



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIENNE S. STUDLEY
CHAIRPERSON

SUSAN J. HARRIMAN
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 4, 2010
To: Members, Ethics Commission
Members, Sunshine Ordinance Task Force
From: John St. Croix, Executive Director
By: Richard Mo, Chief Enforcement Officer
Re: Regulations regarding Ethics Commission Enforcement of the Sunshine
Ordinance

I. Introduction

On October 13, 2009, based on the discussions held at the April 24, 2009 joint meeting between the Ethics Commission (“Commission”) and the Sunshine Ordinance Task Force (“Task Force”), staff prepared a memorandum setting forth five proposed changes to the Commission’s Regulations for Investigations and Enforcement Proceedings (“Regulations”) to clarify the Commission’s handling of complaints alleging Sunshine Ordinance (“Ordinance”) violations. *See Attachment A.* Commission staff also presented these proposals to the Task Force. These proposals are summarized as follows:

- 1) Sunshine Task Force referrals to the Commission will be treated as formal complaints;
- 2) The Commission will consider only allegations of intentional or willful violations of the Sunshine Ordinance;
- 3) The Commission will impose penalties for willful violations of the Sunshine Ordinance, including recommending discipline or removal and issuing monetary penalties;
- 4) Under the Ordinance’s administrative exhaustion requirements, the Commission will not initiate complaints for willful violations of the Sunshine Ordinance that have been referred to the District Attorney or the Attorney General, unless that law enforcement agency receiving the referral has failed to act for more than 40 days; and
- 5) Deliberations by the Commission regarding alleged violations of the Sunshine Ordinance will be held in public meetings. Investigative files

containing information related to Sunshine enforcement matters will be public documents. However, to preserve the integrity of staff investigations, internal staff e-mails, memoranda and notes regarding any particular Sunshine enforcement matter will not be disclosed until after the complaint has achieved final resolution, either through dismissal or the issuance of a final decision by the Commission after a hearing on the merits. The Commission adopted a regulation implementing this recommendation at its October 19, 2009 meeting.

On February 24, 2010, the Commission received written feedback regarding these five proposals from the Task Force. *See Attachment B.* The Task Force's response contained two proposals, summarized below:

- 1) Task Force referrals should be treated as formal complaints and given deferential treatment; and
- 2) The Commission should consider all Task Force referrals of violations of the Ordinance, whether they be intentional, unintentional, willful or non-willful.

To address issues that remain outstanding after the Commission's October 19, 2009 meeting, as well as the Task Force's two proposals, staff has drafted a separate set of regulations that would govern all complaints alleging a violation of the Sunshine Ordinance. *See Attachment C.* These proposals have been forwarded to the Task Force, whose members have been invited to attend the May meeting. This memorandum contains two parts: 1) a synopsis of the rationale for creating a separate set of regulations, and casting whether the Commission wishes to adopt such a set of regulations as a decision point; and 2) a summary of each section of the proposed regulations, cast as a series of decision points.

II. Separate Regulations

1. Separate Set of Enforcement Regulations for Sunshine Complaints

Staff Recommendation: Staff proposes that the Commission adopt a separate set of regulations to govern all complaints that allege a violation of the Sunshine Ordinance.

Discussion: The proposed regulations: 1) clarify and make transparent the process by which the Commission investigates allegations of Sunshine violations; 2) expedite the resolution of the investigations process for Sunshine violations by streamlining the process; and 3) provide the Commission the authority to issue monetary penalties against respondents.

As a preliminary matter, Decision Point 1(a) asks whether the Commission wishes to go this route. If so, Decision Point 1(b) sets forth draft language in the Regulations to provide for the separate set of regulations governing alleged violations of the Sunshine Ordinance.

Decision Point 1(a): Shall the Commission create and adopt a separate set of regulations to govern the investigations and enforcement of complaints that allege a violation of the Sunshine Ordinance?

Decision Point 1(b): If the answer to Decision Point 1(a) is yes, shall the Commission approve the addition of Section III.D. as set forth on page 3 of the current Regulations (*See Attachment D.*)?

III.D. Complaints Alleging a Violation of the Sunshine Ordinance. Any complaint that alleges a violation of the San Francisco Sunshine Ordinance, filed either by a complainant or referred to the Ethics Commission by the Sunshine Ordinance Task Force, shall be governed by the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance.

Decision Point 1(c): If the answer to Decision Point 1(a) is yes, shall the Commission approve the deletion of other references to the Sunshine Ordinance in the current Regulations? (*See strikethrough language in Attachment D, pages 2, 7 and 16.*)

III. Proposed Regulations Governing Alleged Violations of the Sunshine Ordinance

1. Sections I & II – Preamble and Definitions

Summary: Section I, the Preamble, states the following: 1) the purpose of these regulations is to promote compliance with the Sunshine Ordinance; 2) these regulations will apply only to complaints alleging a violation of the Sunshine Ordinance; and 3) all matters involving allegations of other laws under the Commission's jurisdiction shall be governed by the Commission's Regulations for Investigations and Enforcement Proceedings.

Section II, Definitions, contains terms taken from the Regulations, with the following five additional definitions:

- 1) "Complaint" means a written document alleging a violation of the Sunshine Ordinance filed with the Commission or Task Force;
- 2) "Order of Determination" means any final recommendation issued by the Task Force concerning a complaint that alleges a violation of the Sunshine Ordinance;
- 3) "Referral" means a complaint submitted by the Task Force to the Commission for further investigation and enforcement, after the Task Force has issued an Order of Determination regarding the complaint;
- 4) "Sunshine Ordinance" means the San Francisco Administrative Code section 67.1, et seq.; and
- 5) "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

Decision Point 2(a): Shall the Commission approve the language of Section I, Preamble, as set forth on page 1 of the proposed regulations?

Decision Point 2(b): Shall the Commission approve the language of Section II, Definitions, as set forth on pages 1-2 of the proposed regulations?

2. Section III – Complaints Alleging Violations of the Sunshine Ordinance

Summary: Section III.A. specifies the process by which complaints involving alleged violations of the Sunshine Ordinance are handled. The pertinent provisions are as follows:

- 1) Any person may file a complaint with the Commission or the Task Force alleging a violation of the Sunshine Ordinance;
- 2) If the Task Force, after issuing an Order of Determination, refers a complaint to the Executive Director, the Executive Director must commence an investigation;
- 3) If the Executive Director receives a complaint that is still pending at the Task Force, the Executive Director may commence an investigation or may, in his or her discretion, postpone review of the complaint until the Task Force has issued an Order of Determination or a final recommendation regarding the complaint; and
- 4) If the Executive Director receives a complaint that has not been filed with the Task Force, the Executive Director may, in his or her discretion, process the complaint pursuant to the Ethics Commission Regulations for Investigations and Enforcement Proceedings.

These provisions address the concerns by the Task Force that the Executive Director should not be able to administratively dismiss referrals from the Task Force without approval from the Commission. Under the draft regulations, a referral alleging a Sunshine Ordinance violation must be fully considered by the Commission or a hearing officer at a public hearing.

