



# San Francisco Ethics Commission

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## Enforcement Regulations<sup>1</sup>

### Section 1. Preamble

The San Francisco Ethics Commission adopts the following regulations applicable to the Commission's enforcement authority as granted by the San Francisco City Charter and Municipal Code.

- A. Purpose. These regulations are intended to ensure the fair, just, and timely review, investigation, and hearing of complaints presented to the Commission by doing the following:
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 violations of laws within the Commission's jurisdiction;
  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. Providing a fair hearing for persons and entities accused of violations;
  5. Ensuring timely enforcement and complaint resolution;
  6. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice; and
  7. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.
- B. Enforcement Authority. These regulations are applicable to potential violations of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, governmental ethics, the San Francisco Sunshine Ordinance, and the Whistleblower Protection Ordinance, as well as 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; San Francisco Administrative Code, Chapter 67, *et seq.*; 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.*

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<sup>1</sup> *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; amendments effective January 8, 2010; amendments effective November 11, 2011; amendments effective March 29, 2013; and amendments effective March 28, 2016.*

## Section 2. Definitions

For purposes of these regulations, the following definitions will apply:

- A. "City" means the City and County of San Francisco.
- B. "Commission" means the Ethics Commission.
- C. "Complainant" means a person or entity making a complaint.
- D. "Enforcement action" means an action pursuant to San Francisco Charter section C3.699-13. An enforcement action does not include the opening of an investigation.
- E. "Director of Enforcement" means the Deputy Director of Enforcement or her designee.
- F. "Deliver" means transmit by U.S. mail, electronic mail, or personal delivery to the individual's registered address with the Ethics Commission, a business entity's registered agent, the business entity's principal place of business, or by leaving a copy of the document or thing at an individual's usual place of abode with someone of suitable age and discretion who resides there. Delivery is effective upon the date of delivery, not the date of receipt.
- G. "Executive Director" or "Director" means the Executive Director of the Commission or the Executive Director's designee.
- H. "Probable cause" means evidence sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation of law.
- I. "Respondent" means a person or entity that is alleged to have committed a violation of law.
- J. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance, which is located at Chapter 67 of the San Francisco Administrative Code.
- K. "Staff" means the Commission's full-time professional staff.
- L. "Violation of law" means a violation of City law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, governmental ethics, the San Francisco Sunshine Ordinance, and the Whistleblower Protection Ordinance, as well as 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; San Francisco Administrative Code, Chapter 67, *et seq.*; 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.*

### Section 3. Filing a Complaint

A complaint alleging a violation of law may be submitted by any person, including a member of the public, any employee or official of the City, or any member of the Commission. A complaint may also be submitted by an entity. Complaints may be sworn or informal, as discussed in greater detail below.

- A. Sworn Complaints. Sworn complaints must be made in writing on a form designated by the Executive Director or in a writing that contains all the information requested in the Director's designated form.
  - 1. Content of Sworn Complaints. Sworn complaints must be signed by the complainant under penalty of perjury. Electronic signatures that conform with the Commission's electronic signature policy sufficiently comply with this requirement. Sworn complaints should include the following facts:
    - i. The name and address of the respondent;
    - ii. The facts constituting an alleged violation(s) of law;
    - iii. The names and addresses of witnesses, if any; and
    - iv. Copies of documents or other evidence that may be relevant to proving the fact(s) constituting the alleged violation(s), if any.
  - 2. Effect of Sworn Complaints. The Director of Enforcement must process and evaluate all sworn complaints, pursuant to procedure outlined in Section 4, Preliminary Review.
- B. Informal Complaints. Informal complaints may be submitted by telephone, in person, or in a writing.
  - 1. Content of Informal Complaints. An informal complaint should include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a sworn complaint will be considered an informal complaint.
  - 2. Effect of Informal Complaints. The Enforcement Director has the discretion to review informal complaints. In exercising that discretion, the Enforcement Director should consider the nature of the alleged violation and whether the information contained in the complaint permits review and investigation of the alleged violation(s).
- C. Anonymous Complaints. Complaints may be submitted anonymously. Such complaints will be treated as informal complaints.
- D. Commissioner-initiated Complaints. Any member of the Commission who submits a formal or informal complaint must recuse him or herself from all consideration, review, investigation, or hearing of that complaint.
- E. Complaints alleging violations of the Sunshine Ordinance. Pursuant to section 67.34 of the San Francisco Administrative Code, the Commission will investigate complaints containing credible allegations against elected official(s) or department head(s) alleging willful violations of the

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Sunshine Ordinance. If a complaint filed with the Commission does not meet the criteria set forth in section 67.34, the Commission will refer it to the Sunshine Ordinance Task Force.

- F. **Withdrawal of Complaint.** The Commission may continue to investigate a complaint even if the complainant withdraws it.

