



San Francisco Ethics Commission

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Date: July 7, 2025

To: Members of the Ethics Commission

From: Olabisi Matthews, Director of Enforcement

Re: **Agenda Item 6: Presentation and Discussion regarding Proposed Amendments to Enforcement Regulations**

Summary

This memorandum provides an overview of proposed amendments to the Ethics Commission's Enforcement Regulations.

Action Requested

The Commission may vote to adopt the proposed amendments as drafted following a review and discussion of the agenda item. The Commission may also provide feedback to Staff regarding the proposed amendments which may be incorporated for future action by the Commission.

Proposed Amendments to Enforcement Regulations

The Enforcement Regulations were originally implemented on July 5, 1997 and last updated on March 19, 2018. The Enforcement Division has grown in size and capacity over the past few years and has been able to efficiently handle a lot more complex matters while refining its protocols and processes. Probable Cause proceedings have been initiated in more matters, one of which moved through the administrative hearing process that resulted in the Commission's first full hearing on the merits in February 2024. Well ahead of the hearing that took place in 2024, Enforcement Staff identified many areas within the Enforcement Regulations that lacked clarity and needed to be addressed in order to better ensure a smooth, fair, and efficient process for all parties. As a result, Enforcement Staff worked to develop the [Enforcement Hearing Guidebook](#) which was published on May 1, 2023. The Enforcement Hearing Guidebook clarifies areas of ambiguity within the Enforcement Regulations, highlights the many gaps therein, and provides several recommendations to assist the Commission in holding a fair administrative hearing on the merits.

However, the Enforcement Hearing Guidebook does not fully address the issues that persist within the Enforcement Regulations. In light of Enforcement Staff's continuing efforts to use all tools within its capacity to resolve matters, including through the administrative hearing process, the Commission's recent experiences with probable cause proceedings and administrative hearing processes, and the existing issues with the Enforcement Regulations, the Commission must update the Enforcement Regulations to help clarify the relevant rules and processes to allow Staff to streamline the various Enforcement functions and to ensure a fairer and more efficient process for all parties.



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Enforcement Staff held [two interested persons meetings on March 4, 2025 and March 6, 2025](#) regarding potential amendments to the Enforcement Regulations. Four participants in total, including attorneys, attended the interested persons meetings and expressed support for the proposed amendments. In particular, participants commented that the overall investigative process by the Enforcement Division can take a considerable amount of time and that any amendments to the Regulations that would streamline the process would be helpful. Participants also mentioned that any proposed amendments should provide sufficient legal certainty insofar as due process is concerned. In preparing this Memorandum, the Enforcement Division has considered each of the comments and has incorporated the comments into the proposed amendments of the Regulations as appropriate.

The draft Regulations from Attachment 1 are being presented for discussion only. Staff will return with a request for action at a future meeting following today's discussion.

Referrals Under the Sunshine Ordinance

This section discusses Staff's recommendations regarding referrals from the Sunshine Ordinance Task Force ("SOTF") under the current provisions of the Enforcement Regulations. The Enforcement Division recommends that the Commission delete certain areas of Section 10(B) of the Enforcement Regulations and amend Section 10(A) to better clarify the Commission's authority under the Charter and Administrative Code. Adopting the recommendations would help clarify the Commission's jurisdictional boundaries and obligations with respect to enforcement of the Sunshine Ordinance.

The Sunshine Ordinance, codified in Chapter 67 of the Administrative Code, created the Sunshine Ordinance Task Force ("SOTF") as the primary administrative body for hearing and determining complaints of alleged violations of the Sunshine Ordinance. [Section 67.30\(c\)](#) of the Administrative Code provides that SOTF "shall make referrals to a municipal office with enforcement power . . . whenever it concludes that any person has violated the provisions of the Ordinance." S. F. Admin Code § 67.30(c) (*see also* S.F. Admin Code § 67.30(d) which states, ". . . the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.").

While the Commission plays an important role in promoting transparency and enforcing ethical standards, it is essential to recognize the legal limits placed on its enforcement powers regarding the Sunshine Ordinance.

The Administrative Code defines the Commission's enforcement authority as it pertains to *willful* violations of the Sunshine Ordinance. Specifically, [Section 67.34](#) provides that the willful failure of "an elected official, department head, or other managerial city employee to discharge the duties imposed by the Sunshine Ordinance . . . shall be deemed official misconduct." This provision further states that "complaints involving allegations of *willful violations* of this ordinance . . . by *elected officials or department heads* . . . shall be handled by the Ethics Commission." *See* S.F. Admin Code § 67.34 (emphasis added).

The Sunshine Ordinance clearly excludes conduct by lower-level City employees or other parties, as well as unintentional violations, from the enforcement purview of the Ethics Commission. This means that the



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Commission may not initiate enforcement proceedings under the Ordinance against City employees or other individuals outside this group, nor in cases where the alleged violation was merely negligent or unintentional and not willful. Instead, the Commission may only enforce the Sunshine Ordinance as to violations committed by elected officials and department heads, and the violation must be willful.

Additionally, even in cases involving a willful violation by an elected official or department head, the Commission cannot impose administrative penalties and may only impose penalties for violation of the "charter or of a City ordinance relating to campaign finance, lobbying, conflicts of interest or governmental ethics . . ." See S.F. Charter § C3.669-13(d). The only remedies available are for the Commission to recommend that the elected official or department head be removed from office for misconduct and to direct the official to comply with the Sunshine Ordinance without any practical means of enforcing such directive. See S.F. Admin Code § 67.34.

Thus, areas of the Enforcement Regulations contained within Section 10¹ that appear to expand the reach of the Commission beyond these clearly defined limits are inconsistent with the provisions of the Administrative Code and Charter and should be deleted from the Regulations.

Moreso, the Administrative Code gives SOTF the authority to conduct hearings regarding a records request denial. See S.F. Admin Code § 67.21. SOTF is designed as the primary forum for resolution of Sunshine Ordinance complaints, including those involving technical or non-willful violations. Section 67.21(e) of the Administrative Code provides that if a public records custodian fails to respond properly to a request, or if a previous petition is denied or ignored, the requester may petition SOTF to determine whether the record is public. SOTF must then issue a determination within 45 days of receiving the petition. If it finds the record is public, it will order the custodian to comply. If the custodian does not comply within 5 days, SOTF will notify the District Attorney or Attorney General for enforcement. S.F. Admin Code § 67.21(e).

The Administrative Code further states, "If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, **the superior court shall have jurisdiction to order compliance.**" S.F. Admin Code § 67.21(f).