Section III.B. clarifies the administrative exhaustion requirement of section 67.34(d) of the Sunshine Ordinance. That section permits “any person” to institute proceedings in court or before the Commission “if enforcement action is not taken by a city or state official 40 days after a complaint is filed.” The Ordinance does not define what “after a complaint is filed” means; nor does it define “enforcement action.” The Ordinance also does not indicate which “city or state officials” have the power to take such action.

By regulation, the Commission can adopt a reasonable interpretation to clarify the 40-day requirement. Section III.B. proposes that if the Task Force, the Supervisor of Records or a complainant has notified the District Attorney or California Attorney General of an alleged violation of the Sunshine Ordinance, the Executive Director shall not review a complaint regarding the alleged violation until at least 40 days after such notification has passed and the enforcement agency receiving the notification has failed to act.

Decision Point 3(a): Shall the Commission approve the language of Section III.A, as set forth on page 2 of the proposed regulations?

Decision Point 3(b): Shall the Commission approve the language of Section III.B., as set forth on page 2 of the proposed regulations?

3. Section IV – Investigations; Report and Recommendation

Summary: Section IV outlines the process for investigating alleged violations of the Sunshine Ordinance. The pertinent provisions are as follows:

- 1) Factual Investigation – The Executive Director will conduct an investigation of a complaint or a Task Force referral alleging a Sunshine violation. If the Task Force has issued an Order of Determination, the Executive Director is required to consider all materials considered and all hearings held by the Task Force. However, neither the Executive Director nor the Commission is bound by the Task Force’s Order of Determination.
- 2) Report of Investigation – After completing the investigation, the Executive Director shall prepare a written report, which will include recommended findings of fact and law, and any recommended penalties, if applicable. If the report contains a finding that a respondent violated the Sunshine Ordinance, a hearing will be scheduled for the matter (see section 3 below.) If the report recommends that the complaint be dismissed, the matter will be considered by the Commission at the next feasible meeting. The Executive Director shall deliver to each Respondent and the Complainant or Task Force (if the Task Force has issued an Order of Determination regarding the complaint) a copy of the dismissal recommendation at least 14 days in advance of the meeting date. After the meeting, the Commission can either: a) dismiss the complaint; b) direct the Executive Director to further investigate the complaint; or 3) direct the Executive Director to schedule a hearing in accordance with Section IV.C. If the Commission dismisses the complaint, the Commission shall notify each Respondent and the Task Force of the dismissal, but the Executive Director and the Commission are not required to take any further action under these Regulations.
- 3) Delivery of Report and Notice of Hearing – The Executive Director will deliver a copy of the written report to each respondent and the complainant and the Task Force (if the Task Force has issued an Order of Determination regarding the complaint) along with a written notice of the date, time and location of the hearing, at least 45 days in advance of the hearing date.
- 4) Response to Report – Each respondent and complainant and the Task Force may submit a written response to the report.
- 5) Rebuttal to Response – The Executive Director may submit a written rebuttal to the response. If the complainant or Task Force has submitted a written response, any respondent may submit a written rebuttal to the Complaint or Task Force’s written response.

Decision Point 4: Shall the Commission approve the language of Section IV, as set forth on pages 2-4 of the proposed regulations?

4. Sections V.A., V.B and V.D. – Hearing Rules and Procedures

Summary: Sections V.A., V.B. and V.D. outline the hearing process for alleged violations of the Sunshine Ordinance. Although patterned after the regulations which govern the hearing process for non-Sunshine complaints, there are several key differences:

- 1) In contrast to non-Sunshine complaints, the entire hearing process for Sunshine allegations is public;
- 2) Unlike non-Sunshine complaints where there is a potential dismissal process and a probable cause hearing followed by a hearing on the merits, for complaints involving Sunshine allegations, there is only one hearing; and
- 3) If the Task Force has issued an Order of Determination regarding the complaint, a representative of the Task Force may participate in the hearing to appear and speak on behalf of the Task Force.

These distinctions serve not only to expedite the resolution of the complaint, but also to provide complete transparency into the handling and resolution of the matter, which aids both the Commission in its public outreach efforts and the Task Force's stated desire to be involved in the Commission's investigations and enforcement process.

Decision Point 5: Shall the Commission approve the language of Sections V.A., V.B. and V.D. as set forth on pages 4-7 of the proposed regulations?

5. Section V.C. – Administrative Orders and Penalties; Warning Letters

Summary: Section V.C. sets forth the procedures by which the Commission determines:

1) whether a violation of the Sunshine Ordinance was willful in nature; and 2) what orders and penalties to issue. Although modeled after the Commission's Regulations for non-Sunshine complaints, there are two key differences:

- 1) If the Commission determines that a violation of the Sunshine Ordinance was willful, it may issue orders and monetary penalties of up to \$5,000 per violation. The regulations provide three basic parameters by which the Commission can determine if a violation was willful:
 - a. if the respondent complied with all other aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame for good cause;
 - b. the volume of records requested, and the extent to which they were practically accessible; and/or
 - c. if the respondent consulted with counsel prior to committing the alleged violation.

Although this list of factors is not exclusive, it provides the Commission with objective standards by which it can determine the willfulness/non-willfulness of a respondent's actions.

- 2) If the Commission determines that the violation was not willful, it may issue warning letters urging the respondent to cease and desist the violation and/or disclose any records required by law.

These distinctions serve three important goals. First, the possible issuance of monetary penalties provides the Commission with substantive enforcement authority over willful violations of the Sunshine Ordinance. Second, the possibility of actual monetary penalties should ensure a higher level of compliance with the requirements of the Sunshine Ordinance by City officials and employees. Third, the ability to issue warning letters for non-willful violations of the Ordinance serves as a deterrent for potential future violations by the respondent, as the Commission may use the warning letter as an aggravating factor to increase the penalties imposed in subsequent enforcement actions.

Decision Point 6: Shall the Commission approve the language of Section V.C, as set forth on pages 5-6 of the proposed regulations?

6. Section VI – Miscellaneous Provisions

Summary: Modeled after the regulations for non-Sunshine complaints, Section VI contains provisions to address issues such as ex parte communications, access to complaints and deliberations, and continuance requests.

Decision Point 7: Shall the Commission approve the language of Section VI, as set forth on pages 7-9 of the proposed regulations?

7. Section VII – Stipulated Orders

Summary: Modeled after the regulations for non-Sunshine complaints, Section VII sets forth the procedure by which the a settlement agreement between the respondent and the Commission may be approved by the Commission.

Decision Point 8: Shall the Commission approve the language of Section VII, as set forth on pages 9-10 of the proposed regulations?



AFTACHMENT A

ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIENNE S. STUDLEY
CHAIRPERSON

SUSAN J. HARRIMAN
VICE-CHAIRPERSON

EMI GUSUKUMA
COMMISSIONER

EILEEN HANSEN
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: October 13, 2009

To: Members, Ethics Commission
Members, Sunshine Ordinance Task Force

From: John St. Croix, Executive Director

Re: Regulations regarding Ethics Commission enforcement of the Sunshine
Ordinance

On April 24, 2009, the Ethics Commission (“Commission”) and the Sunshine Ordinance Task Force (“Task Force”) held a joint meeting to address matters within the jurisdiction of both bodies. At that meeting, Task Force members described how the Task Force evaluates complaints, issues findings and refers some matters to the Commission for further adjudication. The Commission’s staff described the enforcement process set forth in the City’s Charter and the Commission’s enforcement regulations and discussed how the Commission has applied that process to Task Force referrals.

