



City & County of San Francisco
Ethics Commission



PROPOSED AMENDMENTS TO THE ENFORCEMENT REGULATIONS



Project Overview

- Conduct a review of the Enforcement Regulations
- Identify areas of ambiguity and inconsistencies
- Conduct best practice research
- Consult with City Attorney's Office
- Engaged with Interested Persons

Overall goal: to promote a clearer, more consistent, fair, and transparent enforcement process.

Project Overview Cont.

Regulation History

- Implemented: **July 5, 1997** and last updated: **March 19, 2018**

Division Growth & Increased Case Activity

- Significant expansion in **size and capacity** since 2018
- Enhanced ability to handle complex enforcement matters
- Greater emphasis on advancing and resolving cases efficiently
- More cases moving through Probable Cause (“PC”) process
 - **2022: *Makras, Taylor, and Raphael*** (*which settled following Commission review of Recommended PC Determination but before Commission ratification*)
 - **2023: *Progress SF***
 - **2025: *Walker* and *Chiem***
- **Hearings on the Merit:** *Taylor* (2024) and *Walker* (2025)

Project Overview Cont.

Goal: to provide you with an update on our efforts, walk you through our proposed amendments, seek your input or feedback regarding our proposals and seek your vote on these proposed amendments.

Four Interested Persons Meeting

- First Round: March 4 & March 6, 2025
- Second Round: May 27 & May 29, 2025

The background image is a collage of various San Francisco cityscapes. It includes classical stone buildings with many windows, modern high-rise structures, and a street view featuring a prominent building with a red-tiled Chinese-style roof. A semi-transparent white banner is positioned horizontally across the center of the image, containing the text 'Proposed Amendments'.

Proposed Amendments

Proposed Amendments – Section 2

Section 2(F) Definitions (Amended)

- 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.

Proposed Amendments – Section 2 Cont.

Section 2(H) Good Cause

- *(Relocated/Amended)*

H. “Good Cause.” The following constitute “good cause:”

- i. Incapacitation for Medical Reasons. Adequate documentation includes 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 includes 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 includes 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.

Proposed Amendments – Sections 3(F) & 4(D)

Current Section 3(F). Withdrawal of Complaints / Proposed Section 4(D)

- *(Relocated and amended)*

Section 3. Filing a Complaint

~~F. Withdrawal of Complaint. The Commission may continue to investigate a complaint even if the complainant withdraws it.~~

Proposed Section 4(D). Complaint Withdrawal / Current Section 3(F)

- *(Relocated and amended)*

D. Complaint Withdrawal. The Commission may continue to investigate a complaint even if the complainant withdraws it.

Proposed Amendments – Section 4 Cont.

Section 4(E) Report to the Commission/Current Section 4(D)

- *(Amended)*

- E. Report to the Commission. The Director of Enforcement will provide ~~a monthly 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.

~~Whistleblower Retaliation Quarterly Report. No less than quarterly, the Director of Enforcement will provide a summary report to the Commission of the status of all complaints still under preliminary review that allege retaliation against whistleblowers.~~ 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.

Proposed Amendment – Section 4 Cont.

Proposed Section 4(F) Final Decision and Reopening of a Case / Current Section 4(E) Final Decision

- *(Amended)*

F. Final Decision and Reopening of a Case. A dismissal or closure of a complaintcase, 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 Director of Enforcement may only reopen a case within the applicable statute of limitations pursuant to Section 14 of these Regulations and conduct any such investigation pursuant to Sections 5 through 10 herein. 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.

Proposed Amendment – Section 5

Proposed Section 5(C)(4) (iii). Withholding

- (New)

~~ii.~~ 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.

Proposed Amendment – Section 5 Cont.

Proposed and Current Section 5(D). Confidentiality

- *(Amended)*

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, ~~created prior to the probable cause determination, such as the complaint, will remain confidential. All investigative documents, including notes and memoranda, created by the Executive Director and his or her staff after the probable cause determination~~ 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 8-7 and 9-10 herein. Any member or 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.