### **Section 4. Preliminary Review of Complaints**

- A. **Preliminary Review.** Upon receipt of a sworn complaint, the Director of Enforcement will conduct a preliminary review of the complaint to determine whether there is reason to believe a violation of law may have occurred. This preliminary review may include reviewing documents, communicating with the complainant or respondent, and any other inquiry to determine whether a full investigation is warranted. If the Director of Enforcement determines there is reason to believe a violation of law has occurred, the Director of Enforcement will open an investigation.
- B. **Complaint Dismissal.** If, based on the allegations and information contained in a complaint, and the Director of Enforcement's preliminary review, the Director of Enforcement determines that no violation of law has likely occurred, the Executive Director may dismiss the complaint. Reasons for dismissal include but are not limited to:
  - 1. The complaint does not include enough information to support further investigation.
  - 2. Credible evidence clearly refutes the allegation.
  - 3. The allegations, if true, do not constitute a violation of law.
  - 4. The complaint contains an expression of opinions, rather than specific allegations.
  - 5. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
  - 6. Dismissal, rather than initiating an investigation, would better serve the interest of justice.
- C. **Complaint Referral.** The Director of Enforcement, with the concurrence of the Executive Director, may refer the matter to another government agency if the Director of Enforcement determines that the agency has jurisdiction and may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. If the Executive Director concurs with the Director of Enforcement's recommendation, the Executive Director will notify the Commission pursuant to subsection E.
- D. **Report to the Commission.** The Director of Enforcement will provide a monthly summary to the Commission of each complaint dismissed including the reasons for dismissal provided. That summary will comply with the confidentiality requirements of the Charter.
  - 1. **Whistleblower Retaliation Quarterly Report.** No less than quarterly, the Director of Enforcement will provide a summary report to the Commission of the status of all complaints still under preliminary review that allege retaliation against whistleblowers. For matters that have been under preliminary review for more than 90 calendar days, the Director of Enforcement will provide an explanation for why the Commission's staff has not completed its preliminary review as well as a target date for completion.

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- E. Final Decision. A dismissal or closure of a complaint, after notification to the Commission pursuant to this Section, is a final decision and represents the end of the administrative process. No further action will be taken by the Commission to review or investigate the allegations contained in the complaint. If a complainant desires further review, the complainant must follow the procedures set forth in Section 1094.5(a) of the California Code of Civil Procedure governing judicial review of any final administrative order or decision.

### Section 5. Investigation

- A. Open Investigation. If, after a preliminary review of the complaint, the Director of Enforcement determines there is reason to believe a violation of law has occurred, then the Director of Enforcement will open an investigation into the allegations contained in the complaint.
  - 1. Upon the Director of Enforcement's decision to open an investigation, the Director of Enforcement will immediately forward the complaint to the District Attorney and City Attorney. Within 10 business days after receipt of the complaint, the District Attorney and City Attorney will inform the Director of Enforcement in writing regarding whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the matter.
  - 2. Within 14 calendar days after receiving notification that neither the District Attorney nor City Attorney intends to pursue an investigation, the Director of Enforcement will notify in writing the complainant of the action, if any, the Commission has taken or plans to take on the complaint, together with the reasons for such action or inaction. If no decision has been made within 14 calendar days after receiving notification that neither the District Attorney nor City Attorney intends to pursue an investigation, the person who made the complaint will be notified of the reasons for the delay and will subsequently receive notification as provided above.
- B. Ex Parte Communication. Once an investigation is opened and until the Commission has made a final decision or order, whether by stipulation or otherwise, members of the Commission will not engage in oral or written communications with the parties or any member of the public outside of a Commission meeting, witness interview or examination, or settlement conference regarding the merits of an enforcement action.
- C. Subpoenas and Subpoenas Duces Tecum.
  - 1. Issuing Subpoenas. The Executive Director may issue subpoenas and *subpoenas duces tecum* on behalf of the Commission. A subpoena or *subpoena duces tecum* may not be issued unless the Executive Director finds that the person to be subpoenaed or the information to be requested in the *subpoena duces tecum* is relevant to a specific matter under investigation or that the person or entity to be subpoenaed controls relevant information.
  - 2. Notice Required. If a *subpoena duces tecum* seeks the production of either personal or financial records, the Enforcement Director will provide notice as required by California Government Code, section 7460, *et seq.*

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3. Service. Subpoenas will be served at least 15 calendar days before the time required for attendance. *Subpoenas duces tecum* will be served as least 25 calendar days before the time required for attendance or production of the requested documents. Service must be made by delivering the subpoena or *subpoena duces tecum* as set forth in Section 2(F) herein.
4. Compliance.
  - i. If the Director of Enforcement consents, any person subject to a *subpoena duces tecum* may satisfy the *subpoena duces tecum* by delivering the requested documents together with an affidavit in compliance with section 1561 of the California Evidence Code.
  - ii. If any person or entity refuses to comply with a subpoena or *subpoena duces tecum*, the Executive Director may ask the City Attorney to petition the San Francisco Superior Court for an order compelling compliance.
5. Objections.
  - i. Any person or entity served with a subpoena or *subpoena duces tecum* may object by filing written objections with the Executive Director at least 5 calendar days before the time required for attendance or production of the requested documents.
  - ii. The Executive Director will rule on the objections and issue a written order at least one calendar day before the time required for attendance or production of the requested documents. The Executive Director's decision is final.
  - iii. Failure to file timely objections with the Executive Director waives all grounds for any objection.
  - iv. Any person or entity that files a motion to quash or modify a subpoena or *subpoena duces tecum* in Superior Court must inform the Executive Director in writing on the same day the motion is filed.
- D. Confidentiality: Disclosure deemed Official Misconduct. The investigation will be conducted in a confidential manner. Records of any investigation will be considered confidential information to the extent permitted by state law. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, will remain confidential. 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, unless and until any such documents are introduced as evidence or as an exhibit for a hearing on the merits, pursuant to Sections 8 and 9 herein. Any member or employee of the Commission or other City officer or employee who, prior to a determination concerning probable cause, discloses information about any preliminary investigation, except as necessary to conduct the investigation, will be subject to an administrative enforcement action and may be deemed guilty of official misconduct. The unauthorized release of confidential information will be sufficient grounds for the termination of the employee or removal of the commissioner responsible for such release.

