



San Francisco Ethics Commission

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Date: October 7, 2022

To: Members of the Ethics Commission

From: Michael Canning, Acting Senior Policy Analyst

Re: **AGENDA ITEM 9 – Presentation and discussion of process to develop behested payments regulations.**

Summary and Action Requested

This memo provides an overview of the Commission's authority to issue regulations and the process by which those regulations are developed, along with a review of the regulation development process regarding the City's behested payment rules that is currently underway. No action is required at this time, as this item is for informational and discussion purposes only.

Legal Foundation and Purpose of Commission Regulations

The [Charter](#) gives the Ethics Commission the authority to “adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of...[the] Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics.”¹ The Commission also has the authority to adopt rules and regulations regarding open meetings and public records.²

Additionally, the City's [Campaign and Governmental Conduct Code](#) further direct the Ethics Commission to issue regulations regarding the implementation of various sections. For example, the [behested payments legislation approved by the Commission](#) on August 12 includes language directing the Ethics Commission to adopt rules, regulations, and guidelines on the implementation of the Chapter prior to January of 2023.

The Commission's regulations are an opportunity for the Commission to clarify City ethics laws, refine Commission interpretations, and strengthen compliance by providing additional details, definitions, interpretations, and illustrations of how City ethics laws function in practice to promote improved understanding. The regulation development process is also something the Commission can do largely independently, making it a responsive tool for clarifying City rules and troubleshooting issues identified as new rules are implemented.

¹ San Francisco Charter § [15.102](#).

² Id.

Overview of Regulation Development Process

The Commission's regulation development process can be viewed as progressing over four phases. Issues are identified, regulations are developed, approved by the Commission, and then implemented. This is an iterative process and phases of this process may be repeated or returned to as issues and approaches to address them evolve. This process is outlined below and illustrated in **Attachment 1**.

1. Identify Issues to Address: Aspects of City ethics rules that could be clarified through regulation can be identified through various sources, including: questions asked by stakeholders, advice given in response to questions, one-on-one meetings with stakeholders, interested persons meetings, and public comment at Commission meetings.

2. Develop Regulations: This phase involves research and analysis by Staff to develop regulations that will address the known concerns, while ensuring the regulations are consistent with City law. This phase can involve work with the City Attorney's office, other City departments, non-City groups with expertise in ethics laws, and other stakeholders. This phase can also include jurisdictional comparisons to identify how other cities may have addressed similar situations. As part of this process, draft regulations or concepts may be discussed during Commission meetings so that Commissioners and the public can weigh in prior to specific language being proposed or draft regulations being agenized for potential approval.

3. Approve Regulations: Prior to adopting, amending, or repealing a regulation, a public hearing must be held and notice of that public hearing must be posted 10 days prior to that hearing.³ For the Commission, these public hearings are typically part of the Commission's regular meetings. The meetings provide additional opportunity for Commissioners and the public to weigh in on the regulations, ask questions, and propose revisions. If the Commission votes to approve the regulations, they must be sent to the Board of Supervisors within 24 hours of adoption. From that point, the regulations need to sit with the Board for 60 days, during which time the Board may, by a two-thirds vote, veto the regulations. If the Board does not veto the regulations, they will become effective after the 60-day period has concluded.⁴ If the Commission does not vote to approve the regulations at the meeting or the Board vetoes the regulations, the process would revert back to the second phase for additional analysis and refinement.

4. Implementation and Education: Following the approval of new or amended regulations by the Commission, Commission Staff inform City officials and other stakeholders of the changes. This work includes updating the Commission's training and compliance materials, so that once the regulations becoming effective, accurate information is available. This is also the time when Staff would be working to prepare those impacted for the upcoming regulatory changes, through public notices, direct communications with stakeholders, and trainings.

³ San Francisco Charter § [4.104](#)

⁴ San Francisco Charter § [15.102](#).

Development of Behested Payments Regulations

The Commission's current work to develop regulations regarding the City's behested payment rules offers an example of this process in practice. In January 2022, [new rules](#) went into effect to prohibit City officials and designated employees from soliciting behested from an "interested party."

Since the rules went into effect in January, Staff have been receiving questions, offering informal advice, and meeting with various stakeholders regarding the City's behested payment rules. Concerns regarding these rules have also been raised during Commission meetings. Many of the concerns raised regard a lack of clarity with the rules. For example, the term "interested party" is currently [defined in the Code](#), however stakeholders have requested additional clarification regarding this term and how it is used. The definition of "interested party" will be further changed through [the legislation that was approved on August 12th by the Ethics Commission](#), which has since been approved by the Board of Supervisors and was signed by the Mayor on October 6. These amendments would change the definition of "interested party," among other aspects of the City's behested payment rules.