Proposed Amendment – Section 5 Cont.

Proposed Section 5(E) Place of Delivery / Current Section 8 (H)

- *(Relocated)*

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.

Proposed Amendment – Section 6 & 7(A)

Proposed Section 6. Case Closure / Current Section 7(A) Complaint Closure

- (Relocated and amended)

Section 6. Case Closure

~~Complaint Case~~ Closure. The Director of Enforcement may recommend closure of a ~~complaint case if it that~~ falls within the Commission's jurisdiction, ~~but 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 ~~complaint 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 ~~Executive~~ Director of Enforcement will notify the Commission in a ~~monthly~~ quarterly report pursuant to Section 4(D). A closed case may be reopened only pursuant to Section 4(F) above.

~~Page Limitations and Format Requirements~~

~~The Probable Cause Report and Hearing Brief will be limited to 25 pages, exclusive of any attachments. The Responses to the Probable Cause Report and Hearing Brief will be limited to 25 pages, exclusive of any attachments. Any rebuttal or reply will be limited to 10 pages, exclusive of any attachments. All other filings will be limited to 10 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.~~

Section 7. Probable Cause Proceedings

~~A. Complaint Closure. The Director of Enforcement may recommend closure of a complaint if it falls within the Commission's jurisdiction, but 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 complaint 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 Executive Director will notify the Commission in a monthly report pursuant to Section 4(D).~~

Proposed Amendment – Section 7

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)*

B.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 ~~but, as described below, the Commission retains the authority to make probable cause findings~~. The Executive Director may not ~~recommend~~ 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.

Proposed Amendment – Section 7 Cont.

Proposed Section 7(A)(7) / Current Section 7(B)(7) Request for Extension of Time

- *(Amended)*

7. Requests for Extension of Time. The Executive Director may extend the time limitations in this Section for ~~good-cause~~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.

Proposed Section 7 (B)(2) Probable Cause Conference / Current Section 7 (C)(2)

- *(Amended)*

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~~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.

Proposed Amendment – Section 7 Cont.

Proposed Section 7 (B)(3)(iii) Probable Cause Conference / Current Section 7 (C)(3)(iii)

- *(Amended)*

- iii. Additional Information. If the Executive Director requires additional information to determine whether there is probable cause, ~~he or she may~~ the Executive Director may permit any party to submit additional evidence at the Probable Cause Conference or by a specified date following the Probable Cause Conference.

Proposed Amendment – Section 7 Cont.

Proposed 7(C)(1) &(2) Executive Director's Probable Cause Determination / Current 7(D) Executive Director's Recommended Probable Cause

- (Amended)

~~D.C.~~ Executive Director's ~~Recommended~~ Probable Cause Determination

1. Standard. The Executive Director may ~~recommend~~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 to believe or entertain a strong suspicion that a respondent committed or caused a violation. A ~~recommended~~ 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 ~~recommends~~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 ~~recommended~~ finding of probable cause must contain ~~a summary~~the Executive Director's assessment of all evidence ~~and arguments~~ presented at the Probable Cause Conference, ~~and the Executive Director's assessment of that evidence~~.

Proposed Amendment – Section 7 Cont.

Proposed Section 7(C)(3). Findings of No Probable Cause / Current Section 7(D)(3)

- *(Amended)*

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 decision.

Proposed Amendment – Section 7 Cont.

Proposed Section 7(C)(4). Delegation of Executive Director's Probable Cause Determination

- *(New)*

4. Delegation of Preparation of Executive Director's Probable Cause Determination Report. The Executive Director may delegate the responsibility for preparing a recommended probable cause determination to the Director of Enforcement. However, the Executive Director retains overall authority over the probable cause determination, and the probable cause determination is only deemed final upon the approval of the Executive Director.

Proposed Amendment – Section 7 Cont.