Under the Charter, the Commission has the authority to adopt regulations related to carrying out the purposes of the Sunshine Ordinance. Following the discussion at the joint meeting, Commission staff reviewed the Sunshine Ordinance and now proposes five regulations to clarify the Commission’s handling of complaints alleging Sunshine Ordinance violations. The last of these proposals will be considered by the Ethics Commission at its meeting on October 19, 2009; the remainder will be crafted and considered once the Commission receives comments from the Task Force.

1. Sunshine Task Force Referrals Will Be Formal Complaints.

The Commission’s Regulations for Investigations and Enforcement Proceedings (“Enforcement Regulations”) distinguish between formal complaints, which are submitted in writing on a form prescribed by the Commission, and informal complaints, which are not submitted using the Commission’s formal complaint form. Under the Enforcement Regulations, the Executive Director has discretion – but no obligation – to process and review informal complaints. The Executive Director must process formal complaints and may only dismiss them in limited circumstances.

Staff proposes amending the Commission’s Enforcement Regulations to provide that any complaint referred to the Commission by the Task Force would be processed as a formal complaint. Under this proposal, the Executive Director would be required to

process and review all Task Force referrals and could only dismiss those matters in certain circumstances as set forth in the Enforcement Regulations.

When it accepts such complaints, the Commission would consider the Task Force's conclusions and findings, but would also conduct its own investigation. The Commission would not be bound by the Task Force's conclusion that the respondent had willfully violated the Sunshine Ordinance. The Commission is not the enforcement arm of the Task Force; the Commission will continue to conduct its own investigations and exercise its own judgment with respect to all of the complaints it handles.

2. The Ethics Commission Will Only Consider Intentional Violations Of the Sunshine Ordinance.

Section 67.34 of the Sunshine Ordinance describes the Commission's jurisdiction to handle enforcement of the Sunshine Ordinance. That section states, in relevant part, “[c]omplaints involving allegations of *willful violations* of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.” (emphasis added). The Commission has long concluded that the Ordinance only gives it the authority to enforce “willful” violations and that “willful” in this context means *intentionally and with knowledge that the act is a violation of the law*. To codify this longstanding understanding and interpretation of the Ordinance, staff proposes that the Commission adopt a regulation defining “willful.” Under this definition, as it has been applied in practice by the Commission, a City employee or officer who withholds records in good faith reliance on the advice of the City Attorney’s Office has not “willfully” violated the Sunshine Ordinance. Staff proposes that the Commission’s regulatory definition of “willful violation” should address this common scenario by clarifying that an action taken in good faith reliance on the advice of the City Attorney cannot be a willful violation of the Sunshine Ordinance.

3. The Ethics Commission Will Have The Authority To Impose Penalties For Willful Sunshine Ordinance Violations.

While section 67.34 of the Sunshine Ordinance provides that the Ethics Commission must handle allegations of willful Sunshine Ordinance violations and section 67.35 mentions “proceedings for enforcement and penalties,” the Sunshine Ordinance does not enumerate the potential penalties. Staff proposes that the Commission should adopt regulations setting penalties for willful violations. Specifically, staff proposes regulations that allow the Commission to impose monetary penalties after finding a willful violation. Staff also proposes that the regulations should allow the Commission to recommend discipline or removal – but not to impose discipline or removal – for department heads or managerial employees who have willfully violated the Sunshine Ordinance.

4. Under The Ordinance’s Administrative Exhaustion Requirements, The Ethics Commission Will Not Initiate Complaints That Have Been Referred To The District Attorney Or Attorney General Unless The Law Enforcement Agency Takes No Action For 40 Days.

Finally, staff also proposes that the Commission adopt a regulation clarifying the administrative exhaustion requirement in section 67.35(d) of the Sunshine Ordinance. That section permits “any person” to institute proceedings in court or before the Ethics Commission “if enforcement action is not taken by a city or state official 40 days after a complaint is filed.” The Sunshine Ordinance does not describe what it means to “file” a “complaint” before going to court and does not define “enforcement action” or indicate which “city or state officials” have the power to take such action. By regulation, the Commission can adopt a reasonable interpretation that clarifies this 40-day requirement.

Staff concludes that the most reasonable interpretation of section 67.35(d) is that “filing” a “complaint” with a “city or state official” means referring an alleged violation to the District Attorney or Attorney General. The Sunshine Ordinance allows the Task Force or the Supervisor of Records to refer City officials to the District Attorney or Attorney General. *See* S.F. Admin. Code § 67.21(d) (if custodian of records refuses to make a record public, “the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance”); § 67.21(e) (if custodian of records refuses to make a record public after a Task Force order, “the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance”). Additionally, the District Attorney has civil and criminal enforcement authority under the Brown Act. *See* Cal. Gov’t Code §§ 54960, 54960.1, 54959.

Thus, staff proposes that the Commission adopt regulations to provide that whenever the Task Force, the Supervisor of Records or a complainant makes such a referral, section 67.35(d) requires the complainant to give the agency 40 days to act before initiating a proceeding with the Commission or in court. The Sunshine Ordinance does not require a referral to the District Attorney or Attorney General in every case, but in those circumstances where someone already has referred the matter, the regulation would prohibit the commencement of a Commission or court action unless the law enforcement agency receiving the referral has failed to act for 40 days.

5. Sunshine Enforcement Matters Will Be Public.

In advance of the Commission’s May 11 and October 19, 2009 meetings, staff proposed amendments to the Enforcement Regulations. One of the proposed amendments provides that enforcement proceedings involving alleged violations of the Sunshine Ordinance should not be subject to the same confidentiality rules as other types of complaints handled by the Commission.

Under that proposal, deliberations by the Commission regarding Sunshine enforcement matters would take place in open session at public meetings, not in closed session like other enforcement matters. Additionally, complaints, investigative files and other documents containing information about Sunshine enforcement matters will be public documents, if the Sunshine Ordinance requires disclosure. Finally, to protect the integrity of staff investigations, internal staff e-mails, memoranda, and notes regarding any particular Sunshine Ordinance matter will not be disclosed until after the dismissal of the complaint or the Commission has issued a final decision following the hearing on the merits on the Sunshine enforcement matter.

Staff believes that these changes are consistent with the purposes of the Sunshine Ordinance. The purpose of the Sunshine Ordinance is to promote transparency in government. Ensuring the transparency of the Commission's decision-making process regarding Sunshine Ordinance violations is consonant with that goal. Additionally, because most Sunshine Ordinance matters already have been discussed at public Task Force meetings before staff initiates an investigation, these matters have already become public.

