items on the work plan. A staffing plan is a strategic planning process by which a company assesses and identifies the personnel needs of the organization. In other words, a good staffing plan helps an agency understand the types of staffing support needed to accomplish its goals and objectives. According to industry experts, staffing planning consists of the following steps.

Figure 23: Process for Developing a Staffing Plan



Source: Auditor generated based on best practices.

As seen in the graph, the first step in developing a staffing plan is to evaluate the needed goals to achieve. By recognizing the targets that staff support would be working toward, the Commission can identify the amount and type of support needed to meet those expectations.

The second step is to determine the current staffing situation and understand what the availability of staff will be. This includes understanding the current resources, including staff, and other people who regularly support function goals. In addition, the current-state analysis should determine competencies, skill set or expertise to fully understand the tools presently available to meet expected plans.

Third, the agency should determine the staffing need. As the agency conducts a staffing needs assessment, the agency will want to consider the factors that can affect staffing decisions and opportunities, including business goals, education, and skills and qualifications needed to perform the work.

The fourth step is to identify influencers or factors that might affect the staffing plan. Influencers can be positive or negative and are defined as anything that might indirectly affect the plan.

Finally, the agency should develop a staff solution plan. The plan itself should outline the staff needed, at what time, location, and cost. The plan may also detail the timing for when specific, outside expertise is needed. The important thing is to present the information in a format that provides the amount and type of information required in an easily consumable format. This plan can be included in the Ethics Commission's Annual Report to allow the P&PE Committee to engage in a discussion about the allocation of staff resources.

We believe the Commission should leverage this Annual Report to request specific staff resources tied to each of the items in the work plan and memorialize a process for determining the staffing needs in the Ethics Commission Procedures. We believe it may be valuable for the Commission to engage subject matter experts in the formation and operation of ethics oversight agencies and programs to provide best practice recommendations and assistance related to staffing. The outcome of these discussions should be the determination of the staff support needs of the Commission in relation to its purpose, powers, and duties, and included in the Commission’s annual work plan. Further, we believe the Commission should update its Procedures to reflect the process for issuing the annual report and including the specific time requested for the upcoming year to memorialize the requested staff time to assist on each function requested.

RECOMMENDATION

We recommend the Mayor and City Council:

- 9. Consider an update to the Council Rules of Procedure detailing the formation of the Annual Report’s section entitled Projects, Priorities, and Objectives for Consideration to require an itemized staffing request for each work area the Commission selects.**

The City can formalize a process for Ethics Commission recommendations regarding subjects under its purview.

Advisory boards enable governments to draw on the skills and experience of their community in a way that enhances an agency’s decision-making process. A critical element of having advisory boards make appropriate contributions is establishing a clearly articulated approach to its roles, responsibilities, and processes. The City can strengthen the Commission recommendation practices by standardizing a process and including input of City departments and other careholders for presentation to legislators.

The City Council created the Commission to help City officials achieve the greatest level of compliance with City codes and policies. As part of the legislation, the City Council provided the Commission with the power and duty to report to the city council with recommendations regarding the subject under its purview.²¹

In April 2019, the Commission issued its *Sacramento Ethics Commission 2018 Annual Report* to the City Council. The report provided information on the power and duties of the commission, commission

²¹ One of the specific roles of most boards and commissions in the City, including the Ethics Commission, is to review and make recommendations to the City Council on matters within its scope of authority and responsibility. Like the Ethics Commission, these commissions hold publicly noticed meetings that are designed to serve as a venue for public input and participation in establishing city policies and operating procedures. Most commissions serve in an advisory capacity to the City Council.

membership, activities of the Commission in its inaugural year, and a series of commission recommendations to further enhance the efficacy of the Commission. According to the report, the Commissioners and staff spent significant time reviewing procedures and best practices of ethics commissions in other California cities and offered a series of recommendations covering issues including subpoena authority, independence, and staffing. The report included the recommendations related to (i) Independence and Staffing; (ii) Subpoena Power; (iii) Hearing Officer; and (iv) Education, Training and Policy. The recommendations included a justification laying out a public policy rationale for the suggested change.

The Commission's 2018 Annual Report was presented and approved by the City Council in April 2019. At the meeting, several Commissioners spoke in support of the recommendations. In turn, the Mayor and a Councilmember requested that specific action to address the recommendations be taken by the Commission and City departments and then the item be returned to the City Council for future deliberation. Unfortunately, these comments do not appear in the meeting minutes and appear to have been undocumented in a meaningful way to ensure follow-up.²²

In October 2022, the Ethics Commission submitted a series of recommendations to the City Council to update the City's Lobbying Ordinance. The Commission issued a letter to the Mayor and City Council outlining five recommendations in an effort to modernize the City's lobbying ordinance. The six-page letter from the Ethics Commission contained a total of five recommendations accompanied by policy rationale for each recommendation and benchmarking comparisons to other cities with code governing lobbying activities.