Proposed Section 7(C)(5) / Current Section 7(D)(4) Default Orders

- *(Amended)*

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 ~~recommendation for 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.

Proposed Amendment – Section 7 Cont.

Current Section 7(D)(6) Commission Ratification of Executive Director's Probable Cause Determination

- *(Deleted)*

~~6.—Commission Ratification of Executive Director's Probable Cause Determination. Upon finalizing her recommended probable cause determination, the Executive Director will inform the Commission of that determination on or before close of business the following business day. Thereafter, any member of the Commission may request review of the Executive Director's recommended probable cause determination by the full Commission in closed session at the next regularly scheduled Commission meeting. A Commissioner's request that a probable cause determination be calendared for consideration by the full Commission must be received by the Executive Director within 5 calendar days of the Executive Director's notification.~~

~~i.—If any Commissioner requests review of the Executive Director's recommended probable cause determination, then the determination is not final until at least three members of the Commission agree to ratify it at the next regularly scheduled Commission meeting. The Commission must consider the Executive Director's recommendation in closed session and may hear argument from the Director of Enforcement or the respondent(s). The parties will not be given additional opportunity to provide written argument to the Commission.~~

~~ii.—If no Commissioner requests review of the Executive Director's recommended probable cause determination, then the Commission has ratified the Executive Director's recommended probable cause determination, and the Executive Director will publish the formal Probable Cause Determination by delivering it to the parties and posting it to the Commission's website.~~

Proposed Amendment – Section 7 Cont.

Proposed Section 7(C)(7) Effect of Commission Advice or Opinion / Current Section 7(D)(8). Effect of Formal Written Advice

- *(Amended)*

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 699-12(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 C3.699-12(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 699-12(b)-3 of the Commission's Opinions and Advice Regulations.

Proposed Amendment – Section 7 Cont.

Proposed Section 7(C)(8) Voluntary Dismissal / Current Section 8(I)

- *(Relocated)*

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.

Proposed Amendment – Section 8

Proposed Section 8. Page Limitations and Format Requirements/ Current Section 6

- *(Relocated and Amended)*

Section 8. Page Limitations and Format Requirements

The Probable Cause Report and Hearing Brief will be limited to ~~25~~40 pages, exclusive of any attachments. The Responses to the Probable Cause Report and Hearing Brief will be limited to ~~25~~40 pages, exclusive of any attachments. Any rebuttal or reply will be limited to ~~10~~20 pages, exclusive of any attachments. All other filings will be limited to ~~10~~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.

Proposed Amendment – Section 9

Proposed Section 9(A). Initiation of Pre-Hearing Matters

- (New)

Section **89**. 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.

Proposed Amendment – Section 9

Proposed Section 9(B). Delegation to a Pre-Hearing Officer / Current Section 8(A) Delegation to Hearing Officer

- *(Amended)*

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 ~~a hearing on the merits~~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.

Proposed Amendment – Section 9

Proposed Section 9(C) Preliminary Matters / Current Section 8(F)

- *(Relocated)*

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.

Proposed Amendment – Section 9

Proposed Section 9(D). Request for Resolution on Preliminary Matters.

- *(Itemized)*

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).

Proposed Amendment – Section 9

Proposed Section 9 (E); 9(E)(1). / Current Section 8(D). Discovery; Subpoenas.

- *(Relocated)*

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 control of the documents. Subpoenas may be issued upon approval of the Commission or the hearing officer.

Proposed Amendment – Section 9

Proposed Section 9(E)(2) Subpoenas Compliance

- *(New)*

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.

Proposed Amendment – Section 9

Proposed Section 9 (F). Preliminary Determinations / Current Section 8(A)(1) Delegation to Hearing Officer

(Amended)

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).

Proposed Amendment – Section 9

Proposed Section 9(G) Request for Review of Preliminary Determinations / Current Section 8(A)(1) Delegation to Hearing Officer

- *(Amended)*

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.