## Section 6. Page Limitations and Format Requirements

The Probable Cause Report and Hearing Brief will be limited to 25 pages, exclusive of any attachments. The Responses to the Probable Cause Report and Hearing Brief will be limited to 25 pages, exclusive of any attachments. Any rebuttal or reply will be limited to 10 pages, exclusive of any attachments. All other filings will be limited to 10 pages, exclusive of any attachments. A “page” means one side of an 8½ inch by eleven-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 twelve-point type. Each page and any attachments will be consecutively numbered.

## Section 7. Probable Cause Proceedings

- A. Complaint Closure. The Director of Enforcement may recommend closure of a complaint if it falls within the Commission’s jurisdiction, but closure rather than initiating probable cause proceedings would better serve the interest of justice. Cause for closure under this provision includes but is not limited to the Enforcement Director’s finding that the violation was *de minimus*; further prosecution of the complaint would not further the purpose of the law; the provision of law at issue was struck down by a court of competent jurisdiction; or the respondent came into full compliance with a reporting obligation prior to the Enforcement Director’s initiating an investigation. If the Executive Director concurs with the Director of Enforcement’s recommendation, the Executive Director will notify the Commission in a monthly report pursuant to Section 4(D).
- B. Initiation of Probable Cause Proceedings.
  1. Delegation of Probable Cause Hearing Officer Duties. The Commission delegates responsibility for conducting Probable Cause Conferences to the Executive Director but, as described below, the Commission retains the authority to make probable cause findings. The Executive Director may not recommend a probable cause determination unless the respondent(s) has been provided an opportunity to respond to a Probable Cause Report and appear in person to make oral argument, if requested.
  2. Probable Cause Report. When the Director of Enforcement believes that probable cause exists to find a violation of law has occurred, the Director of Enforcement will prepare a written “Probable Cause Report” to commence probable cause proceedings. The Director of Enforcement must deliver a copy of the Probable Cause Report to each respondent, the Executive Director, and if applicable, a complainant who has alleged retaliation pursuant to Section 4.115 of the San Francisco Campaign & Governmental Conduct Code. The Probable Cause Report must include:
    - i. Identification of the alleged violations;
    - ii. A summary of the laws at issue;
    - iii. A statement of the evidence gathered through the investigation, including any exculpatory and mitigating information of which Staff has knowledge;
    - iv. Notification that the respondent has the right to respond in writing to the Probable Cause Report;

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- v. Notification that the respondent has the right to request a Probable Cause Conference, at which the respondent may be present in person and represented by legal counsel or another representative; and
  - vi. Any other relevant material or argument.
3. Whistleblower Complainants. Complainants who have alleged retaliation pursuant to Section 4.115 of the San Francisco Campaign & Governmental Conduct Code may participate in probable cause proceedings regarding their complaint as identified in this section. Participation may include but is not limited to providing additional evidence to the Executive Director in response to the Director of Enforcement's Probable Cause Report or writing an independent response to the Director of Enforcement's Probable Cause Report. Complainants who would like to participate pursuant to this section must deliver a request to the Executive Director in writing within 10 calendar days of the issuance of Director of Enforcement's Probable Cause Report. The Executive Director shall have discretion to define the scope of the complainant's participation in probable cause proceedings.
  4. Response to the Probable Cause Report. Each respondent may submit a written Response to the Probable Cause Report. The Response may contain evidence, legal arguments, and any mitigating or exculpatory information. Responses must be delivered to the Executive Director and delivered to all other respondents listed in the probable cause report not later than 21 calendar days following service of the Probable Cause Report.
  5. Rebuttal. The Director of Enforcement may submit evidence or argument in rebuttal to the response. When the Director of Enforcement submits a rebuttal, the Director of Enforcement shall deliver a copy to all respondents not later than 14 calendar days following the date the response was filed.
  6. Evidence. The evidence recited in the Probable Cause Report, Response, and Rebuttal may rely on witness declarations, hearsay evidence (including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence), and any other relevant evidence.
  7. Requests for Extension of Time. The Executive Director may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the Executive Director may allow the submission of additional material. Parties seeking extensions of time to file pleadings or present additional materials must file a request with the Executive Director at least 5 calendar days prior to the original deadline.
- C. Probable Cause Conference.
1. Confidentiality. Probable cause conferences shall be confidential and closed to the public unless the respondent requests, and all other respondents agree, that it be open to the public. After a determination regarding probable cause, the Probable Cause Report, the Response, and the Rebuttal will be confidential pursuant to section 5(D) of these regulations, unless the respondent requested that the probable cause hearing be public. If the respondent(s) agreed to a public hearing, then any evidence or argument produced at the public hearing shall be deemed public records.