The City Clerk sought a review and additional advice on the Ethics Commission's recommendations from an ethics consultant. The consultant issued a letter including point-by-point comments on the Sacramento Ethics Commission recommendations with suggestions.

Finally, the Commission recommendation appeared at an April 2023 meeting of the P&P Committee. The staff report for the item contained a brief procedural introduction and considerations from staff, a copy of the City Code's lobbying rules, the Commission's recommendation letter, and the City Clerk's consultant response, in a 29-page document. The P&P Committee members approved forwarding the item to the City Council's Law and Legislation Committee to engage in a policy discussion about the recommendations. One of the Committee members requested analysis of the cost and staff time related to implementing portions of the recommendations. Notably, like the presentation of Commission recommendations to City Council in 2019, these directives were not memorialized or included in the meeting minutes increasing the risk this insight will not be part of future discussions.

²² The Commission included the same recommendations in the 2020 Annual Report which was presented and approved by the City Council in August 2021. No comments were made by either Commissioners or Council members on this item.

As a result, there have been comments, recommendations, and directions from a number of different careholders that have not been aggregated in one document. This makes the review of the totality of the record challenging to a Councilmember seeking to understand the entirety of the record related to the Ethics Commission's recommendations to update the lobbying ordinance.

The City Council approved changes to improve the operations and support for its boards and commissions through updates to its Council Rules of Procedure in March 2023. The new rules focus, in pertinent part, on the legislative process for considering reports and recommendations made by the Commission. The new Council Rules of Procedure Chapter 17.C require that advisory commissions provide an annual report that includes proposed projects, priorities, and recommendations for review by the P&PE Committee for consideration prior to being forwarded to the City Council. According to the rules, the City Clerk shall act as a liaison and collaborate with city staff to collect any additional information before forwarding the report to the City Council. Additionally, the Committee may request supplemental information from staff or the advisory body or provide specific directions pertaining to the recommendations.

However, we found there is no mechanism or process to collect and aggregate each recommendation from the Commission, information provided by the City Clerk or consultants, and the comments from the City Council Committees prior to the recommendations appearing before the City Council. As a result, as discussed above, a risk exists that discussion and direction from the P&PE Committee or City Council may not be properly collected, memorialized, and entered into the record to inform the P&P Committee or City Council when deliberating the recommendations. Additionally, as discussed above, in instances where other City departments are asked to provide input on a recommendation, there is no process or established form to aggregate the different comments. We believe this creates the risk that City Councilmembers may not have the benefit of reviewing the whole record when being asked to deliberate and make decisions.

We found in our research of other advisory commissions making recommendations to a legislative body, there are often City departments or careholders that may be impacted by the recommendations. In turn, these parties often seek to provide a response to provide clarity. We found that not separating each recommendation out into a separate form -- that includes the recommendations, responses, and potential direction -- creates confusion because there are simply too many recommendations to effectively parse through. We found that advisory organizations have developed a recommendation form, for each recommendation, that includes the text of the recommendation and policy reasoning, and a space for City department or careholder response. Breaking each recommendation into one form and including all responses makes review easier and more efficient for the legislative body in understanding and deliberating the recommendations.

For example, in our *Audit of the Sacramento Community Police Review Commission*, we found several advisory Commissions making recommendations to legislative bodies incorporate a boilerplate form. In that report, we recommended that the Sacramento Community Police Review Commission and

Sacramento Police Department, in consultation with the City Attorney’s Office, work to create an agreed-upon format for Sacramento Community Police Review Commission recommendations. The recommendation noted the format should direct the specific information to be required in each recommendation.

In turn, the Sacramento Police Department and the Sacramento Community Police Review Commission developed a boilerplate recommendation form. Below is a sample of the form in use:

Figure 24: Sacramento Community Police Review Commission Recommendation Submission and Response Form

RECOMMENDATION SUBMISSION AND RESPONSE FORM
2019 UOF #1

DISCUSSED BY SCPRC	APPROVED AND IMPLEMENTED	X	PENDING FURTHER REVIEW
RECEIVED BY SPD	APPROVED AND PENDING		SPD UNABLE TO IMPLEMENT
RETURNED TO SCPRC	PARTIAL IMPLEMENTATION		DENIED
12/31/2019			
10/09/2023			

SCPRC RECOMMENDATION

GO 580.02 Use of Force

SPD's UOF policy is outdated and not aligned with changes to state law.

