



City & County of San Francisco  
**Ethics Commission**



**OVERVIEW OF THE PROBABLE CAUSE &  
ADMINISTRATIVE HEARING PROCESS**

# Goal

To review the prosecution phase of the enforcement process to better understand:

- **The process** of handling a case that proceeds through an Administrative Hearing.
- **The role and obligations of each party** involved throughout the process.
- **The role and duty of the Commission** as the ultimate decision maker.



# Overview of the Enforcement Process



## Complaint/ Staff Initiation

- Preliminary Review
- Open Investigation if reason to believe violation occurred

## Investigation

- Violations Identified



## Stipulated Settlement Agreement

## Administrative Hearing Process

- Probable Cause Proceedings
- Pre-Hearing Matters
- Hearing on the Merits
- Commission's Findings



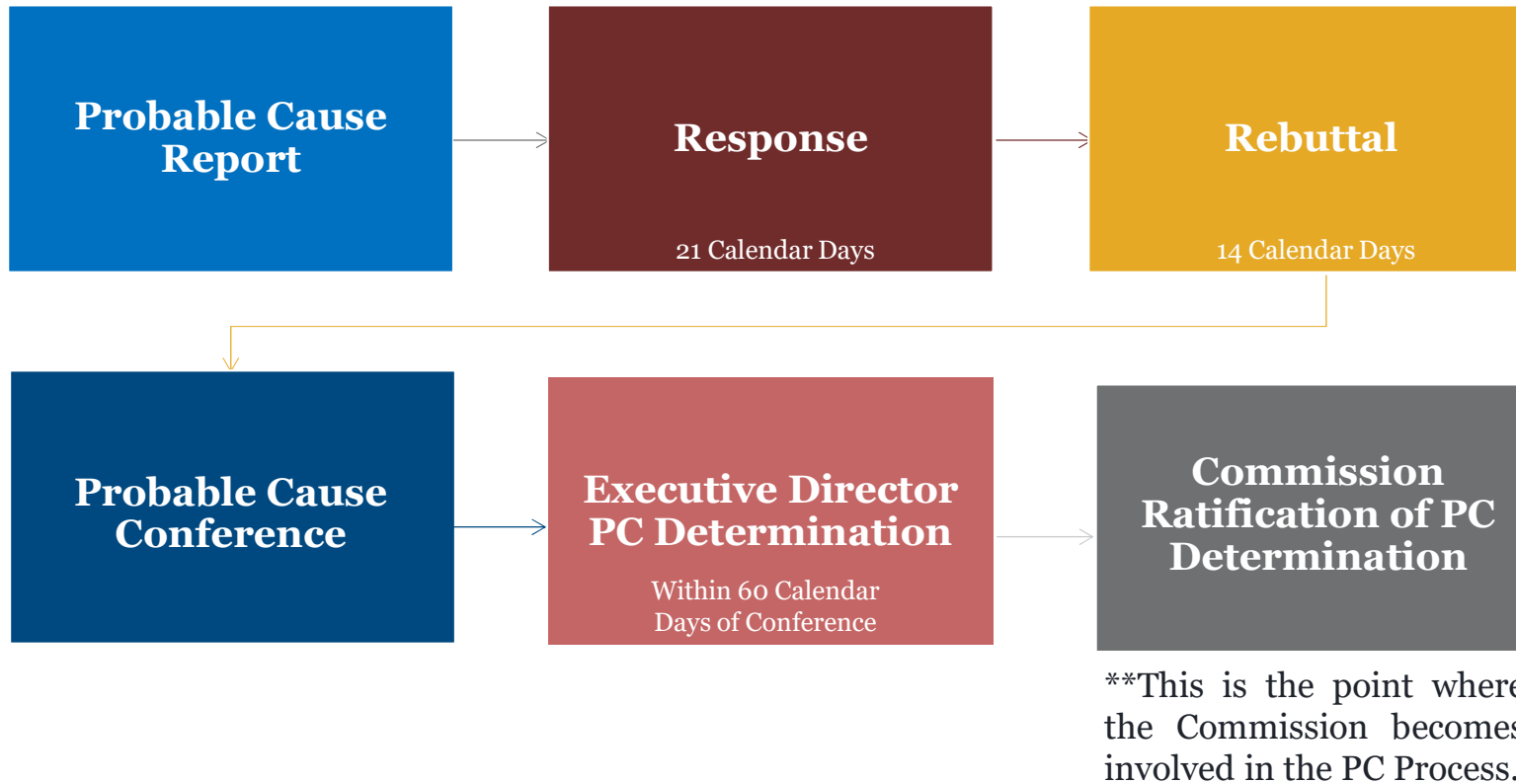


A photograph of an ornate doorway with intricate gold-colored metalwork. A blue mat with the words 'CITY HALL' in gold lettering is placed on the floor in front of the doorway. A semi-transparent grey box is overlaid on the left side of the image, containing the number '01'. A semi-transparent white box is overlaid in the center of the doorway, containing the text 'Probable Cause Proceedings'.