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2. Requesting a Probable Cause Conference. The Executive Director, Director of Enforcement, or any respondent(s) may request a Probable Cause Conference. The request will be served upon the Executive Director and all other parties no later than 21 calendar days after delivery of the Probable Cause Report unless the Executive Director extends the time for good cause. The Executive Director will set a time for the Probable Cause Conference, which will be conducted informally. Complainants who have alleged retaliation pursuant to Section 4.115 of the San Francisco Campaign & Governmental Conduct Code may appear at a Probable Cause Conference, but they may not request a Probable Cause Conference.
3. Probable Cause Conference Procedures.
  - i. Representation. The Probable Cause Conference will be an informal proceeding. The respondent may bring legal counsel or any other representative to assist them in the Probable Cause Conference.
  - ii. Presentation of Evidence. The Executive Director may allow witnesses to attend and participate in the Probable Cause Conference. A party making a request to present witness testimony at the Probable Cause Conference pursuant to this section must deliver a written request to the Executive Director and all parties within 7 calendar days of the Probable Cause Conference. When deciding whether to allow witness testimony, the Executive Director will consider the relevance of the witness's proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate.
  - iii. Additional Information. If the Executive Director requires additional information to determine whether there is probable cause, he or she may permit any party to submit additional evidence at the Probable Cause Conference or by a specified date following the Probable Cause Conference.
  - iv. Recordings and Transcripts. Every Probable Cause Conference will be audio recorded. The Director of Enforcement will retain the recording until the opportunity for legal challenge has been exhausted. The audio recording of the Probable Cause Conference will be provided to the respondent upon request. A respondent may ask that a certified court reporter attend and record the Probable Cause Conference at the respondent's cost. That respondent will provide copies of any transcript to the Executive Director and all other respondents. The cost of such a record will be borne by the respondent requesting the record.
- D. Executive Director's Recommended Probable Cause Determination
  1. Standard. The Executive Director may recommend a finding of probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a respondent committed or caused a violation. A recommended finding of probable cause by the Executive Director does not constitute a finding that a violation has occurred.
  2. Finding of Probable Cause. If the Executive Director recommends a finding of probable cause, the finding must be in writing and must be based solely on the evidence and

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argument presented in the Probable Cause Report, Response, and Rebuttal, as well as any evidence or argument presented by the parties at the Probable Cause Conference. A recommended finding of probable cause must contain a summary of all evidence and arguments presented at the Probable Cause Conference, and the Executive Director's assessment of that evidence.

3. **Finding of No Probable Cause.** If the Executive Director determines that probable cause does not exist to believe a violation of law has occurred, the Executive Director will issue a finding of no probable cause in writing. The finding of no probable cause will provide clear and concise reasons supporting that determination.
4. **Default Orders.** If the Director of Enforcement followed the notice of conference procedures identified in these Regulations, and the respondent(s) failed to appear before the Executive Director for the Probable Cause Conference, then the Executive Director may make a recommendation for a finding of probable cause adverse to the interests of the respondent(s) who failed to appear. The Director of Enforcement bears the burden of proving that the respondent(s) was properly served in accordance with these regulations.
5. **Timeframe.** The Executive Director will make a probable cause determination within 60 calendar days after the later of the date the Probable Cause Report was served, the date the Probable Cause Conference was held, or the date the last pleading was received if no Probable Cause Conference is held. The Executive Director will not make a Probable Cause Determination before the respondent's deadline to respond to the Probable Cause Report. The Executive Director will deliver the Probable Cause Determination to each respondent and the Director of Enforcement within 7 calendar days of making the determination.
6. **Commission Ratification of Executive Director's Probable Cause Determination.** Upon finalizing her recommended probable cause determination, the Executive Director will immediately inform the Commission of that determination. Thereafter, any member of the Commission may request review of the Executive Director's recommended probable cause determination by the full Commission in closed session at the next regularly scheduled Commission meeting. A Commissioner's request that a probable cause determination be calendared for consideration by the full Commission must be received by the Executive Director within 5 calendar days of the Executive Director's notification.
  - i. If any Commissioner requests review of the Executive Director's recommended probable cause determination, then the determination is not final until at least three members of the Commission agree to ratify it at the next regularly scheduled Commission meeting. The Commission must consider the Executive Director's recommendation in closed session and may hear argument from the Director of Enforcement or the respondent(s). The parties will not be given additional opportunity to provide written argument to the Commission.
  - ii. If no Commissioner requests review of the Executive Director's recommended probable cause determination, then the Commission has ratified the Executive Director's recommended probable cause determination, and the Executive Director will publish the formal Probable Cause Determination by delivering it to the parties and posting it to the Commission's website.

