



San Francisco Ethics Commission

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Date: August 7, 2026

To: Members of the Ethics Commission

From: Jeffrey Zumwalt, Acting Director of Enforcement; Bertha Cheung, Senior Investigator

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

Summary

During its July and August 2025 meetings, the Commission reviewed proposed amendments to the Enforcement Regulations, received presentations from Staff, considered public comment, and provided feedback on the proposed revisions. In response, Staff revised the amendments to address Commissioner concerns and to further clarify and improve the enforcement process.

All proposed amendments were reviewed by the Commission except for three substantive issues identified at the August 2025 meeting requiring additional Staff review. This memorandum summarizes those revisions and requests that the Commission adopt the amended Enforcement Regulations.

Action Requested

Staff requests that the Commission adopt the amendments to the Enforcement Regulations, as revised in response to Commissioner feedback and consultation with the City Attorney's Office. With respect to the meet-and-confer process with the San Francisco Municipal Executives Association ("MEA"), the Department of Human Resources' Employee Relations Division ("ERD") has issued a close-out memorandum concluding its review and determining that MEA has not identified any negotiable impacts arising from the proposed amendments.

Accordingly, Staff recommends that the Commission approve the amendments as set forth in **Attachment 1**.

Origins of the Enforcement Regulation Review Project

The Enforcement Regulations were originally adopted on July 5, 1997, and last amended on March 19, 2018. Since that time, the Enforcement Division has expanded significantly in size and capacity, handling increasingly complex matters and refining investigative and adjudicative procedures. Probable cause proceedings have become more frequent, culminating the Commission's first administrative hearing on the merits in February 2024.

In preparation for that hearing, Enforcement Staff identified ambiguities and procedural gaps within the Regulations that affected the fairness and efficiency of the administrative process. To address those



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issues, Staff issued the [Enforcement Hearing Guidebook](#) on May 1, 2023, which provided interpretive guidance, identified procedural gaps, and recommended best practices for administrative hearings.

Although the Guidebook addressed many immediate concerns, it did not resolve underlying regulatory deficiencies that complicated the administration of the hearing process. Based on lessons learned from recent probable cause proceedings and the Commission's first hearing on the merits, Staff initiated a comprehensive review of the Enforcement Regulations in late 2024. The objective of this project is to clarify governing procedures, streamline enforcement operations, and ensure a fair, transparent, and efficient enforcement process for all parties.

Interested Persons Meetings

On March 4 and March 6, 2025, Staff conducted [two interested persons meetings](#) regarding potential amendments to the Enforcement Regulations. Four individuals, including practicing attorneys, participated and generally supported the proposed amendments. Participants expressed that investigations can be lengthy and expressed support for reforms to improve efficiency while preserving due process protections.

On May 27 and May 29, 2025, Staff conducted [two additional interested persons meetings](#) focused on enforcement of the Sunshine Ordinance, particularly Sections 67.34 and 67.35. Five individuals participated, including attorneys and representatives of the Sunshine Ordinance Task Force. Participants emphasized the need for clearer definitions of "willful violation," greater Commission involvement in referrals, streamlined probable cause and hearing procedures, and clearer standards governing case closures.

Prior Commission Review

Staff first presented the proposed amendments to the Commission on June 13, 2025. At its July 11, 2025 meeting, Staff provided a detailed presentation and received Commissioner feedback.

On August 8, 2025, Staff completed its presentation and requested Commission action. During that meeting, Commissioners identified three substantive issues requiring additional review. The Commission unanimously voted to continue the matter to allow Staff to revise the proposed language consistent with Commission direction.

Meet-and-Confer Process with MEA

On August 13, 2025, MEA requested that ERD meet and confer regarding the proposed amendments to the Enforcement Regulations on the grounds that they could affect represented employees.

Staff and ERD subsequently engaged in the meet-and-confer process over approximately ten months. The process included multiple in-person meetings, several rounds of written correspondence, and responses to two public records requests submitted by MEA. Throughout this process, Staff and ERD considered and responded to MEA's proposals.



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On May 29, 2026, ERD issued a close-out memorandum stating its determination that MEA had not identified any negotiable impacts arising from the proposed amendments, and that ERD considered its review of the meet-and-confer process with MEA complete. The memorandum further noted that MEA's proposals concern the Commission's statutory discretion and legal duties and do not constitute negotiable terms or conditions of employment subject to mandatory bargaining.

Accordingly, Staff recommends that the Commission proceed with adoption of the amendments.

Proposed Amendments to the Enforcement Regulations

Attachment 1 contains the redlined amendments to the Enforcement Regulations, and **Attachment 2** summarizes the rationale supporting each amendment. Because the Commission has previously reviewed the amendments in detail, this memorandum focuses on the three substantive issues identified during the August 2025 meeting. A complete summary of the revisions made since that meeting is provided in **Attachment 3**.

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

Under the City's governing statutes, respondents and witnesses may be subject to penalties for withholding required information. SF C&GCC §§ 1.170(f), 2.136(a), and 3.240(a).

At the August 2025 meeting, Commissioner Salahi discussed clarifications to the Regulations regarding the relationship between subpoena compliance and withholding liability under the City's enforcement framework. Following that discussion and after consultation with the City Attorney's Office, Staff made two related clarifications to the withholding provision.

First, Staff clarified the intent standard by specifying that withholding liability applies where a person "knowingly and intentionally" conceals or withholds required information. This clarification aligns the Regulations with existing statutory standards pursuant to Sections 1.170(f), 2.136(a), and 3.240(a) of the Campaign and Governmental Conduct Code and does not alter the substantive standard or respondent protections.