01

# Probable Cause Proceedings

# 01 - Probable Cause Proceedings





# 01 - Probable Cause Proceedings



## Director of Enforcement

- Prepares and delivers **Probable Cause Report** to Executive Director and each Respondent
- Identifies violations, states relevant law, summarizes evidence obtained
- Notifies Respondent of Right to Respond and to request a Probable Cause Conference

## Respondent

- May submit a **Response** with evidence, legal arguments, and mitigating information
- Due 21 calendar days following service of Probable Cause Report
- Delivered to Executive Director, Director of Enforcement, each Respondent

## Director of Enforcement

- May submit a Rebuttal
- Due 14 calendar days after Response was filed
- Delivered to the Executive Director and each Respondent



# 01 - Probable Cause Proceedings



- Within 21 calendar days of PC Report
- Conducted by Executive Director
- Informal Proceeding
- Closed session
- Respondents may retain counsel or another representative
- Parties may present witness testimony upon 7-day request

- Finding of **Probable Cause** OR **No Probable Cause**
- Within 60 calendar days of PC Conference
- Summarizes all evidence and arguments presented, and Executive Director's assessment of the evidence
- Executive Director notifies Commission of Determination

- Ratification without Review OR
- Request for Review: ratification by vote of 3 members
- Submit request within 5 calendar days of notification
- Closed session





A close-up photograph of a highly ornate brass door handle. The handle is intricately carved with floral and scrollwork patterns. Below the handle, a blue mat with the words 'CITY HALL' in gold lettering is visible. The background shows the dark wood of the door frame.

02

## **Pre-Hearing Matters**



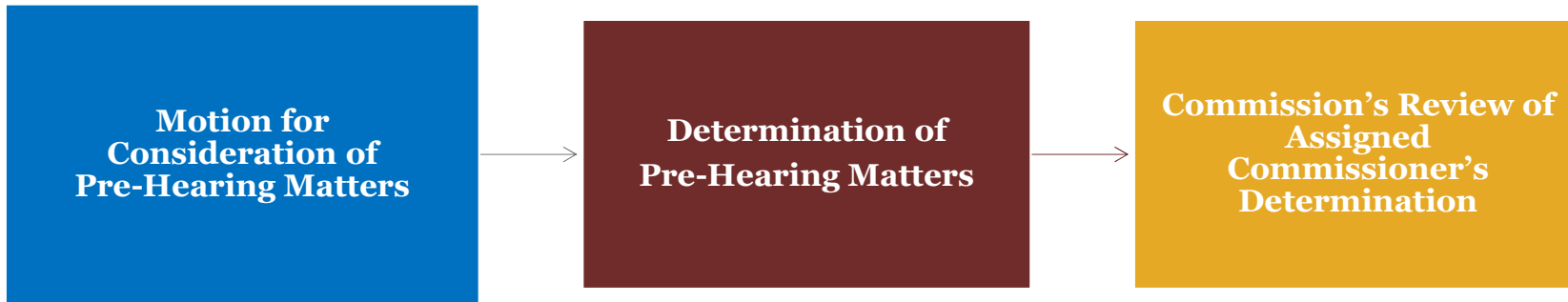
## 02 – Pre-Hearing Matters

- **Pre-hearing matters include** procedural matters, disqualification of Commissioners and request for dismissals, amongst others.
- **Who decides:** The Commission must decide on who will preside over pre-hearing matters. However, in making that determination, the Commission may:
  - Assign an individual member of the Commission as Assigned Commissioner (as adopted by this Commission *In the Matter of Paul Allen Taylor*), **or**
  - Appoint any licensed attorney to preside over pre-hearing matters, **or**
  - The full Commission presides over pre-hearing matters.



# 02 – Pre-Hearing Matters

## Process for Resolving Pre-Hearing Matters





# 02 – Pre-Hearing Matters

## Motion for Consideration of Pre-Hearing Matters

### Deadline for Submission of Pre-Hearing Matter Motions

(1) **Timeline as adopted by this Commission** *In the Matter of Paul Allen Taylor*