Amend GO 580.02: Adopt the "necessary" standard for use of force included in AB 392 (Weber-2019) and recommended by the SCPRC including a definition for UOF.

SCPRC RECOMMENDATION RATIONALE

Community trust in law enforcement is undermined when force is used unnecessarily and disproportionately. Police are less able to do their job when community distrust leads to decreased respect and cooperation, a situation that increases the risks to officers and civilians.

SPD RESPONSE

In 2021, SPD's use of force policy was updated to reflect AB392 and contains a verbatim citation of Penal Code § 835a.

As of October 2023, a revision of the department's use of force policy contains the following:

- Verbatim citation of Penal Code § 835a
- Included, but not limited to, definitions of crisis intervention techniques, de-escalation, excessive force, force definitions, intercede, and levels of resistance
- Compliance with Government Code § 7286 ([link](#))

OTHER CITY DEPARTMENTS

City Council Meeting on 06/30/2020, City Council Policy, Police Use of Force

- http://sacramento.granicus.com/AgendaViewer.php?view_id=22&clip_id=4652
- https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4652&meta_id=588408

City Council Meeting on 05/04/2021, Mayor Darrell Steinberg memorandum, Deadly Use of Force Recommendation

- http://sacramento.granicus.com/AgendaViewer.php?view_id=22&clip_id=4935
- https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4935&meta_id=627523

APPENDIX

N/A

Source: Sacramento Police Department Website²³

²³ Sacramento Police Department Police Transparency URL: https://www.cityofsacramento.gov/police/police-transparency/sacramento_community_police_review_commission (Last visited: April 25, 2024)

As can be seen above, the recommendation form includes the date recommendation was approved by the Police Commission, the date of SPD review, the implementation status, the recommendation rationale, the SPDs response, a space for other City department comments, and an Appendix for additional information. As such, a legislative body hearing this item need only review this document to ascertain all the information necessary to engage in an informed, robust discussion about the recommendation at issue.

The City Clerk, in discussions for this report, expressed interest in creating a boilerplate form to aggregate information pertaining to specific recommendations and standardize this process across the City's boards and commissions.

We believe the City could benefit from facilitating discussions between the City Clerk and relevant careholders, in consultation with the City Attorney's Office and the City Council's Personnel and Public Employees Committee, to establish a form for the presentation of recommendations and identify the exact type of information that should be included. Notably, the City Clerk expressed interest in potentially using this form for all of the City's boards and commissions. Finally, we believe this agreed-upon format should be presented to the City Council and its description should be memorialized, at minimum, in the City Council Rules of Procedure or the Ethics Commission's policies and procedures.

RECOMMENDATION

We recommend the Office of the City Clerk:

- 10. Consult the City Attorney's Office and propose to the Personnel and Public Employees Committee a format and process for all commission recommendations. The format should direct the specific information to be required in each recommendation. The City Clerk should consider an update to the City Council Rules of Procedure to require the use of a recommendation process.**

Finding 5: The City can clarify the Ethics Commission’s powers and duties to review and make recommendations to the City Council pertaining to any contract with the California Fair Political Practices Commission.

The City created an Ethics Program to achieve the greatest level of compliance with City and applicable State law by elected officials and city employees through training and compliance monitoring. The program included the following three elements: compliance, review and investigation, and an enforcement mechanism through the creation of the Ethics Commission (Commission).

A part of the enforcement program envisioned executing a contract with the California Fair Political Practices Commission (FPPC) to provide additional expertise in receiving complaints, providing advice, and enforcing campaign and conflict of interest laws. The City Code placed a duty on the Commission to review and make recommendations to the City Council on the renewal of the FPPC contract.

The City entered a contract with the FPPC in February 2018 and the contract expired in December 2019. Near the expiration of the agreement, the Ethics Commission discussed the contract renewal in a public meeting and provided input on certain contract terms. Additionally, according to the City Clerk, prior to the expiration of the contract, a series of discussions were conducted between the City Clerk and a former Commission Chair about the renewal of the contract. The contract was subsequently not renewed. Since the expiration of the contract, one Commissioner has requested a number of times to review the FPPC contract, and an item has not been docketed for a public Commission meeting to discuss the FPPC contract. This has resulted in confusion over the Commission’s role.

As described below, since the contract expired the Ethics Commission has effectively investigated and adjudicated potential violations of the City’s campaign finance laws. In addition, the City Clerk’s Office, through its stewardship of the Good Governance Program, has overseen trainings provided to individuals under the purview of the Commission.