S:\Enforcement\SunshineOrdinance\memo to EC&SOTF 10.09.doc

ATTACHMENT B

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: February 24, 2010

To: John St. Croix, Executive Director, Ethics Commission
Members, Ethics Commission
Members, Sunshine Ordinance Task Force

From: Richard Knee, Chair, Sunshine Ordinance Task Force
Erica L. Craven-Green, Vice-Chair, Sunshine Ordinance Task Force

Subject: Regulations regarding Ethics Commission enforcement of the Sunshine
Ordinance

The Task Force appreciates the opportunity to comment on the Ethics Commission's detailed proposed regulations for enforcement of the Sunshine Ordinance.

The proposed regulations were discussed at numerous Task Force meetings, and members of the Task Force as well members of the public submitted verbal and written comments.

At the Task Force's February 23, 2010, meeting, the matter was discussed for a final time and the comments of the Task Force are as follows:

**1. Sunshine Task Force Referrals Should be Treated as Formal Complaints,
but Also Given Deferential Treatment**

The Task Force is pleased at the proposal that its complaints should be treated, at a minimum, as formal complaints under the Commission's regulations. However, the Task Force has concerns about the circumstances that would allow the Executive Director to dismiss complaints administratively.

As an initial matter, some members of the Task Force feel that the Ethics Commission should not reinvestigate Task Force complaints, but should defer wholly to the Task Force's findings and pursue enforcement proceedings only. Some members of the public who have long been interested in Sunshine-related issues share that view.

Other Task Force and public members believe that the Commission may have authority to conduct its own investigation but believe – at a minimum – that all findings made by the Task Force should be given deferential treatment and reviewed only to determine that the Task Force’s decision rested on “substantial evidence.” “Substantial evidence” review would recognize and respect the time and energy that the Task Force spends on reviewing complaints, and would encourage departments to appear and present their best case before the Task Force in the first instance, instead of relying on an opportunity to reargue (or argue in the first instance) in front of the Commission.

More generally, all members specifically felt that if a referral is made to the Ethics Commission for failure to comply with an Order of Determination (willful or not) or willful failure to comply with the Ordinance, those findings should constitute “probable cause” under the Ethics Commission’s regulations and the complaints should proceed to adjudication.

At an absolute minimum, the Task Force requests that written determinations as to why the Executive Director administratively dismissed referrals should be made part of the public record in both Ethics Commission and Task Force hearings.

2. The Ethics Commission Should Consider All Violations; Intentional, Unintentional, Willful and Non-Willful Violations

Another fundamental disagreement is over the jurisdiction of the Ethics Commission to hear referrals regarding non-willful violations of the Ordinance, with willful being defined by the Ethic Commission’s proposed regulations as “knowledge that the act is a violation of the law.”

The Task Force is adamant that the Ethics Commission has the authority and indeed responsibility to consider complaints based on allegations of violations that are not willful under Section 67.34 of the Ordinance.

Specifically, Section 67.30(c) of the Ordinance provides that: “The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provision of this ordinance or the Acts.” The Task Force has consistently held that this provision grants and mandates that the Ethics Commission consider referrals based on non-willful violations.

Please let us know whether we can provide any additional information on the Task Force’s concerns. Thank you for your kind attention and, again, for your willingness and patience to give the Task Force a voice in your considerations.

ATTACHMENT C

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR COMPLAINTS ALLEGING VIOLATIONS OF SUNSHINE ORDINANCE

Effective Date: July 14, 2010

Table of Contents

I.	Preamble	1
II.	Definitions	1
III.	Complaints Alleging Violations of the Sunshine Ordinance	2
IV.	Investigations; Report and Recommendation	3
V.	Hearing.....	4
VI.	Miscellaneous Provisions.....	7
VII.	Stipulated Orders	9
VIII.	Severability	10

I. PREAMBLE

Pursuant to San Francisco Charter section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, S.F. Admin. Code §§ 67.1, et seq. These Regulations shall apply only to complaints alleging violations of the Sunshine Ordinance. All matters involving alleged violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other ethics laws shall be handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

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

- A. "Business day" means any day other than a Saturday, Sunday or City holiday.
- B. "City" means the City and County of San Francisco.
- C. "Commission" means the Ethics Commission.
- D. "Complaint" means a written document alleging a violation of the Sunshine Ordinance filed with the Commission or the Task Force.
- E. "Complainant" means a person or entity that files a complaint.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.
- G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson, designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.
- H. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.
- I. "Mitigating information" means information tending to excuse or reduce the culpability of the respondent's conduct.
- J. "Order of Determination" means any final recommendation issued by the Task Force concerning a complaint that alleges a violation of the Sunshine Ordinance.

K. "Referral" means a complaint submitted by the Task Force to the Commission for further investigation and enforcement, after the Task Force has issued an Order of Determination regarding the complaint.

L. "Respondent" means a person who is alleged in a complaint to have committed a violation of the Sunshine Ordinance.

M. "Stipulated order" means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

N. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

O. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

P. "Willful violation" means a violation where an individual intentionally violated the Sunshine Ordinance and acted or failed to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

III. COMPLAINTS ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE

A.1. Any person may file a complaint with the Commission or the Task Force alleging a violation of the Sunshine Ordinance. When the Executive Director receives a complaint referred by the Task Force following the issuance of an Order of Determination, the Executive Director shall handle the complaint pursuant to Section IV of these Regulations.

A.2. When the Executive Director receives a complaint that is still pending at the Task Force, the Executive Director may handle the complaint pursuant to Section IV of these Regulations or may, in his or her discretion, postpone review of the complaint until after the Task Force has issued an Order of Determination or a final recommendation regarding the complaint.

A.3. When the Executive Director receives a complaint that has not been filed with the Task Force, the Executive Director may, in his or her discretion, process the complaint pursuant to the Ethics Commission Regulations for Investigations and Enforcement Proceedings.

B. If the Task Force, the Supervisor of Records or a complainant notifies the District Attorney or California Attorney General of an alleged violation of the Sunshine Ordinance, the Executive Director shall not review a complaint regarding that alleged violation until at least 40 days after the notification.

IV. INVESTIGATIONS; REPORT AND RECOMMENDATION

A. Factual Investigation. The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, and the review of documentary and other evidence.

If the Task Force has issued an Order of Determination regarding the complaint, the Executive Director shall consider all materials considered and all hearings held by the Task Force prior to its issuance of the Order of Determination. Neither the Executive Director nor the Commission shall be bound by the Task Force's recommendation in its Order of Determination.

B.1. Report of Investigation. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report summarizing his or her factual and legal findings. The report shall contain a summary of the legal provisions cited by the complaint or referral and the evidence gathered through the Ethics Commission's investigation, including any exculpatory and mitigating information. In the report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of any other evidence. The report shall not exceed 10 pages excluding attachments.

The report shall also include the Executive Director's recommended findings of fact and law, and any recommended penalties, if applicable.

B.2. Finding of Violation. If the Executive Director's report contains a finding that a respondent violated the Sunshine Ordinance, the complaint shall be handled pursuant to Sections IV.C. through IV.E.