Proposed Amendment – Section 10

Proposed Section 10(A) Delegation to a Hearing Officer / Current Section 8(A)(1) Delegation to Hearing Officer

- *(Relocated and amended)*

Section **109**. 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 Commission, the Commission will sit as the hearing panel to hear the merits of the case.

Proposed Amendment – Section 10

Proposed Section 10(B) Notice of Hearing / Current Section 8(B) Scheduling of Notice of Hearing on the Merits

- *(Relocated and amended)*

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).”

Proposed Amendment – Section 10

Proposed Section 10(C) / Current Section 8(E). Hearing Briefs

- *(Relocated and amended)*

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 68 of these regulations. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of Staff's Hearing Brief will be delivered to the 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)' Rresponsive Bbrief will be delivered to each Commissioner, assigned Commissioner, or outside hearing officer, and to all parties to the proceeding due no later than 15 calendar days prior to the date the hearing on the merits commences, and Staff's Rrebuttal Bbrief will be submitted 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.

Proposed Amendment – Section 10

Proposed Section 10(D)(2) / Current section 9(A)(2)

- (Amended)

A.D. General Rules and Procedures.

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, ~~assigned Commissioner~~ 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 ~~complaint case~~, from engaging in oral or written communications regarding the merits of a ~~complaint case~~ or enforcement action with any person or entity. After a final determination on the merits of a ~~complaint case~~, Commissioners may discuss matters in the public record.

Proposed Amendment – Section 10

Proposed Section 10(D)(4) / Current Section 9(A)(4). Rules of Evidence

- *(Amended)*

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.

Proposed Amendment – Section 10

Proposed Section 10((D)(6) / Current Section 9(A)(6). Exhibits

- (Amended)

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.

Proposed Amendment – Section 10

Proposed Section 10(D)(7) Current Section 9(A)(7). Witnesses

- *(Amended)*

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.

Proposed Amendment – Section 10

Proposed Section 10(D)(8). Opening and Closing Arguments / Current Section 9(A)(8). Oral Argument

- (Amended) 8. ~~Oral Argument~~Opening and Closing Arguments. At the hearing, the Executive Director and each respondent will be allowed to present oral 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.
 - 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.

Proposed Amendment – Section 10

Proposed Section 10(D)(10) / Current Section 8(G). Recordings

- *(Relocated)*

10. Recordings. Every hearing on the merits will be recorded digitally. The Commission will
~~retain the tapes~~ 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 a
~~tape~~ recordings will be available upon request.

Proposed Amendment – Section 10

Proposed Section 10(D)(11)(i) / Current Section 9(A)(10)(i). Extensions of Time and Continuances

- *(Amended)*

~~10-11.~~ Extensions of Time and Continuances.

- 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 ~~g~~Good ~~C~~ause.

Proposed Amendment – Section 10

Proposed Section 10(E) Finding of Violation, Section (10(E)(1) / Current Section 8(A)(2)

- *(Relocated and Amended)*

B-E. Finding of Violation. ~~If the Commission conducts the hearing on the merits, the Commission will determine, no later than 45 calendar days after the date the hearing is concluded, whether the respondent(s) has committed a violation of law.~~

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.

Proposed Amendment – Section 10

Proposed Section 10(E)(1)(a) Proposed Order

- (New)

~~B.E. Finding of Violation. If the Commission conducts the hearing on the merits, the Commission will determine, no later than 45 calendar days after the date the hearing is concluded, whether the respondent(s) has committed a violation of law.~~

- ~~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.~~

Proposed Amendment – Section 10

Proposed Section 10(E)(1)(b) (Relocated) / Current Section 9(B)(3)

- *(Amended)*

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.

Proposed Amendment – Section 10

Proposed Section 10(E)(2) / Current Section 9(B)(1)

- *(Amended)*

2. If the Commission assigns ~~one of its members or an outside~~a hearing officer to conduct the hearing on the merits, the ~~assigned member or~~ 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.