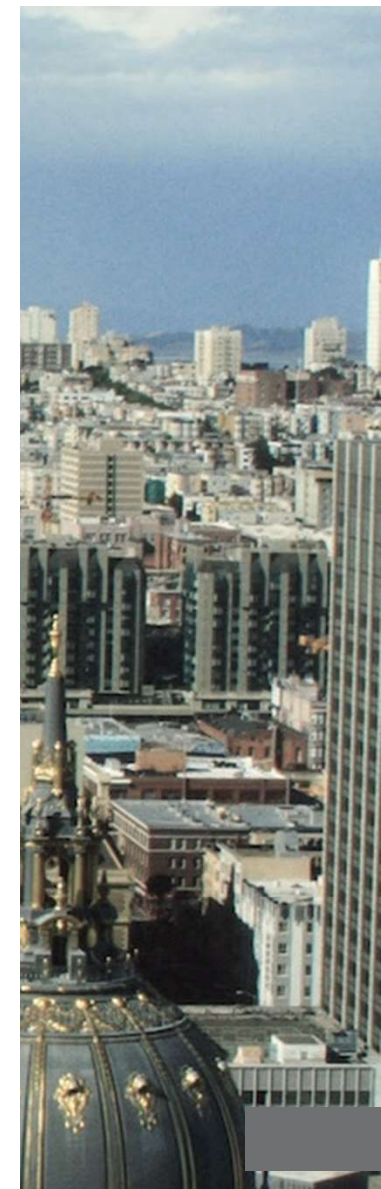
- **Request** due **30 calendar days** after the Commission meeting at which an Assigned Commissioner is appointed
- **Response** due **15 calendar days** after Request is submitted
- **Reply** due **10 calendar days** after the Response is submitted, **or**

(2) Timeline under the Enforcement Regulations

- Request due 15 calendar days prior to the hearing on the merits
- Response due 10 calendar days prior to the hearing on the merits
- Reply due 7 calendar days prior to the hearing on the merits

### Process for Submission of Motions

By email (as adopted by this Commission *In the Matter of Paul Allen Taylor*) **or** by mail.



## 02 – Pre-Hearing Matters

### Determination of Pre-Hearing Matters

- The Assigned Commissioner may provide:
  - (1) **Written determination** delivered to the full Commission and all parties (as adopted by this Commission *In the Matter of Paul Allen Taylor*), **or**
  - (2) Verbal determination delivered to the full Commission and all parties at the next regularly scheduled meeting.





# 02 – Pre-Hearing Matters

## Commission's Review of Assigned Commissioner's Determination

- The Commission should establish a process for reviewing any requests submitted by parties.
  - (1) **Adopt the PC ratification review process** in section 7(D)(6) of the Enforcement Regulations,
    - Request for review within **5 calendar days** following the Assigned Commissioner's determination.
    - The review will take place at the next regularly scheduled meeting.
    - Parties will be permitted to provide oral arguments, but no additional written arguments will be allowed.
    - The full Commission will decide the issue by a majority vote.
    - The matter will then proceed to a full hearing on the merits, **or**
  - (2) Set forth a different review process that allows the Commission to hear and rule on the issues raised by the requesting party, **or**
  - (3) Review any disputed pre-hearing matters when the full Commission takes up the case at hearing on the merits.



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03

## Hearing on the Merits



## 03 – Hearing on the Merits

- **Hearing on the Merits:** A formal proceeding to resolve whether or not a respondent has violated the laws administered by the Commission.
- **Open to the Public:** Held in public within a regularly scheduled meeting or in special session(s).
- **Notice:** Executive Director will schedule the hearing and must deliver Notice with the date, time, and location to each party at least 30 calendar days prior to the hearing.
- **Hearing Briefs:** outlines any legal arguments, evidence, witnesses to be presented at hearing.
  - Executive Director must submit a hearing brief no later than **30 calendar days** prior to hearing on the merits.
  - Respondent may submit one no later than 15 calendar days prior to hearing.
  - Replies are due **7 calendar days** prior to hearing.



## 03 – Hearing on the Merits

- **Who decides:** The Commission may delegate authority to preside over a hearing to a hearing officer. They may make this delegation either:
  - at the time it appoints an Assigned Commissioner for pre-hearing matters, **or**
  - at any other point before the hearing commences.
- If no delegation is made, the entire Commission will preside over the hearing (as adopted *In the Matter of Paul Allen Taylor*).
- **Presentation of the Case:**
  - Administration of Oaths and Affirmations
  - Oral Arguments and Rebuttals
  - Exhibits
  - Witness Examinations





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04

## **Commission's Findings**

# 04 – Commission’s Findings

- **Findings:** The Commission must make a finding **no later than 45 calendar days** after the conclusion of a hearing.
- **Finding of Violation:** vote by at least 3 Commissioners
  - Standard of Proof: preponderance of the evidence (more likely than not or greater than 50% chance).
  - Supported by findings of facts and conclusions of law, and must be based exclusively on the record of the proceedings.
  - Each Commissioner must certify that they personally heard all testimonies and reviewed entire record of the proceedings.
- If a finding of violation of law is made, the Commission may issue orders or penalties.
- **Finding of No Violation:**
  - Insufficient evidence to establish that respondent committed a violation, or
  - Sufficient evidence to establish that respondent did not commit a violation of law.







# Q&A