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7. Findings of No Probable Cause are Final. The Commission's finding of no probable cause is a final decision and represents the end of the administrative process. No further action will be taken by the Commission to review or investigate the allegations contained in the complaint. If a complainant desires further review, the complainant must follow the procedures set forth in Section 1094.5(a) of the California Code of Civil Procedure governing judicial review of any final administrative order or decision.
8. Effect of Formal Written Advice. The Executive Director will not make a finding of probable cause if she or he is presented with clear and convincing evidence that, prior to the alleged violation:
  - i. The respondent had requested and obtained written formal advice from the Commission;
  - ii. The respondent, in requesting the opinion, disclosed truthfully all facts pertinent to the case;
  - iii. The Commission or its staff issued a written opinion with which both the District Attorney and City Attorney concurred; and
  - iv. The respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the written opinion of the Commission.

### **Section 8. Pre-Hearing Matters**

- A. Delegation to a Hearing Officer. Upon majority approval, the Commission may delegate authority to preside over a hearing on the merits to a hearing officer. Any licensed attorney in the state of California or individual member of the Commission may serve as a hearing officer.
  1. 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 will make an actual determination. Procedural determinations may be reviewed by the Commission upon request by the Executive Director or a respondent.
  2. After presiding over a hearing on the merits, the hearing officer must submit a report and recommendation to the Commission for its consideration. The report and recommendation will contain proposed findings of fact and conclusions of law. Copies of the report and recommendation will be delivered to the Commission, Executive Director, and each respondent no later than 30 calendar days after the date the hearing is concluded. Thereafter, the Executive Director will calendar the matter for consideration at the next Commission meeting in open session.
- B. Scheduling and Notice of Hearing on Merits. The Executive Director will 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 30 calendar days prior to the commencement of the hearing. The notice will 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

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\_\_\_\_\_), upon the charges made in the Finding of Probable Cause. You may be present at the hearing and may, but need not, be represented by counsel or another representative. You may also present any relevant evidence, and you 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 records, documents, or other things by applying to the Commission on or before (date).”

- C. Hearing Officer. Following the issuance of a Finding of Probable Cause by the Executive Director, the Commission will proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission pursuant to Section 7(A), the Commission will sit as the hearing panel to hear the merits of the case.
- D. Discovery. The Executive Director and each respondent will be entitled to pre-hearing discovery in accordance with the provisions of the California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 *et seq.*
  - 1. Subpoenas. The Commissioner or hearing officer assigned to decide preliminary matters will be authorized to provide for the issuance of subpoenas. The Executive Director and any respondent named in the Finding of Probable Cause may request the issuance of subpoenas to compel the attendance of witnesses and production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 calendar days prior to the commencement of a hearing on the merits. The request will 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 will 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 hearing officer.
- E. Hearing Briefs. The Executive Director will, and any respondent may, submit a hearing brief. The briefs will outline significant legal arguments and list evidence and witnesses to be presented at the hearing and may attach anticipated evidence, including documents and declarations. The briefs are not required to list anticipated rebuttal evidence or rebuttal witnesses. For page limitations and formatting requirements, see Section 6 of these regulations. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of Staff’s Hearing Brief will be delivered to the Commission, assigned Commissioner, or outside hearing officer and all parties to the proceeding no later than 30 calendar days prior to the date the hearing on the merits commences. The respondent(s)’ responsive brief will be due no later than 15 calendar days prior to the date the hearing on the merits commences, and Staff’s rebuttal brief will be submitted no later than 5 calendar days prior to the date the hearing on the merits commences.
- F. Preliminary Matters. Any party may request formal consideration of preliminary matters by delivering to the assigned Commissioner, or hearing officer a motion setting forth relevant facts, law, and argument. Preliminary matters may include, but are not limited to, the following:

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1. Procedural matters;
2. Disqualification of any member of the Commission from participation in the hearing on the merits;
3. Requests for dismissal of any charges in the Probable Cause Determination because, even if the allegations set forth in the Determination are true, as a matter of law those charges do not state a violation of law as alleged;
4. Discovery motions; and
5. Any other matters not related to the truth or falsity of the factual allegations in the Probable Cause Determination.

A request for resolution of preliminary matters must be delivered to the Commission or hearing officer no later than 25 calendar days prior to the commencement of a hearing on the merits. Responses are due 20 calendar days prior to the hearing on the merits, and replies are due 15 calendar days prior to the hearing on the merits. When the request, response, or reply is delivered to the Commission or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent(s).

- G. Recordings and Transcripts. Every hearing on the merits will be recorded digitally. The Commission will retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape will be available to the respondent upon request.
- H. Place of Delivery. Whenever these regulations require delivery to the Commission, its members, or the Executive Director, delivery will be made at the Staff's office. Whenever these regulations require delivery to a respondent or his or her committee, delivery will be effective and sufficient if made by first class U.S. mail, personal delivery, or any other means of delivery agreed upon by the parties. In addition, the Commission may rely on the following addresses:
1. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current personal address.
  2. If the respondent is a former City employee, to the address listed with the City's retirement system.
  3. 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.
  4. 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.