Proposed Amendment – Section 10

Proposed Section 10(E)(4) / Current Section 9(B)(3)

- *(Amended)*
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 he or she 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.

Proposed Amendment – Section 10

Proposed Section 10(E)(5) / Current Section 9(B)(4)

- *(Amended)*

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.

Proposed Amendment – Section 10

Proposed Section 10(G) Penalty Factors / Current Section 9(D)

- *(Amended)*

~~D-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, ~~which must include three years' worth of income tax returns and six months' worth of bank records or accounting statements, at a minimum. 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.~~

Proposed Amendment – Section 10

Proposed Section 10(I) / Default Orders / Current Section 9(F)

- (Amended)

~~F.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 the party~~ 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.

Proposed Amendment – Section 11

Proposed Section 11(A) / Current 10(A) Willful Violations

- (Amended)

Section ~~10.~~ 11. Enforcement ~~of Referrals~~ 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 ~~section 67.35. 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.~~

Proposed Amendment – Section 11 Cont.

Proposed Section 11(B) / Current Section 10(B). Referrals

- **(Amended)**
 - 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. If a City officer or employee fails to comply with an Order of Determination by the Sunshine Ordinance Task Force or Supervisor of Records, then those agencies may refer the matter to the Ethics Commission for enforcement pursuant to its authority under San Francisco Charter section C3.699-13 and San Francisco Administrative Code 5-67.35(d).~~
 - ~~1. Show Cause Hearing. After receipt of a referral, the Commission will schedule a Show Cause Hearing on the matter at the next regularly scheduled Commission meeting, provided that the parties are given at least 15 calendar days' notice of the Show Cause Hearing. The Show Cause Hearing will be open to the public.~~
 - ~~i. Standard of Proof. The respondent(s) will have the burden to prove that he or she did not commit a violation of the Sunshine Ordinance, as documented by the Sunshine Ordinance Task Force's Order of Determination and referral or the referral from the Supervisor of Records.~~
 - ~~ii. Standard of Review. Where appropriate, the Commission will defer to the findings of fact set forth in the Sunshine Ordinance Task Force's Order of Determination; however, any party may bring evidence to present or witnesses to testify on their behalf at a Show Cause Hearing. The Commission will review the Sunshine Ordinance Task Force's conclusions of law independently, or de novo.~~

Proposed Amendment – Section 11 Cont.

Proposed Section 11(B) / Current Section 10(B). Referrals

- (Amended)

~~iii.—Hearing Procedures. Upon request, the complainant and respondent will each have 10 minutes to present their argument to the Commission during the Show Cause Hearing. The complainant and respondent may reserve up to 3 minutes of their 10 minutes for rebuttal. Witnesses may speak for 3 minutes. The Commission, through the Chair, may extend any speaker's testimony beyond the timeframes identified here.~~

~~a.—Participation of Referring Agency. The Sunshine Ordinance Task or Supervisor of Records may send an authorized representative to deliver comment or argument in favor of its referral. The representative will have 5 minutes to make their presentation before the commencement of the Show Cause Hearing. The representative will not be considered a party to the proceedings but rather a third-party friend of the Commission.~~

~~b.—Additional Briefing Not Required. The parties may, but are not required to, submit written evidence and argument in support of their position.~~

~~c.—Rules of Evidence Do Not Apply. Formal rules of evidence do not apply to hearings on referrals to enforce orders of the Sunshine Ordinance Task Force.~~

~~d.—Newly Discovered Evidence. If any party presents evidence to the Commission during the Show Cause Hearing that was not presented to the Sunshine Ordinance Task Force during its proceedings, then the Commission may remand the referral to the Sunshine Ordinance Task Force for its further deliberation and review of the new evidence.~~

Proposed Amendment – Section 11 Cont.