We believe the Commission’s powers and duties can be clarified to determine whether the Ethics Commission review of a FPPC contract requires a public meeting to discuss the item. The City Council can provide clarity by revisiting the provisions to determine whether the provision of the City Code is necessary or whether the Commission has been operating appropriately without the need for the assistance of the FPPC.

During discussions surrounding the establishment and function of the Commission, the City envisioned the FPPC in playing an important role. Specifically, according to a City Council Report presented to the City Council, the FPPC would provide review and enforcement of campaign related complaints and provide clarification of campaign finance terms through advice letters. The FPPC’s role was

contemplated as an important function of enforcing City Code sections related to campaign contributions, campaign spending limits, and public campaign financing.

The Council envisioned the contract with the FPPC as a cost-effective enhancement of the City's Good Governance Program. In fact, it was celebrated by both the drafters of the program and the Mayor and City Council as an efficient means of bringing a level of sophistication to the program while saving the costs of staffing a full department to perform the various tasks assigned to the FPPC.

The City Council approved Ordinance No. 2017-0026 in March 2017 and assigned the Commission the power and duty to review contracts between the City and FPPC. Specifically, the Code states, "[T]he commission has the power and duty to do the following...Every two years, review any contract the city has with the FPPC, for the purpose of reporting to the council on the contract's efficacy. The commission may also make recommendations regarding renewal of the contract."

The City of Sacramento entered into a contract with the FPPC in February 2018 to assist in the administration, implementation, and enforcement of campaign laws. The contract stated the FPPC would provide campaign law enforcement and interpretation including:

- **Auditing:** conduct an audit of each candidate and his or her controlled committee for elective City office for whom it is determined that \$2,000 or more in contributions have been received or \$2,000 in expenditures have been made.
- **Enforcement:** serve as the civil and administrative prosecutor for violation of the City Code campaign contribution limits. The FPPC may also initiate investigation and initiate civil and administrative actions.
- **Advice, Education, and Training:** the "FPPC may, in its sole discretion, provide written and/or verbal assistance, upon request, to candidates for elected City offices and potential contributors" regarding the City Code campaign contribution limits.
- **Legal Review:** FPPC may, in its sole discretion upon request from the City Attorney, conduct a legal review of Chapter 2.13, to determine its compliance with the Political Reform Act or to make recommendations for amendments. Additionally, the City Council will consult with the FPPC before amending Sacramento City Code section 2.13.

During the term of the contract, the FPPC conducted a series of audits, provided informal advice to several individuals, and conducted investigation and enforcement action in six separate cases. Specifically, the FPPC conducted the following:

- The FPPC performed audits of the June 2018 primary election which consisted of audit work reviewing campaign contributions for candidates who raised or spent more than \$2,000. The audits searched for violations of City local ordinances and the Political Reform Act. This audit work was initiated in February 2019 and completed in February 2021. According to the FPPC, the agency performed a total of 10 audits of campaigns for the City Council, which resulted in four warning letters and one settlement stipulation.

According to the FPPC, in instances where an investigation is conducted and a violation is found, the FPPC will work to come to agreement with the subject of the investigation, called a stipulation, rather than pursue a full quasi-judicial hearing before the Commission.

- The FPPC conducted six investigations related to enforcement actions between February 2019 and February 2021 into potential violations of City of Sacramento Ordinances. According to information provided by the FPPC, all these investigations were closed.
- The FPPC provided informal advice to two individuals related to compliance with the campaign laws related to advertising and finance.
- The FPPC also created a dedicated page for the City of Sacramento on the FPPC website that included a link to the City's campaign finance ordinance, a candidate checklist, a Guide of What to Keep for an FPPC Audit, information about contribution limits, filing schedules, quick tips, and advice.

According to the contract, the City established a "floor" of \$55,000 for services provided by the FPPC. The City paid the FPPC the "floor" amount of \$55,000 twice per the terms of the contract, the first in September 2018 and the second in April 2019.

The City Clerk notified the Commission in July 2019 that the FPPC contract was expiring in December 2019.

At the Ethics Commission meeting in August 2019, an FPPC representative provided an update on work undertaken on audits of campaigns. The FPPC noted that many of the audits had not yet been completed.

At the August 2019 meeting, the Ethics Commission discussed the agreement between the City and the FPPC.²⁴ At the meeting, the FPPC noted the agency had developed a new boilerplate contract that would be used with local municipal agencies seeking assistance. Commissioners discussed several issues related to the contract including the scope of services, the audit function, and training opportunities. The Commissioners raised concerns about the \$55,000 being a requirement when in non-election years the FPPC might not bill the City for enough work to reach the \$55,000 threshold.