As noted above, the Commission's core enforcement responsibilities include campaign finance, governmental ethics, conflicts of interests, and lobbying laws, all of which are complex areas that require deep investigative and legal capacity. Investigating minor or unintentional open government infractions

¹ In 2010, the Commission adopted its current Enforcement Regulations, including Regulation 10, which addresses referrals from SOTF. Section 10(B) of the Enforcement Regulations provides a mechanism for processing referrals from SOTF. This section was drafted in an overly broad manner, suggesting that the Commission has discretion to act on any and all SOTF findings. However, internal or administrative regulations may not override or expand statutory authority beyond what is granted by law. See Gov Code 11342.2; see also, *California School Boards Assn. v. State Bd. Of Education*, 186 Cal. App. 4th 1298, 1315 (2010) ("An administration agency cannot by its regulations alter or amend a statute or enlarge its scope." (citing, *Morris v. Williams*, 67 Cal. 2d 733, 748 (1967))).



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dilutes the limited staff and legal resources and diverts attention from matters with systemic impact or greater public harm. It also introduces administrative redundancy without adding clear value.

Below, the Enforcement Division has provided a recommended revision of Section 10 of the Regulations to more accurately reflect the legal limitations of the Commission’s authority under the Charter and Administrative Code.

Adopting these recommendations will not change the practice of the Ethics Commission with regards to willful violations. The Enforcement Division will continue to accept and process complaints and referrals that allege willful violation of the Sunshine Ordinance, conduct investigations, and bring the matter before the Commission to recommend removal from office where a willful violation is found to have occurred. Additionally, any required administrative hearings regarding an alleged willful violation would proceed through the regular administrative enforcement hearing process, which has been very well fleshed out and through which we handle all other matters that come before the Commission.

The following table provides an overview of the proposed regulation amendments and explains the rationale for the amendments presented in **Attachment 1**. For ease of review, the proposed amendments to the Enforcement Regulations are marked up in this Attachment.

Table 1: Overview of Proposed Regulation Amendments

Section No.	Proposed Regulation Amendment	Description & Rationale
Section 1. Preamble		
	No amendment required.	Not applicable.
Section 2. Definitions		
Section 2(F) Definitions (Amended)	The proposed amendment would allow for an extension of any delivery deadline that falls on a weekend or holiday to the next business day.	Currently, the Regulations do not provide for an extension of the deadline for submissions that fall on a weekend or holiday. This amendment would permit extension of any such deadlines to the next business day.
Section 2(H) Good Cause (New)	The proposed amendment would provide a clear definition for “Good Cause” within the Regulations.	Portions of the Regulations refer to “good cause” but do not provide a clear definition for this term. This proposed amendment provides a clear definition for “good cause.”
Section 3. Filing a Complaint		
Current Section 3(F). Withdrawal of	The proposed amendment would move the current provision from	Sections 3A to 3E provide a list of complaints filed by a person or an



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Complaints / Proposed Section 4(D) <i>(Moved from current Section 3(F) to the new Section 4(D))</i>	<p>Section 3 to Section 4, which provides that the Commission may continue to investigate a complaint even if the complainant withdraws the complaint.</p>	<p>entity. However, the current provision does not fall within any specific category of complaints filed by a complainant. Instead, it provides that the Commission may continue with the investigation of a complaint even if it has been withdrawn by the complainant. Such a provision should be more appropriately set forth in Section 4 below which deals with how a complaint is being handled by Enforcement Staff.</p>
Section 4. Preliminary Review of Complaints		
Proposed Section 4(D). Complaint Withdrawal / Current Section 3(F) <i>(Relocated and amended)</i>	<p>See proposed amendment under Section 3(F) above.</p>	<p>See description and rationale under Section 3(F) above.</p>
Proposed Section 4E. Report to the Commission / Current Section 4(D) / (Amended)	<p>The proposed amendment would change the provision of the complaint dismissal summary by the Director of Enforcement from a monthly basis to a quarterly basis. In addition, the proposed amendment would eliminate the requirement for the provision of the whistleblower retaliation quarterly report by the Director of Enforcement.</p>	<p>The current provision of the Regulations provides that the Director of Enforcement will issue on a monthly basis a summary to the Commission of each complaint dismissed including the reasons for dismissal provided.</p> <p>The amended provision would streamline the timeline for preparing and submitting enforcement reports, allowing the Director of Enforcement to provide the complaint dismissal and closure summary during the same period the enforcement quarterly reports are due.</p> <p>In addition, the amended provision would eliminate the whistleblower retaliation quarterly report requirement. As it stands, the current provision is redundant as all data regarding all enforcement matters, including whistleblower retaliation matters, are</p>



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		consolidated within the Enforcement Director's quarterly report and information regarding closed or dismissed whistleblower retaliation matters are contained within the dismissal and closure summary report. Therefore, there is no strong reason why only whistleblower retaliation complaints require a standalone summary report and continuing to do so is unnecessary.
Proposed Section 4(F) Final Decision and Reopening of a Case / Current Section 4(E) Final Decision (Amended)	The proposed amendment would confer on the Commission the ability to re-open cases upon discovery of new material facts or evidence even though the cases were dismissed or closed. The ability to re-open cases by the Commission, however, would be limited by certain parameters and would also be subject to the four-year statute of limitations period prescribed under the new Section 14(A) of the Regulations.	<p>Currently, the Regulations states that a dismissal or closure of a matter is a final decision on such matter and represents the end of the administrative process. The Regulations prohibit the Commission from taking any further action on a matter that has been dismissed or closed. This undermines the investigative ability of the Enforcement Division to reopen a matter where new material facts or evidence pertinent to a case have been discovered.</p> <p>To address this, the proposed amendment would allow the Enforcement Division to re-open cases which were already dismissed or closed if there are new material facts or evidence that come to light concerning those cases. To achieve this, the proposed change would set forth a list of parameters that would allow the Enforcement Division to determine when the dismissed/closed case may be reopened. This would also provide legal certainty for respondents who are informed of the circumstances when their cases may be reopened.</p>



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		Moreover, to ensure there is legal certainty over the period of which a case may be re-opened, the proposed change would be subject to the statute of limitations set forth in Section 14(A) of the Regulations such that Staff may not re-open cases after the expiration of the four-year limitations period even if new facts or evidence arise.
Section 5. Investigation		
Proposed Section 5(C)(4) (iii). Withholding (New)	The proposed amendments would allow the Commission to bring a charge for withholding under sections 1.170(f), 2.136(a), and 3.240(a) of the Campaign and Governmental Conduct Code in any case brought before the Commission if a Respondent does not comply with a subpoena or subpoena duces tecum.	Under the current provision, the only option for a respondent's refusal to comply with a subpoena or subpoena duces tecum is for the Executive Director to request the City Attorney to petition the San Francisco Superior Court for an order compelling compliance. However, because the Code has a withholding provision, the proposed amendment will clearly include this option within the Regulations, addressing any ambiguity regarding the options available to the Enforcement Division regarding compliance with subpoenas.
Proposed and Current Section 5(D). Confidentiality (Amended)	The proposed amendment would clarify that evidence obtained throughout the course of the investigation, including those obtained prior to a probable cause determination, may be introduced as evidence or as an exhibit for a hearing on the merits and thus may not be subject to the confidentiality provision.	The current provision appears to deem evidence obtained prior to a probable cause determination as confidential and prohibit the disclosure of such evidence even during the course of a hearing on the merits. The proposed amendment would clarify that evidence obtained throughout the course of the investigation can be introduced as exhibits or evidence for a hearing on the merits.