Staff recently held two interested persons meetings regarding behested payment regulations, on September 22 and 27. See the meeting notice in **Attachment 2**, for more information. These meetings, combined with the feedback already received, provide the Commission a solid understanding what aspects of the law would benefit from clarification through Commission regulations.

Following last month's interested persons meetings and in anticipation of the forthcoming legislative changes, Staff is currently developing regulations that would:

- Further define and illustrate "interested party" and the different prongs that can make someone an interested party and for which City officers and designated employees.
- Further define and illustrate when a payment has been solicited and made "at the behest of" a City officer or designated employee.
- Clarify how changing the definition "payment" so that it excludes payments valued at less than \$1,000 impacts the prohibition on soliciting behested payments.
- Clarify how the public appeals exception can be used.
- Clarify how the exception for contracted benefits can be used.
- Clarify what is meant by an indirect solicitation.
- Allow City departments to apply for competitively awarded grants from, and with, interested parties in certain circumstances.
- Allow City departments to negotiate the terms of, perform pursuant to, amend, or expand, a grant agreement between an interested party and the City, if initiated by the interested party.

- Allow City departments to accept programmatic gifts to the City, if: 1) the offer is initiated by the interested party, 2) the gift does not confer a personal benefit on any City officials, and 3) is fully and properly disclosed.

Staff have begun working on these regulations and anticipate being able to notice official draft regulations in time for consideration by the Commission at the November 18 regular meeting. If approved by the Commission in November, the regulations would become effective in mid-January, following 60 days with the Board of Supervisors and assuming the Board does not veto the regulations. The timeline in **Attachment 3** illustrates the process outlined above, with the major milestones identified.

Recommended Next Steps

No action is required at this time, as this item is for informational and discussion purposes only.

Attachments:

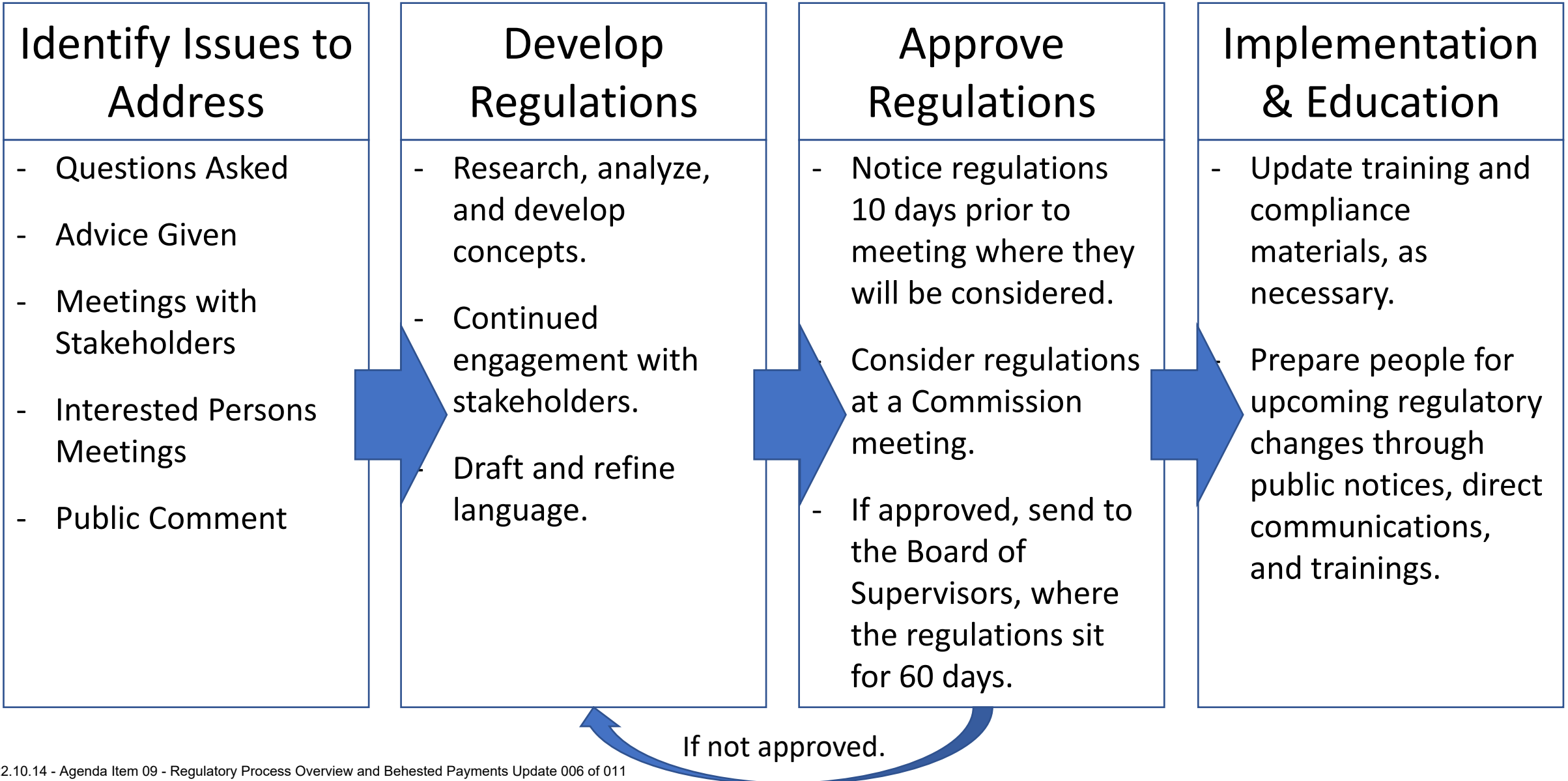
Attachment 1: Ethics Commission Regulation Development Process Overview