- I. Voluntary Dismissal. At any time after the Probable Cause Determination has been issued, the Executive Director may voluntarily dismiss all or part of an enforcement action for good cause by filing a Request for Voluntary Dismissal with the Commission. The Commission must consider the Request for Voluntary Dismissal at its next regularly scheduled Commission meeting in open session.

## Section 9. Hearing on the Merits

### A. General Rules and Procedures.

1. Commencement. The Probable Cause Determination will be the charging document for the hearing on the merits.
2. Public Hearing. The hearing on the merits will 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 parties' witnesses from being present during the hearing at which they are not providing testimony. 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. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.
3. 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 or caused the violation.
4. Rules of Evidence. All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act will be admissible in a hearing on the merits. The Executive Director and each respondent will 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.
5. Request for a Translator. Any party may request the presence of a City-approved translator for the Hearing on the Merits. The request must be made to the Executive Director in writing within 20 calendar days of the Hearing on the Merits, and the requesting party must immediately deliver a copy of the request to all of parties. The requesting party shall bear the cost of translation services.
6. Exhibits. Where both parties stipulate to the admissibility of an exhibit, the parties will so advise the Commission in advance of the hearing. For all other exhibits, each party must move to admit an exhibit at the hearing, and the other party will have an opportunity to object prior to the ruling on the admission.
7. Witnesses. Witnesses will be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners will have an opportunity to pose questions to the witness.
8. Oral Argument. At the hearing, the Executive Director and each respondent will be allowed oral argument. Each party will be allowed a minimum of 15 minutes to make their case, with three minutes for rebuttal. The Commission may extend any party's argument time.

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9. Oaths and Affirmations. The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
10. Extensions of Time and Continuances.
  - i. Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials under this section, 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 10 business days before the deadline to complete an act or produce materials. The Commission Chair or designee will have the discretion to consider untimely requests. The Commission Chair or designee will approve or deny the request within 5 business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.
  - ii. 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 10 business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing will have the discretion to consider untimely requests.
  - iii. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing will approve or deny the request within 5 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.
- B. Finding of Violation. If the Commission conducts the hearing on the merits, the Commission will determine, no later than 45 calendar days after the date the hearing is concluded, whether the respondent(s) has committed a violation of law.
  1. 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 will submit a report and recommendation to the Commission no later than 30 calendar days after the date the hearing is concluded. Thereafter, the Commission will determine, no later than 45 calendar days after the date the report and recommendation is delivered, whether the respondent(s) has committed a violation of law.
  2. The votes of at least three Commissioners are required to find a violation of law.
  3. A finding of a violation will be supported by findings of fact and conclusions of law and must be based exclusively on the record of the proceedings before the Commission. Each Commissioner who participates in the decision will 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.

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4. Within 10 days of the Commission's finding that a respondent(s) has retaliated against a City employee in violation of section 4.115 of the San Francisco Governmental Conduct Code, the Executive Director will notify the Clerk of the Board of Supervisors by sending her a copy of the Commission's final order.
- C. Administrative Orders and Penalties. 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:
1. Cease and desist the violation;
  2. File any reports, statements, or other documents or information required by law;
  3. 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 \$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. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 calendar days of the Commission's decision;
  4. Order forfeiture of campaign contributions that exceed the limits imposed by or that do not comply with the requirements of Section 1.114 of the Campaign Finance Reform Ordinance;
  5. Order forfeiture of campaign contributions prohibited by Section 1.126 of the Campaign Finance Reform Ordinance; and
  6. Any other relief the Commission deems appropriate and within its authority under Charter section C3.699-13.
- D. Penalty Factors. When deciding on an order and penalties, the Commission will consider all the relevant circumstances surrounding the case, including but not limited to:
1. The severity of the violation;
  2. The presence or absence of any intention to conceal, deceive, or mislead;
  3. Whether the violation was willful;
  4. Whether the violation was an isolated incident or part of a pattern;
  5. Whether the respondent has a prior record of violations of law;
  6. The degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and
  7. The respondent's ability to pay will be considered a mitigating factor if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years' worth of income tax returns and six months' worth of bank records or accounting statements, at a minimum.
- E. Finding of No Violation. If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation of law, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation of law, the Commission will publicly announce this fact. No further action will be taken by the Commission to review or investigate the allegations contained in the complaint. If a complainant desires further review, the complainant must follow the procedures set forth in Section



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1094.5(a) of the California Code of Civil Procedure governing judicial review of any final administrative order or decision.

- F. Default Orders. If the Executive Director followed the notice of hearing procedures identified in these Regulations, and the respondent(s) failed to appear before the Commission for a hearing on any matter, then the Commission may enter an order adverse to the interests of the respondent(s) who failed to appear, including but not limited to, a Default Order for injunctive relief and administrative penalties after a hearing on the merits. The Executive Director bears the burden of proving that the respondent(s) was properly served in accordance with these regulations. A default order is a final administrative order or decision. If a party desires further review, he must follow the procedures set forth in Section 1094.5(a) of the California Code of Civil Procedure governing judicial review of any final administrative order or decision.