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Proposed Section 5(E) Place of Delivery / Current Section 8 (H) / (Relocated)	This proposed amendment would relocate the provision regarding place of delivery.	This proposed amendment would help clarify any ambiguity and better organize the Regulations regarding delivery.
Section 6. Case Closure		
Proposed Section 6. Case Closure / Current Section 7(A) Complaint Closure (Relocated and amended)	<p>Aside from the substantive changes set forth below, the proposed amendment for this Section would single out case closure as a standalone section.</p> <p>In light of the proposed amendment made under the new Section 4(F) above which seeks to change the provision of the dismissal summary by the Director of Enforcement from a monthly basis to a quarterly basis, the reference to “monthly” under this Section would be updated to “quarterly” and the section reference would be revised from “Section 4(D)” to “Section 4(F)” accordingly.</p> <p>In addition, given this Section relates to closure of a case, the proposed amendment should also incorporate the relevant amendment made under the new Section 4(G), which confers on the Director of Enforcement the ability to re-open a case within the statute of limitations upon discovery of new material facts or evidence even if the case was closed.</p>	<p>The current Regulations incorporate the closure of cases as part of the probable cause proceedings section. Closures come at the conclusion of an investigation when the Enforcement Division does not intend to initiate probable cause proceedings. In the past, the Enforcement Division would memorialize a case closure in the form of a “no probable cause report” as part of the probable cause process. However, since this practice is no longer adopted, the section on case closure should not be included as part of the probable cause proceedings section and should be reorganized as a standalone section.</p> <p>Also see description and rationale under Sections 4(F) and 4(G) above.</p>
Section 7. Probable Cause Proceedings		
Current Section 7(A) Complaint Closure	See above.	See above.



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<i>(Relocated to Proposed Section 6 and Amended)</i>		
Proposed Sections 7(A) Initiation of Probable Cause Proceedings; (7)(A)(1) Delegation of Probable Cause Hearing Officer Duties / Current Section 7(B)(1) (Amended)	The proposed amendment will confer upon the Executive Director authority to make findings regarding probable cause rather than recommendations. The Executive Director's determination will be the final determination regarding probable cause.	The current provision delegates Commission authority regarding conducting Probable Cause Conferences to the Executive Director and allows the Executive Director to make recommendations regarding probable cause. The proposed amendment will confer authority to make a finding of probable cause. This will allow for a more streamlined and efficient process that will ensure that cases move through the enforcement process without unnecessary delay. The Commission would still retain authority to determine whether a violation of law has occurred at a full hearing on the merits.
Proposed Section 7(A)(7) / Current Section 7(B)(7) Request for Extension of Time (Amended)	Capitalization of the word "Good Cause" in light of proposed amendment under Section 2(H)	Capitalization of the word "Good Cause" in light of proposed amendment under Section 2(H)
Proposed Section 7 (B)(2) Probable Cause Conference / Current Section 7 (C)(2) (Amended)	Same as above	Same as above
Proposed Section 7 (B)(3)(iii) Probable Cause Conference / Current Section 7 (C)(3)(iii) (Amended)	Gender neutral language	Gender neutral language
Proposed 7(C) Executive Director's Probable Cause Determination / Current 7(D) Executive Director's Recommended Probable Cause (Amended)	The proposed amendment reflects the proposed amendments described below. It would confer on the Executive Director the discretion to delegate the drafting of the probable cause determinations to the Director of Enforcement.	The current Regulations provide that the Executive Director will draft the probable cause determination upon making any finding. However, based on the Commission's recent experiences with probable cause proceedings and administrative hearing processes, the Enforcement Division finds that in certain cases, a



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		<p>probable cause determination may mirror the probable cause report to a considerable extent in terms of findings of facts and conclusions of the law.</p> <p>With the proposed amendment, the Executive Director would have a wider degree of discretion to delegate the drafting of the probable cause determination to the Director of Enforcement. This would streamline the overall probable cause process for the Enforcement Division and would allow a more efficient resolution of the violations.</p>
<p>Proposed Section 7(C)(3). Findings of No Probable Cause / Current Section 7(D)(3) (Amended)</p>	<p>The proposed amendment would consolidate the current Sections 7(D)(3) and 7(D)(7) as they both concern the Commission's findings of no probable cause.</p> <p>In addition, the consolidated provisions would more clearly delineate the steps required following a finding of no probable cause.</p>	<p>The current provision of the Regulations splits up Sections 7(D)(3) and 7(D)(7) in relation to the meaning of a finding of no probable cause by the Commission and the finality of the finding of no probable cause. The proposed amendment would address the misalignment of the two sections by combining them into one subsection.</p> <p>In addition, the current provision does not clearly describe the steps following the Commission's issuance of the findings of no probable cause. The proposed amendment would clarify that upon issuance of a finding of no probable cause, the case will be closed internally without proceeding to the Commission, and no further action will be taken by the Commission to review or investigate the allegations contained in the complaint.</p>
<p>Proposed Section 7(C)(4). Delegation of Executive Director's Probable Cause</p>	<p>The proposed amendment would confer on the Executive Director the discretion to delegate the drafting of</p>	<p>The current Regulations provide that the Executive Director will draft the probable cause determination</p>



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Determination (New)	the probable cause determinations to the Director of Enforcement.	<p>upon making any finding. However, based on the Commission’s recent experiences with probable cause proceedings and administrative hearing processes, the Enforcement Division finds that in certain cases, a probable cause determination may mirror the probable cause report to a considerable extent in terms of findings of facts and conclusions of the law.</p> <p>With the proposed amendment, the Executive Director would have a wider degree of discretion to delegate the drafting of the probable cause determination to the Director of Enforcement. This would streamline the overall probable cause process for the Enforcement Division and would allow a more efficient resolution of the violations.</p>
Proposed Section 7(C)(5) / Current Section 7(D)(4) Default Orders (Amended)	Deletion to reflect recommended amendment above regarding authority of Executive Director to make probable cause determinations.	Deletion to reflect recommended amendment above regarding authority of Executive Director to make probable cause determinations.
Current Section 7(D)(6) Commission Ratification of Executive Director’s Probable Cause Determination (Deleted)	The proposed amendment would eliminate the need for Commission ratification of the Executive Director’s Probable Cause Determination as described under section 7(B) above.	The proposed amendment would allow for a more streamlined and efficient process of handling enforcement matters that have proceeded to the Probable Cause stage. The need for ratification of the Executive Director’s Probable Cause Determination will no longer exist where the Executive Director has the final authority to make such Determination. However, the Commission retains authority to determine whether a violation has occurred once a matter proceeds to a full hearing on the merits after a finding of probable cause.