Attachment 2: Interested Persons Meetings Notice

Attachment 3: Timeline for Behested Payment Regulations

Attachment 1

Overview: Ethics Commission Regulation Development Process



Attachment 2

Announcement of Interested Persons Meetings to Discuss Behested Payment Regulations

Thursday, September 22, 2022 – 3:00 PM to 4:30 PM

And

Tuesday, September 27, 2022 – 11:30 AM to 1:00 PM

These meetings will be conducted remotely using an online meeting platform. If you would like to attend, please RSVP to michael.a.canning@sfgov.org and you will be provided with a link to the meeting shortly before the date of the meeting.

Please join staff from the Policy Division of the San Francisco Ethics Commission to share your thoughts on forthcoming regulations regarding the City’s behested payment rules. In January, a [new law went into effect](#) that prohibits City officials and designated employees from soliciting behested payments from any person who is an “interested party” for them as defined in local law. In August, the [Ethics Commission approved legislation](#) that would make various changes to this law. The recently approved changes are currently being considered by the Board of Supervisors.

The Ethics Commission is responsible for creating regulations that are consistent with and related to carrying out the purposes and provisions of City ethics laws. The Commission’s regulations are an opportunity for the Commission to clarify and interpret City ethics laws, and ease compliance by providing additional details, definitions, interpretations, and illustrations of how City ethics laws function in practice.

As part of this regulation development process, we invite members of the public to share their thoughts about the City’s behested laws and how they should be clarified and illustrated. The two meetings will each have the same agenda, and participants are welcome to join one or both meetings.

Aspects of San Francisco’s behested payment laws and potential regulations that will be discussed at these meetings may include:

- **Defining what it means to ‘solicit’ a behested payment:** City law ([SEC. 3.620\(a\)](#)) prohibits certain City officials from soliciting behested payments from interested parties, however the term ‘solicit’ is not explicitly defined in the Code. How should ‘solicit’ be defined?
 - Is it a solicitation if an interested party approaches a City official to offer a gift to the City and the official coordinates the acceptance of the gift?

- Can a City department apply for a competitive grant from an interested party or should that be considered a solicitation?
- Should negotiating, entering into, or performing pursuant to grant agreement or contract, between the City and an interested party, be considered a solicitation?
- **Clarifying and illustrating what an ‘interested party’ is:** The current definition of ‘interested party’ in the Code would be changed if the Board approves the [legislation currently under consideration](#). Either based on current law, or the proposed legislation, what aspects of this definition need to be clarified? What questions exist about when someone is or is not an interested party?
- **Clarifying and illustrating when a payment is made ‘at the behest of’ a City official:** City law defines ‘at the behest of’ to mean “under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of” ([SEC. 3.610](#)). What aspects of this definition need to be clarified?
- **Specifying how leases should be valued:** City contractors are interested parties for City officials. City contractors are persons who contract with, or are seeking to contract with, a City department when the total anticipated or actual value of the contract is \$100,000 or more within a fiscal year ([SEC. 1.126](#)). In situations where the City is leasing out real property, how should the value of that lease be determined?
- **Clarifying and illustrating when an ‘indirect solicitation’ is made:** City law ([SEC. 3.620\(b\)](#)) prohibits City officials from indirectly soliciting behested payments. What aspects of this prohibition need to be clarified?
- **Clarifying and illustrating how the ‘public appeals’ exception functions:** City law exempts solicitations made through a public appeal as defined in the Code ([SEC. 3.610](#)). What aspects of this exception need to be clarified?
- **Clarifying how the recently proposed exceptions would function:** The [legislation recently approved by the Commission](#) that is currently being considered by the Board of Supervisors would create several new exceptions. What questions exist regarding these exceptions as written? What aspects of these exceptions need further clarification?