A representative of the FPPC and the City Clerk explained at the meeting that the floor amount was set to pay for FPPC staff to accommodate the City during both election and non-election years. In other

²⁴ Sacramento Ethics Commission, Agenda, August 26, 2019, Item 3, "Review of Agreement with the Fair Political Practices Commission for Administration, Implementation, and Enforcement of Sacramento City Code Chapter 2.13" The staff recommendation in the agenda states: "Review and comment on the efficacy of the City's agreement with the Fair Political Practices Commission and make recommendations regarding the renewal of the agreement."

words, the floor is part of the FPPC's attempt to average costs for election cycles to compensate for staffing costs during years when there are no elections.

The City Clerk stated to the Commission that the City Attorney's Office was, at that time, in negotiations with the FPPC to formalize a new contract. The Chair of the Commission requested the City Clerk to consult the City Attorney's Office about the possibility of adjusting the floor for a lower payment amount in non-election years. The Commission did not vote to adopt any recommendations or forward any recommendations to the City Council. Despite the lack of a formal vote to memorialize recommendations, several Commissioners made verbal recommendations about the contract during the meeting that were not reflected in the meeting minutes.²⁵

The City Clerk provided another update to the Ethics Commission during its November 2019 meeting and stated that the City Attorney's Office continues to engage the FPPC in contract negotiations.

The contract between the FPPC and the City expired in December 2019. According to the City Clerk, the contract was not renewed following contract negotiations due to an impasse related to the \$55,000 floor amount and the inclusion of a "do not exceed" amount included in the contract. The City Clerk stated that this information was communicated to the Chair of the Ethics Commission.

Notably, the FPPC contract expired just before the City began grappling with the COVID-19 pandemic. As such, the Ethics Commission did not hold any public meetings for the eight months between its November 2019 and July 2020 meetings making the disclosure related to the FPPC in a public meeting very difficult.

Finally, the City Clerk stated that auditing candidate campaign information was not included in the scope of the Ethics Commission jurisdiction. We confirmed that the City Code sections guiding the Commission, the effectuating ordinances creating the Commission, and the legislative recording leading to the City Council approval of the ordinances included no discussion or direction providing the Commission with any role over audits of City elections.

Since the expiration of the contract, Commissioners have requested information regarding the status of the agreement. An item, however, has not been docketed at a public Commission meeting to review the FPPC contract since it expired.

The City Code states the Commission has the power and the duty to: "[e]very two years, review any contract" and "make recommendations regarding renewal of the contract."

²⁵ The Meeting Minutes for the Ethics Commission discussion of the FPPC contract stated, "Action: Reviewed and commented on the efficacy of the City's agreement with the Fair Political Practices Commission and made recommendations regarding the renewal of the agreement."

The City Clerk stated the Commission’s review of the contract was not necessary because the contract had expired.

Meanwhile, Commissioners believe that the Mayor and City Council included the FPPC as a resource when the Good Governance Program and Ethics Commission were created. Specifically, that the FPPC would serve a vital role in reviewing complaints and provide guidance related to campaigns. These Commissioners believe the Commission’s role should be clarified.

Notably, according to the legislative record, the City’s Law and Legislation Committee contemplated that in instances where there is no contract with the FPPC, those responsibilities will fall to the Ethics Commission. This provision is also included in the City Code chapter guiding the Commission.²⁶

Since the FPPC contract expired, the Commission’s Independent Evaluator has investigated and the Ethics Commission has publicly adjudicated several campaign-related complaints. Additionally, the City Clerk has posted many of the same materials on its website that the FPPC posted. These include City Code sections related to the Code of Fair Campaign Practices, Campaign Contribution Limitations, and Campaign Spending Limits and Public Campaign Financing. The provision of additional resources providing guidance and advice are discussed in greater detail in Finding 2 of this report.

As a result, a component of the City’s Good Governance Program, as it was originally approved by the City Council, has caused confusion between the City Clerk and some of the members of the Commission. However, as discussed above, many of the services provided by the FPPC have been provided by the City Clerk’s Office and the City’s Independent Evaluator. We believe the City Council would benefit from a discussion about the continuing need to contract with the FPPC to support the City’s Ethics Program and the Commission’s role in reviewing the FPPC contracts.