B.3. Finding of No Violation. If the Executive Director's report contains a finding that the respondent did not violate the Sunshine Ordinance and recommends dismissal of the complaint, the matter will be considered in open session at the next feasible Commission meeting. The Executive Director shall deliver to each Respondent and the Complainant or Task Force (if the Task Force has issued an Order of Determination regarding the complaint) a copy of the dismissal recommendation at least 14 days in advance of the meeting date. After the Commission considers the matter, it may: 1) dismiss the complaint; 2) direct the Executive Director to further investigate the matter; or 3) direct the Executive Director to handle the complaint pursuant to Section IV.C. through IV.E. If the Commission dismisses the complaint, the Commission shall notify each Respondent and the Task Force of the dismissal, but the Executive Director and the Commission are not required to take any further action under these Regulations.

C. Delivery of Report and Notice of Hearing. The Executive Director shall deliver to each Respondent and the Complainant or Task Force (if the Task Force has issued an Order of Determination regarding the complaint) a copy of the report summarizing the Ethics Commission's investigation, with written notice of the date, time and location of the hearing, at least 45 days in advance of the hearing date. The notice shall inform each

Respondent that he or she has the right to be present and represented by counsel at the hearing.

D. Response to the Report.

1. Each Respondent and Complainant or the Task Force (if the Task Force has issued an Order of Determination regarding the complaint) may submit a written response to the report. The response may contain legal arguments, a summary of evidence, and any mitigating information. The response shall not exceed 10 pages excluding attachments.
2. If any Respondent or the Complainant or Task Force submits a response, they must deliver the response no later than 20 days prior to the date of the hearing. The respondent and/or the Task Force must deliver eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response(s) to the Commission. The Respondent must also deliver one copy of the response to every other Respondent named in the report and the Task Force. The Complainant or Task Force must also deliver one copy of its response to each Respondent.

E. Rebuttal.

1. The Executive Director may submit a written rebuttal to any response. If the Executive Director chooses to do so, the Executive Director must deliver the rebuttal to the Commission and each respondent named in the report no later than seven days prior to the date of the hearing. The rebuttal shall not exceed five pages excluding attachments.
2. If the Complainant or Task Force has submitted a written response under subsection D, any respondent may submit a written rebuttal to the Task Force's written response. If the respondent chooses to do so, the respondent must deliver eight copies to the Executive Director, one copy to every other respondent, and one copy to the Task Force no later than seven days prior to the date of the hearing. The rebuttal shall not exceed five pages excluding attachments.

V. HEARING

A. General Rules and Procedures.

1. Public Hearing

The Commission may hold the hearing, or the Commission may assign one of its members or a hearing officer to hold the hearing and submit a report and recommendation to the Commission. If the Commission holds the hearing, the Commission may assign an outside hearing officer as the presiding officer at the hearing, as set forth in section VI.E.3.

The hearing shall be open to the public. If the Task Force has issued an Order of Determination regarding the complaint, the Ethics Commission may permit a representative of the Task Force to participate at the hearing to appear and speak on behalf of the Task Force.

2. Standard of Proof

The Commission may determine that a respondent has committed a violation of the Sunshine Ordinance only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed the violation.

3. Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in the hearing. The Executive Director and each respondent shall have the right to introduce exhibits and to rebut any evidence presented.

4. Exhibits

Where the Commission and the respondent stipulate to the admissibility of an exhibit, they shall so advise the Commission in advance of the hearing. For all other exhibits, either the Commission or the respondent may move to admit a particular exhibit at the hearing, and the non-moving party shall have an opportunity to object prior to the ruling on the admission.

5. Testimony

The Commission, individual member or hearing officer may, in their discretion, permit witness testimony at the hearing at the request of the Executive Director or a respondent, or at the Commission's initiative.

6. Oral Argument

At the hearing, the Executive Director, each respondent, and the Complainant or a Task Force representative (if the Task Force has issued an Order of Determination regarding the complaint) shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

B. Finding of Violation.

If the Commission conducts the hearing, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of the Sunshine Ordinance. If the Commission assigns one of its members or an

outside hearing officer to conduct the hearing, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded, as described in section VI.E of these Regulations. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of the Sunshine Ordinance.

The votes of at least three Commissioners are required to find that a respondent has committed a violation of the Sunshine Ordinance. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

C. Administrative Orders and Penalties; Warning Letters.

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. To determine whether a violation is willful, the Commission may consider whether:

- (a) the respondent complied with all aspects of the Sunshine Ordinance, but failed to comply within the appropriate time-frame for good cause;
- (b) the volume of records requested, and the extent to which they were practically accessible; and/or
- (c) the respondent consulted with counsel prior to committing the alleged violation.

2. If the Commission finds that respondent(s) committed a willful violation of the Sunshine Ordinance, the Commission may issue orders and penalties requiring the respondent(s) to:

- (a) cease and desist the violation;
- (b) disclose any documents or records required by law; and/or
- (c) pay a monetary penalty to the general fund of the City in an amount up to five thousand dollars (\$5,000) for each violation.

When deciding penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) the severity of the violation;
- (b) the presence or absence of any intention to conceal, deceive, or mislead;

- (c) whether the violation was an isolated incident or part of a pattern;
- (d) whether the respondent has a prior record of violations; and
- (e) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

3. If the Commission finds that respondent(s) have violated the Sunshine Ordinance but have not committed any willful violation, the Commission may issue warning letters urging the respondent(s) to:

- (a) cease and desist the violation; and/or
- (b) disclose any documents or records required by law.

4. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, the Commission shall publicly announce this fact. The Commission's announcement may but need not include findings of law and fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and the Complainant or the Task Force of the Commission's determination.

VI. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission or the Commission has received a complaint referral from the Task Force, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of an enforcement action with the Commission's staff, the respondent, the Complainant, any member of the Task Force or any person communicating on behalf of the respondent, complainant or any member of the Task Force except for communications, such as scheduling matters, generally committed between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

E. Powers and Duties of Individual Commissioners and Hearing Officers.

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to conduct a hearing under these Regulations, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, each respondent, and the Task Force no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

3. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

F. Extensions of Time and Continuances.

The Executive Director, any respondent or the Task Force may request the continuance of a hearing date. The requester must deliver the request to the Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five business days of the submission of the request. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request only upon a showing of good cause.

G. Recordings. Every hearing shall be electronically recorded.

H. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection G, to:

a. If the respondent is a City employee, to the employee's City office address or to the address listed with the (Controller/ Payroll) as the employee's current address.

b. If the respondent is a former City employee, to the address listed with the City's retirement system.

c. If neither subsections (a) nor (b) are applicable, to an address reasonably calculated to give notice to and reach the respondent.

3. Delivery is effective upon the date of delivery, not the date of receipt.

I. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

J. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the last date on which the Commission hears argument or testimony in the proceeding.

VII. STIPULATED ORDERS

A. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- (1) the proposed stipulation, decision and order is subject to approval by the Commission;
- (2) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;
- (3) the respondent understands and acknowledges that the stipulation is not binding on any other agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other agency with regard to the matter, or any other matter related to it;
- (4) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and
- (5) in the event the Commission rejects the proposed stipulation and a full hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under section V, subsection C of these Regulations.