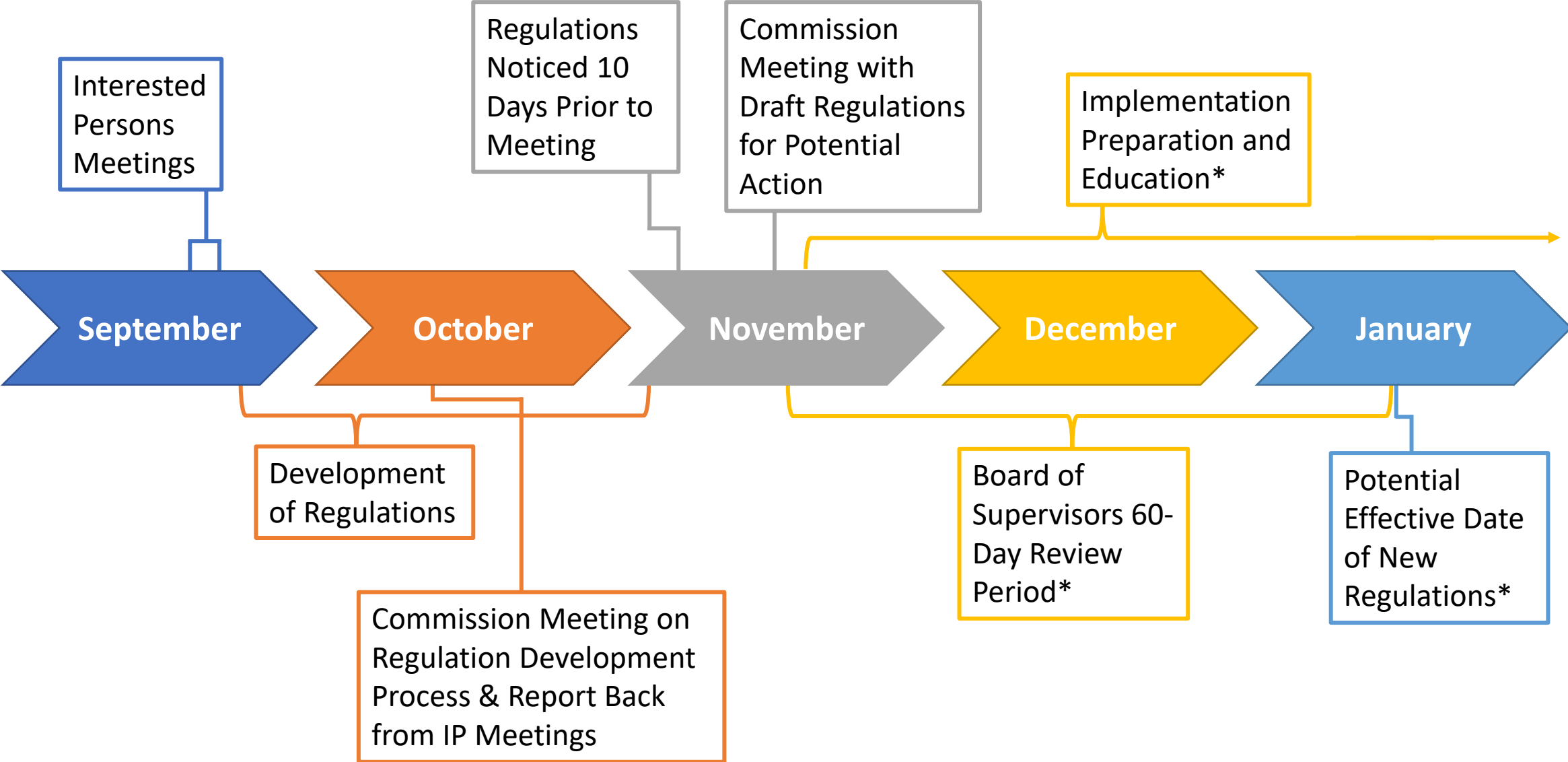
Staff also welcomes written comments, which can be sent via email to michael.a.canning@sfgov.org, or via U.S. mail to San Francisco Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102.

The meetings will be conducted remotely via an online meeting platform. The week of the meetings, Staff will distribute links to the meetings via email to all attendees who RSVP.

For questions about the upcoming interested persons meetings, or to RSVP, please contact Michael Canning at michael.a.canning@sfgov.org. We welcome your input and hope to see you at one or both of our upcoming online meetings.

Attachment 3

Timeline for Development of Behested Payment Regulations



*If regulations are approved by the Commission in November.