RECOMMENDATION

We recommend the Office of the City Clerk:

- 11. In consultation with the City Attorney’s Office and the City Council consider clarifying the Ethics Commission’s powers and duties to review and make recommendations related to contracts with the Fair Political Practices Commission.**

²⁶ City Code chapter 2.112.030(A)(1)(c) states, “[T]he commission has the power and the duty to do the following ... Review, investigate, and consider complaints alleging violations of ... 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.”

MEMORANDUM

To: Farishta Ahrary, City Auditor, City of Sacramento

From: Mindy Cuppy, City Clerk, City of Sacramento

Date: April 9, 2025

RE: **Audit of the Sacramento Ethics Commission**

We appreciate the opportunity to review this audit report and respond to the recommendations offered by the Office of the City Auditor. The recommendations are listed below and are followed by a response from the Office of the City Clerk:

Recommendation 1: Design and document a strategic plan, in consultation with the City officials, the Ethics Commission, and careholders, that clearly states the goals and objectives for the Good Governance Program. The strategic plan should identify objectives and action plans to complete the objectives. Finally, the strategic plan should provide for monitoring activity and recurring annual updates.

Response 1: Neutral, neither agree nor disagree.

Recommendation 2: Consider determining the training curriculum that Ethics Commissioners should be required to complete and potential remedies if training is not completed. Further, the training curriculum should be memorialized through City Council direction.

Response 2: Concur. The Sacramento Ethics Commission, in their 2025 Annual Workplan, intends to review existing ethics training provided by the city and make recommendations regarding additional training as appropriate.

Recommendation 3: Consider directing staff, in consultation with the City Attorney's Office, to create a collection of information materials providing guidance on complying with laws under the purview of the Ethics Commission.

Response 3: Concur.

Recommendation 4: Consider directing staff to evaluate the costs, structure, and process to design and implement an online submittal system staffed by the Office of the City Clerk support staff, the City Attorney's Office, or possibly a contractor, to respond to questions by individuals under compliance of the Ethics Commission seeking information on compliance with laws under the purview of the Ethics Commission.

Response 4: Concur.

Recommendation 5: Consider evaluating the costs, structure, and process to design and implement an online ethics complaint submittal system staffed by the Office of the City Clerk support staff, the City Attorney's Office, or possibly a contractor, to receive and record ethics complaints filed for consideration by the Ethics Commission.

Response 5: Concur.

Recommendation 6: Consider directing staff to design and provide training to the Ethics Commission on the functionality of an online ethics complaint submittal system.

Response 6: Concur, should a system be implemented.

Recommendation 7: Consider establishing a more thorough process to review complaint logs prior to public issuance to ensure only appropriate information is publicly available.

Response 7: Concur. Review should be part of the staff report routing process.

Recommendation 8: Include in the Complaint Log a more descriptive rationale for complaint dismissal based on lack of jurisdiction.

Response 8: Concur. Standardized language has been vetted with the City Attorney and has already been put in place.

Recommendation 9: Consider an update to the Council Rules of Procedure detailing the formation of the Annual Report's section entitled Projects, Priorities, and Objectives for Consideration to require an itemized staffing request for each work area the Commission selects.

Response 9: Neutral, neither agree nor disagree.

Recommendation 10: Consult the City Attorney's Office and propose to the Personnel and Public Employees Committee a format and process for all commission recommendations. The format should direct the specific information to be required in each recommendation. The City Clerk should consider an update to the City Council Rules of Procedure to require the use of a recommendation process.

Response 10: Concur.

Recommendation 11: In consultation with the City Attorney's Office and the City Council consider clarifying the Ethics Commission's powers and duties to review and make recommendations related to contracts with the Fair Political Practices Commission.

Response 11: Neutral, neither agree nor disagree.

April 15, 2025

Farishta Ahrary, CPA, CFE, PMP
915 I Street
MC09100
Historic City Hall, Floor 2
Sacramento, CA 95814

Dear Ms. Ahrary:

Thank you for the opportunity to comment on the City Auditor's audit of the Sacramento Ethics Commission. We believe this is a very important audit and welcome its release and its findings. We have some concerns, however, that we detail below. But, first and foremost we enthusiastically welcome the audit's examination of the Ethics Commission in the context of the city's 2017 "good governance" reforms.

We must add some context to our own comments. The Brown Act, and open meeting laws in general, prohibit us from conferring with our other colleagues on the commission. Moreover, the confidential nature of the review and consultation process also prevented us from communicating with numerous former ethics commissioners who may have been interviewed or whose viewpoints may have touched this document. Therefore, these comments can only be received as ours alone.

That said, there is one common theme that we have heard consistently from every former or current member of the Ethics Commission: all agree that Sacramento's commission should be an independent, properly staffed body on the model of other cities such as Oakland, San Francisco, or Los Angeles.