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Proposed Section 7(C)(7) Effect of Commission Advice or Opinion / Current Section 7(D)(8). Effect of Formal Written Advice (Amended)	The proposed amendment would bring the Regulations in alignment with the Commission's current practice regarding advice.	The Commission only gives written advice and does not distinguish between formal or informal advice. The proposed amendment will reflect the actual practice of the Commission. Also, the proposed amendment will eliminate the requirement for the District Attorney and City Attorney concurrence on the advice.
Proposed Section 7(C)(8) Voluntary Dismissal / Current Section 8(l) (Relocated)	This proposed amendment relocates the provision regarding voluntary dismissal to more appropriately fit under the probable cause section.	The proposal will provide better clarity regarding the workflow of the enforcement process with regards to dismissals.
Proposed Section 8. Page Limitations and Format Requirements (Relocated and amended)		
Proposed Section 8. Page Limitations and Format Requirements/ Current Section 6 / (Relocated and Amended)	<p>The proposed amendment for this Section would be reorganized after the probable cause proceedings section. The proposed amendment would increase the page limitation of a probable cause report and a hearing brief, as well as the response to the probable cause report and the hearing brief, from 25 pages to 40 pages, exclusive of any attachments.</p> <p>In addition, the page limitation of any rebuttal or reply, and any other filings, would be increased from 10 pages to 20 pages, exclusive of any attachments.</p> <p>Where parties need to go beyond the page limitation as prescribed under the amended provision of this Section, parties may stipulate to a new page limitation proportional to the level of complexity and the circumstances peculiar to the case.</p>	<p>The current provision covers page limitations and formality requirements for various documents including a probable cause report, a hearing brief, a rebuttal, a reply to the rebuttal, and any other filings. Reorganizing this section after the probable cause proceedings section would provide a clearer structure to the Regulations.</p> <p>The current provision of the Regulations provides that the page limitations of a probable cause report and a hearing brief, as well as the response to the probable cause report and the hearing brief, to be 25 pages, exclusive of any attachments. On the other hand, a rebuttal or a reply, and any other filings, are limited to 10 pages, exclusive of any attachments.</p> <p>However, given the Commission's recent experiences with probable cause proceedings and administrative hearing processes</p>



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		<p>where certain cases are fact intensive, involve multiple violations, and require an extensive analysis of the facts and the law, there is a need to increase the page limitations. The amended provision would better address the page limitations and formality requirements for parties.</p> <p>In addition, the Enforcement Division received comments from the public in the interested persons meetings proposing that parties may choose to stipulate to a new page limitation if the 40/20-page increase does not meet the page limitations. The Enforcement Division endorsed this comment considering that parties may require a page number that exceeds the 40/20-page limitation because of the complexity or the circumstances peculiar to each case.</p>
Proposed Section 9 Pre-Hearing Matters		
Proposed Section 9 Pre-Hearing Matters / Current Section 8	A series of changes would re-organize this section to more closely track the pre-hearing process. They would also move sub-sections that deal more directly with the hearing phase into Section 10, including sub-sections pertaining to notice of hearing, recordings of hearing, and hearing briefs.	The current regulations include sub-sections pertaining to the hearing in the pre-hearing section. The proposed recommendations will rectify the discrepancy.
Proposed Section 9(A). Initiation of Pre-Hearing Matters (New)	The proposed amendment would establish the process for initiating preliminary matters. The amendment would direct the Executive Director to place an item on the Commission's meeting agenda for the determination of who will preside over preliminary matters.	The current Regulation is silent on how the parties and the Commission transition from a probable cause determination to a hearing and the process for initiating pre-hearing matters. This amendment would provide clarity on this process and formalize the process used in past cases.



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Proposed Section 9(B). Delegation to a Pre-Hearing Officer / Current Section 8(A) Delegation to Hearing Officer (Amended)	<p>The proposed amendment clearly states the Commission’s authority to decide preliminary matters, delegate to a pre-hearing officer, and removes references to the hearing on the merits from this section to provide more clarity.</p> <p>This amendment would also clarify a contradictory statement that confuses a pre-hearing officer with a hearing officer.</p>	The current Regulations refer to the pre-hearing and hearing officers interchangeable, when in fact there should be two different processes. This amendment, and the next, would clarify this issue.
Proposed Section 9(C) Preliminary Matters / Current Section 8(F) (Relocated)	Based on formatting and reorganization, this proposed amendment relocates this provision to Section 9(C).	Based on formatting and reorganization, this proposed amendment relocates this provision to Section 9(C).
Proposed Section 9(D). Request for Resolution on Preliminary Matters. (Itemized)	This provision is properly itemized within the Regulations.	The proposed amendment would provide clarity.
Proposed Section 9(F) Preliminary Determinations / Current and Section 8(A) Delegation to a Hearing Officer and Section 8(A)(1) (Relocated and Amended)	Same as above; this proposal also breaks apart the provisions within the current section and provides better clarity regarding the pre-hearing process and the role of the assigned Commissioner and the entire Commission.	See above; also, the references to the hearing officer’s post-hearing obligations have been moved to Section 10.
Proposed Section 9(G) Request for Review of Preliminary Determinations / Current Section 8(A)(1) Delegation to Hearing Officer (Amended)	The proposed amendment would also establish that if any party requests Commission review of a determination by a pre-hearing officer, the Commission shall review the determination at its next monthly meeting. The amendment would further clarify that the parties can present arguments, and a majority must vote to change the officer’s determination.	The current Regulations refer to Commission review of an officer’s determination without clarifying how that review shall be conducted. This amendment would establish a process for such review and provide clarity on the process.



