



San Francisco Ethics Commission

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Date: August 4, 2025

To: Members of the Ethics Commission

From: Olabisi Matthews, Director of Enforcement

Re: **Agenda Item 6: Presentation and Discussion Regarding Proposed Amendments to the Ethics Commission's Enforcement Regulations**

Summary

At the July Commission meeting, Staff presented proposed amendments to the Enforcement Regulations, responded to questions and public comments, and received feedback from the Commission. In response to the issues raised, Staff has revised portions of the proposed amendments as necessary to further clarify the Enforcement process. This memo discusses the additional revisions made and maintains the discussion and proposed recommendations regarding referrals under the Sunshine Ordinance.

Action Requested

The Commission should review and discuss the proposed amendments. Following discussion, the Commission may vote to adopt the amendments as drafted. Alternatively, the Commission may provide feedback to Staff, which may be incorporated into a revised version for consideration at a future meeting.

Overview of the Enforcement Regulations Review Project

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.

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.

Enforcement Staff also held [two additional interested persons meetings on May 27, 2025 and May 29, 2025](#) to discuss current challenges and opportunities for reform in the enforcement of the Sunshine Ordinance, particularly in relation to Sections 67.34 and 67.35 of the Ordinance. Five participants in total, including attorneys and representatives of the Sunshine Ordinance Task Force ("SOTF") attended the interested persons meetings and expressed comments regarding the lack of a clear definition for "willful violation" and concerns that under the Commission's process, Commissioners do not get to weigh in on referrals alleging willful violation until after Staff's review and unless Staff makes a recommendation of a finding of willful violation. Participants also discussed the need for a clearer set of case closure standards and supported the proposed amendments regarding a streamlined probable cause and hearing process.

Proposed Amendments to the Enforcement Regulations

Table 1 attached provides a summary of the rationale for each proposed amendment and **Attachment 1** provides the redline edits to the Enforcement Regulations. The following further clarifies certain issues raised at the previous meeting:

Regarding Proposed Section 2(H) – Good Cause, it is important to clarify that this section is not newly proposed but is currently located in Section 11(B)(2) of the existing Enforcement Regulations. The revision presented here updates the language by replacing "consists of" with "includes." This change was made in response to concerns raised at the previous meeting regarding the potential inflexibility or strictness of the original phrasing. The updated wording is intended to allow for a broader interpretation of what may be required to demonstrate "good cause."

Regarding proposed Section 4(F) – Reopening of a Case, the updated revision clarifies that, as with all other investigations opened, the Director of Enforcement will have authority to reopen a case if warranted.

Regarding proposed Section 5(D) – Confidentiality, as discussed at the previous meeting and as summarized below, under the Charter, the current practice to not disclose the complaint ensures fairness, protects whistleblowers, and upholds the integrity of investigations and complies with the confidentiality provisions under the Charter. Notably,



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1. **Respondents Are Fully Informed Without Releasing the Complaint:** Respondents are made aware of the scope of the investigation and potential violations through standard procedures like notification regarding the investigation and request for information, subpoenas, and request for interviews, ensuring fair engagement without needing the actual complaint. The suggestion that respondents are "left in the dark" is, therefore, unfounded. Respondents have been able to engage meaningfully with investigators through our current practice, and we continue to see great outcomes in our investigative work.
2. **Protecting Whistleblowers and Complainants:** The Commission has a core responsibility to protect the confidentiality of complainants, many of whom are whistleblowers acting in the public interest. Confidentiality safeguards such individuals who report potential violations, encouraging them to come forward without fear of retaliation. Releasing complaints could deter future reporting.
3. **Standard Practice Among Peer Agencies:** Other local ethics bodies, such as those in Los Angeles and San Diego, also keep complaints confidential, supporting consistency and credibility across jurisdictions.
4. **Many Investigations Are Not Complaint-Based:** A significant number of investigations arise from proactive efforts like audits or staff reviews, where no formal complaint exists to disclose.
5. **Maintaining Investigative Integrity:** Complaints may contain inaccuracies or biased language; disclosing them could distract from the core issues and disrupt the investigative process.
6. **Preserving Interagency Collaboration:** Disclosure could harm partnerships with other departments that expect confidentiality, reducing future cooperation and effectiveness.
7. **No Legal Obligation to Disclose:** The Commission's confidential approach is both longstanding and legal under the Charter's mandate that "records of any investigation shall be considered confidential information to the extent permitted by state law" (SF Charter § C3.699-13(a)).

The Commission's current practice strikes an appropriate balance between fairness, transparency, and confidentiality and serving the public's interest. It safeguards whistleblowers, preserves investigative integrity, aligns with trusted practices in other local jurisdictions, and complies with the Charter's confidentiality provision.

Regarding proposed Section 13(C) Use of Legal Defense Funds and Installment Plans, the updated revision adopts the restriction on the use of legal defense funds under the Political Reform Act and as adopted by the Fair Political Practices Commission. It also clarifies the rule regarding installment plans, noting that although the Commission will not accept installment payments, respondents are able to pursue several avenues with the City to pay fines, including through installment payments.



Referrals Under the Sunshine Ordinance

The issues present within this section have been extensively discussed by the Commission. 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 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 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.



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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 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.

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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The proposed amendments to the Regulations in Attachment 1 are being presented for discussion and action.