Proposed Section 11(B) / Current Section 10(B). Referrals

- (Amended)
 - ~~iii. Hearing Procedures. Upon request, the complainant and respondent will each have 10 minutes to present their argument to the Commission during the Show Cause Hearing. The complainant and respondent may reserve up to 3 minutes of their 10 minutes for rebuttal. Witnesses may speak for 3 minutes. The Commission, through the Chair, may extend any speaker's testimony beyond the timeframes identified here.~~
 - ~~a. Participation of Referring Agency. The Sunshine Ordinance Task or Supervisor of Records may send an authorized representative to deliver comment or argument in favor of its referral. The representative will have 5 minutes to make their presentation before the commencement of the Show Cause Hearing. The representative will not be considered a party to the proceedings but rather a third-party friend of the Commission.~~
 - ~~b. Additional Briefing Not Required. The parties may, but are not required to, submit written evidence and argument in support of their position.~~
 - ~~c. Rules of Evidence Do Not Apply. Formal rules of evidence do not apply to hearings on referrals to enforce orders of the Sunshine Ordinance Task Force.~~
 - ~~d. Newly Discovered Evidence. If any party presents evidence to the Commission during the Show Cause Hearing that was not presented to the Sunshine Ordinance Task Force during its proceedings, then the Commission may remand the referral to the Sunshine Ordinance Task Force for its further deliberation and review of the new evidence.~~

Proposed Amendment – Section 11 Cont.

Proposed Section 11(C) Remedies / Current Section 10(B)(1)(v)

- *(Amended)*

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.

Proposed Amendment – Section 11 Cont.

Current Section 10(C).

- *(Deleted)*

~~C. Final Decision. An enforcement decision made by 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. 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.~~

Proposed Amendment – Section 12

Proposed Section 12(B)(2) Late Filing Fees / Current Section 11(B)(2)

- (Amended)

2. Good Cause. ~~The following factors will presumptively qualify as “good cause” and are therefore grounds for a waiver: “Good Cause” shall be defined as provided in section 2(B).~~
 - 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.~~
3. ~~The following do not constitute “good cause” and therefore are not grounds for a waiver: 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.~~

Proposed Amendment – Section 13 (C)

Proposed Sections 13(C) Use of Legal Defense Funds / Installment Plans

- (Amended)

C. Administrative Penalties. Installment Plans. As a rule, the Executive Director will not accept offers to pay assessed administrative penalties in installments without proof of inability to pay as set forth in Section 9(E). Upon proof of inability to pay, the Executive Director may consider accepting an offer to pay assessed penalties in installments, but installment agreements must require full payment before the expiration of 6 months.

1. Use of Legal Defense Funds. As a rule, and as provided under Section 85304.5 of the Political Reform Act and Regulation 18530.45 of the Regulations of the Fair Political Practices Commission, the Executive Director will not accept the use of Legal Defense Funds for the payment of any assessed administrative penalties.
2. Installment Plans. The Executive Director will not accept payment of any assessed administrative penalties in installments. Notwithstanding the above provisions, this subsection does not limit the ability of the City, including but not limited to the Bureau of Delinquent Revenue, to pursue all available remedies to collect any unpaid penalty including a payment plan.

Proposed Amendment – Section 13 (D)

Proposed Sections 13(D) Assessing Administrative Penalties

- (Amended)

C.D. Assessing Administrative Penalties. When assessing administrative penalties for the purposes of settlement negotiation, Staff will follow the rules set forth in Section ~~9(E)~~ 10(G) of these regulations.

The image is a collage of various San Francisco cityscapes. In the foreground, there's a blue diagonal shape on the left. The background features several iconic buildings: the top left shows a classical building with many windows; the top center is a large, ornate building with a flat roof; the bottom left shows a building with a fire escape; the bottom center is a street-level view of a corner building with a red-tiled roof; and the bottom right shows a view of Chinatown with traditional Chinese architecture. A semi-transparent white rectangle in the center contains the text 'Q & A' in a black serif font.

Q & A