



San Francisco Ethics Commission

25 Van Ness Avenue, STE 220
San Francisco, CA 94102-6053
ethics.commission@sfgov.org
415-252-3100 | sfethics.org

Date: January 13, 2025
To: Members of the Ethics Commission
From: Zachary D'Amico, Senior Investigator & Legal Analyst
Subject: Attachment to **Agenda Item 10 – Review and Revision of Enforcement Regulations**

Summary

This memorandum provides notice of an effort to review and revise the Ethics Commission's Enforcement Regulations. This memo provides an overview of the gaps in the current regulations and the process we plan to follow to address those gaps. Staff do not recommend any action at this time.

Background

The Commission adopted [Enforcement Regulations](#) on July 5, 1997. These regulations have been amended as a matter of practice, with 11 such efforts in almost 28 years, the most recent coming in 2018.

In recent years, Commission staff have taken note of provisions that were vague, confusing, or non-existent in ways that impacted their ability to investigate potential violations and enforce the law. In particular, the Commission has expanded its ability and willingness to pursue cases through to the Probable Cause, Pre-Hearing, and Hearing phases, invoking sections of the regulations that had previously gone under-utilized. As a result of this shift, staff produced the [Enforcement Hearing Guidebook](#) in 2023. During this project, staff informed the Commission that it would look to update the Enforcement Regulations after more experience.

Issues Identified

Commission staff have identified issues with the current Regulations that impact the Commission's operations.

First, in certain ways, the Regulations have not been updated to reflect current practices. For example, the Enforcement Division uses confidential warning letters to resolve certain cases in lieu of an administrative penalty based on a consideration of factors provided within the Commission's Streamlined Administrative Resolution Program ("SARP"). The current regulations are silent on the topic of warning letters. Thus, the Division currently uses this Confidential warning letter provision within SARP as guidance to resolve matters that fall outside of SARP, when a violation may have been committed, but the Executive Director determines that enforcement action is not in the interest of justice.

Second, the Regulations contain ambiguities that reduce clarity for respondents and respondents' counsel, thereby inhibiting staff's ability to move forward efficiently. For example, the Regulations are

ambiguous on the appointment and functioning of a pre-hearing officer; the specific mechanics for running a hearing; the process for dealing with witnesses, evidence, and objections; and the timing and substance of a Commission decision on the merits after a hearing. Staff encountered many obstacles in the Commission's first hearing in several decades as a result of these ambiguities.

Third, the Regulations contain certain contradictions across provisions. For example, the purported timeline for noticing a hearing on the merits conflicts with the suggested timeline for hearing briefs.

To ensure a clearer, more consistent, fair and transparent enforcement and administrative process, it is imperative that the Commission conduct this review and update the Regulations. Doing so will serve the interest of both the Commission and the regulated community to address the gaps, ambiguities, and inconsistencies described above.

Review and Revision

Staff have begun the process of reviewing these issues and conducting research into the best ways to address them. Staff have started meeting with other jurisdictions to learn how they address these issues.

This agenda item serves as the public announcement of the formal review and amendment process. After this meeting, staff will solicit ideas and feedback on the project through a round of Interested Person ("IP") Meetings. Commissioners are also encouraged to share ideas and feedback. Staff will continue to conduct additional research on other jurisdictions, best practices, and state law that may be applicable. Staff will then incorporate research and ideas into draft regulations, which we will bring to the Commission at a monthly meeting. After receiving Commission reaction and working with the City Attorney to ensure we meet any meet-and-confer requirements, if any, we will incorporate feedback. We hope to be ready with the final proposed revisions by the end of this fiscal year.