We respect that, at this juncture, this is not the commission the council created, and it is not the commission the auditor evaluated. We respect that the auditor examined what is, not what might be. Again, it is very important that this document puts the origin of the Sacramento Ethics Commission in the context of the "good government" package of four ordinances the City Council enacted in 2017. That package enacted four ordinances, two of which added or codified specific ethics rules. The other two added new administrative structures which lack clear guidance regarding their relationship to each other. These are the Ethics Commission itself, and the Office of Compliance under the aegis of the City Clerk.

We ask the Mayor and the City Council, as they review this audit, to consider the relationship between the Ethics Commission and the Office of Compliance – both as envisioned in 2017 and as realized during the eight-year experience of the Commission and the Office. As staff-delegated responsibilities, some duties delegated to the Office are broader than those to the Commission. However, our experience is that, in some cases, the Office's role in the administration of

Sacramento's Ethics Program encroaches upon the responsibilities of the Commission, particularly as it relates to the free flow of information to support our distinct role in the administration of the City's Ethics Program. Notably, even the Ethics Commission's limited budget resources are appropriated directly to the Office of Compliance. (See "City of Sacramento Approved Budget Fiscal Year 2024/25," p. 216.) We have found that circumstance to contribute to the Commission's limited access to information regarding some of its sources of support, including the now-expired Fair Political Practices Commission (FPPD) contract, the services of the Independent Evaluator firms, and the work product of other paid consultants.

Ultimately, this challenging arrangement inhibits even the most elemental notions of an ethics commission in Sacramento with the kind of independence necessary to undertake its core function: to be an independent watchdog that generates public confidence.

Moreover, this relationship is pervasive throughout the audit itself. A substantial portion of this audit's analysis – especially regarding the audit's first two findings – is based on a "benchmark" of 15 ethics organizations in other jurisdictions. The vast majority of these ethics agencies are independent bodies with their own staffs and budgets. As "benchmarks" for this audit ostensibly reviewing "the ethics commission," most of the discussion and recommendations focus on activities ostensibly outside of the purview of the Commission. The focus of many findings leaves unfulfilled needed solutions related to the functioning of the Ethics Commission itself.

Notably, some of the audit's discussion acknowledges the seriousness of the Commission's function. The audit notes that "[a] key goal of an ethics commission is to enhance public trust in the ethics enforcement process by assigning it to a quasi-independent entity" [p. 21]; the Commission's establishment "in an effort to establish rules for good governance, improve public engagement, transparency, and compliance" [*ibid.*]; and that "a principal goal of the City's establishment of the Commission and the Ethics Program is to achieve the greatest level of compliance to City codes and policies as well as applicable State law" [p. 33].

In sum, as the Mayor and the City Council examine our comments regarding the individual findings and digest the audit as a whole, we urge them to think seriously about addressing the contradictions in the structure of the entities and the audit's review of them. Our specific comments are as follows:

RECOMMENDATIONS and RESPONSES:

1. The Office of the City Clerk design and document a strategic plan, in consultation with the City officials, the Ethics Commission, and careholders, that clearly states the goals and objectives for the Good Governance Program. The strategic plan should identify objectives and action plans to complete the objectives. Finally, the strategic plan should provide for monitoring activity and recurring annual updates.

RESPONSE: **Support**. However, we are concerned regarding the extent to which the strategic plan will focus on the Ethics Commission itself and the level of participation the Commission will be afforded in the development and implementation of a strategic plan.

2. The City Council consider determining the training curriculum that Ethics Commissioners should be required to complete and potential remedies if training is not completed. Further, the training curriculum should be memorialized through City Council direction.

RESPONSE: **Support**. We would strongly urge training opportunities to be viewed broadly to include any instruction from outside entities related to the functioning of ethics commissions, in general, and tools for enhancing the conduct of our core functions, including complaint procedures and best practices for conducting fair and thorough hearings. Some of the ethics resource organizations cited in the audit would be a good place to start, in our view.

3. The Mayor and City Council consider directing staff, in consultation with the City Attorney's Office, to create a collection of information materials providing guidance on complying with laws under the purview of the Ethics Commission.

RESPONSE: **Support**.

4. The Mayor and City Council consider directing staff to evaluate the costs, structure, and process to design and implement an online submittal system staffed by the Office of the City Clerk support staff, the City Attorney's Office, or possibly a contractor, to respond to questions by individuals under compliance of the Ethics Commission seeking information on compliance with laws under the purview of the Ethics Commission.