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Proposed Section 9(D). Request for Resolution on Preliminary Matters. (Itemized)	This provision is properly itemized within the Regulations.	The proposed amendment would provide clarity.
Proposed Section 9 (E); 9(E)(1). / Current Section 8(D). Discovery; Subpoenas. (Relocated)	Based on formatting and reorganization, this proposed amendment relocates this provision to Section 9(E).	Based on formatting and reorganization, this proposed amendment relocates this provision to Section 9(E).
Proposed Section 9(E)(2) Subpoenas Compliance (New)	The proposed amendment would clarify that failure to comply with a subpoena authorized during the discovery process can be used as evidence of a violation of the relevant areas of law governing withholding of evidence.	The current regulations give the Commission specific subpoena authority for the discovery process but does not include remedies for non-compliance with such a subpoena. This amendment would clarify that non-compliance may be used as evidence of withholding.
Proposed Section 9 (F). Preliminary Determinations / Current Section 8(A)(1) Delegation to Hearing Officer (Amended)	This proposed amendment simplifies the next step following a determination on preliminary matters by the pre-hearing officer.	The proposed amendment would provide clarity.
Proposed Section 9(G) Request for Review of Preliminary Determinations / Current Section 8(A)(1) Delegation to Hearing Officer (Amended)	The proposed amendment would also establish that if any party requests Commission review of a determination by a pre-hearing officer, the Commission shall review the determination at its next monthly meeting. The amendment would further clarify that the parties can present arguments, and a majority must vote to change the officer's determination.	The current Regulations refer to Commission review of an officer's determination without clarifying how that review shall be conducted. This amendment would establish a process for such review and provide clarity on the process.
Proposed Section 10. Hearing on the Merits		
Proposed Section 10	A series of changes would re-organize this section to include sub-sections originally in the pre-hearing section. This includes sub-sections pertaining to scheduling and notice of a hearing, hearing briefs, and recordings.	The current regulations include sub-sections pertaining to the hearing in the pre-hearing section.
Proposed Section 10(A) Delegation to a Hearing	The proposed amendment would also establish that if any party	The current Regulations refer to Commission review of an officer's



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Officer / Current Section 8(A)(1) Delegation to Hearing Officer (Relocated and amended)	requests Commission review of a determination by a pre-hearing officer, the Commission shall review the determination at its next monthly meeting. The amendment would further clarify that the parties can present arguments, and a majority must vote to change the officer's determination.	determination without clarifying how that review shall be conducted. This amendment would establish a process for such review and provide clarity on the process.
Proposed Section 10(B) Notice of Hearing / Current Section 8(B) Scheduling of Notice of Hearing on the Merits (Relocated)	The proposed amendments would change the notice requirements from 30 to 60 calendar days. They would also remove duplicative language referring to a hearing officer. Finally, they would move this sub-section to Section 10.	Current regulations require hearing briefs from the enforcement division to be sent 30 days before a hearing, rendering a 30-day notice requirement for a hearing untenable. This change creates a more realistic process.
Proposed Section 10(C) / Current Section 8(E). Hearing Briefs (Relocated and amended)	Based on formatting and reorganization, this proposed amendment relocates this provision to proposed Section 10(C) and also amends the provision to clarify process for delivery of hearing brief.	The current Regulations do not clearly specify everyone who should receive delivery of the hearing briefs. In addition to relocating this provision, this amendment also amendment clarifies the delivery process.
Proposed Section 10(D)(2) / Current section 9(A)(2) (Amended)	This proposed amendment would change "complaint" to "case" to align with Division's classification of matters.	This proposed amendment would change "complaint" to "case" to align with Division's classification of matters.
Proposed Section 10(D)(4) / Current Section 9(A)(4). Rules of Evidence (Amended)	This proposed amendment would enshrine rules of evidence for administrative hearings that exist in the California APA and the Enforcement Hearing Guidebook surrounding relevance, reliability, and hearsay. The amendment would also establish a process for objections.	<p>The current regulations are silent on specific rules of evidence, requiring all parties to parse through the California APA and the Commission to determine on an ad hoc basis if it wants to adopt more stringent requirements. The proposed amendments would enshrine certain important rules of evidence regarding relevance, reliability, and hearsay.</p> <p>The current regulations are also silent on the process for objections. The amendment would establish a</p>



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		basic right to object and process for consideration of objections.
Proposed Section 10(D)(6) / Current Section 9(A)(6). Exhibits (Amended)	The proposed amendment would clarify that authentication of evidence is not required. It would also set a timeline and process for submission and consideration of stipulated exhibits. Finally, it would permit parties to move for admission of multiple exhibits at one time.	<p>The current regulations are silent on authentication. This proposal would remedy that by enshrining the standard in the California APA. Current regulations also refer to stipulated exhibits but fail to include a timeline or process for their submission and consideration. This amendment would provide clarity on those matters.</p> <p>Finally, during the Commission's prior hearing, it expressed an interest in allowing for expedited consideration of evidence through the submission of batched exhibits, subject to objections. This proposed amendment includes that option.</p>
Proposed Section 10(D)(7) Current Section 9(A)(7). Witnesses (Amended)	This proposed amendment would clarify how Commissioner questioning shall proceed.	The current regulations allow Commissioners to question witnesses, but they are silent on how that should proceed if a hearing officer is presiding, and what order it should happen if the entire Commission is presiding. The proposed amendments would provide a clear process for all parties to follow.
Proposed Section 10(D)(8). Opening and Closing Arguments / Current Section 9(A)(8). Oral Argument (Amended)	The proposed amendment would clarify the timing and order for opening and closing arguments.	The current regulations refer to oral argument but are ambiguous or silent on issues of order and time limitations. The proposed amendment would provide clarity and would follow the traditional process used in criminal, civil, and administrative hearings.
Proposed Section 10(D)(10) / Current Section 8(G). Recordings (Relocated)	Based on formatting and reorganization, this proposed amendment relocates this provision to Section 10(D)(1).	Based on formatting and reorganization, this proposed amendment relocates this provision to Section 10(D)(1).