C. Once the Executive Director enters into a stipulation with a respondent, the Executive Director shall inform the Commission of this stipulation and shall place the matter on the agenda at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement.

D. Stipulations must be approved by the Commission. The stipulated order shall have the full force of an order of the Commission.

IX. SEVERABILITY

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

ATTACHMENT D

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION

REGULATIONS FOR INVESTIGATIONS

AND ENFORCEMENT PROCEEDINGS

Effective Date: July 5, 1997

Includes technical amendments effective April 13, 2002;

Streamlined Process for Complaints Alleging a Failure to File Campaign Finance Disclosure

Reports effective August 15, 2004; amendments effective October 10, 2005;

amendments effective March 10, 2006; amendments effective November 10, 2006; amendments effective December 18, 2009; and amendments effective January 8, 2010; and amendments effective

July 14, 2010

Table of Contents

I.	Preamble	1
II.	Definitions	1
III.	Complaints	2
IV.	Review of Complaints.....	3
V.	Conduct of Investigations.....	4
VI.	Determination That There is Not Probable Cause to Believe a Violation of Law Has Occurred.....	5
VII.	Recommendation That There is Probable Cause to Believe a Violation of Law Has Occurred.....	5
VIII.	Probable Cause Hearing; Determination of Whether and How to Proceed with a Hearing on the Merits.....	6
IX.	Issuance of Accusation; Scheduling and Notice of Hearing on Merits	9
X.	Discovery; Hearing Briefs; Preliminary Matters	9
XI.	Discovery of Exculpatory Information and Dismissal of Complaint Prior to Hearing on the Merits.....	12
XII.	Hearing on the Merits	13
XIII.	Miscellaneous Provisions.....	15
XIV.	Stipulated Orders.....	19
XV.	Severability	20

I. PREAMBLE

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of laws within the Commission's jurisdiction by:

1. Setting and maintaining objective standards for the investigation and prosecution of matters brought before the Commission;
2. Eliminating any political or improper influence in the investigation and prosecution of persons accused of ethics violations;
3. Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission;
4. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;
5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;
6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

II. DEFINITIONS

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

- A. "Business day" means any day other than a Saturday, Sunday or City holiday.
- B. "City" means the City and County of San Francisco
- C. "Commission" means the Ethics Commission.
- D. "Complainant" means a person or entity that makes a complaint.
- E. "Credible" means offering reasonable grounds for being believed.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.
- G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity or to an agent authorized to accept delivery on behalf of the person or entity. For

purposes of these Regulations, delivery may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed. The Commission, the Executive Director or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, following a determination of probable cause, the Commission Chair or designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

H. "Enforcement action" means an action pursuant to San Francisco Charter section C3.699-13.

I. "Exculpatory information" means information tending to show that the respondent is not guilty of the alleged violations.

J. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

K. "Mitigating information" means information tending to excuse or reduce the significance of the respondent's conduct.

L. "Probable cause" means that based on the evidence presented there is reason to believe that the respondent committed a violation of law.

M. "Respondent" means a person or entity that is alleged in a complaint to have committed a violation of law.

N. "Stipulated order" means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

O. "Violation of law" means a violation of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics, and State laws relating to campaign finance, conflicts of interest, or governmental ethics, including, but not limited to: San Francisco Charter section 15.100 et seq. and Appendix C (ethics); the San Francisco Campaign and Governmental Conduct Code; ~~the San Francisco Sunshine Ordinance, S.F. Administrative Code Ch. 67~~; the Political Reform Act of 1974, Government Code section 81000 et seq.; Government Code section 1090 et seq.; and Government Code section 3201, et seq. For complaints processed under these Regulations pursuant to section III.A.3. of the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance, "violation of law" shall also mean a violation of the San Francisco Sunshine Ordinance, S.F. Administrative Code Ch. 67.

III. COMPLAINTS

A. Formal Complaints.

1. Any person or entity may file a formal complaint alleging a violation of law. Formal complaints must be made in writing on a form specifically provided by the Commission staff. Formal complaints must include the following information, upon the complainant's information and belief:
 - (a) the name and address of the respondent;
 - (b) the provision(s) of law allegedly violated;
 - (c) the facts constituting the alleged violation(s);
 - (d) the names and addresses of witnesses, if any; and
 - (e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any.
2. Formal complaints may be filed anonymously. Any formal complaint not filed anonymously must be verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of the entity.
3. The Executive Director shall process and review all formal complaints, following the process described in Section IV.

B. Informal Complaints. Any person or entity may file an informal complaint alleging a violation of law by submitting a complaint by telephone, in person, or in writing other than on the form prescribed by the Commission. The Executive Director shall have no obligation but has the discretion to process and review informal complaints.

C. Complaints Initiated by the Executive Director. The Executive Director may initiate complaints. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section.

D. Complaints Alleging a Violation of the Sunshine Ordinance. Any complaint that alleges a violation of the San Francisco Sunshine Ordinance, either filed by a complainant or referred to the Ethics Commission by the Sunshine Ordinance Task Force, shall be governed by the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance. As set forth in section III.A.3. of those regulations, the Executive Director may process any complaint that has not been filed with the Sunshine Ordinance Task Force under these Regulations.

IV. REVIEW OF COMPLAINTS

A. Preliminary Review. The Executive Director must conduct a preliminary review of each formal complaint. This inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the respondent, and any other inquiry to determine whether a full investigation is warranted.

B. Dismissal of Complaint. Based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to:

1. Credible evidence clearly refutes the allegations.
2. The allegations, if true, do not constitute a violation of law within the Commission's jurisdiction.
3. The complaint contains an expression of opinions, rather than specific allegations.
4. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.

If the Executive Director dismisses a complaint under this section, the Executive Director shall take no further action on the complaint, except that he or she may: 1) inform the complainant of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

C. There is Reason to Believe a Violation May Have Occurred. If, based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director determines that there is reason to believe that a violation of law may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney.

Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

If neither the District Attorney nor City Attorney intends to pursue an investigation, the Executive Director shall, within 14 days of such notification, inform the complainant in writing of the action, if any, that he or she has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Executive Director has not informed the complainant of the action that he or she has taken or plans to take on the complaint within 14 days, the complainant shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

V. CONDUCT OF INVESTIGATIONS

A. Factual Investigation. The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, the deposition of respondent(s) and/or witnesses, and the review of documentary and other evidence.

B. Subpoenas. During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

VI. DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. Executive Director Determination and Calendaring. If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

B. Commission Decision Not to Dismiss. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is reason to believe that a violation of law may have occurred, the Commission shall direct the Executive Director either to investigate the matter further or to prepare a probable cause report and schedule a probable cause hearing.