RESPONSE: **Support**. We believe that the construction of any system, whether managed with internal resources or outsourced, should enable the Commission to receive periodic updates regarding various opinions so that commissioners may stay current on any analysis. We also request that the Commission have direct access to engage with the entity developing the advice. Notably, other agencies that provide advice regarding complex laws with substantial stakes for noncompliance, such as the FPPC or the Internal Revenue Service (IRS), have processes to publish authoritative opinions with individual identifying information redacted.

5. The City Clerk consider evaluating the costs, structure, and process to design and implement an online ethics complaint submittal system staffed by the Office of the City Clerk support staff, the City Attorney's Office, or possibly a contractor, to receive and record ethics complaints filed for consideration by the Ethics Commission.

RESPONSE: **Support**. We would request that a workplan with scope and preliminary schedule be created to identify the next steps, features, budget required to set up and implement an online system. A timeline with key milestones and deadlines should be provided as part of the workplan within the next three months if not sooner.

6. The City Clerk consider directing staff to design and provide training to the Ethics Commission on the functionality of an online ethics complaint submittal system.

RESPONSE: **Support.** We urge this recommendation to be implemented in a manner which enables the Commission to engage in oversight of its own complaint process and to understand actions and consequences so that the Commission can review our own Rules of Procedure to align them with any outcomes arising from this recommendation.

7. The City Clerk consider establishing a more thorough process to review complaint logs prior to public issuance to ensure only appropriate information is publicly available.

RESPONSE: **Support.**

8. The City Clerk include in the Complaint Log a more descriptive rationale for complaint dismissal based on lack of jurisdiction.

RESPONSE: **Support.** We appreciate the audit's analysis of the older Preliminary Review Memo (PRM) process and the transparency opportunities associated with it. More generally, we would appreciate more opportunities for the Commission to understand how complaint processing functions, including initial consultations with the City Attorney's Office. We respect the audit's analysis balancing transparency and the privacy of complainants and respondents early in the process. Perhaps, an additional solution would be to facilitate opportunities for the Commission to receive complaint information in non-public settings to improve the quality of the Commission's oversight of its own complaint process.

9. The City Council consider an update to the Council Rules of Procedure detailing the formation of the Annual Report's section entitled Projects, Priorities, and Objectives for Consideration to require an itemized staffing request for each work area the Commission selects.

RESPONSE: **Support.** We appreciate the audit's discussion of the consideration of our 2022 Annual Report recommendations and the Commission's recommendations for updating the City's Lobbying Ordinance. These are examples of commissioners not being informed of consultant work product regarding our recommendations and not receiving timely updates regarding the disposition of our recommendations through the City's legislative process.

10. The City Clerk consult the City Attorney's Office and propose to the Personnel and Public Employees Committee a format and process for all commission recommendations. The format should direct the specific information to be required in each recommendation. The City Clerk should consider an update to the City Council Rules of Procedure to require the use of a recommendation process.

RESPONSE: **Support.** The analysis of the Commission's difficulties in methodically requesting resources are very helpful. At times, even commissioners themselves are not clear how our

recommendations will be implemented, and we find ourselves surprised at the process that follows our Annual Report approval.

11. The City Clerk in consultation with the City Attorney's Office and the City Council consider clarifying the Ethics Commission's powers and duties to review and make recommendations related to contracts with the Fair Political Practices Commission.

RESPONSE: **Support, with reservation.** Our reservation relates to the matter of who decides the jurisdiction of the Ethics Commission. We understand we are a creation of the Mayor and the City Council. Therefore, we believe the Mayor and the City Council should resolve the jurisdictional questions raised in this finding and recommendation. We acknowledge that the context of this jurisdictional matter relates to the FPPC contract, which serves various functions that are outside of the Commission's jurisdiction. Nevertheless, regarding the functions within the Commission's jurisdiction, we believe that the Mayor and the Council included the FPPC as a resource when the Commission was created, and it would have served a vital role reviewing campaign related complaints and providing guidance and recommendations to the Commission. In general, the essence of the jurisdictional matters here is an example of overreach that has deprived the Commission of information and curtailed its ability to oversee its own functions. Those limits are inconsistent with the original design of the Commission's role in the "good governance" reforms.

In closing, we would like to underscore how much we appreciate your and your office's work, including the review and consultation opportunities. Notwithstanding our criticisms above, we have found this audit to be a very important endeavor. We welcome and value it.

Sincerely,



Linda Ng
Chair, Sacramento Ethics Commission



Alan LoFaso
Vice Chair, Sacramento Ethics Commission

cc: Kevin Christensen, Assistant City Auditor