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Proposed Section 10(D)(11)(i) / Current Section 9(A)(10)(i). Extensions of Time and Continuances (Amended)	Capitalization: “good cause” to ‘Good Cause”	Capitalization: “good cause” to ‘Good Cause” to align with proposed Section 2(H) above
Proposed Section 10(E) Finding of Violation, Section (10(E)(1) / Current Section 8(A)(2) (Relocated and Amended)	The proposed amendment would remove references to the pre-hearing officer from the sub-section dedicated to the hearing officer. It would also remove references to the pre-hearing officer’s obligations after a hearing. Finally, it would move this sub-section later in this section.	The references to the hearing officer’s post-hearing obligations have been moved to Section 10.
Proposed Section 10(E)(1)(a) Proposed Order (New)	This proposed amendment would provide clarity to the process for issuing drafting and issuing an Order at the conclusion of the hearing.	The proposed amendment would add clarity to the process following the conclusion of a hearing.
Proposed Section 10(E)(1)(b) (Relocated) / Current Section 9(B)(3) (Amended)	The proposed amendment would clarify how findings of fact and conclusions of law may be used in the event that the entire Commission presides. It would create a process for the Chair to vote immediately or to request proposed findings and conclusions from the parties. It would also clarify that written findings and conclusions are only required in the event that a hearing officer presides. Finally, it would direct the ED to submit a proposed order accompanying the hearing brief in instances where the entire Commission is presiding over a hearing, and would grant the same opportunity to the Respondent(s).	The current regulations refer to findings and conclusions in the event a hearing officer presides, but they are silent on who should draft findings and conclusions – or even if they are required – in the event that the entire Commission presides. The proposed amendment would provide clarity.
Proposed Section 10(E)(2) (Amended) / Current Section 9(B)(1) (Amended)	This proposed amendment clarifies the language within the provision regarding the hearing officer and removes any reference to an assigned officer.	The proposed amendment would add clarity to the hearing process.
Proposed Section 10(E)(4)	This proposed amendment clarifies the language within the provision	The proposed amendment would add clarity to the hearing process.



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(Amended) / Current Section 9(B)(3) (Amended)	regarding attendance at the hearing of the merits and the obligations of any Commissioner who did not attend.	
Proposed Section 10(E)(5) (Amended) / Current Section 9(B)(4) (Amended)	This proposed amendment clarifies the language within the provision by including the paragraph title, "Retaliation."	This proposed amendment clarifies the language within the provision by including the paragraph title, "Retaliation."
Proposed Section 10(G) Penalty Factors / Current Section 9(D) (Amended)	This proposed amendment expands the Director of Enforcement's discretion regarding consideration of a respondent's inability to pay what would otherwise be an appropriate recommended penalty amount.	The current Regulations limits the type of proof a respondent may provide to demonstrate inability to pay. This proposed amendment would loosen the restriction and allow for a broader consideration.
Proposed Section 10(I) / Default Orders / Current Section 9(7) (Amended)	This amendment would further clarify and streamline the hearing process and allow for an entry of default order where the Executive Director demonstrates that the hearing was duly noticed and a respondent failed to appear at such a duly noticed hearing.	The current regulations are silent on this issue and such amendment would bring clarity to and help streamline the process.
Section 11. Enforcement of Referrals under the Sunshine Ordinance		
Proposed Section 11(A) / Current 10(A) Willful Violations (Amended)	The proposed amendment would clarify the Commission's authority over allegations of violation of the Sunshine Ordinance. The Commission will handle such violations according to its established enforcement process for handling other alleged violations by the Charter provisions dealing with official misconduct.	See summary above.
Proposed Section 11(B) / Current Section 10(B). Referrals (Amended)	This proposed amendment would clarify the remedies available for willful violations of the Sunshine Ordinance pursuant to the Ordinance and the Charter.	See summary above.
Current Section 10(B) (1) (i) – (iv). (Deleted)	This proposed amendment would eliminate the Show Cause Hearing process procedure.	See summary above.



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Proposed Section 11(C) Remedies / Current Section 10(B)(1)(v) (Amended)	This proposed amendment would clarify the remedies available to the Commission for willful violations of the Sunshine Ordinance. It would reference the SF Charter's limitations on the Commission's available remedies for official misconduct.	See summary above.
Current Section 10(C). (Deleted)	This section has been removed because the San Francisco Charter only gives the Ethics Commission jurisdiction over willful violations. Provisions regarding show cause hearings are unnecessary given the Commission's existing regulations governing hearings.	See summary above.
Proposed Section 12(B)(2) Late Filing Fees / Current Section 11(B)(2) (Amended)	The proposed revision would clarify the application of the definition of "good cause" to other sections of the Enforcement Regulations that also require good cause.	The current regulations require the showing of good cause in different aspects throughout the enforcement process but only defines good cause under the Late Filing Fees section. This proposed amendment will make clear that the definition applies to other aspects of the regulations.
Proposed Sections 13 – 15 Below	Except for renumbering, no changes proposed.	Except for renumbering, no changes proposed.



ATTACHMENT 1



Enforcement Regulations²

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.*

² 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; amendments effective March 28, 2016; and substantial revisions effective March 19, 2018.



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. Whenever a delivery deadline falls on a weekend or legal City holiday, the deadline shall be extended to the next business day that is not a legal City holiday.
- G. "Executive Director" or "Director" means the Executive Director of the Commission or the Executive Director's designee.
- H. "Good Cause". The following constitute "good cause":
 - 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.

The following do not constitute "good cause": 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.



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- I. "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.
- J. "Respondent" means a person or entity that is alleged to have committed a violation of law.
- K. "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.
- L. "Staff" means the Commission's full-time professional staff.
- M. "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.



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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 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.

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:



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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. Complaint Withdrawal: The Commission may continue to investigate a complaint even if the complainant withdraws it.
- E. Report to the Commission. The Director of Enforcement will provide on a quarterly basis, a 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. 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.

Final Decision and Reopening of a Case. A dismissal or closure of a case, 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 unless:

1. Newly discovered material facts or evidence come to light,
2. The newly discovered facts or evidence were in the actual or constructive possession of the respondent and were fairly encompassed in requests for information or subpoenas to Respondent, and Staff had no reasonable means to discover these facts or evidence except through disclosure by Respondent, and
3. The facts or evidence, if available, would have altered the outcome of the case.

Notwithstanding the above provisions, the Commission may only reopen a case within the applicable statute of limitations pursuant to Section 14 of these Regulations. 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



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- 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.*
 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.



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- 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.
 - iii. Withholding: Should the Director of Enforcement deem appropriate based on the circumstances of the case concerned, the Director of Enforcement may bring a charge for withholding information, pursuant to sections 1.170(f), 2.136(a), and 3.240(a) of the Campaign and Governmental Conduct Code, in any case brought before the Commission if any person or entity conceals or withholds information. In addition to all other evidence demonstrating that a Respondent has withheld information required to be provided by law, the failure to fully comply with a subpoena or subpoena duces tecum may provide support for the Executive Director to bring additional charges for concealing or withholding information or for failure to cooperate with an investigation. This provision shall also apply for any subpoena issued after a Probable Cause Determination, pursuant to Sections 7 and 10 herein.
- 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, 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 7 and 10 herein. Any member or



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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. Notwithstanding the above, any materials or evidence provided to the Ethics Commission under a protective order or that is otherwise confidential or privileged under local, state, or federal law shall not be publicly disclosed.

E. 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 by U.S. mail or by electronic mail. Whenever these regulations require delivery to a respondent or his or her committee, delivery will be effective and sufficient if made by as set forth in Section 2(F) herein, 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 (1) through (3) 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.

