



ETHICS COMMISSION

REGULATIONS FOR THE PROVISION OF OPINIONS AND ADVICE

Effective Date: TBD

Regulation 699-12-1: Definitions

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

- A. "City" means the City and County of San Francisco.
- B. "Commission" means the Ethics Commission, a body of five appointed members.
- C. "Day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business, unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.
- D. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.
- E. "Good Cause" means providing adequate or substantial grounds or reason to take a certain action, or to fail to take an action prescribed by law.
- F. "Requestor" means a person requesting an opinion or advice of the Ethics Commission or the requestor's authorized representative.
- G. "Staff" means the employees of the Ethics Commission.

Regulation 699-12(a)-1: Requesting an Opinion

- (A) A request for an opinion must be submitted to the Executive Director in writing, either hard copy or electronically, and must clearly state all of the following to be a complete and proper request:
 - (i) That an opinion of the Commission is being requested.

- (ii) The name, title or position, and email address, mailing address, or telephone number of the person or persons by or for whom the opinion is being requested.
 - (iii) If the requestor is an authorized representative, a specific statement that such authorization has been made.
 - (iv) All material facts, stated as clearly, concisely, and completely as possible.
 - (v) The question or questions based on the material facts.
- (B) A request for an opinion is not a complete and proper request if it does any of the following:
- (i) Does not pertain to the requestor's duties under provisions of the Charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics.
 - (ii) Is not made in writing.
 - (iii) Does not clearly state that an opinion of the Commission is being requested.
 - (iv) Asks a general question of interpretation or policy.
 - (v) Depends on facts that are not provided by the requestor.
 - (vi) Asks about a hypothetical situation.
 - (vii) Asks about the duties or activities of someone other than the requestor who has not authorized such request.
 - (viii) Pertains to past duties or activities.
 - (ix) Omits factual information relevant to the duty or activity that is the subject of the request.
 - (x) Is substantially similar to a previously adopted opinion.
 - (xi) Is expressly addressed in the Charter, an ordinance, or Commission regulations.
 - (xii) Is outside the Commission's jurisdiction.
- (C) The requestor may submit supporting materials, including memoranda, briefs, arguments, or other relevant material regarding the request for an opinion, provided that the supporting material is provided no later than twenty days prior to the meeting at which the Commission will consider the request.
- (D) A requestor may withdraw a request for an opinion at any time prior to the Commission considering the proposed opinion. The withdrawal must be submitted in writing to the Executive Director.

Regulation 699-12(a)-2: Process for Reviewing Requests and Considering and Adopting Opinions.

- (A) Only requests for an opinion that are complete and proper will be accepted for purposes of issuing an opinion. Upon receiving a request for an opinion, the Executive Director or his or her designee must determine whether the request constitutes a complete and proper request. The determination shall be transmitted to the requestor as soon as practicable after the determination is made. If the request does not constitute a complete and proper request, the Executive Director or Staff shall notify the requestor of the specific deficiencies in the request.

- (B) Following the determination that an opinion request is complete and proper pursuant to Regulation 699-12(a)-1, the Commission shall consider the draft opinion in open session at its next regularly scheduled meeting so long as that meeting occurs no less than forty-five days after that determination. If good cause exists to extend the deadline for considering the opinion, the Executive Director will so notify the Commission.
- (C) Upon receipt of a complete and proper request, the Executive Director or other Staff shall prepare a draft opinion that addresses the questions posed in the request. The Commission shall review the draft opinion and may adopt any recommendations of Staff. The Commission may adopt an opinion upon a majority vote of its members. If the Commission fails to adopt a draft opinion, the Commission must do one of the following:
 - (i) Deny the request for an opinion and state the reasons for the denial,
 - (ii) Request that the Executive Director amend the draft opinion in accordance with the direction of the Commission and schedule the revised opinion to be considered at the Commission's next regularly scheduled meeting.
- (D) If the Commission adopts an opinion, the Executive Director shall, within three days of adoption, transmit the opinion to the City Attorney and District Attorney, provided that the Executive Director can extend this time for good cause.
- (E) As set forth in the Charter, within ten days of receipt of the proposed opinion, the City Attorney and District Attorney shall advise the Commission whether they concur in the proposed opinion. If either the City Attorney or District Attorney does not concur with the proposed opinion, he or she shall inform the Commission in writing concerning the basis for disagreement.

Regulation 699-12(a)-3: Effect of Opinions

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, the respondent was the subject of an Opinion adopted by the Commission and concurred in by both the District Attorney and City Attorney in which the conduct in question was deemed lawful and all facts pertinent to the opinion were truthfully disclosed by the respondent.

Regulation 699-12(a)-4: Rescinding Opinions.

An opinion may be rescinded by the Commission at a public meeting of the Commission by a majority vote of its members. The Commission must state for the public record the reasons for rescinding the opinion.

Regulation 699-12(b)-1: Requesting Informal Advice.

- (A) A request for informal advice must clearly state all of the following in order to be a complete and proper request:
- (i) That informal advice is being requested.
 - (ii) The name, title or position, email address, and mailing address or telephone number of the person or persons by or for whom the advice was requested. If the advice is requested by the authorized representative of several similarly situated persons, the identifying and contact information of at least one represented person must be included.
 - (iii) If the requestor is an authorized representative, a specific statement that such authorization has been made.
 - (iv) All material facts, stated as clearly, concisely, and completely as possible.
 - (v) The question or questions based on the material facts.
- (B) A request for informal advice is not a complete and proper request if it does any of the following:
- (i) Does not pertain to the requestor's duties under provisions of the Charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics.
 - (ii) Asks a general question of interpretation or policy.
 - (iii) Depends on facts that are not provided by the requestor.
 - (iv) Asks about a hypothetical situation that does not pertain to the requestor's actual conduct or planned future conduct.
 - (v) Asks about the duties or activities of someone other than the requestor who has not authorized such request.
 - (vi) Pertains to past duties or activities.
 - (vii) Omits factual information relevant to the duty or activity that is the subject of the request.
 - (viii) Is substantially similar to a previously adopted opinion or published informal advice.
 - (ix) Is expressly addressed in the Charter, an ordinance, or Commission regulations.
 - (x) Is outside the Commission's jurisdiction.
 - (xi) Is not made in writing, if the requestor desires the advice to be delivered in writing.

Regulation 699-12(a)-2: Reviewing Requests and Issuing Informal Advice.

- (A) Only requests for informal advice that are complete and proper will be accepted for purposes of issuing informal advice. Upon receiving a request, Staff must determine whether it constitutes a complete and proper request for informal advice. Staff's determination shall be transmitted to a requestor as soon as practicable after the determination is made. If the request does not constitute a complete and proper request, Staff shall notify the requestor of the specific deficiencies in the request.
- (B) Staff must provide the advice to the requestor no later than 30 days after a complete and proper request for informal advice is received. Staff may extend the response deadline if there is good cause for the delay.

Regulation 699-12(a)-3: Effect of Informal Advice

- (A) If a person who is the subject of informal advice issued by Staff conforms their conduct with the facts and recommendations stated therein, the informal advice may be relevant in a subsequent enforcement proceeding before the Commission as a mitigating circumstance.

- (B) Informal advice does not constitute a Commission opinion and is not a formal declaration of Commission policy.