C. Commission Decision to Dismiss. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not reason to believe that a violation of law may have occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

D. Commission Decision Not to Calendar. If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration pursuant to section VI(A), the Executive Director shall take no further action except that he or she may: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a

warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

VII. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. Probable Cause Report. When the Executive Director determines there is probable cause to believe a violation of law has occurred, the Executive Director shall prepare a written “probable cause report” and schedule a probable cause hearing. The probable cause report shall contain a summary of the laws that the Executive Director believes the respondent(s) violated and evidence gathered through the investigation, including any exculpatory and mitigating information. In the probable cause report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

B. Delivery of Probable Cause Report and Notice of Probable Cause Hearing. The Executive Director shall deliver to each respondent a copy of the probable cause report, with written notice of the date, time and location of the probable cause hearing, at least 45 days in advance of the hearing date. The notice shall inform each respondent that he or she has the right to be present and represented by counsel at the probable cause hearing.

C. Response to the Probable Cause Report.

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who submits a response must deliver the response no later than 20 days prior to the date of the probable cause hearing. Unless the parties agree to deliver materials by email, the respondent must deliver a total of eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response to the Commission. The respondent must also deliver one copy of the response to every other respondent named in the probable cause report.

D. Rebuttal . The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must deliver the rebuttal to the Commission and each respondent named in the probable cause report no later than seven days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair’s designee for good cause shown, the rebuttal shall not exceed ten pages excluding attachments.

VIII. PROBABLE CAUSE HEARING; DETERMINATION OF WHETHER AND HOW TO PROCEED WITH A HEARING ON THE MERITS

A. General Rules and Procedures.

1. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members to conduct the probable cause hearing and submit a report and recommendation to the Commission.
2. Except for hearings regarding alleged ~~willful~~-violations of the Sunshine Ordinance, the hearing shall be closed to the public to the extent permitted by state law, unless the respondent requests that the probable cause hearing be held in public. Probable cause hearings regarding alleged ~~willful~~-violations of the Sunshine Ordinance shall be held at a public meeting unless otherwise provided in state or local law.
3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the probable cause hearing. Neither the Executive Director nor the respondent(s) may present live witness testimony at the probable cause hearing.
4. The Commission may find that there is probable cause to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation.

B. Probable Cause Determination.

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members to conduct the probable cause hearing, the assigned member shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing concludes, and the Commission shall make the probable cause determination no later than 45 days after the assigned member delivers his or her report and recommendation.
2. A determination that there is probable cause to believe that a violation of law has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.
3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:

- (a) the respondent had requested and obtained a written opinion from the Commission;
- (b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case;
- (c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concurred; and
- (d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission.

4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

5. If the Commission determines that there is probable cause to believe a violation of law has occurred, the Commission shall announce its determination in open session. The announcement shall contain a summary of the allegations for which the Commission determines there is probable cause to believe a violation of law has occurred and a cautionary statement that each respondent is presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

C. Determination How to Proceed with Hearing on Merits.

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may also sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution of preliminary matters in advance of the hearing on the merits. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X, subsection B. The Commission alternatively may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters.

3. The Commissioner or hearing officer assigned to decide preliminary matters shall also be authorized to provide for the issuance of subpoenas.

D. Amending Probable Cause Determination.

Before the Executive Director has scheduled the hearing on the merits, or no later than 60 days prior to the date the hearing on the merits is scheduled to commence, the Executive Director may request that the Commission amend the probable cause determination to add or amend allegations or charges against the respondent. If the Executive Director seeks to amend the probable cause determination, the Executive Director, the respondent(s) and the Commission shall follow the procedures set forth in Sections VII and VIII, and the Executive Director shall issue an amended accusation and notice of the hearing on the merits following the procedures set forth in Section IX.

IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS

A. Issuance of Accusation.

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the laws that each respondent allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The accusation shall list only those charges for which the Commission made a determination of probable cause. The Executive Director shall deliver a copy of the accusation to each respondent ten days after the Commission's probable cause determination. The accusation is a public document.

The Executive Director shall present the case in support of the accusation at the hearing on the merits. The accusation shall be the charging document for the purpose of the hearing on the merits. The commission shall not find that any respondent has committed a violation of law if the accusation does not allege such a violation and provide the respondent notice of the basis for the allegation.

B. Scheduling and Notice of Hearing on Merits.

The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the commencement of the hearing to each respondent at least 45 days prior to the commencement of the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission (or name of hearing officer or assigned Commissioner) at ____ on the ____ day of ____, 20____, at the hour of ____, at (location of _____), upon the charges made in the accusation. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given an opportunity to cross-examine all witnesses

testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Commission on or before (date).”

X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.

A. Discovery. The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

B. Resolution of Preliminary and Procedural Matters.

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII, subsection C(2). Preliminary matters may include, but are not limited to, the following:

- (a) procedural matters;
- (b) disqualification of any member of the Commission from participation in the hearing on the merits;
- (c) requests for dismissal of any charges in the accusation because, even if the allegations set forth in the accusation are true, those charges do not state a violation of law as alleged;
- (d) discovery motions; and
- (e) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the commencement of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director or each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the

assigned Commissioner or hearing officer no later than ten days after the date of delivery of the request. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed ten pages excluding attachments.

5. The requestor may submit a written reply to an opposition. The reply must be delivered to the assigned Commissioner or hearing officer no later than five days after the date of delivery of the opposition. At the same time that the reply is delivered to the assigned Commissioner or hearing officer, the party submitting the reply must deliver copies of the reply to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the reply shall not exceed five pages excluding attachments.

6. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the commencement of the hearing on the merits.

7. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall deliver the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than three days prior to the hearing on the merits.

8. Before or during the hearing on the merits, the Executive Director and any respondent may file a request for resolution of a procedural matter affecting the conduct of the hearing. This request shall be directed to the Commissioner or hearing officer designated to hear preliminary matters pursuant to Section VIII, subsection C(2). The request shall follow the process outlined by paragraphs 2 through 5 of this section, except that the request may be submitted later than 25 days prior to the commencement of the hearing on the merits but may not be submitted after the conclusion of the hearing on the merits. If either party requests a written decision, the assigned Commissioner or hearing officer shall issue a written decision no later than 20 days after the date of the request.

C. Hearing Briefs.

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and list evidence and witnesses to be presented at the hearing. The brief is not required to list anticipated rebuttal evidence or rebuttal witnesses. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date the hearing on the merits commences. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent

who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to every other respondent named in the accusation.

D. Issuance of Hearing Subpoenas.

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the commencement of the hearing on the merits. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the request is for a document subpoena, it shall be accompanied by a declaration which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued upon approval of the Commission or the Commissioner or hearing officer designated by Section VIII, subsection C(2).

**XI. DISCOVERY OF EXCULPATORY INFORMATION AND
DISMISSAL OF COMPLAINT PRIOR TO HEARING ON
THE MERITS**

A. Discovery of Exculpatory Information. Following the delivery of the probable cause report, if the Executive Director is aware of or discovers any exculpatory information with respect to any charge listed in the accusation, the Executive Director shall notify the Commission and the respondent(s) of this information.

B. Dismissal Recommendation. After a determination of probable cause and before a hearing on the merits, the Executive Director may recommend that the Commission dismiss the complaint. The Executive Director may make such a recommendation based on the Executive Director's discovery of exculpatory information or other good cause. In such situations, if he or she has not done so already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation.