Section 6. Case Closure

Case Closure. The Director of Enforcement may recommend closure of a case that falls within the Commission's jurisdiction, where 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 case 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 Director of Enforcement will notify the Commission in a quarterly report pursuant to Section 4(E). A closed case may be reopened only pursuant to Section 4(F) above.



Section 7. Probable Cause Proceedings

A. Initiation of Probable Cause Proceedings.

1. Delegation of Probable Cause Hearing Officer Duties. The Commission delegates responsibility for conducting Probable Cause Conferences and making probable cause findings to the Executive Director. The Executive Director may not make 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;
 - 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



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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 in writing at least 5 calendar days prior to the original deadline.

B. 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.
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, the Executive Director 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.
- v. Request for a Translator. Any party may request the presence of a City-approved translator for the Probable Cause Conference. The request must be made to the Executive Director in writing at least 20 calendar days before the Probable Cause Conference, and the requesting party must deliver a copy of the request to all of parties at the same time they submit the request to the Executive Director. The requesting party shall bear the cost of translation services.

C. Executive Director's Probable Cause Determination

1. Standard. The Executive Director may make 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



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to believe or entertain a strong suspicion that a respondent committed or caused a violation. A 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 makes a finding of probable cause, the finding must be in writing and must be based solely on the evidence and 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 finding of probable cause must contain the Executive Director's assessment of all evidence presented at the Probable Cause Conference.
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.

The Commission's finding of no probable cause is a final decision and represents the end of the administrative process. Accordingly, the case will be closed internally without proceeding to the Commission, and 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

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 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.



7. Effect of Commission Advice or Opinion: This provision applies solely to administrative enforcement by the Commission.
 - i. An opinion adopted by the Commission will have the same effect as that described under Regulation 669-12(a)-3 of the Commission's Opinions and Advice Regulations.
 - ii. An opinion adopted by the Commission and concurred by the City Attorney and the District Attorney will have the same effect as that described under Charter Section C3.669-12(a). Absent a concurrence by the City Attorney and District Attorney under Charter Section C3.699-12, reliance on an opinion will not preclude criminal or civil penalties.
 - iii. Advice issued by the Commission will have the same effect as that described under Regulation 669-12(b)-3 of the Commission's Opinions and Advice Regulations.
8. Voluntary Dismissal. At any time after the Probable Cause Determination has been issued, the Executive Director may request voluntary dismissal of 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 closed session. If the Commission ratifies the Executive Director's request for voluntary dismissal, the Commission will take no further action to investigate the matter. If the Commission denies the Executive Director's request voluntary dismissal, then it may provide guidance to the Executive Director regarding what additional information it would like the Executive Director to investigate.

Section 8. Page Limitations and Format Requirements

The Probable Cause Report and Hearing Brief will be limited to 40 pages, exclusive of any attachments. The Responses to the Probable Cause Report and Hearing Brief will be limited to 40 pages, exclusive of any attachments. Any rebuttal or reply will be limited to 20 pages, exclusive of any attachments. All other filings will be limited to 20 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. Parties may stipulate to a greater page limitation proportional to the level of complexity and circumstances peculiar to each case.

Section 9. Pre-Hearing Matters

- A. Initiation of Pre-Hearing Matters. At any time after the Probable Cause Determination has been published, the Executive Director may commence pre-hearing matters by placing the matter on the agenda at a regularly scheduled monthly Commission meeting. A matter may not proceed to the preliminary hearing stage until the Commission decides who will preside over the preliminary matters by a vote of at least 3 Commissioners.



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- B. Delegation to a Pre-Hearing Officer. The Commission has the authority to determine preliminary matters. Upon majority approval, the Commission may delegate authority to preside over preliminary matters to a pre-hearing officer. Any licensed attorney in the state of California or individual member of the Commission may serve as a pre-hearing officer.
- C. 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:
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.
- D. A request for resolution of preliminary matters must be delivered to the Commission or hearing officer no later than 15 calendar days prior to the commencement of a hearing on the merits. Responses are due 10 calendar days prior to the hearing on the merits, and replies are due 7 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).
- E. 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



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- control of the documents. Subpoenas may be issued upon approval of the Commission or the hearing officer.
2. Compliance. All subpoenas issued under sub-section 9(D)(1) shall also be subject to the compliance provisions in sub-section 5(c)(4) above.
- F. Preliminary Determinations. Determinations of the pre-hearing officer shall be subject to review, pursuant to a request for review by either party, pursuant to subsection (9)(F).
- G. Request for Review of Preliminary Determinations: Preliminary determinations may be reviewed by the Commission upon request by the Executive Director or a respondent. Any request for review must be made in writing and submitted to the pre-hearing officer and all parties within five days of receipt of the determination after which the Executive Director will place the matter before the Commission at its next regularly scheduled monthly meeting.
- a. Review of Preliminary Determinations. If the Executive Director or a respondent requests review of a determination by the pre-hearing officer, the Commission shall review the determination at its next monthly meeting. The Director of Enforcement or Respondent(s) may present oral arguments but may not present any written arguments. Upon majority vote, the Commission may decide on the request for review by (1) approving the request(s) and issuing a revised determination on the request(s), (2) vacating the pre-hearing officer's determination, or (3) denying the request and ratifying the pre-hearing officer's determination. The Commission may announce its findings on the record or may issue its findings in writing.

Section 10. Hearing on the Merits

- A. Delegation to a Hearing Officer: The Commission has the authority to preside over a hearing. 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. Unless otherwise decided by the



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Commission, the Commission will sit as the hearing panel to hear the merits of the case.

- B. **Scheduling and Notice of Hearing on Merits.** The Executive Director will schedule the hearing on the merits, and deliver a 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 ____), 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 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 8 of these regulations. Staff’s Hearing Brief will be delivered to each Commissioner, assigned Commissioner, or outside hearing officer, and to 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 delivered to each Commissioner, assigned Commissioner, or outside hearing officer, and to all parties to the proceeding no later than 15 calendar days prior to the date the hearing on the merits commences. Staff’s Rebuttal Brief will be delivered to each Commissioner, assigned Commissioner, or outside hearing officer, and to all parties to the proceeding no later than 5 calendar days prior to the date the hearing on the merits commences.
- D. **General Rules and Procedures.**



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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 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 case, from engaging in oral or written communications regarding the merits of a case or enforcement action with any person or entity. After a final determination on the merits of a case, 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.
 - a. Relevance. Evidence shall be admitted if it has any tendency to prove or disprove any disputed fact that is of consequence to the determination of the action.
 - b. Reliability. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to relying in the conduct of serious affairs.
 - c. Hearsay. Hearsay evidence may be used to support other evidence but may not be used alone to support a finding of fact.
 - d. Objections. Any party may object to the introduction of evidence through witness testimony, exhibit, or oral argument. If a hearing officer presides, the hearing officer will make a ruling on the objection. If the entire Commission presides, the Chair will make a ruling on the objection. The individual making the determination may request additional argument on the objection from either party at their discretion.