### **Section 10. Enforcement of Referrals under the Sunshine Ordinance**

- A. Willful Violations by Elected Officials and Department Heads. As identified in Section 3(E) of these Regulations, complaints involving allegations of willful violations of the Sunshine Ordinance, the Brown Act, or the California Public Records Act by elected officials or department heads of the City and County of San Francisco will be handled by the Ethics Commission pursuant to Sections 1-9, 12, and 13.
- B. Referrals. If a City officer or employee fails to comply with an Order of Determination by the Sunshine Ordinance Task Force or Supervisor of Records, then those agencies may refer the matter to the Ethics Commission for enforcement pursuant to its authority under San Francisco Charter Section C3.699-13 and San Fran. Admin. Code § 67.35(d).
  - 1. Show Cause Hearing. After receipt of a referral, the Commission will schedule a Show Cause Hearing on the matter at the next regularly scheduled Commission meeting, provided that the parties are given at least 15 calendar days' notice of the Show Cause Hearing. The Show Cause Hearing will be open to the public.
    - i. Standard of Proof. The respondent(s) will have the burden to prove that he or she did not commit a violation of the Sunshine Ordinance, as documented by the Sunshine Ordinance Task Force's Order of Determination and referral or the referral from the Supervisor of Records.
    - ii. Standard of Review. Where appropriate, the Commission will defer to the findings of fact set forth in the Sunshine Ordinance Task Force's Order of Determination; however, any party may bring evidence to present or witnesses to testify on their behalf at a Show Cause Hearing. The Commission will review the Sunshine Ordinance Task Force's conclusions of law independently, or de novo.
    - iii. Hearing Procedures. Upon request, the complainant and respondent will each have 10 minutes to present their argument to the Commission during the Show Cause Hearing. Witnesses may speak for 3 minutes. The Commission, through the Chair, may extend any speaker's testimony beyond the timeframes identified here.

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- a. Participation of Referring Agency. The Sunshine Ordinance Task or Supervisor of Records may send an authorized representative to deliver comment or argument in favor of its referral. The representative will have 5 minutes to make their presentation before the commencement of the Show Cause Hearing. The representative will not be considered a party to the proceedings but rather a third-party friend of the Commission.
  - b. Additional Briefing Not Required. The parties may, but are not required to, submit written evidence and argument in support of their position.
  - c. Rules of Evidence Do Not Apply. Formal rules of evidence do not apply to hearings on referrals to enforce orders of the Sunshine Ordinance Task Force.
  - d. Newly Discovered Evidence. If any party presents evidence to the Commission during the Show Cause Hearing that was not presented to the Sunshine Ordinance Task Force during its proceedings, then the Commission may remand the referral to the Sunshine Ordinance Task Force for its further deliberation and review of the new evidence.
- iv. Deliberations and Findings. The Commission will deliberate in public. Public comment on the matter will be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act. The Commission's enforcement decision must be supported by findings of fact and conclusions of law and will be based on the entire record of the proceedings.
  - v. Available Remedies. Upon finding a violation of the Sunshine Ordinance, the Commission may impose any of the remedies set forth in San Francisco Charter Section C3-699.13, which is incorporated into these Regulations at Section 9(C). When assessing administrative penalties, the Commission will follow the penalty factors set forth in Section 9(D). Commission Staff may provide the Commission with a recommended penalty according to Section 9(D)'s penalty factors where appropriate.
    - a. Willful Misconduct. If the Commission determines that an elected official, department head, or managerial city employee willfully failed to discharge any duties imposed by the Sunshine Ordinance, Brown Act, or California Public Records Act, then the Commission may find that the City official committed official misconduct. *See* San. Fran. Admin. Code § 67.34. If the City employee or official is identified in Section 15.105 of the San Francisco Charter, then the Commission must refer its finding to the City official's appointing authority, as required by Section 15.105 of the San Francisco Charter.
- C. Final Decision. An enforcement decision made by the Commission pursuant to this Section is a final decision and represents the end of the administrative process. No further action will be taken by the Commission to review or investigate the allegations contained in the complaint. If a complainant desires further review, the complainant must follow the procedures set forth in Section 1094.5(a) of the California Code of Civil Procedure governing judicial review of any final administrative order or decision.