The revised language provides:

"Withholding. 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 San Francisco Campaign & Governmental Conduct Code, in any case brought before the Commission if any person or entity knowingly and intentionally conceals or withholds information required to be provided by law. In addition to all other evidence demonstrating that a respondent has knowingly and intentionally 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 Director of Enforcement to bring additional charges for concealing or withholding information or for failure to cooperate with an investigation as required under Section 3.240(a). This provision shall also apply for any subpoena issued after a Probable Cause Determination, pursuant to Sections 7 and 10 herein."



Second, Staff addressed the treatment of objections to subpoenas in the context of withholding determinations. Concerns were raised regarding circumstances in which objections may be asserted in a manner that could delay or impede compliance, including objections that could be characterized as frivolous or made in bad faith. Rather than establishing any upfront determination regarding the validity of such objections, the revised language clarifies that the filing of an objection does not, by itself, preclude a withholding charge. This approach preserves the Commission's ability to evaluate the reasonableness and validity of objections within the ordinary adjudicative process.

Accordingly, the revised language provides:

"v. The filing of an objection to a subpoena or subpoena *duces tecum* does not, by itself, preclude a charge of withholding under this Section. Nothing in this Section limits the Commission's authority, in any subsequent adjudicative proceeding on a withholding charge, to consider the validity or reasonableness of any objections made to the subpoena in its determination of the charge."

Proposed Section 7(C)(5)(i), (ii) and (iii). Finding of no probable cause

Under the existing framework of the Regulations, the Executive Director is delegated authority to make recommendations regarding probable cause. Enforcement Reg. 7(D)(1). As previously presented to the Commission at the August 2025 meeting, the proposed amendment confers authority on the Executive Director to make findings of probable cause. This change is intended to streamline the enforcement process and reduce unnecessary delay, while preserving the Commission's ultimate authority to determine whether a violation has occurred following a full hearing on the merits.

At the meeting, the Commission raised concern that the Regulations should preserve Commission oversight of findings of *no* probable cause. To address this concern, Staff has retained the existing ratification procedures applicable to the Executive Director's probable cause determinations under current Section 7(D)(6) and extended a comparable review framework to findings of *no* probable cause.

The revised framework preserves Commission oversight while establishing a clear process and timeline for review. It provides the Commission with a final opportunity to weigh in before the Executive Director issues the finding of no probable cause to the parties, at which point the determination becomes final for purposes of Commission action.

If a closed session is required at that point, the matters relating to the draft finding of no probable cause may be discussed in closed session under the Commission's authority pursuant to Government Code section 54956.9, to the extent applicable.

The revised language provides:

"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 draft a



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confidential finding of no probable cause in writing. The finding of no probable cause will provide clear and concise reasons supporting that determination.

- i. The Executive Director's finding of no probable cause shall be transmitted to the Commission.
- ii. Any Commissioner may request that the finding be reviewed by the full Commission in closed session at the next regularly scheduled Commission meeting. A request for review must be submitted to the Executive Director within 5 calendar days after transmission of the finding to the Commission.
- iii. If a Commissioner timely requests review, the finding of no probable cause shall not become final unless and until at least three members of the Commission vote to ratify the finding. The Commission shall consider the matter in closed session and may hear arguments from, and ask questions of, the Executive Director. Following its review, the Commission may ratify the finding of no probable cause or decline to ratify the finding and direct such further action as it deems appropriate.
- iv. If no Commissioner timely requests review, the Executive Director's finding of no probable cause shall become final upon expiration of the review period. Within 5 calendar days after the finding of no probable cause becomes final, the Executive Director shall issue the written finding to all parties.
- v. The Executive Director's final finding of no probable cause constitutes the final administrative determination of the Commission. Upon the finding becoming final, the case shall be closed, and no further action will be taken by the Commission or the Enforcement Division with respect to the allegations contained in the case except as provided in Sections 4(G) and 4(H) of these regulations. If a complainant desires further review of the final finding of no probable cause, the complainant must follow the procedures set forth in Section 1094.5(a) of the California Code of Civil Procedure governing judicial review of a final administrative order or decision."

Proposed Section 9(B). Delegation to a Pre-hearing Officer & Proposed Section 10(A). Delegation to a Hearing Officer

Under the existing framework of the Regulations, any licensed attorney in the State of California or individual member of the Commission may serve as a hearing officer. Enforcement Reg. 8(A).

At the August 2025 meeting, Commissioner Yeh noted that the original language, namely "any licensed attorney in the State of California," was ambiguous and could be interpreted to include out-of-state attorneys, and raised whether the role should be limited to attorneys at all.



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Staff revised the language to clarify that pre-hearing and hearing officers may be: “Any licensed attorney of the State Bar of California, an inactive licensee of the State Bar of California as permitted under State Bar Rule 2.30(c), or any individual member of the Commission.”

This revision ensures clarity regarding eligibility while maintaining flexibility in staffing adjudicative roles.

Conclusion

Staff has revised the amendments in response to Commission feedback and consultation with the City Attorney’s Office. With respect to the meet-and-confer process, the ERD has issued a close-out memorandum concluding its review and determining that MEA has not identified any negotiable impacts arising from the proposed amendments. The Commission remains willing to engage with MEA should negotiable impacts arise in the future.

Staff recommends that the Commission adopt the amendments set forth in **Attachment 1**.

Attachments:

Staff Presentation on Proposed Amendments to Enforcement Regulations

Attachment 1 - Staff Amendments to the Enforcement Regulations

Attachment 2 - Rationale Table to Proposed Amendments

Attachment 3 - Summary of Changes since August 2025