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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 at least 20 calendar days before the Hearing on the Merits, and the requesting party must deliver a copy of the request to all of parties at the same time they submit the request to the Executive Director. 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. Parties have until 24 hours before the hearing to notify the Commission of any stipulated exhibits. 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. If a hearing officer presides, the hearing officer will make a ruling on the admission. If the entire Commission presides, the Chair will make a ruling on the admission of such exhibits.
 - a. Authentication. In accordance with the California Administrative Procedure Act, exhibits do not need to be authenticated.
 - b. Multiple Exhibits. Parties are permitted to move for the admission of multiple exhibits at one time. The ruling party may choose to rule on the admission of all exhibits at once, or rule on the admission of individual exhibits separately. If any party objects to any of the exhibits, the ruling party must rule on the objection and the admissibility of the relevant exhibit separately.
7. Witnesses. Witnesses will be examined by the parties as follows: direct examination, cross-examination, re-direct examination. After the parties have concluded their examination of a witness, Commissioners will have an opportunity to pose questions to the witness. If the Commission presides over a hearing, following direct and cross examination by the parties, the Chair shall have the first opportunity to pose questions to the witness, followed by the other Commissioners in an order decided by the Chair.
8. Opening and Closing Arguments. At the hearing, the Executive Director and each respondent will be allowed to present opening and closing arguments. 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.
 - a. Opening Arguments. At the beginning of the hearing, the Executive Director will present opening argument first, followed by each respondent in the order listed on the Enforcement Division's Hearing Brief. The Executive Director will then have an opportunity for rebuttal.



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- b. Closing Arguments. After the conclusion of each party's evidence and any Commissioner questions, the Executive Director will present closing argument first, followed by each respondent in the order listed on the Enforcement Division's hearing brief. The Executive Director will then have an opportunity for a rebuttal.
 - c. Time and Limitations. Each party will be allowed a maximum of 15 minutes for opening arguments and 15 minutes for closing arguments. The Executive Director will be allowed to reserve a maximum of three minutes for opening arguments rebuttal and three minutes for closing arguments rebuttal.
 9. Oaths and Affirmations. The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
 10. Recordings. Every hearing on the merits will be recorded digitally. The Commission will retain all recordings according to its record retention policies and in compliance with City law until the opportunity for legal challenge has been exhausted. Copies of recordings will be available upon request.
 11. 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 in writing 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



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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.

E. Finding of Violation.

1. If the Commission presides over the hearing on the merits, the Commission will determine whether the respondent(s) has committed a violation of law.
 - a. Proposed Order: the Executive Director will and Respondent may submit a proposed order along with the hearing brief if the Commission presides over the hearing on the merits. At the conclusion of the hearing on the merits, the Commission may immediately deliberate over the proposed order and amend it as necessary following the Commission's decision on each violation presented. The Commission will adopt a Final Order and decision with a vote of at least 3 Commissioners on each violation.
 - b. The Commission shall make its final determination on all violations no later than 45 calendar days after the date the hearing is concluded. A finding of violation must be supported by findings of fact and conclusions of law and must be based exclusively on the record of proceedings before the Commission. The findings of fact and conclusions of law may, but need not, be in writing. The Commission may deliberate and shall vote on each violation and adopt its Final Order following a vote on all violations.
2. If the Commission assigns a hearing officer to conduct the hearing on the merits, the 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, pursuant to Section 1(b) above.
3. The votes of at least three Commissioners are required to find a violation of law.
4. 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, but did not attend the hearing in its entirety, will certify on the record that such Commissioner 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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5. Retaliation. Within 10 business 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.
- F. 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 do not comply with the Campaign Finance Reform Ordinance, San Francisco Campaign & Governmental Conduct Code section 1.100, *et seq.*; and
 5. Any other relief the Commission deems appropriate and within its authority under Charter section C3.699-13.
- G. 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 of financial hardship to the Director of Enforcement of such inability. This documentation should demonstrate sustained financial hardship and may include recent pay stubs within the last six months, proof of government assistance, income tax returns, or six months' worth of bank records or accounting statements.



- H. 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 1094.5(a) of the California Code of Civil Procedure governing judicial review of any final administrative order or decision.
- I. 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. The Commission shall enter a Default Order with a vote of at least three Commissioners upon a request by the Executive Director, following a showing that the respondent(s) was properly served in accordance with these regulations. The Default Order shall be entered into at the same meeting during which the Commission votes on whether to find a violation. 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 11. Enforcement under the Sunshine Ordinance

- A. Complaints of 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. However, complaints alleging willful violations by elected officials and department heads are public documents, pursuant to the Sunshine Ordinance . If a complaint filed with the Commission does not meet the criteria set forth in Section 67.34, i.e., if it does not allege willful violation by a department head or elected official, the Commission will decline such complaint if it originates from the Sunshine Ordinance Task Force or will refer it to the Sunshine Ordinance Task Force if it originates elsewhere.
- B. Referrals. All referrals to the Ethics Commission of alleged violations of the Sunshine Ordinance under Section 67.35 shall be handled pursuant to Section (11A) above.



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- C. Remedies for Official Misconduct under the Sunshine Ordinance: Willful violation of the Sunshine Ordinance shall be deemed official misconduct pursuant to Section 67.34 of the Administrative Code. If the Commission determines that an elected official or department head 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* S.F. 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. The Ethics Commission does not have authority to impose any administrative penalties over any alleged violations of the Sunshine Ordinance.

Section 12. 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 Executive Director'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 and addressed to the Executive Director. The request must explain why the Executive Director 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



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- presumptively deny requests for reduction or waiver of late filing fees received past this deadline.
2. Good Cause. "Good Cause" shall be defined as provided in section 2(B).
 3. Lobbyist Ordinance. Pursuant to Section 2.145 of the San Francisco Campaign & Governmental Conduct Code, the Executive Director must notify the members of the Commission if the reduction or waiver of a late filing fee that equals or exceeds \$500 if the fee resulted from a late filed lobbyist disclosure. The Executive Director will follow the requirements of Section 2.145.
- 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 13. 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.



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- C. As a rule, the Executive Director will not accept the use of donor funds or Legal Defense Funds to pay any assessed administrative penalties.
- D. Assessing Administrative Penalties. When assessing administrative penalties for the purposes of settlement negotiation, Staff will follow the rules set forth in Section 10(H) 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 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 14. 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.



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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 15. 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.