



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

Date: September 11, 2013

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BRETT ANDREWS
COMMISSIONER

From: John St. Croix, Executive Director

BENEDICT Y. HUR
COMMISSIONER

Re: Amendments to regulations for violations of Sunshine Ordinance

JAMIENNE S. STUDLEY
COMMISSIONER

Since the Commission's Regulations for Violations of the Sunshine Ordinance ("Regulations") took effect on January 25, 2013, staff has identified several provisions that require modification. These draft amendments, notice of which was provided to the public on September 11, 2013, are discussed below. Additions are set forth in underlined text; deletions are set forth in crossed-out text in the attached draft regulations.

JOHN ST. CROIX
EXECUTIVE DIRECTOR

The Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances related to open meetings and public records. A rule or regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the rule or regulation. S.F. Charter § 15.102.

1. Draft amendments to Chapter Two of the Regulations

Chapter 2 of the Regulations requires the Commission to conduct a show-cause hearing on any referral finding a willful violation of the Sunshine Ordinance ("Ordinance") by a City officer and employee (other than an elected official or department head), or any referral finding a non-willful violation of the Ordinance by an elected official or department head. Staff proposes amendments to section II.C.1 and 2, related to Hearing Procedures.

Under section II.C, Respondent may make an opening statement and rebuttal. However, the section is not clear whether each Respondent to the complaint may make a five-minute opening statement and three-minute rebuttal, or whether all Respondents must share those time limits. Staff proposes to add the word "each" before the word "Respondent" to clarify that each Respondent in the complaint may make a five-minute statement and a three-minute rebuttal. The change would reflect the Commission's practice in the show-cause hearings held thus far. The Commission Chair, at his or her discretion, would continue to have the ability to allow additional testimony and extend the time limit for the parties.

Decision Point 1a.

Shall the Commission approve the amendments to Chapter 2, section II.C.1, as set forth on page 5 of the draft amendments?

Under section II.C.2, each party may submit documents to the Commission, no later than five days before the scheduled hearing. Staff proposes language to clarify that “five days” means five business days, in order to allow Commission staff sufficient time to prepare agenda packets and post information on the Commission’s website. This change conforms to the “five business day” time limit set forth for responses from parties in Chapter 3.

Staff also proposes language to clarify that a party who fails to submit documents by the deadline may bring the documents to the hearing and seek the Commission’s permission to submit them at that time, provided that the party brings enough documents for all members of the Commission, the opposing party or parties, and members of the public. This latter proposal accords with the Commission’s practice in show-cause hearings held thus far.

Decision Point 1b.

Shall the Commission approve the amendments to Chapter 2, section II.C.2, as set forth on page 6 of the draft amendments?

2. Draft amendments to Chapter Three of the Regulations

Chapter 3 governs the handling of referrals that allege willful violations of the Ordinance by elected officials or department heads, complaints filed at the Commission and complaints initiated by Ethics staff. In general, the Executive Director investigates complaints under Chapter 3 and then schedules a public hearing before the Commission. Staff proposes changes to section II.D.2, related to responses to the Executive Director’s report and recommendation regarding the complaint; and to section III.2, related to the time limits imposed upon the oral statements of the complainant and respondent at the public hearing.

In section II.D.2, a Complainant or Respondent, if he or she wishes to do so, must provide a response to the Executive Director’s report no later than five business days prior to the date of the hearing. Staff has added language similar to that proposed in Chapter 2, section II.C.2 above, to clarify that a party who fails to provide a response by the time limit may nonetheless bring the response to the hearing and seek the Commission’s permission to submit it that time, provided that the party brings enough documents for all members of the Commission, the opposing party, and members of the public.

Decision Point 2a.

Shall the Commission approve the amendments to Chapter 3, section III.D, as set forth on page 10 of the draft amendments?

In section III.A, each Complainant and Respondent may speak on his or her own behalf in the public hearing. Staff proposes to change the time limits so that they follow those set forth in

Chapter 2 – that is, Complainant is allowed a five-minute, instead of a ten-minute, opening statement and a three-minute, instead of a five-minute, rebuttal. In addition, staff has added language to clarify that each Respondent to the complaint is permitted a five-minute, rather than a ten-minute, statement. The Commission Chair may, at his or her discretion, continue to allow additional testimony and extend the time limit for the parties.

Decision Point 2b

Shall the Commission approve the amendments to Chapter 3, section III.A.2, as set forth on page 10 of the draft amendments?

3. Draft amendments to Chapter Four of the Regulations

Chapter 4 sets forth miscellaneous provisions that govern the handling of complaints related to violations of the Sunshine Ordinance. Staff proposes to add two new subsections.

New subsection I.K would address withdrawals of complaints. Under staff’s proposal, if a §§complainant or referring entity withdraws a matter that would fall under Chapter 2 of the Regulations, the Commission, which would have otherwise held a show-cause hearing on the matter, would take no further action on the complaint or referral.

If a complainant or referring entity withdraws a matter that would otherwise fall under Chapter 3 of the Regulations, the Commission may at its discretion dismiss the complaint at the hearing. Under Chapter 3, staff conducts a factual investigation and prepares a written report to the Commission – the report will note if a complainant or referring entity has withdrawn the matter, and the Commission may decide how to proceed and whether to dismiss the matter.

Decision Point 3a

Shall the Commission approve the amendments to Chapter 4, section I.K, as set forth on page 15 of the draft amendments?

New subsection I.L. addresses complaints alleging violations of the Sunshine Ordinance by the Ethics Commission or its staff. Under staff’s proposal, if the Commission receives a referral concerning a violation of the Sunshine Ordinance by staff or the Commission, the Commission/staff will return the referral to the referring entity and take no further action on the matter. If the Commission receives a direct complaint alleging a violation of the Sunshine Ordinance by staff or the Commission, the Commission/staff will inform the Complainant of other remedies available under state and/or local law.¹ Otherwise, the Commission/staff will take no further action.

Staff recommends subsection I.L because the Commission has received referrals alleging violations by staff, and it has been a challenge to find other Ethics agencies that are willing to handle them in the Commission’s stead. To avoid imposing such work on other Ethics agencies

¹ Other remedies may include referring the matter to the District Attorney or Attorney General (S.F. Admin. Code §§ 67.21(e) and 67.30), or instituting action before a court of law (S.F. Admin. Code § 67.35 and Calif. Gov’t Code § 54960 or 54960.1).

and to avoid any appearance of possible conflict, staff believes that informing the Complainant to pursue other available remedies would be the best measure.

Decision Point 3b

Shall the Commission approve the amendments to Chapter 4, section I.L., as set forth on page 15 of the draft amendments?

4. Draft amendment to the title of the document

Currently, the title of the document reads, “Ethics Commission Regulations for Violations of the Sunshine Ordinance. Staff proposes adding the word “handling” to the title, which would provide a more accurate description of the purpose of the document.

Decision Point 4

Shall the Commission approve the amendment to the title of the document, as set forth on the front cover of the draft amendments?

S:\Enforcement\Investigations.Enforcement.Regulations\Sunshine.Regulations\mem to EC re proposed changes 7.2013.docx