C. Commission Consideration of Dismissal Recommendation. The Executive Director shall present the dismissal recommendation and the reasons for the recommendation to the Commission in a public memorandum. Thereafter, any two or more members of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. If two or more members of the

Commission do not cause the complaint to be calendared, or if in open session a majority of the Commission does not vote to override the dismissal recommendation, the Commission shall take no further action on the complaint except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for it appropriate action.

D. Dismissal or Removal of Specific Charges. After a determination of probable cause and before a hearing on the merits, the Executive Director may decide not to proceed with a specific charge listed in the accusation. If the Executive Director makes such a determination, the Executive Director shall immediately notify in writing the respondent(s) and the Commission or hearing officer. If the Executive Director provides such notice, the Commission shall not find a violation based on the specific charge or violation after a hearing on the merits.

XII. HEARING ON THE MERITS

A. General Rules and Procedures.

1. Public Hearing

The hearing on the merits shall be open to the public, provided that either the Executive Director or the respondent(s) may request that the Commission, assigned Commissioner or hearing officer exclude any witnesses.

2. Standard of Proof

The Commission may determine that a respondent has committed a violation of law only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed the violation.

3. Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

4. Exhibits

Where both parties stipulate to the admissibility of an exhibit, the parties shall so advise the Commission in advance of the hearing. For all other exhibits, each party may move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to object prior to the ruling on the admission.

5. Witnesses

Witnesses shall be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners shall have an opportunity to pose questions to the witness.

6. Oral Argument

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

B. Finding of Violation.

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of law. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of law.

The votes of at least three Commissioners are required to find a violation of law. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

C. Administrative Orders and Penalties.

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. The Commission may issue orders and penalties requiring the respondent(s) to:

(a) cease and desist the violation;

(b) file any reports, statements or other documents or information required by law; and/or

(c) pay a monetary penalty to the general fund of the City in an amount permitted under the law that the Commission finds the respondent has violated, or, if the law does not specify the amount of the monetary penalty, in an amount up to five thousand dollars (\$5,000) for each violation, or three times the amount which the

respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

2. When deciding on an order and penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) the severity of the violation;
- (b) the presence or absence of any intention to conceal, deceive, or mislead;
- (c) whether the violation was deliberate, negligent or inadvertent;
- (d) whether the violation was an isolated incident or part of a pattern;
- (e) whether the respondent has a prior record of violations of law; and
- (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

3. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

XIII. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside of a Commission meeting, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

B. Access to Complaints and Related Documents and Deliberations.

1. Except as described in subsection 3 for complaints alleging violations of the San Francisco Sunshine Ordinance processed under these Regulations pursuant to section III.A.3. of the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance, no complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed except as necessary to the conduct of an investigation, prior to a probable cause determination.
2. After a determination of probable cause, the probable report, the response, and the rebuttal shall be confidential, unless the respondent requested that the probable cause hearing be public. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, shall remain confidential, except that the Executive Director may provide a copy of the complaint to the respondent(s) if the Executive Director determines that disclosure is necessary to the conduct of the investigation. All investigative documents, including notes and memoranda, created by the Executive Director and his or her staff after the probable cause determination shall be confidential, except for the accusation, until any such documents are either delivered to the Commission or respondent(s), introduced as evidence or an exhibit, or distributed for public consumption, such as an agenda or press release.
3. For complaints alleging ~~willful~~-violations of the San Francisco Sunshine Ordinance (**S.F. Administrative Code Ch. 67**) processed under these Regulations pursuant to section III.A.3. of the Ethics Commission Regulations for Complaints Alleging Violations of Sunshine Ordinance, no complaint, investigative file or information contained therein, or Commissioner or staff deliberations shall be disclosed except as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. Deliberations by the Commission regarding such a complaint shall be conducted at a public meeting. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff shall not be disclosed until after the dismissal of a complaint or the Commission has issued its final decision following the hearing on the merits.
4. In addition to the prohibition on ex parte communications stated in Section XIII, subsection A, except at a public meeting of the Commission, Commissioners are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.

C. Oaths and Affirmations.

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

E. Powers and Duties of Hearing Officers.

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.
2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section X, subsection B(7).
3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.
4. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

F. Statute of Limitations.

1. Unless otherwise stated in local or State law, for statute of limitations purposes, an action or proceeding for administrative penalties is brought or commenced by the Executive Director on the date the Executive Director delivers the probable cause report.

2. If there is no statute of limitations for violations of the law allegedly violated, the probable cause report must be delivered within four years of the date of events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later.

G. Extensions of Time and Continuances.

Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials pursuant to these Regulations, that party may request an extension of time. Requests for extensions of time may be made to the Commission Chair or the Commission Chair's designee. The requester must deliver the request to the Commission Chair or designee and provide a copy of the request to all other parties no later than ten business days before the deadline to complete an act or produce materials. The Commission Chair or designee shall have the discretion to consider untimely requests. The Commission Chair or designee shall approve or deny the request within five business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.

The Executive Director or any respondent may request the continuance of a hearing date. The requester must deliver the request to the Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request only upon a showing of good cause.

H. Referrals to Other Enforcement Agencies.

At any time after the filing of a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission or Executive Director determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director or the Commission that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

I. Recordings and Transcripts.

Every probable cause hearing and hearing on the merits shall be tape-recorded. Where the Commission assigns a Commissioner to conduct a probable cause hearing, and where the Commission assigns a Commissioner or hearing officer to conduct a hearing on the merits, the hearing shall also be recorded stenographically. The Commission shall retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape shall be available to the respondent upon request.

J. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent or his or her committee, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection F, to:

a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.

b. If the respondent is a former City employee, to the address listed with the City's retirement system.

c. If the respondent is a current or former candidate or committee registered with the Ethics Commission, to the address provided to the Ethics Commission by that candidate or committee.

d. If subsections (a) through (c) are not applicable, to an address reasonably calculated to give notice to and reach the respondent.

It is the responsibility of City employees, or candidates or committees who file reports with the Ethics Commission, to maintain accurate addresses with relevant City Departments. The Executive Director therefore may rely on those addresses in carrying out the objectives of the Commission.

3. Delivery is effective upon the date of delivery, not the date of receipt.

K. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

L. Public Summary of Dismissed Complaints.

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but need not be limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

M. Conclusion of Hearing on the Merits.

For the purposes of these Regulations, a hearing on the merits concludes on the last date on which the Commission hears argument or testimony in the proceeding.

XIV. STIPULATED ORDERS

A. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- | (1) the proposed stipulation, decision and order is subject to approval by the Commission;
- | (2) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;
- | (3) the respondent understands and acknowledges that the stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- | (4) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and
- | (5) in the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13.

C. Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any two or more members of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting

occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement. If there is a vacancy on the Commission or if a member must recuse himself or herself from consideration of the stipulated order, one member of the Commission may cause the stipulation to be calendared. Commissioners' requests that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

D. Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission.

XV. SEVERABILITY

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.