## Section 11. Late Filing Fees

- A. Weekend Filing Deadlines. Except as identified in subsection (B), filings that are due to the Commission on a Saturday, Sunday, or City-recognized holiday but filed no later than the next business day will not be assessed late filing fees. Any late filing fees that would have accrued on a weekend or holiday deadline will be waived pursuant to applicable authority under the relevant ordinance as a matter of enforcement discretion. The Ethics Commission's electronic filing system, will recognize the next business day as the filing deadline where applicable.
1. Late filing fees will not be waived for Late Contribution Reports (Form 497) or Late Independent Expenditure Reports (496) due the weekend before an election.
  2. All electronic filings must be submitted to the Commission's electronic filing system by 11:59 p.m. Pacific Time on the deadline. All paper filings must be received in paper format or by facsimile by 5:00 p.m. on the deadline.
  3. City-recognized holidays include: New Year's Day, Dr. Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the Day After, Christmas Day.
- B. Waiver Requests. Persons owing late filing fees may respond to the Commission's initial, non-specific written notice by requesting a reduction or waiver of the fees in whole or in part. The request must be in writing, explain why the Commission should consider the late filer's filing non-willful, relate why enforcement of the late filing fee provision would not further enforcement of the applicable law, identify good cause to justify the requested reduction or waiver in late filing fees, provide adequate documentation to demonstrate the facts underlying the request for good cause, and be signed by the responsible party.
1. Deadline. The waiver request must be received by the Commission within 14 calendar days of the date on the Commission's initial non-specific written notice. The Commission will presumptively deny requests for reduction or waiver of late filing fees received past this deadline.
  2. Good Cause. The following factors will presumptively qualify as "good cause" and are therefore grounds for a waiver:
    - i. Incapacitation for Medical Reasons. Adequate documentation consists of a signed statement by a board-certified physician, psychologist, psychotherapist, or chiropractor identifying the filer, the nature of the filer's incapacitation, and the date(s) thereof. The statement must be on the medical provider's letterhead.
    - ii. Death. Adequate documentation consists of a copy of the filer's death certificate, published death notice, or obituary.
    - iii. Act of God. The loss or unavailability of records due to a fire, flood, theft, earthquake or similar reason. Adequate documentation will consist of a police officer, fire or insurance report indicating the date of the occurrence and the extent of the loss or damage.
    - iv. Other Unique Reasons. These include compelling reasons beyond the filer's control.

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3. The following do not constitute “good cause” and therefore are not grounds for a waiver: first-time filer, not receiving notice of filing requirements, not being available to sign forms, not sending filing to proper official, not knowing where to get forms, not having complete information by filing deadline, not picking up mail, secretarial error.
- C. Conversion to Enforcement Action. The Executive Director reserves the right to convert matters involving candidates and committees with late-filed reports that have generated more than \$2,000 in late filing fees to enforcement actions to be handled pursuant to these Regulations.

### Section 12. Stipulated Orders

- A. Stipulated Orders. Settlement saves time and resources for both the Commission and the respondent(s). At any time, the Executive Director may enter negotiations with a respondent(s) to resolve the factual and legal allegations in a complaint by way of a stipulated order. The stipulated order will 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. The stipulated order will also explicitly state that:
1. The proposed stipulated order is subject to approval by the Commission;
  2. The respondent knowingly and voluntarily waives 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 cooperating with or assisting any other government agency about 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 will 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 will be disqualified because of prior consideration of the stipulation.
- B. Non-Admissible. The details and supporting documentation for unsuccessful settlement negotiations are non-admissible in the subsequent administrative enforcement action.
- C. Installment Plans. As a rule, the Executive Director will not accept offers to pay assessed administrative penalties in installments without proof of inability to pay as set forth in Section 9(E). Upon proof of inability to pay, the Executive Director may consider accepting an offer to pay assessed penalties in installments, but installment agreements must require full payment before the expiration of 6 months.
- D. Assessing Administrative Penalties. When assessing administrative penalties for the purposes of settlement negotiation, Staff will follow the rules set forth in Section 9(E) of these regulations.
- E. Consent Calendar. Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director will inform the Commission of the proposed stipulation. Thereafter, any member of the Commission may request that the stipulated order be reviewed in public session by the full panel of the Commission during its next meeting. Requests for consideration before the full panel of the Commission must be received by the Executive

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Director by 12:00 p.m. on the fifth calendar day prior to the Commission meeting. If no member requests review in public session by the full panel of the Commission, then the stipulated order will be placed on the public agenda for the next Commission meeting in a section titled "Consent Calendar." Members of the public will be permitted to comment on any stipulated order listed on the Consent Calendar.

- F. Commission Approval Required. Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order will have the full force of a final order of the Commission.
- G. Retaliation Notification. Within 10 days of the Commission's execution of a stipulated order finding that a respondent(s) has retaliated against a City employee in violation of section 4.115 of the San Francisco Governmental Conduct Code, the Executive Director will notify the Clerk of the Board of Supervisors by sending her a copy of the Commission's final order.

### Section 13. Statute of Limitations

- A. Statute of Limitations. Unless otherwise stated in City 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 Director of Enforcement delivers the Probable Cause Report. 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 the alleged violation of law.
- B. Tolling the Statute of Limitations. The four-year limitations period is tolled:
  - 1. If the respondent(s) engaged in concealment or deceit, for the period of concealment or deceit. Concealment or deceit may occur as part of an alleged violation, such as with money laundering or the falsification of records, or may occur as conduct following a complaint.
  - 2. If the respondent(s) fails to comply with a subpoena or *subpoena duces tecum*, from the date the compliance was originally required until the date compliance is achieved.

### Section 14. 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 will not be affected thereby.